IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004121
First-tier Tribunal Nos:
PA/53640/2021
IA/09968/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 07 December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

MI
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Islam of Counsel
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 6 November 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

1. This is my decision which I have delivered orally at the hearing. The background to the substantive matter relates to a protection claim. For that reason, it is appropriate to make an anonymity order.

2. The background to the protection claim is that the Appellant contends that he would be at risk on return to Bangladesh because of his activities in support of the Bangladesh National Party (BNP).

First Tier Tribunal's Decision

3. The matter had come for hearing before First-tier Tribunal Judge Coll ("the judge) sitting at a hybrid hearing at the Taylor House Tribunal Centre on 16 May 2022. The judge had considered the Appellant's claims and had concluded that:

   (1) It was not reasonably likely that the Appellant was a member of the BNP in Bangladesh or in the UK;

   (2) The events claimed as having occurred such as attacks were not true to the lower standard of proof; and

   (3) Even if the Appellant was a low member of the BNP he could internally relocate within Bangladesh.

4. The Appellant's grounds are lengthy and unfortunately are not set out as separate itemised grounds of appeal. There were original grounds of appeal lodged with the First-tier Tribunal and then renewed grounds to the Upper Tribunal. The grounds in reality are similar in wording, and they can be summarised as follows:

   (1) That there were document verification errors in respect of the case law of **PJ (Sri Lanka) [2014] EWCA Civ 1011** and **QC [2021] UKUT 33**;

   (2) The FtT Judge made errors of law in respect of the assessment of the Appellant's credibility;

   (3) The letter from Mr Choudhry had not been properly considered; and

   (4) The evidence was not properly considered in respect of photographs which were provided.

Permission to Appeal

5. Permission to appeal was granted by Upper Tribunal Judge Reeds. She said at paragraph 2 as follows:

> *"It is not clear from the grounds what the substance of the oral submissions were made on the issue of verification of the BNP letter which purported to give support for his factual claim to have been a member of the BNP and the events he claimed to have occurred in Bangladesh. However it is arguable that the FtTJ having identified that there can be a duty on the respondent to investigate or verify a document and that the question a FtTJ should ask is whether a simple process of enquiry would have conclusively resolved the document's authenticity and reliability, the FtTJ did not carry out such an assessment. It will therefore be for the appellant's legal*

representatives to demonstrate that any error in this respect was material to the outcome.

Whilst the other grounds may have less merit, I do not restrict the grounds".

The Hearing Before Me

6. When the matter commenced for hearing this morning Mr Islam had taken me at some length to his grounds of appeal including his first ground of appeal. Mr Islam then said that there were others matters he also sought to raise in respect of the nature of the hearing. A summary of Mr Islam's submission being that the judge had said that she found the Appellant lacking in credibility and that the Appellant had failed to answer questions or that the Appellant had been repeating himself. It was pointed out that the grounds of appeal had said as follows:

> *"The learned Judge failed to: (i) take into account that the appellant was appearing in person and the interpreter that he was being assisted by was acting remotely via a video-link which created more scope for not understanding a question properly; (ii) taking into account the appellant was facing the learned Judge but the screen that was linking the interpreter was behind the appellant; (iii) give adequate/any reasons as to how the failure of the appellant to answer a question impacted on his credibility/reliability; (iv) give adequate/any reasons as to how the appellant's request to repeat a question impacted on his credibility; (v) give adequate/any reasons as to the nature of avoiding a question and how it impacted on the credibility/reliability of the appellant; (vi) give adequate/any reasons as to how the answer of the appellant was vague and how it impacted on his credibility; (vii) give adequate/any reasons as to how a rhetorical question impacted on the credibility/reliability of the appellant".*

7. Perhaps because of the way in which Mr Islam had drafted the very lengthy grounds of appeal over some nine pages and without any subparagraphs or numbers and the way in which this ground of appeal was rather buried within the other grounds, it led to this not being the main focus of attention.

8. After I heard from Mr Islam on this aspect, I then invited Ms Everett to respond in relation to the fairness ground of appeal. Ms Everett took a very fair approach and said that although the Secretary of State still opposed the appeal ultimately, she considered she would have to defer to me for what the outcome ought to be. Especially since this was a protection claim in which she said it was imperative for one to remember that the most anxious scrutiny has to be applied.

Decision and Analysis

9. It is clear from the judge's decision at paragraph 6 that the Appellant and Mr Islam, his counsel, had attended the hearing in good time. The judge noted that although an interpreter had been requested, no interpreter had attended the hearing. The judge put the case back to enable an interpreter to be found by the court staff at short and urgent notice. The judge then commenced this case at 12.40 p.m. The best that could be done in the circumstances was that the interpreter was to attend remotely. Once the interpreter arrived online, the judge correctly checked to make sure that the Appellant and the interpreter were able to understand each other for the purposes of the hearing.

