



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/05367/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 14th September 2018**

**Decision & Reasons
Promulgated
On 26th September 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

**A P
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Singer, Counsel

For the Respondent: Miss Z Kiss, Home Office Presenting Officer

DECISION ON ERROR OF LAW

1. The appellant appeals with leave against a decision of First-tier Tribunal Judge Bird who, in a Decision and Reasons promulgated on 2 July 2018, dismissed the appellant's appeal against the respondent's decision dated

12 April 2018 refusing his application for asylum and humanitarian protection.

2. Miss Kiss did not disagree with Mr Singer's submissions that the judge's decision contained errors of law such that the decision could not stand.
3. The judge at paragraph 20 said that at the end of the evidence she heard submissions from both representatives which were recorded in the Record of Proceedings. The appellant's Counsel, Mr Georget, had not prepared a skeleton argument but undertook to provide a written skeleton with objective evidence that was being relied on by the end of the week. The judge stated that on 31 May no written skeleton had been received from Mr Georget. She therefore decided to proceed with the evidence that she had received both at the hearing and prior to the hearing and the submissions she had heard and recorded at the hearing.
4. It was not in dispute that Mr Georget's written submissions were sent to the Tribunal by e-mail on 30 May 2018 at 16.27 hours. Though it was not the judge's fault that she did not receive the written submissions, I find that the judge would have benefitted from having sight of the written submissions.
5. Consequently, I find that the judge acted unfairly in assessing that the appellant's advocate had not submitted a skeleton argument or country information evidence, when he had. Had these submissions and country information evidence been considered, the ultimate conclusion as to risk on return may have been different.
6. Mr Singer submitted that the appellant produced and relied on various documents to show that he was charged with criminal offences in 2005, 2009 and 2013. The appellant claimed that his political opponents in the Awami League brought these charges against him and they were politically motivated. The appellant asserted that in 2015 he was listed as an absconder in relation to the 2009 matter. The judge did not accept that the appellant was charged with murder in 2005, although she accepted that the appellant had faced charges in 2009 and absconded from these.
7. Mr Singer submitted that the judge erred in law in characterising his absconsion as simply fleeing prosecution and not persecution. The judge should have asked herself whether she accepted to the lower standard of proof that the charges were politically motivated as claimed by the appellant. I accept that in failing to ask herself this question and also failing to direct herself that prosecution can amount to persecution in certain circumstances, the judge erred in law in her approach to this issue.
8. I accept Mr Singer's submission that the judge erred in law in failing to have proper regard to the evidence of the appellant's sur place activity. The evidence in relation to his sur place activity was mentioned by Mr

Georget in his written submissions which, unfortunately, the judge did not have before her when she determined this appeal.

9. In the light of the above reasons, I find that the judge's decision is materially flawed and cannot stand. It is remitted to Taylor House for rehearing by a different judge.
10. It was agreed by the parties that the evidence given by the appellant and recorded at paragraphs 10 to 16, and the evidence given by the appellant's witness which is recorded at paragraphs 17 to 19 of the decision should be preserved.
11. The appellant will require a Sylheti Bengali interpreter.
12. The appellant's solicitor is directed to submit a fully paginated bundle of documents to the First-tier Tribunal and the Secretary of State.

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: 20 September 2018

Deputy Upper Tribunal Judge Eshun