



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: AA/02602/2012  
AA/02606/2012

AA/01158/2013

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 30<sup>th</sup> September 2013**

**Determination Sent  
On 23<sup>rd</sup> October 2013**

**Before**

**UPPER TRIBUNAL JUDGE D E TAYLOR  
DEPUTY UPPER TRIBUNAL JUDGE HEMINGWAY**

**Between**

**MOHAMMED SHAH  
SHAFIKA ABDURRAHIM ABDULJALIL**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr O’Ryan, Counsel  
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. These are the Appellants’ appeals against the decision of Judge Fisher made following a hearing at Bradford on 14<sup>th</sup> May 2012.

## **Background**

2. The Appellants claim to be citizens of Myanmar. The Secretary of State accepts that the second Appellant is Burmese but believes that the first Appellant is a citizen of Bangladesh.
3. The first Appellant's immigration history is as follows. He applied for a UK visa on 13<sup>th</sup> November 2007 in the name of Mohammed Shah with a supporting Bangladeshi passport which had been issued in Bangladesh and was valid from 22<sup>nd</sup> December 2003 until 21<sup>st</sup> December 2008. He travelled to the UK in 2008 and 2009 and 2010 and also to Switzerland on that passport, obtaining valid visas on each occasion and each time returning to Saudi Arabia.
4. On 17<sup>th</sup> October 2011 the first Appellant arrived in the UK and claimed asylum on 1<sup>st</sup> November 2011 with his dependent spouse.
5. On 27<sup>th</sup> February 2012 a decision was made to refuse to grant him asylum under paragraph 336 of HC 395 as amended and to remove him as an illegal entrant from the UK by way of directions under paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971. The basis for the refusal was that he was a national of Bangladesh and could safely be returned there and his claim to be a Rohingya originating from Myanmar was rejected.
6. Judge Fisher concluded that although there were points in favour of the first Appellant's claimed Burmese nationality, the fact that he was in possession of a valid Bangladeshi passport and the significant inconsistencies in the evidence, especially between him and his wife, and the implausibility of aspects of his account, led him to conclude that the entire account had been fabricated. On that basis he dismissed the appeals.
7. The Appellant filed lengthy Grounds of Appeal. The application was initially refused by Designated Judge Manuel on 21<sup>st</sup> June 2012 but, upon renewal to the Upper Tribunal, permission was granted by Upper Tribunal Judge Latta on 9<sup>th</sup> August 2012.
8. This matter first came before Mr C M G Ockelton, Vice President of the Upper Tribunal, Immigration and Asylum Chamber and myself on 28<sup>th</sup> November 2012. The appeal was adjourned on that occasion in order to permit the second Appellant, whose nationality was not in dispute, to make an application for asylum in her own right. She subsequently did so and was refused on 29<sup>th</sup> January 2013. Her appeal against that decision comes before us today.
9. Accordingly, unusually, the Tribunal is sitting as both the Upper and First-tier Tribunal to determine both whether Judge Fisher erred in law in dismissing the appeals of the first Appellant and his dependent wife and whether the Respondent's decision to refuse the second Appellant's independent claim in her own right

10. So far as the latter appeal is concerned, it is adjourned to be listed For Mention before Judge Hemingway in twelve weeks.

### **Submissions**

11. Both parties agreed that the question of the first Appellant's nationality was determinative of this appeal and if found to be a Rohingya from Myanmar the Appellants would succeed in their claim.
12. Mr Diwnycz accepted that there were material errors in Judge Fisher's assessment of the evidence, stated that he did not wish to cross-examine either the first Appellant or his dependent wife, made no submissions save to rely on the Reasons for Refusal Letter and said that he was content to leave the matter in the Tribunal's hands. He did not challenge the evidence that the first Appellant has written and published articles highlighting the fate of the Rohingya people and criticising the Burmese government and his children are notable players in the Free Rohingya Campaign.

### **Consideration of whether there is an error of law**

13. We conclude that Judge Fisher did err in that he failed to take into account material evidence, in particular an education certificate, found to be genuine by a specialist document examiner at the National Document Fraud Unit, from the London Chamber of Commerce and Industry in Burma in 1987 in the name of Ba Sein (a) Mohammed Sha. The first Appellant placed considerable reliance on the certificate as evidence that he had lived in Burma as per his account but Judge Fisher made no reference to it in the determination. Moreover the judge failed to take account of the fact that the road names given by the first Appellant were highly consistent with the claim that he had lived in Burma some time ago, in that he gave old names of roads rather than the current names.
14. The judge failed to take into account relevant evidence in reaching his decision.
15. Furthermore, there were a number of undisputed facts which the judge referred to but stated that they were not "conclusive evidence" of the first Appellant's nationality which indicates an improper application of the lower standard of proof, namely reasonable degree of likelihood.
16. Accordingly the decision is set aside.

