IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001246
First-tier Tribunal Nos:
PA/50176/2022
IA/00516/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 10 July 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

Mohammad Sharif Ahmed
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr T Jorro, Counsel instructed by Londonium solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

Heard at Field House on 19 June 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. The appellant, who is a citizen of Bangladesh, is appealing against a decision of Judge of the First-tier Tribunal Bartlett dated 24 January 2023.

2. One of the appellant's grounds of appeal (Ground 3) is that the judge erred by applying the wrong standard of proof.

3. On 28 April 2023 the respondent submitted a Rule 24 response stating that she does not oppose the appellant's application for permission. The Rule 24 response states that the judge's credibility assessment was materially undermined by the judge applying the wrong standard of proof. It is stated that the matter should be remitted to the First-tier Tribunal for a de novo hearing.

4. Mr Jorro, in both a skeleton argument and oral argument, argued that the positive findings made by the judge in respect of the appellant's account (which, he submitted, are not undermined by the error) are sufficient, when considered in the context of the background material about the worsening situation in Bangladesh, to support a conclusion in the appellant's favour and therefore I should set aside the decision of the First-tier Tribunal and remake the decision by allowing the appeal. He also argued that if I was not prepared to remake the decision in the appellant's favour on the basis of the positive findings then I should preserve them. He argued that preserving these findings would be consistent with the principles in *AB (preserved FtT findings; Wisniewski principles Iraq* [2020] UKUT 268 (IAC).

5. Mr Lindsay relied on the Rule 24 response. He submitted that the credibility assessment, as a whole, was undermined by applying the wrong standard of proof and therefore it is not possible to preserve any of the findings

6. I do not accept that the positive findings alone are sufficient to justify allowing the appeal, as, considered in isolation, they do not establish that it is reasonably likely the appellant would face a risk on return. Mr Jorro acknowledged that his submissions in this regard were ambitious.

7. The real issue before me (and the focus of the oral submissions) was whether the positive findings should be preserved. Both Mr Jorro and Mr Lindsay made strong arguments but ultimately I was persuaded by Mr Lindsay. The assessment of whether the appellant is telling the truth about what occurred in Bangladesh needs to be made on the totality of the evidence, viewed holistically (see paragraph 121 of *MN v The Secretary of State for the Home Department* [2020] EWCA Civ 1746), and applying the correct standard of proof. A judge remaking this decision is likely to be hindered from undertaking a holistic assessment by findings of fact in respect of certain aspects of the appellant's account of events in Bangladesh being preserved. The nature of the error is such that a fresh consideration of the evidence as a whole is required and in these circumstances I am not persuaded that any finding should be preserved.

8. Having regard to the relevant Practice Direction and the principles considered in *AEB v Secretary of State for the Home Department* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023]

UKUT 46 (IAC) I consider remittal to the First-tier Tribunal appropriate as extensive fact-finding will be required and the appellant should not lose the benefit of the two tier decision-making process given the nature of the error.

Notice of decision

The decision of the First-tier Tribunal involved the making of an error of law and is set aside. The appeal is remitted to the First-tier Tribunal to be made afresh (with no findings preserved) by a different judge.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27.6.2023