



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/10469/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 2 November 2017

**Decision & Reasons
Promulgated
On 16 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTER

Between

**MAK
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Z McCallum, counsel.

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

An order has been made under rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead to the appellant being identified. Failure to comply with this order could lead to a contempt of court

1. This is an appeal by the appellant against a decision of the First-tier Tribunal dismissing his appeal against the respondent's decision dated 15 September 2016 refusing his application for international protection.

2. The appellant is a citizen of Bangladesh born 17 June 1986. He arrived in the UK on 18 November 2009 with a valid visa to study as a Tier 4 student. His leave to remain in this capacity was extended to 30 August 2015 but on 13 August 2014 he was served with notice of his liability to administrative removal on the basis that he had obtained leave by deception. On 17 February 2015, the appellant was served with a further notice alleging that he had submitted false educational certificates. He sought to challenge these notices by applying for judicial review but on 16 February 2016 he was refused permission to bring proceedings. On 1 March 2016, he claimed asylum.
3. He based his claim on a fear of persecution arising from his support for the BNP in Bangladesh. He claimed that false cases had been brought against him by members of the Awami League and he supported this claim by producing a number of documents relating to proceedings in Bangladesh including FIRs, warrants of arrest, warrants of conviction, court orders and judgments. The respondent, however, was not satisfied that these documents were genuine or reliable or that the appellant had given a credible account about why he was in fear of returning to Bangladesh.
4. At the hearing before the First-tier Tribunal an application was made by the presenting officer for an adjournment on the basis that the court documents produced by the appellant had been sent for verification. The judge refused the application because there had already been one adjournment and the originals of the documents relied on were in the possession of the appellant's solicitor and therefore available to be produced in evidence. Having heard the evidence and considered the submissions, the judge did not find the appellant to be credible and he was not satisfied that the court documents relied on were genuine. He commented that there was voluminous country evidence on the use of fraudulent documents for immigration purposes in Bangladesh. The appeal was dismissed accordingly.
5. Permission to appeal was refused by the First-tier Tribunal on 1 June 2017 but on 28 June 2017 the presenting officer wrote to the Tribunal to confirm that the respondent had received notification that an FIR relied on by the appellant and submitted for formal verification had been verified as genuine at police level in Bangladesh and would be verified at court level during August 2017. The respondent hoped to receive a document verification report in late August/early September 2017.
6. Permission to appeal was granted by the Upper Tribunal on the basis that it was arguable that the judge's credibility findings were inadequate and that he had erred in concluding that the FIR was not a reliable document.
7. In her submissions Ms McCallum argued that there was a mistake of act amounting to an error of law and that there had been a procedural irregularity which had caused unfairness. Mr Walker did not seek to resist the appeal. He accepted that in the light of the information obtained by the respondent in the verification process, the decision by the judge not to grant an adjournment had resulted in unfairness.

8. For the reasons relied on by Ms McCallum and in the light of the jurisprudence in R (Iran) & Others v Secretary of State [2005] EWCA Civ 982 and MM (Unfairness; E&R) Sudan [2014] UKUT 105, I am satisfied that the failure to grant an adjournment amounted to a procedural irregularity which caused unfairness and accordingly, the judge erred in law such that the decision should be set aside. Both representatives submitted, and I agree, that this is a proper case for the appeal to be remitted to the First-tier Tribunal for a full rehearing.

Decision

9. The First-tier Tribunal erred in law and the decision is set aside. The appeal is remitted to the First-tier Tribunal for reconsideration by way of a full rehearing before a different judge.
10. In the light of the issues raised in this asylum appeal, I am satisfied that this is a proper case for an order to be made under rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and I make an order prohibiting the disclosure or publication of any matter likely to lead to the appellant being identified.

Signed: H J E latter

Dated: 13 November 2017

Upper Tribunal Judge Latter