

Upper Tribunal (Immigration and Asylum Chamber) PA/13172/2016

**Appeal Number:** 

# **THE IMMIGRATION ACTS**

Heard at Field House

**On** 5 January 2018

Decision & Reasons Promulgated On 17 January 2018

Before

# DEPUTY UPPER TRIBUNAL JUDGE DOYLE

## Between

#### SHAHJAHAN AHMED (ANONYMITY DIRECTION NOT MADE)

<u>Appellant</u>

and

#### SECRETARY OF STATE FOR THE HOME DEPARTMENT Respondent

## **Representation**:

For the Appellant: Mr V Ogunbusola, instructed by M-R solicitors For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

# **DECISION AND REASONS**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

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2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Conrath promulgated on 16 May 2017, which dismissed the Appellant's appeal on all grounds.

## <u>Background</u>

3. The Appellant was born on 26 March 1975 and is a national of Bangladesh. The appellant says that he left Bangladesh on 29 April 2004 and travel to India where he remained until July 2004. From there he went to Italy where he stayed for a further six months, before travelling to France in February 2005. The appellant claims that he arrived in the UK in November 2005. The appellant did not make an application for leave to remain until 3 November 2009. That application was refused. On 8 October 2010 the appellant asked for reconsideration of the decision, saying that because of his affiliation with the Bangladesh National party he had a fear of return to Bangladesh.

4. It was not until 15 July 2015 the respondent wrote to the appellant saying that an application for international protection must be made in person in Croydon. The appellant chose not to make the protection claim and on 26 November 2015 the respondent adhered to the decision of the 3 November 2009.

5. On 24 May 2016 the appellant made a protection claim. The respondent refused that claim on 21 November 2016.

## The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Conrath ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 23 October 2017 Upper Tribunal Judge Reeds gave permission to appeal stating

1. The Judge made a number of adverse credibility findings concerning the appellant's claim including the length of delay in seeking to claim asylum on the factual basis now claimed. However, it is arguable, as the grounds assert, that the Judge did not give proper consideration to the arrest warrant provided. The Judge did not assess its reliability in accordance with the decision of <u>Tanveer Ahmed</u>. The document was dated February 2016 which is arguably nine months before his interview in November 2016 and thus was arguably consistent with his account of when he had received the news of it.

2. It is also arguable that the alternative findings at paragraphs 51 and 52 are inconsistent with the background material in the objective information paragraph 1.3.11 (country information and guidance Bangladesh: opposition to the government contained in the appellant's bundle).

#### <u>The Hearing</u>

7. For the appellant, Mr Ogunbusola moved the grounds of appeal. He took me to [50] & [51] of the decision and told me that, there, the Judge failed to consider a document which the appellant says is a warrant for arrest properly. He told me that the Judge had taken a dismissive approach to that document and decided that the document was not genuine, and that if it was genuine it was of little value because the Judge viewed it as evidence of "trumped up charges". He told me that, in effect, the Judge took the view that the document was a forgery, and reversed the burden of proof.

(b) Mr Ogunbusola told me that the Judge's findings at [50] and [51] of the decision are not properly reasoned, and that the Judge had failed to appreciate the high probative value of the document produced. He told me that the Judge's findings are irrational and relied on Ireland AO v Refugee Appeals Tribunal 27 February 2017. He told me that no reasoning has been provided to suggest that the document is not apparently reliable, and so the Judge's conclusions are irrational.

(c) Mr Ogunbusola referred me to background materials and told me that the Judge applied to high a standard of proof. He reminded me that the appellant had to establish to a reasonable degree of likelihood that he faces of risk on return to Bangladesh. He told me that the evidence indicated that the appellant established the facts claimed to the applicable standard of proof. He urged me to allow the appeal and set the decision aside.

8. Mr Walker for the respondent told me that the decision does not contain errors, material or otherwise. He told me that the Judge has made a number of adverse credibility findings and that at [50] and [51] the Judge correctly dealt with the document which is said to be an arrest warrant. He told me that the Judge gave clear and sustainable reasons for placing no weight on that document. He told me that consideration of the arrest warrant formed only one small part of the overall credibility assessment, and that the Judge made clear findings against the appellant which are not the subject of challenge. He urged me to dismiss the appeal and allow the decision to stand.

