Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03851/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 February 2020	**On 4 March 2020**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

M S U
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:
For the Appellant: Mr A Bandegani, Counsel, instructed by Duncan Lewis Solicitors
For the Respondent: Ms R Bassi, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Rayner ("the judge"), promulgated on 7 June 2019, in which he dismissed the appellant's appeal against the respondent's refusal of his protection claim. However, the judge allowed the appellant's appeal against the respondent's refusal of his human rights claim, specifically in relation to Article 8 ECHR.

2. As a result of the partial success his appeal, the appellant was granted limited leave to remain in the United Kingdom. This in turn gave rise to a jurisdictional issue as to whether the appellant's ongoing appeal to the Upper Tribunal in respect of the protection claim was to be treated as abandoned.

3. Following the grant of permission by Upper Tribunal Judge Grubb, this question was subject of consideration by a panel consisting of the President and the Vice-President, resulting in the now reported decision of MSU (S.104(4b) notices) [2019] UKUT 412 (IAC). In short, it was concluded that the appellant's appeal on the protection claim did not fall to be treated as abandoned.

The decision of the First-tier Tribunal

4. The appellant, a citizen of Bangladesh, had claimed that he was an active member of the Bangladesh Nationalist Party ("BNP") and that this had in the past, and would on return, cause him significant problems amounting to a real risk of persecution and/or treatment contrary to Article 3 ECHR. In particular, it was said that political opponents from the Awami League had instigated false criminal cases against the appellant in Bangladesh.

5. In a lengthy decision, the judge rejected the appellant's account. Core aspects of that account are dealt with under a number of sub-headings.

"BNP member in Bangladesh"

6. The judge concluded that the appellant's account as to his claimed membership/activity for the BNP had been materially inconsistent over the course of time. Supporting evidence from witnesses was deemed to be lacking in relevant detail. Expert evidence from Dr I Amundson (contained in three reports) was undermined by the apparent failure of the author to have seen or considered materials adverse to the appellant, in particular the reasons for refusal letter and a previous decision of the First-tier Tribunal from 2014 (relating to a human rights claim only). The late timing of the claim political activity was also held against the appellant's overall credibility.

"Arrest in 1987"

7. A claimed arrest in 1987 was said to have been provided in a "confused and contradictory" manner by the appellant. It was not accepted.

"Political activity in the United Kingdom"

8. Although the judge accepted that the appellant was a member of the BNP in the United Kingdom, the timing of this raised real concerns and it was concluded that this activity was an attempt to "bolster" his claim.

"Fear of return for political reasons"

9. The judge rejected the claim that the appellant was at risk on return solely in respect of any political activity undertaken in Bangladesh all the United Kingdom.

"Land dispute"

10. The judge placed reliance upon observations made by the judge in the previous appeal in 2014, noting that the appellant was found not to be credible. The judge goes on to identify an inconsistency between the account in 2014 and that been relied upon for him. The change in account (it had previously been said that other family members had forcibly occupied land in Bangladesh, whereas that had then changed to other family members still residing there) was deemed to be "an example of how the appellant is prepared to adapt his evidence so as to best suit the claim that he is making at the time." In addition, even in light of the expert evidence, the judge considered that the appellant had failed to give a sufficiently detailed account in either of his interviews with the respondent.

"Police visit to appellant's home in Bangladesh February 2018"

11. For five reasons set out in this sub-section, the judge rejects the appellant's account that the police had in fact visited his house in February 2018 as a result of adverse influence by members of the Awami League.

"*Documents*"

12. The appellant had produced a number of documents relating to claimed false criminal cases against him in Bangladesh. These included: a First Information Report; a Complaint; a series of Orders; a Charge Sheet; and an Arrest Warrant. Having considered Dr Amundsen's expert evidence, the judge concluded that when taken in the round together with the rest of the appellant's evidence, no reliance could be placed upon the relevant documents.

13. The protection claim was duly rejected.

14. The judge went on to consider Article 8 length, concluding that the respondent's decision was disproportionate on the grounds that it was not

reasonable for the appellant children to leave the United Kingdom, with reference to section 117B(6) of the Nationality, Immigration and Asylum Act 2002, as amended.

The grounds of appeal and grant of permission

15. Five grounds of appeal were put forward. Permission to appeal was expressly limited to grounds 2-5. Ground 1, which asserted that the judge should have made additional findings on the link between political activities and claimed falls charges, has not been the subject of a renewed application before me.

16. The five grounds relate to: the judge's treatment of Dr Amundsen's evidence; the alleged failure of the judge to have due regard to other supporting evidence; a claimed misunderstanding by the judge relation to who was occupying land in Bangladesh; an absence of reasons for rejecting certain evidence.

The hearing

17. Mr Bandegani made an application to rely on an addendum by Dr Amundsen, dated 24 June 2019, which sought to confirm that she had in fact had sight of the reasons for refusal letter and the 2014 decision of the First-tier Tribunal. It was said that this evidence could properly be admitted because it went to show that the judge had laboured under a mistake of fact when criticising the expert for not considering these two items of evidence when preparing reports.

18. The application was formally opposed by the respondent.

19. I decided to admit the addendum report. It did go to the issue of whether the judge had made a mistake fact. The respondent had had prior sight of the short addendum (it having been referred to in the rule 24 response) and I note that the respondent's position has in fact been that the appellant's challenge on this particular point is misconceived in any event.

