Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2022-000640**

[PA/10068/2019]

THE IMMIGRATION ACTS

Heard at Field House	**Decisions and Reasons Promulgated**
On 22 July 2022	**On 7 September 2022**

Before

Upper Tribunal Judge NORTON-TAYLOR
Deputy Upper Tribunal Judge MANUELL

Between

Mr A B
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Alam, Counsel
(instructed by Lawmatic Solicitors)
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

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Introduction

1. The Appellant appealed with permission granted by Upper Tribunal Judge Sheridan on 8 April 2022, permission to appeal having been refused by First-tier Tribunal Judge Dixon on 19 November 2021, against the decision of First-tier Tribunal Judge Russell who had dismissed the appeal of the Appellant against the refusal of his international protection claim. The decision and reasons was promulgated on 3 February 2021.

2. The Appellant claimed that he was a national of Burma, born on 1 January 1984. He claimed in summary that he was at risk on return from the government of Burma because of his Rohingya ethnicity. After reviewing the evidence the Appellant presented and the account he provided, including his immigration history, Judge Russell found that the Appellant was not credible and had not proved that he was Burmese.

3. Upper Tribunal Judge Sheridan considered that it was arguable that Judge Russell had erred by stating at [31] of his determination that it is not possible for Rohingya in Burma to obtain ordinary markers of identity, yet at [34] the judge appeared to have attached significant weight to the absence of corroborating evidence as to the appellant's claimed nationality. It was arguably erroneous to attach weight to the lack of documentary evidence concerning the appellant's nationality in the light of what the judge had accepted at [31(a)] of his determination.

4. Notice under rule 24 had been served by the Respondent, indicating that the onwards appeal was opposed.

Submissions

5. Mr Alam for the Appellant relied on the grounds of onwards appeal and the grant of permission to appeal in the Upper Tribunal. In summary, counsel submitted that the judge had erred in his treatment of the Appellant's delay in making his asylum claim and had not properly considered the reasons given, the Appellant's lack of English which was confirmed by his need of an interpreter at his appeal

hearing. The judge had given excessive weight to the delay. The judge had further erred by demanding corroboration which there was no requirement for the Appellant to provide (see, e.g., ST (Corroboration – Kasolo) Ethiopia [2004] UKAIT 00119) and when the judge had accepted that it would be difficult for the Appellant to provide corroboration in any event. The judge had speculated as to why the Appellant had taken the family registration card, which the Respondent had failed to verify. The decision and reasons was unsafe and should be set aside and the appeal reheard before another judge.

6. Mr Avery for the Respondent submitted that there was no error of law, merely disagreement with a decision open to the judge. Ten years' delay had not been adequately explained. The judge had not demanded corroboration and had only referred to the absence of potential supporting evidence relevant to the claim which was freely available. The appeal should be dismissed.

7. Mr Alam wished to make no reply.

No material error of law finding

8. The tribunal reserved its decision, which now follows. The tribunal must reject the submissions as to material error of law made on behalf of the Appellant. In the tribunal's view, the errors asserted to exist in the decision are based on a misreading of the determination.

9. The submission that the judge impermissibly demanded corroboration fails to reflect TK Burundi [2009] EWCA Civ 40 which the judge applied: "Where evidence to support an account given by a party is or should readily be available, a judge is, in my view, plainly entitled to take into account the failure to provide that evidence and any explanations for that failure." The judge correctly and explicitly stated that markers of identity were not readily available for Rohingya, which indicated that he was well aware that the Appellant would almost certainly be unable to produce items such as passport, identity card or birth certificate.

10. The judge examined the sole item of documentary evidence the Appellant produced some ten years after his arrival in the United Kingdom (the family registration book)

and considered its provenance. He gave sustainable reasons for finding that no weight could be given to it. He applied the guidance in QC (verification of documents; Mbanga duty) China [2021] UKUT 00033 (IAC): "In all cases, it remains the task of the judicial fact-finder to assess the document's relevance to the claim in the light of, and by reference to the rest of the evidence". It was not argued that there was an exceptional verification duty on the Respondent: see QC (above) and we find there was no such duty on the facts of this appeal.

11. The explanation given by the Appellant, that he at the age of 7 or thereabouts he took his family's registration book and fled alone from their refugee camp in Bangladesh to Chittagong railway station, leaving his family behind and taking a document of great importance to them, and then remaining in Bangladesh for further lengthy period working on a stranger's farm, was rejected as incredible, rightly in the tribunal's view.

12. The judge gave a careful and accurate self-direction as to the effect of the ten year delay on the Appellant's part in making his asylum claim, referring to JT (Cameroon) [2008] EWCA Civ 878 and SM (Section 8: Judge's Process) Iran UKAIT 00116. The Appellant's explanation that he could not find out what he had to do in order to claim asylum because he did not speak English the judge rejected as incredible, a conclusion which was obviously open to him. The Appellant's case was that he had come to the United Kingdom for his own safety. Waiting some 10 years to make an asylum claim is plainly inconsistent with having an urgent need of international protection and travelling half way across the world to make it. The Appellant was 23 years old when he arrived in the United Kingdom in 2007. Ample sources of advice in Bengali or Sylheti were readily available to the Appellant in the United Kingdom.

13. The judge's use of the word "positive" in [31] of the determination was heavily criticised by Mr Alam and was possibly an unhappy choice. The meaning is nevertheless clear from the context of the judge's discussion of the evidence: credible or reliable. At [32] the judge referred to the lack of granular material or grit in the Appellant's account of life in Burma, which was one example of the lack of credibility. There was no expert's report, e.g., a linguistic analysis report. There was no evidence that the

camp mentioned by the Appellant existed in 1992. There was no letter of support from any United Kingdom Rohingya organisation. These were among the reasons the judge gave for being able to place little or no weight on the family registration card, lately produced with no credible provenance and with no other connections to Rohingya ethnicity or Burmese nationality or origin being provided.

14. Despite what might reasonably be thought to be the obvious weakness of the Appellant's claim, the judge conducted a full and careful review of his case, in a logical, structured manner. Perhaps even more importantly, on a fair and full reading of the decision, it is clear that the judge was constantly testing his conclusions, giving anxious scrutiny to the evidence and considering the alternatives: this can be seen in particular at [31] to [35] of the determination which sets out the judge's final reflections.

15. In the tribunal's view, the submissions advanced on the Appellant's behalf amount to no more than a means of seeking to avoid the judge's adverse findings of fact, all of which were available to him. The tribunal finds that there was no material error of law in the decision challenged. The onwards appeal is dismissed.

DECISION

The appeal is dismissed_

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed R J Manuell **Dated** 25 July 2022

Deputy Upper Tribunal Judge Manuell