



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

Appeal Number: PA/04519/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 18 December 2018**

**Decision & Reasons
Promulgated
On 4 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**HUSAIN [C]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Karim of Counsel

For the Respondent: Mr Stefan Kotas, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant against the decision of the First-tier Tribunal Judge Cary (“Judge Cary” or “the Immigration Judge”) to dismiss his appeal against the respondent’s decision to refuse the appellant’s asylum claim on the 26 April 2017. The First-tier Tribunal (FtT) decided to reject his account of having been involved with the Bangladesh National Party. On 10 October 2018 the Immigration Judge decided that the

appellant had not established he had been persecuted. The decision was promulgated on 22 October 2018. The Immigration Judge dismissed the appeal on asylum and human rights grounds and under the Immigration Rules. The claim to humanitarian protection was also rejected. Permission to bring the present appeal was given by FTT Judge Boyes who thought it arguable that Judge Cary had erred in taking into account Judge Bartlett's earlier decision and gave permission on the other grounds "so as not to bind the UT".

Background

2. The appellant first came from Bangladesh to the UK in 2010 as a Tier 4 Student Migrant. He applied for further leave to remain in May 2010 but the application was refused and he appealed that refusal. Eventually he was granted further leave to remain as a Tier 4 Student on 18 January 2011 which expired on 29 December 2013. His leave was subsequently renewed until January 2015. There then seems to have been a problem with the appellant's studies and the respondent decided to consider curtailing his leave and his leave was curtailed in 2014. He then made an application for leave to remain on 6 February 2015 which again he appealed but again those appeals were dismissed.
3. He was detained and under immigration control in 2016. He was served with the papers requiring his removal from the UK but when interviewed he then raised the matter of asylum and on 31 October 2016 he finally advanced that asylum claim. He claimed that he was attacked by supporters of the Awami League in Bangladesh in April 2009 and had therefore decided to flee to the United Kingdom. He claimed that since arriving in the UK he had continued to support the BNP and he said that he was concerned he would be killed by the police or members of the Awami League in Bangladesh.
4. Judge Cary was the second judge who has had to consider his appeal, the first being Judge Bartlett who in a hearing on 1 August 2017 heard extensive evidence about the appellant's background but, in his decision promulgated on 17 August 2017, decided that he would reject the appellant's account as having been incredible. He therefore decided to dismiss the appeal on asylum and other grounds. However, the appellant appealed that adverse decision to the Upper Tribunal and on 12 February 2018 Upper Tribunal Judge Gill set aside Judge Bartlett's decision and directed a *de novo* hearing before the First-tier Tribunal. That appeal subsequently came before Judge Cary.

The Upper Tribunal hearing

5. At the hearing submissions were made by both representatives. Essentially, Mr Karim, who represented the appellant, reduced the grounds of appeal to the key ones as follows: ground 1 was that Judge Bartlett's decision should not have been referred to in Judge Cary's decision. The

references to Judge Bartlett's decision at various points showed he said that Judge Bartlett's adverse findings had infected Judge Cary 's findings which made them unreliable.

6. Mr Karim then referred me to two cases, the case of **KJ [2009] EWCA Civ 292** in which, he said, the Court of Appeal had indicated that it was not appropriate to refer to a decision of an earlier Tribunal which was tainted in any way. He also referred me to the case of **EN [2005] UKAIT 00146** at paragraph 40(e) where Judge Gleeson explained that it would be wrong in law for the later judge to decide an important credibility issue, before the Tribunal in that case as having been settled by the first Immigration Judge by the second Immigration Judge, whose determination was on appeal in that case (the issue being whether or not an appellant had been subject to FGM). The first Immigration Judge's decision no longer existed, and it would be wrong in law for the Asylum and Immigration Tribunal, having found an error of law in that decision, to refer to the earlier adverse credibility findings by the first Immigration Judge and give them any weight.
7. Secondly, Mr Karim submitted that the judge had failed to give adequate reasons for rejecting the appellant's evidence as to his involvement with activities for the BNP.
8. Thirdly, Mr Karim referred to paragraph 54 of Judge Cary's decision where he had referred to making an "overall assessment" as to the appellant's credibility. Mr Karim pointed out that what the Immigration Judge appeared to say was that because he had reached an adverse finding as to credibility but that he then he was able to discount and place no reliance upon certain documents which he had to consider. Because he had reached an adverse credibility finding generally did not mean he was able to discount the documents as being of no weight or any significance. Mr Karim submitted Judge Cary had been wrong in principle to take that approach. The Immigration Judge had to take a view "in the round" and this involved looking at all the evidence, then weighing up that evidence and reaching clear conclusions on that evidence.
9. Mr Karim then referred to "lawyer to lawyer communications" (i.e. between lawyers in Bangladesh) which appeared to suggest that the appellant was a subject of interest to the authorities there. This, Mr Karim said, clearly corroborated the appellant's account but the Immigration Judge simply failed to make any findings in relation to this evidence. This was central to his case, he said. The Immigration Judge had simply dismissed these documents without giving any reasons. That was wrong in principle, he said.
10. The fourth ground of appeal was that Mr Karim was that the Immigration Judge had been wrong to suggest that there was no obligation on the respondent to verify the documents. He said there were no exceptional reasons why it was unnecessary for the respondent to verify the

documents. They had failed to identify what sort of exceptional reasons there were for verification not to take place. The appellant submitted that this is contrary to **MA (Bangladesh)** in which the Court of Appeal said that the correct approach in determining whether the circumstances of a particular case may necessitate in an investigation by national authorities was first to consider whether a disputed document is at the centre of the case. Mr Karim submitted that these documents were at the centre of the case and, therefore, they would require proper document verification before they could be rejected.

