



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/06221/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Bradford
On 20 March 2018**

**Decision & Reasons
Promulgated
On 16 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MR MD KHALED AHMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Frantzis, counsel instructed by Kabir Ahmed
Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Bangladesh, date of birth 10 November 1989, appealed against the Respondent's decision, dated 1 April 2015, to refuse an asylum claim. The matter came before First-tier Tribunal Judge L Mensah (the Judge) who, on 4 August 2017, dismissed the appeal on all grounds.

2. Permission to appeal was given on 19 December 2017 and the Respondent made a Rule 24 response on 17 January 2018. In giving permission to appeal, Upper Tribunal Judge Perkins on 19 December 2017 said:
 - “2. I give permission on each ground but I am particularly concerned that the Judge may have given an unlawful reason for disregarding the psychiatric evidence and particularly without inviting the appellant's representative to make submissions directed to difficulty.
 3. That said, the appellant will have to show that any error was material and his representatives must be astute to address that point”.
3. Before the First-tier Tribunal the Appellant was represented by counsel, Mr Ell, who did not settle the grounds of appeal to the Tribunal, which was done by a solicitor called A Parikh of Schneider Goldstein Immigration Law. Ms Frantzis and Mr McVeety make at least common cause to this extent that there is nothing to suggest that the evidence, whatever the Judge's doubts, particularly the medical evidence provided concerning the Appellant's psychiatric health, had not been challenged either as to the veracity of the report or to its contents or to the extent to which it might have been said. The Judge was concerned that the interpreter for the purposes of both medical assessments had been Mr Reaz Ali, a UK national related to the Appellant. The judge found Mr Reaz Ali an unreliable witness and for that reason was extremely concerned that the interpreting given to the psychiatrist, Dr Saima Latif, which might equally be unreliable in terms of the history that the doctor was given. Of course, the assessment that the doctor makes is based in part upon the history but also the doctor's own analysis and so to that extent there was no evidence to suggest that Dr Latif had either misunderstood this matter in terms of the way the case was being put, as translated by Mr Ali, either at the first assessment made in January 2015 or when the second assessment was made in October 2016.

4. Mr McVeety essentially argued that the Judge made a number of unchallenged sustainable and damning criticisms of the Appellant and Mr Ali's credibility and that even if the Judge had not expressed herself in the way she did, the decision would not in all likelihood be any different were another Tribunal to have considered this matter.
5. The basis of the Appellant's claim was that his sexuality, being a homosexual and that he faced a real risk of proscribed ill-treatment and persecution both from the authorities and society on a return to Bangladesh. It was also the Appellant's case that he had at least been able to live his life without fear in the United Kingdom based around his claimed sexuality. It was, as I understand it, the Appellant's case that were he to be returned to Bangladesh that his sexuality would again present a risk because he would not effectively be able to conceal it and thus avoid discrimination, persecution, ill-treatment and face the reality of no sufficiency of protection to which he could have recourse nor would internal relocation be an option.
6. It is sufficient to say the reasoning of Judge Mensah is very limited in relation to the analysis of the claimed sexuality other than by way of criticising, no doubt in many respects for good reasons, the credibility of the Appellant, Mr Ali and the second report particularly of Dr Saima Latif. It is trite law to say that the parties to an appeal are entitled to sufficient and adequate reasons why the claim has failed. The thrust of the medical evidence was essentially to buttress the claims that the Appellant had been ill-treated in Bangladesh because of his sexuality. Dr Saima refers to an analysis that she makes as to PTSD and the effects of depression and the like associated with that condition. The first report is not substantively criticised in any way by the Judge. The second report is essentially rejected because the doctor's analysis was partly reliant upon the translation done by Mr Reaz Ali whose credibility the Judge had rejected.
7. It is, at a distance, difficult to know on what basis the Judge truly assessed this matter for the reasoning is extremely limited for rejecting the claimed sexuality, independent of the Judge's disbelief of the Appellant's claim for

other reasons. It is true to say the Appellant has a poor immigration history but ultimately that is not determinative of the issue. Looking at the evidence in the round, I find that whilst there are damning findings of fact, the matter was not addressed in the round and the assessment of the medical evidence may make a difference to that overall assessment. It is of course trite to say that the evidence is looked at in the round and in the light of such cases as Mibanga [2005] EWCA Civ 367. The impression given by the Judge was that the rejection of medical evidence was a consequence of the adverse taken upon the Appellant and Mr Ali: Therefore the medical evidence was not considered as a part of the whole. For these reasons I am satisfied that the original Tribunal made a material error of law and the matter needs to be remade in the First-tier Tribunal. No findings of fact to stand.

DECISION

8. The appeal will be allowed to that extent that the matter will be returned to the First-tier Tribunal.

No anonymity direction is made.

Signed

Date 28 March 2018

Deputy Upper Tribunal Judge Davey