



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

Appeal Number: AA/02869/2013

THE IMMIGRATION ACTS

**Heard at Royal Courts of Justice-Belfast
On 27 October 2015**

**Determination
Promulgated
On 22 December 2015**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

MR MD ABU SOAIEF

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Natur, Solicitor

For the Respondent: Mrs S Saddiq, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Bangladesh born on 27 June 1986. He arrived in the UK on 2 July 2009 as a student. He was granted further leave as a student until September 2011.
2. He was arrested by immigration authorities when he was found working in a restaurant, on 6 February 2013. He claimed asylum on 8 February 2013.

That application for asylum was refused and a decision made on 9 March 2013 to remove him to Bangladesh.

3. The appellant appealed against that decision and his appeal came before First-tier Tribunal Judge Farrelly at a hearing on 18 March 2014, whereby the appeal was dismissed on all grounds.
4. Permission to appeal was granted by a Judge of the Upper Tribunal. Thus, the appeal came before me.

The appellant's claim and the First-tier Judge's determination

5. The appellant's claim in summary is that in 2005 he joined the Hizb-ut Tahrir Party in Bangladesh. His role within the party was to distribute leaflets and to give speeches to influence people about Islamic values, as well as to gather people to support Hizb-ut Tahrir. He claims that he was arrested by police on 6 March 2009 for holding a demonstration which caused a road to be blocked. He was detained for one night.
6. After he had come to the UK he learnt that an arrest warrant was issued in March 2011 and served on his father. He fears that if returned to Bangladesh he would be arrested because of his association with Hizb-ut Tahrir and because of the arrest warrant.
7. Judge Farrelly referred to background evidence which indicated that Hizb-ut Tahrir had been banned in Bangladesh, being described as an Islamist group. He considered documents that the appellant had produced but found that those documents could not be relied on as evidence that the appellant was the subject of any court proceedings in Bangladesh or subject to an arrest warrant.
8. He found that the circumstances in which the appellant claimed asylum adversely affected the credibility of his claim.

The grounds and submissions

9. It is asserted that the delay between the hearing of the appeal and the promulgation of the determination materially affects the judge's assessment of credibility. The decision in *Sambisavam v Secretary of State for the Home Department* [1999] All ER (D) 1168 is relied on. Although the delay is less than the three months referred to in that case, it is just short of that period, being eleven weeks.
10. It is contended in the grounds that the judge's consideration of the documentary evidence relied on by the appellant is inadequate. The judge had not identified the documents by title and he did not refer to the contents of them. It is argued that he did not identify the positive features of that documentary evidence which supported the appellant's appeal.
11. Furthermore, it is suggested that in relation to a particular a letter from the attorney in Bangladesh, the respondent had failed to verify that document, in circumstances where verification would have been possible.

12. The original grounds of application for permission, also relied on, argue that the judge failed to give adequate consideration to the country background material in terms of the risk to the appellant because of his association with Hizb-ut Tahrir.
13. It is also contended that there was a general failure to consider the appellant's evidence and to give comprehensible reasons for rejecting those aspects of the evidence which were rejected, the judge instead relying on the respondent's account of events, not taking into account the appellant's explanations for some of the issues.
14. In oral submissions Mr Natur relied on the grounds and directed my attention to specific aspects of some of the documents. So far as verification of documents is concerned I was referred to *PJ (Sri Lanka) v Secretary of State for the Home Department* [2014] EWCA Civ 1011, in particular at [30]. In relation to the judge's reasons generally, I was referred to the decision in *MK (duty to give reasons) Pakistan* [2013] UKUT 641 (IAC).
15. The judge had failed to take into account the knowledge of Hizb-ut Tahrir that the appellant demonstrated, for example in his interview. His evidence at the hearing before the First-tier Tribunal was not considered in detail, although the appellant was cross-examined for 45 minutes.
16. Mrs Saddiq submitted that there was no merit in the delay point. The determination had been completed within eleven weeks of the hearing and the judge who granted permission to appeal did not consider that there was much merit in that point.
17. Otherwise, the judge gave adequate and sustainable reasons for his findings. I was referred to various paragraphs of the determination in which it was submitted the judge had considered the different documents relied on by the appellant. The judge was entitled to conclude that the documents were not reliable.
18. With reference to the decision in *PJ (Sri Lanka)* at [29], there is no rebuttable presumption that documents from a lawyer in another jurisdiction are reliable. There was no obligation on the respondent to verify the advocate's letter. I was also referred to the decision in *MJ (Singh v Belgium: Tanveer Ahmed unaffected) Afghanistan* [2013] UKUT 253 (IAC).
19. The judge had concluded that there were significant gaps in the appellant's knowledge of Hizb-ut Tahrir and the references to the asylum interview and the questions the appellant answered on this point did not show significant knowledge of that group.
20. In reply Mr Natur referred to the Operational Guidance Note for Bangladesh ("OGN") dated September 2013 in terms of the potential for risk on return.

