



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

Appeal Number: PA/07575/2018

THE IMMIGRATION ACTS

Heard at Field House

On 7 August 2019

**Decision & Reasons
Promulgated**

On 12 August 2019

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

**HR (BANGLADESH)
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Gherman, instructed by Solicitors Inn Ltd

For the Respondent: Mr Tufan, Senior Presenting Officer

DECISION AND REASONS

**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 their 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. I make this direction because this is decision relates to a protection claim.

1. The appellant is a Bangladeshi national who was born on 1 April 1991. He entered the UK lawfully in 2009 and re-entered lawfully in 2011. Some time after his leave to remain came to an end he claimed asylum, stating that he had suffered difficulties in Bangladesh on account of his membership of the Bangladesh National Party and that he would be persecuted on account of his political opinion were he to return. The appellant also stated that he had been politically active in the UK and that this would give rise to further problems on return.
2. In her decision of 31 May 2018, the respondent gave a range of reasons for rejecting the appellant's account as untrue. The appellant appealed to the First-tier Tribunal and his appeal was heard by Judge Sweet, sitting at Hatton Cross on 30 January 2019.
3. In the decision which followed that hearing, Judge Sweet also considered the appellant's account to be untrue. Having noted that it was part of the appellant's case that he was wanted in Bangladesh on trumped-up charges dating from 2009, Judge Sweet gave the following reasons for rejecting the appellant's account. At [33], he noted that the appellant had returned to Bangladesh (in order to marry) in 2011 and had suffered no problems. At [34], he noted that the appellant had delayed significantly in claiming asylum. At [35], he considered that these two points 'considerably weaken his claim for asylum in the UK'. At [36], Judge Sweet considered the medical evidence adduced by the appellant, which purported to confirm that he had suffered a knife wound at the hands of the opposing Awami League but 'no practitioner is able to confirm the exact cause of the injury', he concluded. At [37], the judge held that the appellant's sur place activities would not place him at risk and, at [38], he concluded that First Information Reports from 2009 would be unlikely to place the appellant at risk because they were issued ten years ago.
4. At the hearing before me, Mr Tufan accepted that the judge's decision could not stand. It was apparent that a major plank of the credibility findings had been reached without consideration of the background material in the appellant's bundles. The finding at [33] - that the appellant would not have been able to return safely to Bangladesh in 2011 if he was wanted for false charges - could not stand in light of the conclusions of a Home Office Fact Finding Mission ("FFM") report dated September 2017, in which it was recorded that the police and the Immigration Police in Bangladesh have very little communication and that '99 per cent of people attempting to leave the country, even if charged with a

crime, and particularly if they were low profile, would not face difficulties in leaving Bangladesh through the official immigration channels'. What appears at first blush to be a perfectly rational and common sense conclusion drawn by the First-tier Tribunal is therefore one which was reached without reference to the background material and cannot stand. I agree.

5. In fairness to Judge Sweet, I add this. The appellant was represented by counsel before the First-tier Tribunal. Although the appellant's ability to return to Bangladesh in 2011 without difficulty was obviously going to be of concern to the Tribunal, and although the FFM report was before the FtT, there was no reference to that report in the skeleton argument (which was titled "Skeleton Argument of the Appellant to Allow the Appeal"). The way in which the appellant's evidence was presented to the FtT further compounded the judge's difficulty. There were four separate bundles, described as 'files' before the judge, three of which had separate indexes. Even with the assistance of Ms Gherman, who did not appear below, it took me some time at the hearing even to locate the background material which was central to the resolution of this appeal. It is scarcely surprising, in these circumstances, that Judge Sweet failed to notice that there was cogent evidence before him which undermined what would otherwise have been a perfectly sensible basis for doubting the credibility of the appellant's account. Be that as it may, the determination of the appeal involved the making of an error on a point of law and it is clear that the error was material to the outcome of the appeal. As a result, I set aside Judge Sweet's decision. Both representatives urged me to remit the appeal to be reheard afresh in those circumstances, and I consider that to be the appropriate course.
6. In an attempt to avoid the recurrence of the problems which occurred in the past, I hereby direct that the appellant's representatives will file and serve, not later than 10 days in advance of the next hearing before the FtT(IAC), a single composite bundle containing all of the evidence upon which they seek to rely. That bundle is to be fully indexed and sequentially paginated and to be accompanied by a skeleton argument with references to that bundle.

Notice of Decision

The decision of the FtT(IAC) (Judge Sweet) is set aside. The appeal is remitted to the First-tier Tribunal at Hatton Cross to be reheard de novo. Anonymity is ordered as above.

A handwritten signature in black ink, consisting of stylized initials 'MB' followed by a long horizontal stroke.

MARK BLUNDELL
Judge of the Upper Tribunal (IAC)
09 August 2019