



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: AA/07125/2015**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 January 2016**

**Decision & Reasons Promulgated  
On 19 January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**AH**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Ms A Everett a Home Office Presenting Officer

For the Respondent: Ms Akhter of counsel instructed by M&K Solicitors

**DECISION AND REASONS**

**Introduction**

1. An anonymity order was previously in place. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

2. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of MH ('the claimant') who appealed against a decision taken on 9 March 2015 to refuse to grant him asylum.

### **Background Facts**

3. The claimant is a citizen of Myanmar born on 30 March 1984. He is a stateless Rohingya born in Myanmar. He fled to Bangladesh when he was 8 years old with his siblings. He lived in Bangladesh until 2006 when he came to the UK entering illegally. He made a claim for asylum under Paragraph 334 of the Immigration Rules HC395 (as amended) (the 'Immigration Rules') on 12 February 2014. That application was refused because the Secretary of State did not accept that the appellant was a stateless Rohingya. The Secretary of State also rejected the claimant's claim that he would be persecuted if returned to Bangladesh. The Secretary of State also considered that the appellant was not in need of Humanitarian protection or that his removal would breach the UK's obligations under the European Convention on Human Rights.

### **The Appeal to the First-tier Tribunal**

4. The claimant appealed to the First-tier Tribunal. In a determination promulgated on 28 September 2015, Judge Lagunju allowed the claimant's appeal. The First-tier Tribunal found that the appellant has a well-founded fear of persecution if he were to be returned to Myanmar. Although the judge did not consider that the claimant had a well-founded fear in Bangladesh, the judge found that he was entitled to International Protection. The judge found that the claimant did not qualify for leave to remain under appendix FM and EX1.1 of the Immigration Rules. She found that the claimant satisfied paragraph 276ADE(vi) of the Immigration Rules because there would be significant obstacles to his integration on return to Myanmar and/or Bangladesh (although it is not entirely clear that the judge also referred specifically to integration in Bangladesh.)

### **The Appeal to the Upper Tribunal**

5. The Secretary of State sought permission to appeal to the Upper Tribunal. On 14 October 2015 First-tier Tribunal Judge Baker granted the Secretary of State permission to appeal. The grant of permission indicated that the grounds may have merit because the First-tier Tribunal judge does not address why the appellant cannot be returned to Bangladesh. Thus, the appeal came before me.

### **Summary of the Submissions**

6. The grounds of appeal assert that the judge found that there was no convention reason why the appellant could not be returned to Bangladesh, that he exaggerated his evidence with respect to

Bangladesh, that he would have sufficient protection if returned to Bangladesh or that he could re-locate. His finding that the appellant would not be able to re-integrate is manifestly inadequately reasoned. The removal directions were to Myanmar or Bangladesh, therefore the judge has materially erred in allowing the appeal.

7. In her oral submissions Ms Everett submitted that paragraph 31 of the decision is insufficiently reasoned regarding whether there is a significant obstacle on return to Bangladesh. The decision was perverse on this issue given the immigration history. The judge found at paragraphs 25 and 26 that there was no fear of persecution on return to Bangladesh. The removal directions were to either Myanmar or Bangladesh. The judge found that the appellant had spent a substantial amount of time in Bangladesh (paragraph 26). She found that the appellant speaks Sylheti Bengali - this is the only language he speaks. In paragraph 31 there is barely any reasoning
8. Ms Akhter submitted that there is only one ground of appeal namely a challenge to the fact that the judge allowed the appeal on asylum grounds. The judge found that the appellant was a Rohingya Muslim from Myanmar. The Secretary of State has not attacked the finding that the appellant was a Rohingya Muslim. There is no challenge to paragraph 276ADE in the grounds of appeal - the Secretary of State cannot now raise a new ground of appeal. The grant of permission does not refer to 276ADE. The appeal is only in relation to the convention reason. The judge made findings in relation to 276ADE - the appellant has lost his parents and has no contact with his brothers. The judge found that the appellant would face significant obstacles to re-integration in Bangladesh. There are sufficient reasons in relation to re-integration.
9. In reply Ms Everett submitted that it is clear that the First-tier Tribunal judge found that the claimant is not at risk on return to Bangladesh and that there is sufficiency of protection. Additionally the claimant could re-locate. The claimant has moved around Bangladesh. It was erroneous of the judge to find that he qualified for humanitarian protection. In answer to the claimant's representative's challenge that the Secretary of State has not challenged 276ADE Ms Everett referred me to the grounds of appeal. It is set out that the challenge is to the finding that the claimant would not be able to re-integrate into Bangladesh as it is manifestly inadequately reasoned. The permission to appeal does not restrict the grounds. She submitted that an assertion that family members are either dead or untraceable is not sufficient to make a finding that a person could not re-integrate.

## **Discussion**

10. I find that the Secretary of State has challenged the Paragraph 276ADE finding of the judge. The grounds set out that:

“His finding that the appellant would not be able to re-integrate within Bangladesh is manifestly inadequately reasoned ...”