My assessment

21. I do not consider that there is any merit in the contention that the First-tier Judge's credibility assessment is flawed by reason of the interval between the hearing of the appeal and the promulgation of the determination. The appeal was heard on 18 March 2014. A printed date of promulgation is given as 25 May 2014 with a further stamped date of 2 June 2014. It seems reasonably apparent that the judge had completed his determination by 25 May 2014. On that basis, the determination was completed just over two months after the hearing. Even if the date of 2 June 2014 is taken as the date on which the judge completed the determination, that is still short of a period of three months identified in *Sambisavam* as an appropriate yardstick.
22. Furthermore, there is nothing on the face of the determination which would indicate that the credibility findings had suffered by reason of that interval of time.
23. So far as verification of documents is concerned, I am not satisfied that there was either any obligation on the respondent to verify the letter from the advocate (or indeed any other document) or that the lack of any such verification has any significance in relation to the judge's credibility findings. As was said in *PJ* at [29]:

"there is no basis in domestic or ECHR jurisprudence for the general approach that Mr Martin submitted ought to be adopted whenever local lawyers obtained relevant documents from a domestic court, and thereafter transmit them directly to lawyers in the United Kingdom. The involvement of lawyers does not create the rebuttable presumption that the documents they produce in this situation are reliable. Instead, the jurisprudence referred to above does no more than indicate that the circumstances of particular cases may exceptionally necessitate an element of investigation by the national authorities, in order to provide effective protection against mistreatment under article 3 ECHR."

24. The court then gave a number of reasons as to why verification may not be feasible, may be unjustified or may be disproportionate. Furthermore, it is worth quoting what was said at [30] as follows:

"Therefore, simply because a relevant document is potentially capable of being verified does not mean that the national authorities have an obligation to take this step. Instead, it may be necessary to make an enquiry in order to verify the authenticity and reliability of a document – depending always on the particular facts of the case – when it is at the centre of the request for protection, and when a simple process of enquiry will conclusively resolve its authenticity and reliability (see *Singh v Belgium* [101] – [105]). I do not consider that there is any material difference in approach between the decisions in *Tanveer Ahmed* and *Singh v Belgium*, in that in the latter case the Strasbourg court simply addressed one of the exceptional situations when national authorities should undertake a process of verification."

25. The general approach to issues of verification was also considered in the decision in *Mj*. Whilst I am not bound by that decision, I endorse and adopt its reasons.
26. So far as the judge's consideration of the documentation in this case is concerned, it is true to say that the determination could have been clearer in its specific identification of documents and assessment of them. For example, as was apparent at the hearing before me, the reference at [22] of the determination to an arrest warrant seems in fact to be a reference to a document headed "Order," to be found at page 9 of the appellant's 29 page bundle. Nevertheless, as the judge pointed out, the document is written in a combination of English and Bengali and contains numerous spelling and grammatical mistakes. This document is also referred to at [26], there described as "the magistrates order," and in which paragraph the judge notes that the refusal letter pointed out that that Order referred to a case dated 8 December 2009, by which stage the appellant was no longer in the country.
27. At [23] the judge considered the document said to be from an advocate in Bangladesh. It is stated in that paragraph that the document is written in very poor English, but that seems to me to be a failure to take into account that this was a translation of the advocate's letter. However, the judge was entitled to reject as inherently implausible the suggestion in that letter that court documents are drawn up by officials who sometimes make mistakes and that it would depend on what typing machine is used in terms of whether Bengali or English would be written. Insofar as it is possible to deduce what is being said in that letter, by the translation, the judge's summary of the letter is sufficiently accurate and on the basis of the explanation given as to the content of the letter the judge was not required to say anything other than that the explanation was not credible.
28. At [24] reference is made to a Bangladesh Supreme Court judgment, apparently submitted on behalf of the appellant to demonstrate that courts in Bangladesh use both languages, English and Bengali. However, as Judge Farrelly pointed out, that judgement does not contain a "random mix" of language but illustrates the high level of English used in the superior courts. Thus, he concluded, it supported the respondent's contention that a higher standard would be expected of official court documentation. This again was a conclusion open to Judge Farrelly.
29. There was sufficient consideration of the documents to make the judge's conclusions on them sustainable. It was not incumbent on him to refer to each document, particularly in circumstances where not all of them referred specifically to the appellant. Furthermore, although not a matter referred to by the First-tier Judge, documents involving other individuals, for example that at page 10 of the appellant's bundle described as an order for remand of certain accused by the magistrate in Dhaka, refer to an incident on 8 December 2009. Of course, by this time the appellant was in the UK and the Order said to relate to the appellant, and referred to by the First-tier Judge at [22] also has that date of 8 December 2009, a date apparently therefore involving persons other than the appellant.

