



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05830/2017

THE IMMIGRATION ACTS

Heard at Field House
On 26 July 2018

Decision & Reasons Promulgated
On 7 August 2018

Before

Deputy Upper Tribunal Judge MANUELL

Between

Mr MSM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Eaton, Counsel
(instructed by Londinium Solicitors)
For the Respondent: Ms A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by Upper Tribunal Judge Martin on 5 June 2018 against the determination of First-tier Tribunal Judge Blake who had dismissed the appeal of the Appellant against the refusal of his international protection claim. The decision and reasons was promulgated on 17 January 2018.
2. The Appellant is a national of Bangladesh, born on 10 November 1976. He had claimed asylum on 1 December 2016, having entered the United Kingdom as a family visitor on 22 January 2010 and overstayed. The Appellant asserted that he was at risk because of his opposition political opinion: he supported the Bangladesh National Party (“BNP”) and the Awami League was in power. He said he had been injured in an attack because of his BNP support in 1996. A false case had been lodged against him in Bangladesh by the Awami League in 2006. The Appellant also claimed that he was at risk because of his sexual orientation.
3. Judge Blake found that the Appellant had failed to prove his claims and was not a credible witness. His evidence lacked consistency and his documents were not reliable. His long delay in claiming asylum further detracted from his credibility. The judge found that the Appellant had no significant political profile in Bangladesh or in the United Kingdom. There was no current threat and he could return to Bangladesh in safety. The judge further found that the Appellant was not a gay man. The appeal was accordingly dismissed.
4. Permission to appeal was granted by Upper Tribunal Judge Martin (with little enthusiasm) because it was held arguable that the judge had erred by failing to make any findings on the risk of suicide identified by the psychiatric report. No merit was found in the criticisms of the judge’s reasoning and conclusions on credibility and risk on return on account of links to the BNP or the Appellant’s claim to be gay.

Submissions

5. Mr Eaton for the Appellant relied on the grounds of onwards appeal and grant, which he submitted was in effect an open one. As that was unclear, the tribunal permitted him maximum latitude. In

summary, counsel submitted that the judge had fallen into extensive error. There had been no attention to the psychiatric report nor indeed to the scarring report which had included a section addressed to the Appellant's mental health: "Mind scars" in the report of Dr Lingam. The PTSD identified by the experts had not been dealt with, nor had the problems with the Appellant's recall been considered by the judge. The Appellant should have been treated as a vulnerable witness. The judge had not addressed the risk posed by the Appellant's connection with the BNP: the country expert's report had not been considered. Even though the Appellant's evidence was that he had been acquitted of the false charge, further consideration of that fact (accepted by the judge) was required. The decision and reasons was unsafe and should be set aside and the appeal reheard.

6. Ms Everett for the Respondent submitted that all of the defects asserted on the Appellant's behalf were entirely without substance. The judge had engaged fully with the evidence, including the Appellant's alleged recall problems. The adverse credibility findings were comprehensive, based largely on inconsistencies in the Appellant's various accounts. The onwards appeal should be dismissed.

No material error of law finding

7. The tribunal accepts the submissions of Ms Everett. In the tribunal's view, the errors asserted to exist in the decision and reasons are entirely illusory. This was plainly and obviously a "last ditch" appeal, devoid of any genuine merit, where an appellant had claimed asylum after a long and inexcusable delay, as the judge properly found. The suggestion that the judge had left any of the evidence produced by the Appellant out of account was without any foundation. The judge examined the Appellant's documents in their natural context of a seriously belated claim by a person who had had access to any necessary information about seeking international protection in the United Kingdom, and who had had ample time to do so. The only point which is unclear in the determination is why, when the Appellant's claim was so transparently false and abusive, the judge continued the anonymity order.
8. As is so frequently seen in late claims of this type, the Appellant produced a series of expert's reports, from familiar names. How such experts can be expected to produce any independent opinion of

value when the evidence supplied to them is thoroughly stale, for example, in relation to scarring, is unclear. The expert evidence produced on the Appellant's behalf was of minimal value, if any, for the reasons identified by Judge Blake: see [135] onwards of the determination where the medical and psychiatric evidence is discussed. Plainly the judge had considered the content of the expert's reports when assessing the credibility and recall issues.

9. There had been no application to the First-tier Tribunal at any stage (e.g., at the prehearing review) for the Appellant to be treated as a vulnerable witness, doubtless because there was no expert evidence on which such an application could properly have been founded. The expert opinions that the Appellant had recall difficulties were displaced by the finding that the Appellant was incapable of giving his story in the same form, i.e. that he was untruthful, a finding open to the judge for the reasons he gave. Key among those reasons was the Appellant's claim that there had been interpreter issues, not that he had mental health issues.
10. The report of Dr Lawrence was of little or no value, as is obvious from the section headed "suicide risk" (see page 100 of the Appellant's bundle) addressing the supposed risk of suicide. The report states that the Appellant had suicidal ideation, but was "at low risk of taking action", which might change if he were to be forcibly removed. Removal arrangements are a matter for the Respondent, not the tribunal. Threats of suicide sadly are sometimes resorted to by appellants facing removal, but add no substance to an appellant's claim absent a proper diagnosis of mental illness based on sound prior evidence such as medical records. None of these matters (which are all plain and obvious) needed to be addressed in any greater detail by the judge because of the psychiatric evidence was largely a series of generalisations which added little or nothing to the credibility analysis. It was simply a makeweight as the judge in effect found.
11. The same point applies to the expert's report about country conditions in Bangladesh. Ample current material concerning Bangladesh is readily accessible in the public domain from a variety of recognised sources. There was no need at all for a bespoke report which added little or nothing to what was already available. The report required no detailed discussion, because it merely stated that the Appellant's claims were plausible. The Appellant's account of

political activity was found not credible by the judge after a detailed analysis which went much further than mere plausibility.

12. The large volume of superfluous material seeking to bolster a non-existent case which was produced required the judge to produce a determination of commensurate length, some 192 paragraphs which was a substantial commitment of judicial time. The judge's findings are wholly sustainable and secure. The pursuit of permission to appeal might be thought an unfortunate if not wasteful activity in those circumstances.
13. Mr Eaton's submissions, like the onwards grounds, avoided the absence of merit of the claim. In the end the submissions made on the Appellant's behalf amounted to little more than disagreement with the judge's decision, which had exposed a transparently weak and contrived case. The tribunal finds that there was no material error of law in the decision challenged.

DECISION

The appeal is dismissed

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed

Dated 30 July 2018

Deputy Upper Tribunal Judge Manuell