



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03925/2018

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice
On 11th June 2018

Decision & Reasons Promulgated
On 13th June 2018

Before

UPPER TRIBUNAL JUDGE REEDS

Between

MA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. K Reid, Counsel instructed on behalf of the Appellant

For the Respondent: Ms Z. Ahmed, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Bangladesh.
2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) 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. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

3. The Appellant with permission, appeals against the decision of the First-tier Tribunal, who, in a determination promulgated on the 26th April 2018, dismissed his claim for protection.
4. The basis of the Appellant's claim is set out in the decision letter and summarised in the determination. The Appellant's claim was based on his faith as an Ahmadi Muslim. He had entered the United Kingdom in October 2010 on a student Visa and had claimed asylum in February 2018 after having been detained by the immigration authorities when encountered working illegally that month. His account had been that he was involved in campaigning the activities of the Ahmadi people in Bangladesh and was attacked on two occasions whilst doing so in April 2008 and then again in July 2010. He was taken into police custody, was beaten but released without charge. It was stated that an arrest warrant was issued in respect of him in 2015.
5. In his determination promulgated on 26 April 2018, the First-tier Tribunal judge dismissed his appeal having made a number of adverse credibility findings in relation to his claim. The summary of his conclusions were set out at paragraphs 25 and 26 and applying the lower standard of proof, he was not satisfied that the Appellant had given a truthful and accurate account and rejected his core account of being an Ahmadi Muslim or that he had encountered problems in Bangladesh as a consequence.
6. The Appellant sought permission to appeal that decision on 27 April 2018 and on 2 May 2018 permission was granted by a First-tier Tribunal judge in the following terms:

The Appellant seeks permission to appeal against this decision on the grounds that because of procedural irregularities arising from the respondent's failure to provide an interpreter for the substantive interview, the judge's failure to take this into account when making adverse findings in relation to the Appellant's credibility has led to an arguable error of law.

The judge had before him the Appellant's ground of appeal which clearly mentioned this ground. At the hearing the Appellant's representative referred to this in her submissions – see paragraph 14 of the judge's determination. It is arguable in failing to consider whether the non -availability of an interpreter during the interview and its consequent effect on the answers given led to an error of law being made in the judge's assessment of the Appellant's credibility."

7. Thus the matter came before the Upper Tribunal. The appellant was represented by Ms Reid of Counsel and the respondent by Ms Ahmed, Senior presenting officer. I have had the benefit of hearing their respective oral submissions in conjunction with the written grounds and the material that was before the First-tier Tribunal.
8. The principal submission advanced by Ms Reid, Counsel instructed on behalf of the Appellant is that the judge erred in law by failing to attach weight to the fact that an interpreter in the Bengali language had not been provided for the Appellant during

his asylum interview and that he had failed to take that into account when reaching adverse findings of credibility. Whilst she submitted in her oral submissions that this was a “narrow ground”, as the judge was required to give anxious scrutiny to the asylum claim it is an important issue to determine.

9. The first issue relates to whether there had been a failure to provide an interpreter or whether the Appellant had been content to for the use of English during his interview. Miss Ahmed on behalf of the Respondent submitted that when looking at the history of the case, the Appellant’s failure to lodge a complaint undermined his account. The evidence she provided in support of this was in the form of CID notes relating to the Appellant specifically. They relate to 21 February 2008 and also 1 March 2018 (the date of his asylum interview) on both occasions it was stated that he requested the interview to be conducted in English and wanted to proceed in English rather than wait for an interpreter and that he confirmed that he understood the questions. If this is an accurate representation it provides an answer to his subsequent assertion. However Ms Reid properly raised an objection to this evidence on the ground that it had not been served upon the Appellant’s representatives nor had it been evidence before the First-tier Tribunal. Miss Ahmed could give no cogent explanation as to why this evidence had not been the subject of a Rule 15(2A) application at any time (either before the hearing or even at the hearing) nor why it had not been served prior to the hearing or before the First-tier Tribunal. Given the late service of the evidence and the fact that Counsel had no opportunity to take instructions on the document, I did not admit this evidence and it plays no part in my reasoning.
10. However in my judgement the issue remains a live one based on other evidence that is available and was before the FTT and a further issue arises as to whether it could be said that there was any unfairness to the Appellant demonstrated by the judge’s consideration of the evidence as a whole.
11. I refer to the interview itself which took place on 1 March 2008. At question two the Appellant was asked “are you content to be interviewed in English?” The reply recorded is “yes”. There is no reference at this point to seeking an interpreter in a different language.
12. It is important also to look at the questions and answers in the interview as a whole. The grounds to the Upper Tribunal refer to the Appellant as speaking and understanding “basic” English (paragraph 9). A careful examination of the interview demonstrates that there were a large number of open questions asked during the interview, for example see question 28) and there were also questions asked by way of a follow-up in the light of answers given by the Appellant (see question 38 and 39). There were also questions which could be regarded as more difficult which related to matters of religion (see question 41). All of the questions were answered. I have not been taken to any point in the interview where it could be said that the Appellant failed to understand the question or stated that to the interviewer. At the end of the interview, the Appellant was asked if he had understood the questions (see concluding questions) and it is recorded as follows; “I understood.”