11. His fifth ground was that there were specific items of evidence that the judge had not referred to which he listed in ground 5 (i) to (v).
12. Ground 6 was technically relied on but not argued orally before me.
13. Ground 7 related to a failure on the part of the Immigration Judge to take account of the oral evidence of Sheikh Liton, whose evidence, Mr Karim said, corroborated the appellant's role as an activist with the BNP. The appellant relied on photographs showing him present with the UK BNP president. Mr Karim argued that it was wrong for the Immigration Judge to characterise the appellant's role with BNP as being unimportant or minor. He was in fact a "major player" in that organisation. He had carried out *sur place* activities and these clearly suggested showed that he would be at risk on return. I was referred to the Country of Origin Information Report at paragraph 1.1.1 and at paragraph 12 which tended to suggest that the risk existed.
14. In reply the respondent said that the attack on the judge's decision was misconceived. He criticised Judge Cary on many grounds, but those criticisms were not justified by a fair reading of the whole decision which he described as "thorough and full". He accepted that the use of earlier decisions which have been set aside needed to be approached with some caution, but the case of **EN** had been misquoted in the sense that there were further material parts to that decision which also needed to be considered. It was pointed out that paragraph 43 of that decision stated that the second Immigration Judge had not erred in taking account of earlier evidence in circumstances where there were clear differences and those differences were material to the evidence given in the later hearing. They may form a significant part of the core account and therefore may affect credibility findings in the later case if there were earlier inconsistent or differing statements.
15. I was then referred to paragraph 51 of the decision in this case, where the Immigration Judge did not accept that the appellant had been attacked as claimed in April 2009. Mr Kotas pointed out that there were a number of adverse credibility findings throughout the case, not least of which engaged Section 8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004. Mr Kotas pointed out that the Immigration Judge had found (at paragraph 51 of his decision) that the appellant had not been

“seriously involved” with BNP activities in Bangladesh, nor did his activities in the UK materially raise his profile. These were conclusions that the Immigration Judge was entitled to come to, Mr Kotas said.

16. The Immigration Judge gave sound reasons given for rejecting the evidence from “the lawyers” at paragraph 52 of his decision, Mr Kotas said. He pointed out that no mention of regular ongoing visits by the police had been made. Nor was there anything produced from the appellant’s mother or brother to confirm his account. The findings of fact were sound, and I was invited to leave the decision in place to say that.
17. The appellant briefly responded he found it very difficult to say what aspects of the decision could be allowed to stand given the “infection” of Mr Bartlett’s earlier decision into the decision under appeal. Bangladesh was in a dangerous situation and the appellant had produced documentary evidence to support his claim. Overall his claim was consistent and reliable, and it should have been accepted by the Tribunal below. Numerous activities for the BNP had been referred to in the appellant’s evidence. He was a very active “leader” of the organisation. The “lawyer’s letter” confirmed this. I was therefore invited to allow the appeal.

Conclusions

18. I have carefully considered the submissions by both representatives and I have also re-read the decision of Judge Cary. As Mr Kotas pointed out, this was a lengthy, thorough and detailed decision. Sometimes the length of the paragraphs can lead to parts of those paragraphs being taken out of context and that appears to have led to some of the submissions made in the current appeal.
19. The appellant had not raised any asylum claim until many years after the events are said to have occurred and long after he arrived into the UK. The background to his claim is of numerous unsuccessful immigration appeals. The Immigration Judge had in mind all the documentation before him, although he did not necessarily deal with this in the order that he should have done.
20. I am satisfied that the Immigration Judge’s decision was not infected by the decision of Judge Bartlett, which had indeed been set aside. Any references to Judge Bartlett’s decision were by way of background only and I am satisfied the Immigration Judge did not regard himself as being bound by that decision.
21. There were a number of gaps in the appellant’s account which he was unable to explain and there was no plausible evidence to support the appellant’s claim to being a high ranking official in the BNP Party. Mr Liton’s evidence was referred to at paragraph 57. The Immigration Judge was entitled to conclude that evidence did not add anything to the overall

picture. I do not consider that the Immigration Judge adopted an over narrow view of credibility by regarding themselves bound by his overall adverse assessment thereof when viewing individual documents. I accept that the Immigration Judge could have expressed himself better in the final sentence of paragraph 54 of his decision, however.

22. I have concluded the Immigration Judge reached a decision he was entitled to reach on the evidence before him and there is no material error of law in the decision of the First-tier Tribunal. The appeal to the Upper Tribunal is therefore dismissed.

Notice of Decision

The appeal against the decision of the First-tier Tribunal is dismissed. Accordingly, the decision of the First-tier Tribunal under the Refugee convention and under the ECHR stand. The claim to international humanitarian was also rightly dismissed by the First-tier Tribunal.

No anonymity direction was made by the First-tier Tribunal and I make no anonymity direction.

Signed

Date 17th January 2019

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT **FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 17th January 2019

Deputy Upper Tribunal Judge Hanbury