



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-002581
(PA/52990/2020); IA/02877/2021**

THE IMMIGRATION ACTS

**Heard at Field House
On the 18th October 2022**

**Decision & Reasons Promulgated
On the 14 November 2022**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**MRU
(Anonymity Direction Made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Spurling, counsel instructed by Hunter Stone Law
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

An anonymity direction was not made by the First-tier Tribunal (“FtT”). As this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, MRU is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction

applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

Introduction

1. The appellant is a national of Bangladesh. He claims to have arrived in the United Kingdom on 29th November 2018. He made a claim for asylum on 17th December 2018. His claim for international protection was refused by the respondent for reasons set out in a decision dated 14th December 2020. The respondent accepted the appellant is a Bangladeshi national but rejected the core of the appellant's account relating to the events leading to his departure from Bangladesh and his claim that he will now be at risk upon return. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Phull for reasons set out in a decision dated 24th April 2022.
2. The appellant advances two grounds of appeal. First, the First-tier Tribunal Judge erroneously found that there was an inconsistency between the appellant's claim when interviewed, that he was beaten with rods and sticks but managed to escape his attackers, and his claim in his initial statement that he was able to escape without any injuries. The appellant claims there is no inconsistency. He has consistently claimed that those who attacked the meeting were armed and he was able to escape unharmed. Second, the appellant claims Judge Phull applied the wrong standard of proof. She found *"there is a reasonable degree of likelihood that the appellant was not a member of the BNP"* as claimed. The appellant claims that adopting this approach is to elevate the standard of proof considerably above the appropriate standard. It is said in effect, something can probably be true, while being reasonably likely to be untrue.
3. Permission to appeal was granted by First-tier Tribunal Judge Seelhoff on 25th May 2022.

4. No rule 24 response has been filed by the respondent. Before me, Mr Tufan accepts the decision of the First-tier Tribunal is tainted by material errors of law such that it must be set aside. He accepts that the approach adopted by the Judge regarding the standard of proof is sufficiently ambiguous so that the parties cannot be satisfied that the judge did in fact apply the correct standard of proof despite her self-direction at paragraph [4] of her decision that in asylum appeals, the burden of proof is on the appellant and the standard of proof is a reasonable degree of likelihood. He accepts that the reference in paragraphs [16] and [19] to there being a “reasonable degree of likelihood that the appellant was not” in attendance at a meeting in October 2019 or a member of the BNP in Bangladesh is to mischaracterise the standard of proof and more for a gives the impression that a heightened standard might have been applied. He accepts the question for the judge was not whether there was a reasonable degree of likelihood that the appellant did not do something, but whether there was reasonable degree of likelihood that the appellant did attend a demonstration or was a member of the BNP as he claims. Mr Tufan also accepts that in answer to Q.133 of his interview the appellant said:

“When they attacked us with all those rods and sticks and we had nothing with us because we did not go there to fight. After the attack, they chased us, when we realised we were not in a position to raise (*sic*) them, we ran away from the stage to save ourselves.”

5. Mr Tufan accepts that on the face of it, there is no apparent inconsistency between a claim that when attacked, the appellant and others ran away to save themselves, and the initial claim in the appellant’s witness statement that he was able to escape without any injuries.

Discussion

6. The appellant’s immigration history is set out at paragraph [2] of the decision. At paragraph [4], Judge Phull notes that in asylum appeals, the burden of proof is on the appellant and the standard of proof is a reasonable degree of likelihood. The appellant’s claim is summarised at paragraphs [7] and [8] of the decision and the parties submissions are summarised at paragraphs [9] and [10]. The Judge’s findings and conclusions are set out at paragraphs [12] to [28] of the decision.

7. Judge Phull addressed the appellant's claim that he is a member of the Bangladesh Nationalist Party ("BNP") at paragraphs [13] to [15] and [19] of her decision. She addressed the appellant's claim regarding his attendance at a meeting on 19th October 2018 and the attack by members of the Awami league in paragraph [16] of her decision.

8. The parties agree that the decision of the First-tier Tribunal must be set aside for the reasons identified in the grounds of appeal. I do not therefore need to say anything further about the grounds of appeal. I must then consider whether to remit the case to the FtT, or to re-make the decision in the Upper Tribunal. Both Mr Spurling and Mr Tufan submit that in light of the errors of law, and the fact sensitive assessment that will be required afresh, the appeal should be remitted to the First-tier Tribunal for hearing *de novo* with no findings preserved. Having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012, the nature and extent of any judicial fact-finding necessary will be extensive. No findings can be preserved. I am satisfied that the appropriate course is for the appeal to be remitted to the FtT for hearing afresh. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

NOTICE OF DECISION

9. The decision of First-tier Tribunal Judge Phull dated 24th April 2022 is set aside.

10. The appeal is remitted to the First-tier Tribunal for rehearing, with no findings preserved.

11. The parties will be notified of a fresh hearing date in due course.

Signed **V. Mandalia**

Date: 18th October 2022

Upper Tribunal Judge Mandalia