## <u>Analysis</u>

9. Between [2] and [8] of the decision the Judge sets out the background to this appeal. Between [9] and [15] of the decision the Judge summarises the appellant's case. Between [16] and [21] the Judge summarises the respondent's position. At [22] and [23] the Judge summarises the notice & grounds of appeal. Between [28] and [32] the Judge sets out the applicable law.

10. The Judge's findings in relation to the appellant's protection claim are set out between [33] and [53] of the decision. The focus in this appeal is solely on [50] and [51] of the decision.

11. Between [33] and [35] the Judge records that the appellant accepts that he has not suffered any form of serious harm in the past. At [36] the Judge says that he has considered the documentary and oral evidence in their entirety. The Judge also sets out the correct standard of proof.

12. Between [37] and [43] the Judge finds that the appellant's conduct damages his overall credibility. Between [44] and [49] the Judge makes a series of detailed adverse credibility findings. The Judge finds that the appellant is not a credible witness. The Judge finds that the appellant overstates his involvement with BNP. The Judge finds that he cannot place reliance on documentary evidence produced by the appellant. Having made all of those findings, none of which favour the appellant, the Judge turns his attention to the document bearing to be an arrest warrant at [50] and [51].

13. In <u>Tanveer Ahmed (Starred)</u> 2002 UKIAT 00439 the Tribunal said "The decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round".

14. Judges should determine how much weight is to be given to each piece of evidence in the appeal in the normal way. It is then for the Judge to assess each piece of evidence together - or what is commonly referred to as "in the round" - in order to arrive at an overall conclusion. A document is no different to any other piece of evidence in this respect. The Judge must decide whether it is a weighty piece of evidence; whether the weight that can be attributed to the document is limited; or whether indeed it is a document which merits no weight at all.

15. The approach to documentation in <u>Tanveer Ahmed</u> was reaffirmed in the starred decision of <u>BD (Croatia)</u> (2004) Starred UKIAT 00032, which confirmed that it would be an error of law not to follow the Tribunal's decision in <u>Tanveer Ahmed</u> [2002] UKIAT 00439. The Tribunal said that <u>Tanveer Ahmed</u> "needs to be considered in all those very many cases, indeed the very considerable majority, where the issue is not whether the document in question is forged or authentic but whether it is reliable or not. This distinction is vital. Documents produced may be on the right paper, even with the right stamps or signature, but may be unreliable because of the way in which they are procured."

16. At [50] and [51] the Judge considers the reliability of the document, not the authenticity of the document. A fair reading of the decision as a whole indicates that the Judge considers all of the evidence in the around. The Judge does not dismiss the documentary evidence because of other adverse credibility findings. Instead the Judge takes an holistic view of the evidence. His consideration of the arrest warrant is not determinative of the appeal; it is part of the overall consideration of every aspect of the appellant's case. The Judge does not make a finding that the arrest warrant is a forgery. His finding is that the document merits little evidential weight.

17. In <u>Green (Article 8 – new rules)</u> [2013] UKUT 254 (IAC) the Tribunal said that "*Giving weight to a factor one way or another is for the fact finding Tribunal and the assignment of weight will rarely give rise to an error of law*".

18. At [51] the Judge considers the arrest warrant as a genuine document, and deals with its evidential value. The conclusions that the Judge reaches are well within the range of reasonable conclusions available to the Judge. The Judge's findings are not irrational. Disagreement with a Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible.

19. At paragraph 49 of <u>MA (Somalia)</u> [2010] UKSC 49, it was said that "Where a tribunal has referred to considering all the evidence, a reviewing body should be very slow to conclude that that tribunal overlooked some factor, simply because the factor is not explicitly referred to in the determination concerned". McCombe LJ in <u>VW(Sri Lanka)</u> C5/2012/3037 said "Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact"

20. In <u>Shizad (sufficiency of reasons: set aside)</u> [2013] UKUT 85 (IAC) the Tribunal held that the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the Judge draws from the primary data were not reasonably open to him or her.

21. In this case, there is no misdirection in law & the fact-finding exercise is beyond criticism. The decision is not tainted by a material error of law. The Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed.

# CONCLUSION

22. No errors of law have been established. The Judge's decision stands.

## DECISION

# 23. The appeal is dismissed. The decision of the First-tier Tribunal promulgated on 16 May 2017 stands.

Signed Paul Doyle 2018 Date 12 January

Deputy Upper Tribunal Judge Doyle