



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/10786/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 6 February 2018

**Decision &
Promulgated
On 13 March 2018**

Reasons

Before

**THE HONOURABLE MR JUSTICE MARTIN SPENCER
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
DEPUTY UPPER TRIBUNAL JUDGE HILL QC**

Between

**MR K M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ogunbusola, Counsel, instructed by Cranbrook Solicitors

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. By permission to appeal granted by Judge R C Campbell on 2 January 2018 the appellant appeals against the decision of First-tier Tribunal Judge Lal, to whom we shall refer as the judge, dated 24 November 2017 when he dismissed this appellant's appeal against the decision of the Home Office to refuse to grant asylum and humanitarian protection, the decision of the Home Office being dated 12 October 2017.

2. The grounds of this appeal are that there was a material irregularity in the decision of the judge in that he refused to adjourn for further enquiries to be made as to the appellant's injuries and mental health stemming from him being a victim of torture in his country of origin, Bangladesh, due to his political affiliations. The appellant wished to obtain a medical report concerning his mental health.

Background

3. The appellant was born on 11 April 1981 and on 12 December 2005 he was granted a visa and work permit to enter and work in the United Kingdom for a period of one year. That visa expired on 12 December 2006. The appellant arrived in the United Kingdom on 22 December 2005. He did not return to Bangladesh or submit himself to the authorities at the expiry of his visa but he remained in the United Kingdom until he was encountered and detained on 13 July 2017. He then claimed asylum on 11 August 2017. He attended a screening interview on 30 August 2017, followed by a substantive asylum interview on 27 September. This led to the initial decision on 12 October refusing the appellant asylum or humanitarian protection.

The Decision of the First-tier Tribunal

4. The appellant appealed against the decision of the Home Office and the appeal hearing came before the judge on 23 November. In relation to the subject matter of this appeal before us the judge set out his reasons as follows:

"Preliminary Matters

10. Mr Paramjorthy renewed an application to obtain a medical report with the appellant's mental health which had been initially been made by solicitor's letter faxed to the Tribunal the day before the hearing at 17.59 hours. He submitted that such a report could be obtained in about three weeks. Mr Lumb was content to leave the matter to the Tribunal.
 11. The Tribunal determined to refuse the application as there was no credible material to suggest that such a report would assist the Tribunal in respect of the determination it needed to reach. Counsel accepted that the report did not go to causation in respect of the events complained of. The Tribunal was supplied with the Rule 35 report as the appellant was currently in immigration detention."
5. Having thus determined the application for an adjournment, the judge proceeded to consider the substance of the appeal, which was dismissed. He found that there was considerable doubt as to the credibility of the claim because the appellant admitted during the hearing on 23 November that as recently as July 2017 he had been "planning on returning voluntarily and his explanation for claiming asylum a month later was that there was no-one there to look after him", a claim which was wholly

incredible because it was based on the death of his parents as long ago as 2007. The judge found that the more likely reason for the claim for asylum was that the appellant had run out of options because of the loss of monies built up in the United Kingdom by illegal working over the previous years and that he was in detention.

6. In relation to the substance of the claim for asylum, namely that the appellant had been involved in political activity on behalf of the Bangladesh Nationalist Party, which lay behind his claim that he would be politically persecuted if he returned to Bangladesh where the ruling party is the Awami League, the judge found that in fact the appellant was never involved in political activity nor was he involved in a fight arising out of political activity and that the appellant was overall an extremely poor witness of truth. The judge said: "The Tribunal was under the distinct impression he was actively misleading the Tribunal." The judge did not accept that the appellant had ever been a political activist as claimed and found that the actions of the appellant were not those of someone with a genuine fear of persecution but rather of someone who entered the UK as an economic migrant and only raised the issue of international protection over eleven years later.

7. In relation to the appellant's health the judge found as follows:

"The Tribunal noted the Rule 36 report that in detention he was reported as feeling low and depressed and reporting of poor sleep but there was nothing to suggest that he is either receiving treatment for any mental health difficulties or the quality of his evidence and recall is somehow affected. The scarring on the legs which Dr Ali notes is consistent with an attack with a blunt instrument is not determinative or supportive of the appellant's claimed political account. The Tribunal has for the reasons above found the appellant to be an extremely poor witness of truth. Such marking could be caused by a variety of accidental and other factors such as being in a fight but with no political overtones."

8. In conclusion, the judge found that the appellant was not at real risk of persecution for any Refugee Convention reason on his return to Bangladesh and he found that the appellant's fears of inhuman or degrading treatment in breach of Article 3 of the European Convention on Human Rights or breach of his right to life under Article 2 ECHR were neither current nor objectively well-founded.