11. There are therefore two central issues. Firstly did the judge err in finding that the claimant was in need of international protection and secondly, whether or not the judge erred in finding that the claimant meets the requirements of paragraph 276ADE of the Immigration Rules?
12. The judge appears to have considered that as a result of her finding on the return to Myanmar the claimant was entitled to international protection notwithstanding the fact that she had found that he would not be at risk of persecution on return to Bangladesh and that in any event he could live safely if he re-located to a different area of Bangladesh.
13. Although the judge set out in paragraph 8 of the decision that the Secretary of State had served an amended notice of decision listing both Bangladesh and Myanmar the judge has failed to consider the alternative of returning the claimant to Bangladesh when considering the need for International Protection.
14. As the judge had found that it would be safe for the claimant to return to Bangladesh the judge erred in finding that the claimant was entitled to International Protection.
15. With regard to the insufficiency of reasoning in relation to the finding that the claimant met paragraph 276ADE the judge’s analysis extends to one paragraph. It is not clear to me that the judge has specifically considered the obstacles to the claimant’s integration on return to Bangladesh. However if the final part of the paragraph is to be read as being specific to Bangladesh then, as three quarters of the single paragraph concerns his re-integration in Myanmar, there are only two sentences that could be read as an analysis of the obstacles to reintegration in Bangladesh. The judge stated:

“... I consider also that the appellant has lost his parents and his only brothers were last seen in a refugee camp in Bangladesh. I find therefore that the appellant has shown that there are significant obstacles to his integration on return.”
16. Whilst a judge does not have to set out in detail all the factors that have been taken into account, in this case the judge has not engaged with the test under paragraph 276ADE and has simply failed to explain why, on the background to this case, the limited factors she identified presented significant obstacles to the claimant’s integration. I am unable to infer from her overall determination what those reasons would have been to enable me to uphold her determination on that basis
17. If the judge had not made the error of law, it is far from clear that she would have reached the same decision in respect of the need for International Protection. The failure to consider the alternative option of

returning the claimant to Bangladesh amounted to a material error of law. The failure to give sufficient reasons and engage in an analysis of the test required under the Immigration Rules also, in this case, amounts to a material error of law.

18. I therefore set aside the decision pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 in respect of the International Protection findings and the findings with regard to paragraph 276ADE. However, the findings in paragraphs 25, 26, 30 and 32 are preserved. No cross appeal has been made in respect of the judge's findings that the claimant is not at risk on return to Bangladesh (paragraphs 25 and 26) nor in relation to the findings on family life (paragraph 30) or Article 8 outside the Immigration Rules (paragraph 32). Both parties considered that I could re make the decision if I found an error of law.

### **Re- making the decision**

19. In the case of Secretary of State for the Home Department v ST (Eritrea) [2010] EWCA Civ 643 ('ST (Eritrea)') the Court of Appeal considered paragraph 334(v) of the Immigration Rules which requires that:
- '(v) refusing his application would result in him being required to go (whether immediately or after the time limited by any existing leave to enter or remain) in breach of the Geneva Convention, to a country in which his life or freedom would threatened on account of his race, religion, nationality, political opinion or membership of a particular social group.'
20. The Court of Appeal held that:
- "It is only if subparagraph (v) is satisfied that a person who is recognised to be a refugee is entitled to asylum ..."
21. In RR (refugee - safe third country) Syria [2010] UKUT 422 (IAC) the Upper Tribunal succinctly set out the position in the headnote at paragraph 4:
- "4) The question then, is whether by reference to A, the country of nationality, the claimant is a refugee. If he is not, the Refugee Convention does not apply to him. If he is, his appeal falls to be allowed only if his return to country B would be contrary to Article 33 of the Refugee Convention."
22. In this case the Secretary of State issued removal directions to either Myanmar or Bangladesh. The judge found that the claimant would be at risk on return and in the alternative that in any event he could re-locate within Bangladesh. There is no cross appeal on these findings. Given the judge's findings there is nothing to indicate that there is a reasonable likelihood that the claimant would suffer from persecution. He lived in Bangladesh for approximately 14 years, speaks Sylheti Bengali and is familiar with the culture. Therefore I find that sub-paragraph (v) of paragraph 334 of the Immigration Rules has not been satisfied and the

claimant is not in need of International Protection. There is no evidence that the claimant qualifies for humanitarian protection on the basis of a return to Bangladesh or that Article 3 of the European Convention on Human Rights would be breached by a return to Bangladesh

23. With regard to private and family life the First-tier Tribunal judge found that the claimant had failed to show that he qualifies under either the parent or partner route under the Immigration Rules. No cross appeal in this regard was made. In relation to private life it is not in dispute that the only relevant sub-paragraph of paragraph 276ADE is (vi) which provides:

‘(vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant’s integration into the country to which he would have to go if required to leave the UK.’

24. The claimant must be able to demonstrate that there are significant obstacles to his integration into Bangladesh. The only factor that has been identified is that his parents are dead and he has lost touch with his siblings so has no contact with any relatives. It is clear that the test is not one of mere difficulty the obstacles to integration must be significant. The claimant is a young adult male aged 31. He had lived in Bangladesh for approximately 14 years from the age of 8. He was able to move around Bangladesh, find work and settle on his own. He lived initially with his siblings in a refugee camp but then went to Dhaka on his own where he stayed for around one year. He then moved to Sylhet for the remainder of his time in Bangladesh. He formed a close relationship with the man for whom he worked referring to him as uncle. He speaks Sylheti Bengali and is familiar with the cultures and customs of Bangladesh. I find that the claimant has not demonstrated that there are significant obstacles to his reintegration into Bangladesh.
25. The claimant does not meet the requirements of paragraph 276ADE and therefore is not entitled to be granted leave to remain in the UK on the basis of his private life.
26. The judge found that there were no compelling or exceptional circumstances about the claimant’s circumstances not covered by the Immigration Rules. No cross appeal was made on this point.

### **Decision**

27. The decision of the First-tier Tribunal contained a material error of law. I set aside that decision pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. I re-make the decision allowing the Secretary of State’s appeal. The Secretary of State’s decision stands.

Signed P M Ramshaw

Date 17 January 2016

Deputy Upper Tribunal Judge Ramshaw