30. Furthermore, in relation to the arrest warrant, at [31] there is reference to the appellant having been asked in cross-examination how his father came by the arrest warrant. It seems that the appellant was unable to recall how his father got the document, which the judge did not find credible. Again, he was entitled to come to that conclusion, bearing in mind the potential importance of the arrest warrant.
31. In addition, in the judge's summary of the Reasons for Refusal Letter from [10], the respondent's identification of adverse credibility factors relating to the documents are summarised, for example in relation to the arrest warrant making no mention of the appellant being involved in a case dated 8 December 2009 "as referred to in another document." That other document is the Order to which I have referred. The judge himself made reference to this at [26]. At [25] reference is made to the question of why the authorities would issue documents in relation to the appellant so long after he had left. This relates to a document concerning the arrest of one Tanveer Ahmed on 10 March 2011, whom the appellant claimed must have named him to the police resulting in the warrant for the appellant's arrest.
32. The renewed grounds suggest that the judge was wrong to rely on information from the Country of Origin Information Report as set out in the refusal letter, in part because that extract from the report refers only to "forged identity documents" whereas the appellant had submitted various court documents and a letter from an advocate in Bangladesh. Those sorts of documents are not referred in the COI Report as being easy to obtain. It is also suggested in the grounds that the COI Report, relying on information from the Canadian High Commission in Dhaka, states that verification of documents is relatively easy.
33. The extract from the COI Report appears at [27] of the Reasons for Refusal Letter. However, the grounds do not quote that extract in full, omitting the passage which states that "The rampant corruption in various levels of the government weakens the integrity and the credibility of officially issued documents." The judge was perfectly entitled to factor into his assessment of the documentary evidence, "the level of false documentation from Bangladesh" [26].
34. In all these circumstances, considering the determination as a whole in which the judge considered the documentary evidence holistically, I am satisfied that he was entitled to find that those documents were not reliable, as expressly stated at [34].
35. I am not satisfied that there is any merit either, in the contention that the judge failed to have regard to relevant background evidence. It is apparent from the determination that he was aware that Hizb-ut Tahrir had been banned in 2009. At [21] there is reference to that banning and to the authorities describing Hizb-ut Tahrir as an Islamist group considered a threat to peace. At [19] there is further reference to Hizb-ut Tahrir and how it is viewed by the government in Bangladesh. These paragraphs are all within the reasons part of the determination.

36. I am not satisfied that there is any merit in the complaint to the effect that the judge failed to have sufficient regard to background evidence when assessing the appellant's claim, in terms of credibility or indeed in terms of risk on return.
37. The First-tier Judge rejected the appellant's account of there being any adverse interest in him, for example in terms of any magistrates' order or any arrest warrant. At [34] he referred to the appellant's account of his involvement with Hizb-ut Tahrir as being a very limited involvement, and only claiming one "very minor encounter" with the authorities. The appellant's account was also that he wants to disassociate himself from Hizb-ut Tahrir. Accordingly, and in the light of the judge's conclusions that there is no active adverse interest in the appellant, he concluded that the appellant would not be at risk on return. Indeed, he concluded that the appellant had not established that he had not returned home because of any fear.
38. It is not suggested in the grounds that there was an absence of any concrete finding in terms of whether the appellant had given a credible account of involvement with Hizb-ut Tahrir, or of his arrest and detention overnight on one occasion. No such complaint appears in the grounds and none was referred to in submissions before me. In any event, even if it could be argued that this aspect of the appellant's account was accepted, the judge was entitled to conclude that there would be no adverse interest in him on return, he not suggesting that he had any intention of reviving his association with Hizb-ut Tahrir with whom, on his case, he was involved in a very modest way over ten years ago.
39. In the original grounds of appeal to the Upper Tribunal it is argued that there was a failure on the part of the judge adequately to consider the appellant's evidence, either as set out in his witness statement, asylum interview or cross-examination which it is said lasted for approximately 45 minutes.
40. At [6]-[9] the broad basis of the appellant's claim is set out. At [17]-[18] the appellant's evidence at the hearing is summarised in terms of the aspects of that evidence that the appellant relies on in support of the claim, explaining for example his fear of return, his father's obtaining of the summons, and why there was a delay in his claiming asylum. The explanation as to why he was unable to describe the logo of Hizb-ut Tahrir is also given. At [20] is a condensed description of the appellant's claimed role with Hizb-ut Tahrir and his arrest and detention in March 2009. At [27] one finds the more detailed explanation for the appellant's late claim for asylum. At [30] there is reference to the appellant's account of why he stopped studying and at [31] evidence he gave in cross-examination in relation to the arrest warrant is set out. In the following paragraph, what he said in the asylum interview about his intention to return when there was a change of government is described.

