



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

Appeal Number: PA/10106/2017

THE IMMIGRATION ACTS

Heard at Field House

On 5th March 2018

Decision & Reasons

Promulgated

On 21st March 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MSM

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Lee (instructed by Duncan Lewis & Co, Solicitors)

For the Respondent: Ms J Isherwood (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant in relation to a judgment of First-tier Tribunal Judge Telford promulgated on 8th December 2017 after a hearing at Harmondsworth on 9th November 2017. Judge Telford, having heard the appeal, dismissed it principally on credibility grounds. The challenge to that judgment is that the Judge fundamentally misunderstood what it was that the Appellant was actually claiming. That can be set out quite briefly in that the Judge at the beginning of his findings on credibility, which start at paragraph 34, said:- "On all aspects of his claim I find his evidence incredible". There is nothing inherently

wrong in putting the overall finding at the beginning and then giving reasons afterwards. However, if the reasons are not based on the evidence then there is a problem. The first reason the Judge gave for his adverse credibility finding was that the Appellant acted inconsistently with his claims which included his claim to be in fear whenever he was in Bangladesh. The lack of action against him by the authorities in Bangladesh when he was there undermined that claim. It was doubly so, the Judge found, because his claim was not only that he was involved in student politics and therefore in the sights of the Awami League, but that his father too was active and targeted politically.

2. The Appellant had never claimed to always have been in fear in Bangladesh. His claim was that there was no problem until his father disappeared. He never claimed to have been in fear while he was in Bangladesh and that, being the basis of a finding of inconsistency, is wrong and means that the credibility findings as a whole start on an unfair and unjustified basis.
3. The next paragraph in the Decision and Reasons referred to the Appellant being able to obtain a visa, travel openly with it using his own passport and to have been able to travel around with impunity. However, at the time he was doing so he had not claimed to have been in fear and therefore no reason why he could not travel around openly and freely.
4. The next issue with the Judge's consideration is his misunderstanding about the position of the Appellant's father. It has always been the Appellant's case, and it is quite clear from his statement and the asylum interview, that his father was the General-Secretary of the local branch of the BNP, whereas the Judge clearly gained the impression that his father was the national General-Secretary of the BNP in Bangladesh, which of course would be a very high profile position. That is not what the Appellant had ever claimed and the grounds refer to the parts of the asylum interview where the Appellant made that clear.
5. Those two matters of themselves are enough for me to find that the adverse credibility findings are unsafe and Miss Isherwood did not seek strenuously to defend the Decision and Reasons. On the basis that the credibility findings, which go to the heart of the matter, are unsustainable I set the Decision and Reasons aside. It is right that it should be remitted for a fresh hearing before the First-tier Tribunal, the appropriate hearing centre being Taylor House. To that extent the appeal to the Upper Tribunal is allowed.

Decision

6. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal at Taylor House for a rehearing on all issues.

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 19th March 2018

Upper Tribunal Judge Martin