13. At the conclusion of the interview the Appellant was given the time to later submit further submissions within five days. This would provide the opportunity to provide clarification of any factual matters or to raise issues surrounding the interview. Miss Reid confirmed that there was no evidence of any further submissions relating to further clarification or to raise issues surrounding the interview.
14. The grounds to this Tribunal at paragraphs 9-11 make reference to the Appellant "repeatedly requesting the Home Office for a Bengali interpreter" and at paragraph 10 makes reference to the lack of an interpreter and that the Appellant did not wish to proceed but claimed that the Home Office warned him that if he refused then an asylum decision would still be made and that his refusal would be considered as a failure to comply. Thus he "hesitantly proceeded with the substantial interview". Notwithstanding those grounds of appeal, as Ms Ahmed submits there was no complaint made about the interview process at any stage. However that is not determinative. Ms Reid submitted, that it was after the decision letter was served and when the Appellant filed grounds of appeal that this was raised as an issue.
15. The grounds of appeal to the FTT at paragraph 12 state "the Appellant does not accept he gave vague or inconsistent accounts during his substantial asylum interview and claims that this is clearly due to poor interpretation by the Bengali interpreter and typing errors on the part of the immigration officer." That paragraph is clearly inconsistent with his account as he did not have a Bengali interpreter nor has it been raised before the FTT or this Tribunal that they were any typing errors on the part of the immigration officer. It appears that this is a general paragraph but is not specific to this Appellant's appeal.
16. I would accept, as Ms Reid pointed out, that at paragraph 15 the issue was raised in general terms on the basis that the Respondent failed to consider the fact that the Appellant required the assistance of a Bengali interpreter as English was not his first language. However at no time has the Appellant or through his legal representatives sought to particularise what part of his interview was wrong or provide any clarification of the interview responses. There has been no particularisation made either to the Respondent before the refusal letter and after the interview or after the decision letter was served.
17. Ms Reid submits that it was clear from the determination at paragraph 14 that the Appellant's representative submitted that less weight should be placed on the answers of the Appellant's asylum interview as it was conducted without an interpreter. Two matters arise from that; firstly, the submission made on behalf of the Appellant was not that no weight should be given to the interview but that less weight should be given. Secondly, I asked Ms Reid if the skeleton argument had particularised any specific defects in the interview that were material and were points that were relied on before the First-tier Tribunal in support of the claim. Having considered the skeleton argument she submitted that there had not been any such particularisation nor was it evident that that had taken place before the First-tier Tribunal. Thus it appears that the submission that was made was based in general

terms with no specific issues raised as to what parts of the interview were unfair, or wrong or which would have a material effect upon the evidence.

18. The second issue arising is whether there had been any identifiable problems with the answers given in English within the interview which required rectification. As set out above at no time did the Appellant or his legal representatives seek to particularise or seek to clarify any factual errors or omissions as a result of the interview. I have concluded for the reasons set out above that the only issue raised was in the most general of terms before the First-tier Tribunal and that the judge's assessment of credibility and consideration of the evidence as a whole, including the asylum interview should be set against that background.
19. Ms Reid submitted that the judge, by failing to consider the issue when reaching a conclusion on credibility erred in law and directed the Tribunal to paragraph 25 of the determination. She submitted that in reaching a conclusion on credibility, no one factor could be determinative and the judge was required to balance all the factors before reaching the decision. However there was no recognition that the interview was conducted in English without a Bengali interpreter.
20. I do not accept that submission is made out. A careful examination of the determination demonstrates that the judge in the main reached his adverse credibility findings based on the evidence as a whole and some of those findings do not rely on the answers given in the substantive interview itself. Such findings can be identified as follows.
21. As to the delay in claiming asylum, it was common ground that he had made his claim in February 2018 having been encountered working illegally and being detained by the immigration authorities. It was also common ground that he entered the UK on 12 October 2010 by way of a student Visa. The judge took into account his evidence, including cross examination recorded at paragraph 12 and reached findings of fact at [24] that the Appellant's evidence that he was afraid of the consequences of engaging with the fast-track procedure was not credible when set alongside his immigration history. In particular the judge made reference to the Appellant having made an immigration application after his arrival in the UK and that it was not credible that having arrived at UK to escape persecution (which is what the Appellant had stated in oral evidence) that he would wait more than seven years before making a claim for asylum on that basis.
22. The Appellant relied upon incidents of detention. The judge had regard to this at [20]. The Appellant provided a newspaper article in support of his claim dated 2 March 2010 which referred to his account that he was involved with and attacked on two occasions in April 2008 and July 2010. The judge found that the contents of the newspaper article was inconsistent with the account given by the Appellant. The judge set out why that was so at paragraph [20] and the judge concluded that the newspaper article did not support the sequence of events of the Appellant in that the Appellant had referred to having been in police custody on one occasion in July 2010 when his brother had already left the country and the newspaper article referred to