10. The difficulty that arose was that the interpreter was on a screen and the screen was located behind the Appellant when the Appellant was giving his evidence. Therefore the Appellant could not see the interpreter and was hearing things being said behind him by the interpreter. That is unusual and I invited Mr Islam to explain why he did not ask the judge to make arrangements so that the matter could proceed in a more suitable way. Mr Islam was frank and said that ultimately, he sought to assist the judge and the Tribunal to proceed with the hearing in a way in which, as I understood it, best use of court time was made. The background being that the lack of interpreter issue arose through no fault of his or his client's. Putting it frankly Mr Islam, if I colloquialise it, said that he felt he had to stay on the 'right side of the judge' and I understand and appreciate what he means. The judge clearly and properly would want to deal with the cases in the most appropriate way and to make best use of the valuable court time.

11. Case Management decisions of this type arise and are for a judge to take by considering the overriding objective. It is for the judge to ensure that the proceedings remain procedurally fair.

12. **Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC)** makes clear that procedural fairness is essential.

13. Fairness is stand-out feature of any hearing and I make clear that the decision I am making in this case is not one in which I am suggesting that remote hearings are unfair or that remote hearings should not take place. Indeed, I make absolutely clear that there are many remote or hybrid hearings which are completely appropriate and fair to all the parties and that there remains, and should remain a place for remote and hybrid hearings. Certainly it assists with not only fairness but also with convenience, where necessary, for the parties.

14. The difficulty with the approach for the hearing in this case though was that the judge found against the Appellant in respect of credibility at paragraph 10 as follows:

> *"I have had the opportunity of hearing direct evidence from the appellant. I remind myself that I must assess this with regard to the asylum claim to the lower standard of proof. Even so, I found the appellant's evidence lacking credibility and unreliable. On many occasions, he failed to answer the question. He asked for repetition and avoided the question or his answers were vague. On a few occasions, he answered with a rhetorical question".*

15. Even without the other grounds of appeal it is important that procedural propriety is correctly considered. I canvassed with the parties today the approach of the Court of Appeal in a different jurisdiction dealing with a family law case. That decision being **Re A (Children) (Remote Hearing: Care and Placement Orders [2020] EWCA Civ 583, [2021] WLR 493**. The President of the Family Division giving the judgment of the court in which all three members of the Court of Appeal had agreed said in summary there were several cardinal points in respect of remote hearings:

> "i) The decision whether to conduct a remote hearing, and the means by which each individual case could be heard, are a matter for the judge or magistrate who is to conduct the hearing.

ii) Guidance or indications issued by the senior judiciary as to those cases which might, or might not, be suitable for a remote hearing are no more than that.

iii) The temporary nature of any guidance, indications or even court decisions on the issue of remote hearings should always be remembered".

16. The situation in relation to this case, as I have said, is that I am certainly not suggesting that there should not have been a hybrid-style of hearing. What I do conclude is that once there was to be an interpreter by remote means, it remained essential that the hearing was fair.

17. In my judgment for an Appellant to be facing a judge whilst giving his evidence but with the interpreter behind the Appellant and then only on a screen and whereby the Appellant could not see the interpreter would inevitably lead to difficulties in the way in which the evidence was provided.

18. In my judgment it is clear from paragraph 10 of the judge's decision that she was concerned that there appeared to have to be repetition of questions, vagueness and that there were some responses from the Appellant which were rhetorical. The judge made clear that those concerns had fed into to her conclusion that the Appellant's evidence lacked credibility and that his evidence was thereby unreliable.

19. I do indeed remind myself, as Ms Everett has pointed out, that this was a protection claim requiring the most anxious scrutiny to be applied. Putting it bluntly, if the wrong decision is made it could mean very serious consequences for the Appellant on return.

20. In my judgment it is not possible to be satisfied that there was a procedurally fair hearing, despite the judge having ultimately considered the documentation and other matters in some detail. It is not possible to be satisfied that the judge's findings that the Appellant was repeating the questions asked of him through the interpreter and then providing vague or rhetorical replies was no more than the Appellant seeking to decipher the questions via the interpreter who was on a screen behind him.

21. Accordingly, I set aside the decision of the First-tier Tribunal. I apply **AEB [2022] EWCA Civ 1512 and Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC),** and I carefully consider whether to retain the matter for remaking in the Upper Tribunal in line with the general principle set out in Paragraph 7 of the Senior President's Practice Statement. I take into account the history of this case, the nature and extent of the findings to be made and that this appeal requires assessment of the Appellant's credibility. In considering paragraph 7.1 and 7.2 of the Senior President's Practice Statement there has to be a re-assessment of the Appellant's claim as a whole, I conclude that fairness requires that there be a re-hearing at the First-tier Tribunal and that the Appellant be afforded the opportunity of having his appeal heard by the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal is set aside.

None of the findings of the First-tier Tribunal shall stand.

Abid Mahmood

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 November 2023