



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005378
First-tier Tribunal No:
PA/54207/2021
IA/12457/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 March 2023

Before

UPPER TRIBUNAL JUDGE LINDSLEY
DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

MSH
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bandegani, of Counsel, instructed by Irvine, Thanvi & Natas Solicitors

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

Heard at Field House on 7 March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Bangladesh born in 1985. He arrived in the UK as a Tier 4 student migrant in June 2005. He had leave to remain as a student until 31st March 2009, he then applied for further leave to remain as a Tier 1 post-study work migrant, but this was refused and his appeals were unsuccessful. The appellant became appeal rights exhausted on 17th November 2009. The appellant then overstayed in the UK, and in 2012 made a human rights application which was refused in 2013. He claimed asylum in 2014, but the claim was refused in 2018 and his appeal dismissed on 7th January 2019. On 12th February 2020 he made further submissions which were originally rejected as a fresh claim, but on reconsideration the respondent refused them as a fresh claim. His appeal against this decision was dismissed on all grounds by First-tier Tribunal Judge Hussain after a hearing on 1st July 2022.
2. Permission to appeal was granted by Judge of the First-tier Tribunal Karbani on 16th November 2022 on the basis that it was arguable that the First-tier judge had erred in law in the consideration of the appeal under Article 3 ECHR, although the Judge commented that in her view the asylum appeal was properly dismissed she did not limit the grant of permission to appeal.
3. The matter came before us to determine whether the First-tier Tribunal had erred in law, and if so to determine whether any error was material and the decision needed to be set aside.

Submissions – Error of Law

4. In grounds of appeal and in oral submissions from Mr Bandegani for the appellant, it is contended, in summary, as follows.
5. Firstly, it is contended that the First-tier Tribunal made irrational findings about the evidence relating to the protection claim. It is contended that it was irrational to have found that the appellant would not have got his wife to investigate whether his parents and cousin had disappeared when he feared that this would have put her at risk. The First-tier Tribunal also irrationally failed to consider whether the evidence (newspaper reports, medical evidence and First Information Report to the police) showed that the appellant had suffered persecution from the local Awami League, and was at future risk from them rather than was at risk from the national Awami League government – which was not the risk contended for in the claim. The appellant claims he was a prominent local activist with Islami Chattra Shibir ('ICS'), the student wing of Bangladesh Jamaat-elIslami of adverse interest to the local Awami League. As a consequence of this error the First-tier Tribunal accepted that the newspaper evidence was genuine but then found it to be implausible because the judge failed to consider it in the context of a low level political person who could be at risk from local political opponents. As a result there was a failure to consider the evidence in the round and a failure to make a rational reasoned decision.
6. Secondly, it is contended that the Article 8 ECHR assessment is flawed as it is accepted that the appellant has PTSD and depression and had experienced suicidal ideations, and that these conditions may engage Article 8 ECHR but then it is found by the First-tier Tribunal that there would be adequate

treatment, without considering if it would be actually available in Bangladesh and without addressing whether the appellant's conditions would cause him to be unable to reintegrate. The evidence in the expert report of Mr Mahbub was that medical facilities were extremely limited, that the appellant would be unlikely to be able to obtain his medication and that he was at risk of being denied treatment or being subjected to degrading and inhuman treatment by healthcare professionals. The context of the appellant lacking family and other support in Bangladesh meant that he could succeed in his appeal if he could show very significant obstacles to integration in Bangladesh as a result of his mental health.

7. Ms Everett for the Secretary of State accepted that the two grounds were made out and that the decision of the First-tier Tribunal could not stand. We therefore indicated that we would set aside the decision and all of the findings. Mr Bandegani argued that given the extent of remaking that the appeal should be remitted to the First-tier Tribunal. Ms Everett was neutral on the matter. We agreed that it would be appropriate for the appeal to be remade in the First-tier Tribunal in light of the extent of remaking which would be extensive, as no findings could be preserved, and the estimated time needed for the hearing was three hours with an appellant's bundle of over two hundred pages .

Conclusions - Error of Law

8. In light of the fact that an error of law is found by consent we only give brief reasons for our decision.
9. With respect to the first ground the appellant argued he was at real risk of serious harm in his home area from the local Awami League before the First-tier Tribunal, as is set out at paragraph 24 of the skeleton argument before the First-tier Tribunal. This is not however made clear in the summary of the appellant's claim set out at paragraphs 4 to 6 of the decision of the First-tier Tribunal, and when the First-tier Tribunal turns to make its finding at paragraph 34 to 36 of the decision the risk is being assessed as coming from the central government not from local Awami League activists. As a result we find that the actual claim that the appellant put forward was not considered and a reasoned decision on that claim was not made, and the decision therefore errs in law.
10. With respect to the second ground we find that the Article 8 decision is inadequately reasoned: the decision contains just one sentence at paragraph 38 which simply records that the medical evidence "may meet the Article 8 threshold" but that removal is proportionate because treatment is available in Bangladesh. This is entirely unsupported with any reference to evidence with respect to medical treatment which clearly was necessary given the appellant's expert evidence on this issue, and fails to consider the Article 8 ECHR appeal by reference to all the relevant evidence firstly by reference to the Immigration Rules at paragraph 276ADE and then outside of those Rules balancing all factors. There is strikingly no reference to the fact that it was submitted for the appellant (paragraph 47 of the skeleton argument) that he has a wife and a baby who reside legally (if on a short term basis with leave until January 2024) in the UK.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. We set aside the decision of the First-tier Tribunal.
3. We remit the appeal to the First-tier Tribunal to be remade.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we 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 original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. We do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13th March 2023