41. Read as a whole the determination does reveal a description and appreciation of the appellant's account and his explanations for some of the adverse credibility issues relied on by the respondent.
42. In the original grounds two specific matters are identified as illustrative of the judge's lack of adequate evaluation or appreciation of the appellant's account. The first relates to the appellant's apparent loss of his passport. At [29] the judge concluded that the appellant was not honest with immigration officials when encountered in the UK, initially denying being employed and being untruthful as to how long he had been working. Specifically in relation to the passport the judge summarised the position as being that the appellant initially said he lost his passport but "then thought better of this." It is said in the grounds that this is a nearly verbatim recitation of the UKBA minute sheet at annex D of the respondent's bundle. Materially, that minute states that the appellant was arrested and taken to an address to retrieve his passport and pack a bag. It states that "Subject had initially claimed he lost his passport in Manchester but on arrival at staff house, he then admitted his passport was in his room. He then retrieved his passport from his top drawer and packed a bag."
43. In his witness statement the appellant said that he was told by UKBA that he needed his passport as he would be deported to Bangladesh, but that he was unsure of whether or not his passport was at his house or at a previous address. He was told by UKBA that if the passport was lost they would need to contact the Bangladeshi High Commission or the Embassy. He then states that he was taken to his house to collect some belongings and found his passport in a drawer which he handed over to UKBA.
44. In my judgement there is no error in the judge's evaluation of this evidence. He was entitled to conclude that the appellant had, in effect, dishonestly claimed to have lost his passport in circumstances where the evidence from the respondent was that the passport was found in a top drawer; and the appellant's own account is hardly any different. He stated that he found his passport in a drawer. The 'minute' states that the appellant "then admitted" that his passport was in his room. None of that suggests that it was lost; quite the contrary. For the judge to characterise this as the appellant having been untruthful in the beginning about losing his passport and then thinking better of the matter is entirely sustainable.
45. Although it is said in the grounds that it remains unclear what weight if any was afforded to the appellant's explanation given in his witness statement, it is readily apparent that the judge did not accept the appellant's claim that he had lost his passport.
46. Furthermore, adequate reasons were given for the judge's conclusion that the appellant had not given a credible account of why he stopped his studies. He found the account of difficulty experienced in transferring money from his father to be unbelievable given the banking systems between the two countries. The judge explained why he did not accept the appellant's account of why he stopped his studies, aside from the

issue of transferring funds, namely in terms of English language requirements. He was entitled to conclude that the appellant subsequently abandoned studying in order to work.

47. Those matters, and his initial attempts at deception in relation to immigration authorities, and the circumstances of the late claim for asylum, were all factors the judge was entitled to take into account in assessing the credibility of the appellant's claim to be in fear of return.
48. Although the judge did not set out specific detail of what the appellant said in the asylum interview in terms of his knowledge of Hizb-ut Tahrir, he did nevertheless summarise the refusal letter in this respect at [14], in terms of the suggestion that the appellant displayed a fundamental lack of understanding of the ideals and aims of Hizb-ut Tahrir and that it is trans-national, and in terms of his inability to provide details of its emblem or slogan. At [32] Judge Farrelly concluded that if the appellant was involved with Hizb-ut Tahrir it would have been apparent to him that they oppose all the political parties in Bangladesh and that there are no alignments. Whilst it is apparent that in the asylum interview the appellant did display some knowledge of Hizb-ut Tahrir, I do not find that there is any error in the judge's characterisation of the appellant's knowledge of Hizb-ut Tahrir as being that there are "significant gaps" in his knowledge of the group [34].
49. It is true that there are criticisms that can be made of the determination of the First-tier Judge. For example, the determination would have benefitted from a more structured approach to the assessment of the appellant's account, including for example in terms of the oral evidence and what the appellant said in interview. However, I am satisfied that it is possible to deduce from the determination all the essentials sufficient to make it sustainable. There is a correct appreciation of the basis of the appellant's claim, identifying the evidence relied on including documentary evidence, and a sustainable evaluation of that evidence against relevant country background material. Legally sufficient reasons are given for the adverse credibility assessment and for the conclusion that the appellant would not be at risk on return.
50. Accordingly, I am not satisfied that it has been established that there is any error of law in the decision of the First-tier Tribunal. Accordingly, its decision to dismiss the appeal on all grounds is to stand.

Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision to dismiss the appeal on all grounds therefore stands.

Upper Tribunal Judge Kopieczek

17/12/15