### **Findings and Conclusions**

17. It is the first Appellant's case that he fled from Burma to Bangladesh in 1993 having been told by a friend who had been arrested and then released that his name was on a government list.
18. The Respondent relies on the fact that the first Appellant travelled to the UK on a genuine Bangladeshi passport, a passport which he had used

frequently to apply for visas in various countries and make a number of visits to them.

19. The first Appellant accepts that the document could be legitimate but that it was obtained fraudulently through an agent. The Bangladesh COI Report which states that:

“The Canadian High Commission in Dhaka in July 2005 advised the Canadian IRB as follows, inter alia; many false documents exist; ... the content of genuine documents is often questionable. The rampant corruption in various levels of the government weakness the integrity and the credibility of officially issued documents ... similarly it is relatively easy to obtain a passport under a false identity.”

20. We accept the submission from Mr O’Ryan that the Respondent’s case is significantly undermined by her own evidence that corruption is rife in Bangladesh.
21. The Respondent also considers that the first Appellant’s evidence in respect of his identity card was inconsistent. The translation of the identity card states that the original was issued in 1982. His occupation on the translation was described as “student” and the first Appellant confirmed that he was a student when it was issued. In his interview the first Appellant said that he thought he had to wait two years to be issued with the card which would have meant that he applied for the identity document in 1980. However by then he was no longer a student.
22. The Appellant says that he made a mistake when he told the officer that he waited for two years but he said that he did not have the opportunity to correct it because the record was not read back to him. However he went to his solicitors and, in their further representations sent before the decision was made, they corrected the error and said that he had waited for nine years to get his ID card. The Respondent refers to legislation passed in 1974, namely the Emergency Immigration Act which required all citizens to carry ID cards. The fact that, on the Appellant’s evidence, he applied for the document before that legislation came into force is not inconsistent with the objective evidence since that evidence is silent as to whether citizens had to apply for identity cards. It simply requires all citizens to carry them. We accept that the fact the first Appellant had to wait nine years for an identity card is consistent with the evidence that Rohingas found it difficult to obtain them and were eligible only for foreign registration cards.
23. Clearly the initial response by the Appellant at interview shows a potential discrepancy in his account. Moreover the fact that he was able to use a Bangladeshi passport on a number of occasions is strong evidence of his nationality of that country. However we consider that the evidence in favour of the Appellant strongly outweighs the doubts raised by the Respondent in the reasons for refusal letter for the following reasons.

24. It is not disputed that the dependent wife is a national of Burma. Nor is it disputed that the adult children have been accepted as nationals of Burma by the US authorities and granted asylum on that basis. Mr Diwnycz acknowledged that the first Appellant's daughter, Susu Lwin, was accepted by the US authorities as having been born there. It is reasonable to assume that the US authorities to have in place robust procedures for checking the nationality of asylum applicants and the fact that the Appellant's daughter and son have been accepted as nationals of Burma by the US authorities and granted asylum is strong evidence of their father's nationality. The two children made applications for asylum which included addresses where they had lived in Burma and the schools which they had attended and an exit stamp on a passport showing that the daughter left Burma in November 2002.
25. We also consider that the first Appellant's knowledge of Burma is highly significant. In the reasons for refusal letter the Respondent criticised the first Appellant's knowledge of Rangoon and in particular stated that the location of the Institute of Economics was on Prome Road although the map states it was on Pirami Road. He also said that the former High Court building was on Barr Street near the US Embassy but there was no Barr Street listed near to the High Court building on the map. The first Appellant was able to demonstrate that he had given the old names for the roads which is persuasive evidence that he lived there until 1993 as claimed. It would not have been possible for the first Appellant to prepare in any way for the highly specific questions which were asked of him at interview.
26. There is other evidence that the first Appellant is Rohingya from Burma in that he speaks standard Burmese, Rohingya and Rakhine. The Respondent does not challenge the Appellant's evidence that Bangladeshi speakers speak Bomang, a dialect of Burmese and not standard Burmese.
27. We see no reason to discount the oral evidence given by Maung Tun Khin who gave evidence at the first hearing. He is the President of the Burmese Rohingya Organisation UK and gave evidence to the effect that the first Appellant was born in the same place as him, namely Buthidaung Township Arakan State, Burma and saw and spent time with him whilst they lived there. The fact that Mr Khin was only 13 years old when the first Appellant left Burma is not relevant to the question of whether he knew him when he was a child and no basis for placing little weight on that evidence.
28. We consider that this is outweighed by the strength of the evidence relied upon by the first Appellant and conclude that he has established, to the lower standard of proof, that he is a Rohingya from Burma.

## **Decision**

29. The decision of the First-tier Tribunal Judge is set aside. It is remade as follows. The appeals are allowed on asylum grounds.

Signed

Date

Upper Tribunal Judge Taylor