20. Mr Bandegani submitted that the expert evidence of Dr Amundsen was rejected *solely* because she had apparently failed to consider the reasons for refusal letter and previous 2014 First-tier Tribunal decision. Absent that error, it was submitted that the overall assessment of the expert evidence and the appellant's credibility might have been very different. It was also submitted that there was a failure to have undertaken a cumulative assessment of all the supporting evidence adduced by the appellant, including, letter from a lawyer in Bangladesh. Grounds 4 and 5 were relied on although they were not the subject of additional oral submissions.

21. Ms Bassi relied on the rule 24 response. She submitted that even if Dr Amundsen had seen the reasons for refusal letter and previous Tribunal decision, she had not actually considered their import when considering the appellant's case. It was accepted that there was no express reference to the lawyer's letter in the judge's decision, but this did not take the appellant's case any further: the judge's decision had to be read as a whole.

22. In reply, Mr Bandegani submitted that the lawyer's letter could not be segregated from the rest of the evidence, and that the judge's failure to have regard to it was a material error. He referred me to the last paragraph in the addendum report of 24 June 2019 in which Dr Admunsen confirmed that she had only referred to those materials which she regarded as "professionally relevant" to her reports.

Decision on error of law

23. It is undoubtedly the case that the judge made a number of adverse credibility findings and that he repeatedly stated that he considered the evidence before him in the round. In many respects, his decision is thorough and, at first glance, unobjectionable.

24. However, for the reasons set out below, I conclude that the judge has materially erred in law.

25. The court documents produced by the appellant were part and parcel of his claim and had to be assessed in the round: there reliability was capable of having an impact on other aspects of claim; conversely, the assessment of those other aspects would be likely to have had an impact on reliability of the court documents.

26. The expertise of Dr Edmondson was accepted. Her conclusions were that most of the documents were "most probably genuine". Having looked at her reports for myself, they are relatively detailed and provide an analysis of the contents of the various materials. The judge was of course entitled to view the expert evidence in light of the evidence as a whole. Aside from the appellant's own evidence (with which the judge was decidedly unimpressed), there was the evidence from a Bangladeshi lawyer, Mr Abdul Karim-Akbory, and Ms Poppy Firmin, a case worker at Duncan Lewis Solicitors. In respect of the former, the letters at 93 and 95 of the appellant's main bundle states that the author had himself obtained certified copies of the relevant court documents. As to Ms Firman's statement, she gives an account of a telephone conversation with another lawyer, Mr Md Bozlur Rachid, in which he purported to provide confirmatory evidence as to the provenance of the court documents, including attesting to the position of Mr Karim-Akbory.

27. The judge has failed to address the lawyer's letters. I take on board the respondent's submission that a judge need not deal with each and every item evidence before them. That much is correct. However, important evidence on material issues must be dealt with, albeit relatively briefly, depending on the circumstances. Here, nothing is said about the letters and their content. It does not appear as though the standing of Mr Karim-Akbory was challenged at any stage. His evidence was capable of supporting the reliability of the court documents.

28. Ms Firman's credibility does not appear to have been challenged. While she could not of course provide direct evidence as to the reliability of the documents, she had committed herself, in a signed witness statement, to the accuracy of a telephone conversation with an individual holding himself out to be a Bangladeshi lawyer who in turn had direct evidence of the provenance of the documents in question. Again, the standing of that lawyer had not seemingly been challenged. The judge has failed to deal with the substance of Ms Firman's evidence. If he was of the view that it should be rejected, there are no reasons in support of this.

29. The cumulative effect of the two matters just described is, in the circumstances of this case, sufficient for me to set the judge's decision aside. It cannot properly be said that the errors I have identified are simply immaterial. It is possible that if the evidence from the Bangladeshi lawyers and Ms Firman had been expressly found to be credible, this would have had a materially positive impact on the reliability of the court documents. In turn, and whilst by no means decisive, this was capable of having a favourable impact upon other aspects of the appellant's evidence.

30. On this basis, I set the judge's decision aside.

31. For the sake of completeness, I consider that there was a mistake fact on the judges part in respect of what materials were before Dr Admunsen. I am satisfied that the reasons for refusal letter and the 2014 Tribunal decision had been provided to her. Although the challenge put forward under Ground 1 is not entirely clear-cut, what is said at the end of [45] and in [47(i)] does indicate that the judge reduced the weight attributable to the expert evidence on the mistaken assumption that the two items in question had not been provided. By itself, I would not have regarded this error of material. In conjunction with the matters set out above, it does attract greater significance.

Disposal

32. Mr Bandegani submitted that if an error of law was found, I could remake the decision in this appeal based upon the evidence before me. Having considered the circumstances of this case as a whole, I take a different view. In light of my decision on error of law, there will need to be extensive fact-finding in this case because none of the judge's findings can

properly be preserved. Having regard to paragraph 7.2 of the Senior Presidents Practice Statement, the appropriate course of action is to remit this appeal to the First-tier Tribunal for a complete rehearing.

Anonymity

33. I maintain the anonymity direction made by the First-tier Tribunal.

Notice of Decision

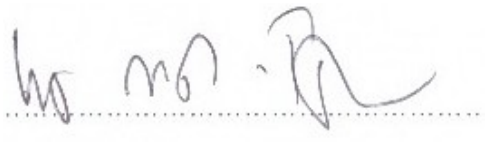
The making of the decision of the First-tier Tribunal did involve the making of a material error on a point of law.

This appeal is remitted to the First-tier Tribunal.

Directions to the First-tier Tribunal

1) **The appeal is remitted for a complete rehearing at the Taylor House hearing centre, with no preserved findings of fact;**

2) **The remitted hearing shall not be heard by First-tier Tribunal Judge Rayner.**

Signed  Date: 2 March 2020

Upper Tribunal Judge Norton-Taylor