



IAC-FH-CK-V1

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

Appeal Number: PA/10356/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 6 January 2020
Extempore**

**Decision & Reasons Promulgated
On 14 January 2020**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**J H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**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 his 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.

Representation:

For the Appellant: Mr Z Khan, Counsel, instructed by Haque & Hausmann
Solicitors (London)

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Abebrese (“the judge”), promulgated on 26 April 2019, by which he dismissed the Appellant’s appeal against the Respondent’s refusal of his protection and human rights claims.

In essence, the Appellant, a national of Bangladesh, had asserted that he had been politically active whilst in Bangladesh as a result of which he had come to the adverse attention of his political opponents, namely the Awami League. Over the course of time it was said that the Awami League had instigated false cases against him, leading to legal proceedings and ultimately warrants for his arrest. The Appellant had also alleged that he had been ill-treated whilst in Bangladesh and had sustained injuries as a result. Without in fact having been arrested, the Appellant came to this country at the beginning of April 2014 as a student. Leave in that category was subsequently curtailed and the Appellant remained here without status. Following his detention in this country in 2017, he made his protection and human rights claims.

In support of his case on appeal to the First-tier Tribunal, the Appellant provided a number of items of documentary evidence including: letters from his political party in Bangladesh apparently attesting to his political activity and role within the organisation; First Information Reports; charge sheets; warrants of arrest; and a letter from a Bangladeshi advocate who purported to confirm that there were active cases against the Appellant in his home country. Medical evidence in the form of a detailed medico-legal report from Dr Sinha was also provided.

The decision of the First-tier Tribunal

The judge made a number of adverse findings on the Appellant’s credibility. He found that the timing of the protection and human rights claims was damaging, given that this action was only taken following his detention in the United Kingdom and after having remained in this country unlawfully after the curtailment of his student leave. The judge did not accept it as credible that the Bangladeshi authorities had not in fact arrested the Appellant whilst he was still in that country, given his claim that there were legal proceedings against him at the time. The judge was also decidedly unimpressed by the Appellant’s lack of any political activity whilst in the United Kingdom. The combination of these matters led the judge to reject the core of the Appellant’s account.

Following this, the judge purported to consider the Appellant’s case “at its highest” and concluded that even if the account had been credible he would have been able to receive sufficient protection from the Bangladeshi authorities and would not be at risk of either persecution or Article 3 ill-treatment. The appeal was duly dismissed.

The grounds of appeal and grant of permission

The grounds of appeal assert that the judge failed to consider a number of aspects of the Appellant's evidence including the items of documentary evidence I have referred to previously. Permission to appeal was initially refused by the First-tier Tribunal but was subsequently granted by Upper Tribunal Judge Finch on 25 November 2019.

The hearing

At the hearing before me, Mr Khan quite properly accepted that taken in isolation the adverse credibility findings stated by the judge were open to him. However, and with reference to the grounds of appeal, he submitted that the judge's failure to consider the various items of documentary evidence fatally undermined the credibility findings as a whole. Particular emphasis was placed upon the advocate's letter and the report of Dr Sinha. He submitted that the judge's alternative finding on the Appellant's case at its highest was insufficiently thorough.

Ms Everett accepted that the alternative scenario finding was indeed inadequate, but she submitted that read as a whole, the judge's credibility findings were sufficient notwithstanding an accepted failure to have had specific regard to certain items of documentary evidence.

Error of law decision

This case is not clear-cut. However, by a relatively narrow margin I conclude that the judge has materially erred in law, specifically in failing to have considered at all, or at least not adequately, what I regard as material aspects of documentary evidence which were before him when reaching his overall credibility findings on the Appellant's claim.

The judge was entitled to make the adverse findings in respect of the timing of the claim in this country, on the absence of political activity whilst here, and on the failure of the Bangladeshi authorities to have actually arrested the Appellant whilst he was still in that country. The question is whether these adverse findings are sufficient of themselves to amount to a sustainable overall conclusion on the evidence, notwithstanding what in my view is a clear failure to have had any or any adequate regard to documentary evidence.

In respect of that evidence, the committee meeting notes naming the Appellant as President of the youth wing of the party in question would have borne at least some relevance to his overall claim to have been not simply politically active, but at a relatively high level, seen in the proper context.

Of greater significance in my view was the advocate's letter and the medical evidence. In respect of the former, the letter purported to come from a

Bangladeshi lawyer. There is no finding by the judge to the effect that the author was not who he said he was or that he was in some way unqualified to pass comment on the Appellant's circumstances. Whilst the advocate did not specifically state how he came to know that there were "active" cases against the Appellant in Bangladesh, he did give several case references which match up with the other documentation before the judge, and the advocate did state in terms that proceedings were live. In my view, this evidence was clearly material and required specific attention, with adequate reasons should the letter have been rejected as being unreliable.

In respect of Dr Sinha's report, no reference to it is made in the judge's decision whatsoever. There is reference in [30] to medical evidence (described by the judge as "generic") that I cannot find on file. Neither representative could identify what this evidence consisted of. In any event, Dr Sinha's report was detailed and specific to the Appellant. It sets out a number of scars on the Appellant's body and in line with the Istanbul Protocol, attributes the label of "highly consistent" with the majority of these marks. This lent support to the Appellant's case to have been targeted by political opponents and ill-treated whilst in Bangladesh. This part of his claim tied in with his assertions to have subsequently become the subject of false cases. Thus, the medical evidence was potentially corroborative of the Appellant's overall case. The failure to have regard to this evidence in any way is a further error and one that I regard as being material.

It is right also that the judge failed to have regard to the Rule 35 report. Whilst this evidence would have been of less probative value, it was nonetheless of some relevance and should have been specifically dealt with in conjunction with the report of Dr Sinha.

For the avoidance of doubt, the judge's purported "at its highest" conclusion is inadequate. Nothing is said about the possible consequences of the alleged false cases brought by political opponents against the Appellant. Nothing is said about possible ill-treatment in detention. If alternative conclusions on a protection claim are to be reached, care must be taken to ensure that all aspects of the evidence (which will have been deemed to be credible) are carefully considered in the context of the country information and case-law, and the submissions made thereon.

In light of the above, the omissions by the judge sufficiently undermine his overall credibility assessment of the Appellant's case to the extent that his decision should be set aside. That I do.

Given the interconnectedness of the errors with the issue of credibility, there should be no preserved findings of fact when this appeal is reconsidered.

In respect of disposal, whilst the default position is for matters to be retained in the Upper Tribunal, this is a case in which there needs to be a wholesale reassessment of the Appellant's case involving what I consider to be extensive fact-finding. With reference to paragraph 7.2 of the Practice Statement and

with a degree of reluctance, I conclude that this matter should indeed be remitted to the First-tier Tribunal to be reconsidered afresh.

Notice of Decision

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

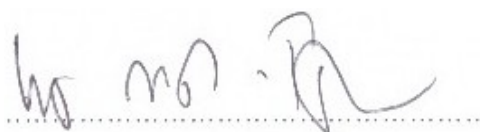
I set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal.

Directions to the First-tier Tribunal

- 1) The appeal is remitted to the First-tier Tribunal (Hatton Cross hearing centre) for a complete rehearing, with no findings of fact preserved;**
- 2) The remitted hearing shall not be conducted by First-tier Tribunal Judge Abebrese.**

Signed



Date: 8 January 2020

Upper Tribunal Judge Norton-Taylor