the Appellant being in police custody, for whatever purpose, along with his brother and at a point in time no later than March 2010. However as the judge observed there was a clear inconsistency as to dates and the nature of events with the Appellant stating that he was in police custody July 2010 at which point his mother and brother had already left Bangladesh according to his account in 2009. At paragraph 20 the judge made reference to the evidence provided by the Appellant not only in the newspaper report but also by reference to his witness statement; at paragraph 18 he said his brother left Bangladesh with his mother in late 2009 and also at paragraph 19. The Appellant had adopted his witness statement as his evidence in chief (see page 30 AB). The judge did not seek to specifically rely on any inconsistencies within the substantive interview.

23. Furthermore the judge also relied on the Appellant's oral evidence and reaching his findings of fact [20] and expressly noted the Appellant's oral evidence.
24. At [21] the judge also considered the original newspaper and reached a finding that the positioning of the article was such, it been placed in the middle of two others, led him to the view that he had "significant reservations about the authenticity" of the article.
25. A further finding related to his claim that an arrest warrant was issued against him in August 2015. Whilst judge made reference to the asylum interview in the context as to why it had taken the authorities five years to issue an arrest warrant and referred his answer that "it takes time", the judge did not solely rely on that. The Appellant had made reference in his witness statement at paragraph 22 and 25 about an arrest warrant issued on 4 August 2015. The judge found that the Appellant had not provided a copy of the arrest warrant with details of any offence and his own account was that he was released from custody without charge and was not and under reporting restrictions. Therefore against that background, he concluded that it was not credible that the authorities in Bangladesh would then issue an arrest warrant five years later in 2015.
26. There were other adverse findings did not relate to any asserted inconsistent evidence. For example, the Appellant's Ahmadi related activities in the UK. His account was set out in the witness statement and oral evidence and recorded by the judge at [23]; that he had attended on average three times every two months since 2011 but had not provided any letter of support from the Ahmadi community. His evidence of the hearing was that he did not know that was necessary. However given the matters set out in the decision letter relating to the rejection of his claim, the judge was entitled to find that this was not a credible or reasonable explanation. Furthermore, the judge observed that he had been living with family relatives but that no family member had attended to support his claim.
27. Other findings are made [19] which make reference to answers given in the screening interview. However the judge also referred to the oral evidence from the Appellant which he rejected at [19].

28. It is against this background that the judge at [25] drew together the various credibility findings. It is plain from the determination as a whole that the judge was very careful in making his assessment of credibility. Such is clear from paragraph 18 whereby he reminded himself of the danger of rejecting evidence because it does not appear to be inherently plausible from a “Westernised perspective”. At paragraph 19 he properly directed himself to the decision of JA (Afghanistan) v SSHD [2014] EWCA Civ 450 and the decision of YL (China) [2004] UKIAT 00145 and the weight to be given to answers given in a screening interview and at [25] he again made reference to the need to exercise caution before arriving at an overall decision of credibility.
29. Having taken into account the submissions made on behalf of the Appellant and those of Miss Ahmed and in the light of the matters set out above, I have reached the conclusion that the judge made an independent, open-minded and careful examination of all of the evidence and considered the weight that should be attached to the evidence having regard to the circumstances in which it came before him. He was plainly aware of the possibility of mistake and misunderstandings in interviews and the need to exercise a degree of caution in credibility assessments in asylum claims which require “anxious scrutiny”, but as set out earlier at no time were any particular answers or areas identified in this regard and it does not appear that any clarification was sought. Consequently the judge gave appropriate weight to all of the evidence and considered it fairly before reaching his overall conclusions at paragraphs 25 and 26.
30. Accordingly, I am not satisfied that it has been demonstrated that the decision of the First-tier Tribunal judge involved the making of an error on a point of law.

Decision:

31. The decision of the First-tier Tribunal did not involve the making of an error on a point of law and the appeal is dismissed. The decision of the FTTJ stands.

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. 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: 12/6/2018

Upper Tribunal Judge Reeds