This Appeal

9. Section 11 of the Tribunals, Courts and Enforcement Act 2007 gives a right of appeal on "any point of law arising from a decision made by the First-tier Tribunal other than an excluded decision". In granting permission to appeal Judge Campbell considered it to be arguable that the judge erred in refusing to adjourn to enable the appellant to seek evidence regarding his mental health. He referred to the fact that there was a Rule 35 report

before the Tribunal which supported the appellant's claim to be a victim of torture and to suffer mental health.

10. Appearing for the appellant this morning, Mr Ogunbusola, who has said everything that could possibly have been said on the appellant's behalf, argued that the appeal should be allowed because it would have been fair to adjourn the hearing below and this appeal has been put fairly and squarely on the basis of fairness. He said that mental impairment could explain the appellant's failure to remember details and why he had been confused and muddled in his interview. He said that there should have been alarm bells ringing in relation to the appellant's mental ability from his failure since 2005 in the time he had been in the UK to prosper or make significant progress. He pointed out the fact that after twelve years the appellant was still living alone in a one bedroomed flat. He submitted that a report that the appellant was suffering from mental impairment would have been highly material to the issues before the First-tier Tribunal had such a report been obtained and shown the appellant to be suffering from mental impairment.
11. Asked whether since the hearing before the judge the appellant had made any effort to obtain such a report to substantiate the suggestion that such a report would have been of assistance to the First-tier Tribunal we were told that no such report had been obtained and indeed, although the appellant has now been released from detention for a period of four weeks it appears that he has not been examined by a medical practitioner with a view to a report being obtained. Thus we take with a pinch of salt the suggestion from Mr Ogunbusola that a report should be available "pretty soon".
12. For the respondent Mr Jarvis submitted that there are fatal difficulties to this application. He said that once Counsel for the appellant had accepted in the court below that there was no causation in relation to the events complained of it is difficult to understand how a medical report would have assisted the judge and what issues such a report could have gone to. He referred to the passages which we have already quoted in relation to the Rule 35 report from Dr Ali and the complete absence of any suggestion of mental health problems such as would have justified an adjournment. He pointed out Dr Ali's evidence that the injuries complained of were consistent with various ways of such injuries being sustained and were not necessarily indicative of torture. He submitted that the approach of the judge to the application to adjourn was not only reasonable but was correct and he submitted that there was no material error in the judge's approach.
13. Rule 21 provides:
 - “(1) Where a party applies for an adjournment of a hearing of an appeal, he must -
 - (a) if practicable, notify all other parties of the application;
 - (b) show good reason why an adjournment is necessary; and

(c) provide evidence of any fact or matter relied upon in support of the application.

(2) The Tribunal must not adjourn a hearing of an appeal on the application of a party, unless satisfied that the appeal cannot otherwise be justly determined.”

14. The overriding objective is enshrined in Rule 4, which provides:

“The overriding objective of these Rules is to secure that proceedings before the Tribunal are handled as fairly, quickly and efficiently as possible; and, where appropriate, that members of the Tribunal have responsibility for ensuring this, in the interests of the parties to the proceedings and in the wider public interest.”

In that respect we note that the application for an adjournment was first made at 17.59 hours the day before the hearing and therefore was very late. No explanation could be given to us for why the application was made so late.

15. In our judgment, the decision of the judge not to adjourn to allow the appellant to obtain further medical evidence was one which he was wholly entitled to make in the circumstances as they presented before him and that decision does not, in our judgment, betray any error of law. We note that in the course of his extensive interview on 27 September 2017 the appellant did not once refer to having been tortured nor did he rely upon torture as a ground for seeking asylum. In that regard it was of significance that it was accepted by Counsel on his behalf that the Rule 35 report did not go to causation in respect of the events complained of. The judge considered that he could properly determine the issues arising on the appeal from the decision of the Home Office without seeing such a medical report and, in our judgment, that was a decision which lay within the judge’s discretion. Indeed, it is arguable that had the judge acceded to the application to adjourn that would have been in breach of Rule 21, which provides that the Tribunal must not adjourn a hearing of an appeal unless satisfied that the appeal cannot otherwise be justly determined.

16. The judge was entitled to take into account the fact that the application had been made at such a late stage. Furthermore, the decision was, in our judgment, retrospectively justified by his findings in relation to the appellant’s credibility and the genuineness of his application for asylum and humanitarian protection, findings made having heard the appellant and considered all the evidence are ones with which we would not interfere.

17. In those circumstances we do not consider that the appellant was deprived of a fair hearing and this appeal is dismissed.

Notice of Decision

The appeal is dismissed.

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 her or any member of her 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 2 March 2018

Mr Justice Martin Spencer

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 2 March 2018

Mr Justice Martin Spencer