



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01545/2018

THE IMMIGRATION ACTS

Heard at Field House
On 25 May 2018

Decision & Reasons Promulgated
On 13 June 2018

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**J A
(ANONYMITY DIRECTION MAINTAINED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Bhuiyan, Solicitor, Universal Solicitors
For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. In a decision posted on 15 March 2018 First-tier Tribunal (FtT) Judge Cockrill dismissed the appeal of the appellant, a national of Bangladesh, against the decision made by the respondent on 18 January 2018 refusing his protection claim. The basis of the appellant's claim was that by virtue of being a journalist and involved with the BNP he had come to the adverse attention of the Awami League and the Bangladesh Border Guard. Among the incidents he described concerned an attack by Awami

League members in retaliation for the appellant's family having stopped them taking stones from his family's house.

2. The main ground advanced by the appellant concerns the decision of the judge refusing to adjourn the hearing. At paragraphs 27 and 29-30 the judge explained what transpired as follows:

“27. The case was listed for a pre-hearing review at Taylor House on 16 February 2018. Solicitors acting for this Appellant, Universal, had filed a Reply Notice indicating that they were in a position to proceed to the substantive hearing. The only evidence was to be called from the Appellant. A Bengali Sylheti speaking interpreter was required. The Immigration Judge who dealt with the pre-hearing review concluded that an anonymity direction was appropriate. In all the circumstances I continued that direction at the substantive hearing, judging that it was entirely appropriate, and would lead to the Appellant feeling that his identity would not become known to third parties and thereby would give him confidence in the appeal process. Otherwise standard directions were issued and the matter was listed for substantive hearing at Taylor House on 2 March 2018.

...

29. However, before the case was called on in the early afternoon, a solicitor appeared for the Appellant, Mr. A. Khan. He was from the Appellant's former solicitors, Universal. It seemed that the appellant had dis-instructed Universal at some point after the pre-hearing review and had consulted a firm of solicitors in Salisbury, Wiltshire which firm had written on 22 February 2018 to the Tribunal indicating that they had had this approach from the Appellant. They were not able to offer him legal advice and assistance on Legal Aid, but were exploring whether or not an adjournment was appropriate. I considered that such an adjournment was entirely inappropriate and not at all in the interests of fairness, given that the firm was based in Salisbury and the Appellant had a home address in Forest Gate, London. For the record, the firm of Universal are based in the Whitechapel High Street, London E1.

30. Having given Mr. Khan an opportunity to take further instructions, he then asked for an adjournment. I heard representations from him and Mr. Ahmad on that issue but concluded, in all the circumstances, that the case was ready to proceed and the interests of fairness fairly and squarely would be served by proceeding to deal with this appeal. The Appellant was present and, of course, was in a position to give oral evidence. I gave Mr. Khan a further opportunity to prepare the matter, having refused the adjournment. When the matter did proceed I checked documents. There was a bundle filed by the Respondent to which I have made reference. There was no bundle supplied for and on behalf of the Appellant, although I would stress that his solicitors, Universal, had declared that they were ready to proceed when the matter had been listed at the pre-hearing review.”

3. Mr Bhuiya submitted that the appellant's newly instructed solicitors had not attended the hearing as they could not receive legal aid in time and that a representative from Universal Solicitors (Mr Khan) attending at the appellant's request only stepped in to request an adjournment once the judge had indicated he was going to proceed, albeit giving the representative twenty minutes in which to

study the case for the hearing. He submitted that that these events gave rise to procedural unfairness because the appellant was essentially placed in the position of having to proceed with the hearing despite there being no witness statement and no appellant's bundle.

4. The fundamental flaw in this contention is that the appellant had made a claim for protection in March 2017 for which purposes he had submitted twenty items of evidence. When he lodged his appeal against the respondent's subsequent refusal he did not submit any further documents. At a pre-hearing review on 16 February 2018 his representatives – Universal Solicitors - stated that they were ready to proceed. Despite the appellant being sent a notice of hearing requiring the appellant to produce any further evidence on which he wished to rely ten days before the hearing, the appellant did not do so. Although nothing is said about the matter in the appellant's written grounds, Mr Bhuiya sought to submit that any such failings were the fault of the appellant's previous representatives. Leaving aside that it was Universal Solicitors who had stated on 16 February 2018 that they were ready to proceed with the only evidence being that "called from the Appellant", there is nothing to substantiate any suggestion that the solicitors failed to prepare a witness statement or produce any other evidence in time for the hearing. Furthermore, it was ultimately the appellant's responsibility to prepare his case. Moreover, the fact of the matter was that even though there was no witness statement before the judge, there was a considerable body of documentary evidence as well as a screening interview and asylum interview record. The appellant cannot have been unaware that it was possible (if not likely) that the hearing would go ahead on 2 March 2018 even though he was initially unrepresented. He had also taken the step of requesting his former solicitors to attend. Whether or not the appellant and Mr Khan had discussed beforehand that the latter would step in if the adjournment application was refused, Mr Khan was afforded some time to acquaint himself with the court file and it is clear from paragraph 33 that he was able to make a relevant and coherent closing submission. In my judgement the above circumstances do not demonstrate any lack of procedural fairness.

5. The appellant's other grounds of appeal allege that the judge:
 - (i) made mistakes of fact regarding the appellant's claim that the extraction of stone from the river, in that he ignored that failing to extract it without government authority was illegal in Bangladesh due to its impact on the environment and that the appellant's journalistic report on this issue drew the ire of powerful people who were earning millions by illegally selling stones;
 - (ii) erred in wrongly assuming the BNP was in power when the case against the appellant was brought (in November 2009);
 - (iii) failing to properly assess the court documents; and
 - (iv) failing to consider that members of the BNP as well as journalists are subjected to persecution in Bangladesh.

6. As regards (i), it is entirely clear from paragraph 37 that the judge was well aware that the appellant's account relied on the extraction of stone being an illegal activity. As regards (ii), it is clear from paragraph 38 read in conjunction with paragraph 31 that the judge was referring to the appellant's claim to have had false cases levelled against him in 2004 and 2008, not in November 2009 when the BNP was no longer in power. In relation to (iii), it is true that the judge did not specifically analyse the court documents, but his assessment at paragraph 38 that "I do not find the documentation the appellant has presented to be reliable", has to be read against the background that the appellant's documents had been the subject of criticism by the respondent, e.g. in relation to a translated copy of an FIR report dated 7 September 2008 the respondent noted that the document was translated in Bangladesh and not by a verified translator in the UK and that fraudulent documents were easily available in Bangladesh. The appellant had not done anything to meet or refute those criticisms. The grounds appear to complain about the judge's lack of specific treatment of the arrest warrant dated 10 November 2009 on the basis that the Home Office fact-finding mission report of September 2017 stated that false documents are not easily obtainable "because of counter-signature processes", but the translating of the document in question bears no counter-signature. As regards (iv), there is no support in Tribunal country guidance or objective country materials to indicate that journalists or BNP members as a class are as such at risk of persecution in Bangladesh and the judge considered the appellant's individual circumstances on the basis that he was a journalist and a BNP member, but was not satisfied that these circumstances demonstrated that his activities in either capacity had in fact attracted the adverse attention of other actors.

Notice of Decision

7. For the above reasons I conclude that the grounds fail to disclose a material error of law in the judge's decision and accordingly the judge's decision to dismiss the appellant's appeal must stand.
8. Anonymity direction is maintained.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: 12 June 2018



Dr H H Storey

Judge of the Upper Tribunal