



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-001469

First-tier Tribunal Nos: PA/55377/2021  
IA/16284/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 7 November 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

**MMA  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr T Shah, Counsel instructed by Taj Solicitors  
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**Heard at Field House on 17 October 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 appeals with permission granted in the First-tier Tribunal on 7<sup>th</sup> May 2023 by Judge Parkes, a decision of the First-tier Tribunal, Judge S J Clarke promulgated on 10<sup>th</sup> February 2023, in which the judge dismissed the Appellant's asylum and human rights appeal.
2. The grounds argued that the judge erred in the approach to an original Bangladeshi arrest warrant, the original of which had been supplied to the Respondent. The grounds argue that the judge erred in finding that there was no duty on the Respondent to verify the document and had taken a wrong approach to the correspondence from a notary public in Bangladesh correcting mistakes made by the notary when translating the arrest warrant.
3. In granting permission Judge Parkes was concerned that the judge had taken into account matters which had not been raised with the Appellant.
4. In the Upper Tribunal the appeal matter had been adjourned on two occasions. On the first occasion on 10<sup>th</sup> July 2023 Judge Canavan had been concerned that the grounds had been imprecise in terms of the provision of evidence in terms of whether or not original documentation or copy documentation had been provided to the Respondent, and whether or not whatever documentation had been provided had been fully included in the Respondent's bundle. The judge noted that there had been no supporting evidence of the assertion that the original Sylheti/Bengali court documents had been sent to the Home Office as stated as required by BW (witness statements by advocates) Afghanistan [2014] UKUT 00568 (IAC).. Judge Canavan decided that it was in the interests of justice to adjourn and made directions in order to ascertain the correct position.
5. In the event, by the time the case was listed again on 18<sup>th</sup> August Judge Canavan noted that the directions had not been fully complied with. The judge as a result had taken the opportunity to listen herself to the ROP and had noted that the representative had advised the judge that a Bengali copy of the arrest warrant had been sent to the Home Office with the asylum claim but had not answered the judge's questions as to why then a Bengali copy had not been included in the Appellant's bundle and had said that he could provide but when asked to produce the document at the hearing he explained that he could not it had been sent by previous representatives.
6. So it was that the case came before me for an error of law hearing on 17<sup>th</sup> October 2023. Both representatives were in agreement that I was in a position to hear the matter and that the previous involvement of Judge Canavan had not led to a direction that the matter be reserved. No evidence had been heard and the matter was not therefore part-heard before the judge.
7. At the start of the hearing I clarified with the representatives what the position was in respect of the arrest warrant. In discussion the agreed position was as follows. The Respondent had recently served e mail correspondence from the Appellant's then representatives, Hunter Stone, dated 21 July 2021 attaching photocopies of the document described as the arrest warrant written in the Bengali language along with a translation of the same document provided by the Appellant's lawyer in Bangladesh, Mr Muhammad Gulam Kibria (Reju) and dated 26<sup>th</sup> June 2019. It was apparent from the correspondence that the documents attached to that email were all scanned copies and none were original documents. The full list of the documents is as follows: the applicant's General

Diary report to the police dated 7<sup>th</sup> November 2018, First Information Report dated 9<sup>th</sup> December 2018, charge sheet issued 13<sup>th</sup> March 2019, court orders dated 23<sup>rd</sup> December 2018, 23<sup>rd</sup> March 2019 and 16<sup>th</sup> March 2019, arrest warrant issued on 16<sup>th</sup> April 2019, newspaper articles in relation to Mr Waris Khan dated 1<sup>st</sup> February 2018 and 18<sup>th</sup> December 2018, and trade license for the applicant's business in Bangladesh SA Shoe issued on 1<sup>st</sup> July 2018 as well as a letter from the lawyer. It is apparent the English translations were enclosed in the Respondent's bundle but the copies of the Sylheti documents were not.

8. Mr Shah addressed me briefly in respect of the judge's concern that the translation of the document which was in the Respondent's bundle referred to the Bengali arrest warrant being in the name of somebody other than the Appellant.
9. In discussion before me both representatives were therefore agreed that at paragraph 17 of the judge's decision where the judge was concerned that the Appellant had compared the copy of the Sylheti document with the translation and had given evidence that on the photocopied document the name was correct, had given evidence which was inconsistent with the representative's confirmation that not only were the originals not available but nor did he have copies. Mr Shah explained that had he been the representative on the day he would have produced the photocopy of the Sylheti document and invited the interpreter to confirm that in fact on the original Sylheti photocopy provided to the court along with the translation the Appellant's name was correct to the point that the Appellant's evidence was not discrepant he had had available a photocopy to compare so that the judge was mistaken in the concern.
10. Mr Shah accepted however that the representative on the day had not provided the judge with the Sylheti copy and neither had the judge been provided a certified copy of the interpretation evidencing the correction. The Representative had instead relied on the letter from the notary public in Bangladesh confirming that he had made mistakes in translation including that of the name of the subject of the arrest warrant.
11. The judge found it inconsistent therefore that at paragraph 13 of his witness statement the Appellant could say that he had compared the original copy of the arrest warrant with the translated copy of the warrant and found that in the original copy there was no discrepancy. The witness statement was dated 20<sup>th</sup> September 2022. The judge noted that the Appellant had not provided the copy to which he had compared the translated copy.
12. Mr Melvin argued that this was not an error of law. Even if as Mr Shah says had the Bangladeshi documents been available the judge would have been satisfied that the Appellant's assertion that his name was correctly noted in the Sylheti copies first produced there is no error by the judge. That was not the position on the day. Importantly the judge's criticism that the copies had not been submitted by the Appellant was open to him. As the judge noted that the documents had not been provided by the Respondent in the bundle, although unfortunate and an oversight, was a matter which lay within the remedy of the Appellant and his representative, whether by contacting the previous representatives, asking the Respondent for them, or providing their own copies or indeed more properly obtaining the original. The judge was right to be concerned that these were all matters which adversely impacted on the reliability of the documents.

13. I find merit in Mr Melvin's submissions. The judge was left with the unsatisfactory position that the Appellant had failed to provide original documents as required under the Procedure Rules for which there was no adequate explanation, and had provided translations which were subsequently explained to be inaccurate in material respects and corrected in correspondence from the Bangladeshi notary public which failed to give any proper explanation as to how the errors had occurred.
14. In that context the contention at Ground 3 that the judge erred in failing to raise with the Appellant concerns about the absence of evidence of the qualifications of the Bangladeshi lawyer and the different spellings of the lawyer's name between Raju and Reju adds little. The point remains that the difficulties were available on the face of the evidence and the Appellant was represented. The evidence brought forward to support the grounds such as the email address of the lawyer and his qualifications and does not resolve matters of concern raised by the judge about the information provided, so that any issue about the failure to raise with the representative on the day is peripheral and does not establish any material error of law.
15. In Ground 2 of the permission application the Appellant argues that the judge failed to appreciate that it was for the Respondent to verify the documentation, because in that context it was said the documentation is easily verifiable and unlikely to leave any live issues as to the reliability of its contents as well as being central to the claim. The difficulty here is that the Appellant has never provided any original documents. The Appellant has provided photocopies or scanned copies and in the context of the warrant only a translation which was marred by deficiencies. It is trite that in the circumstances such as the position the judge found themselves in with the apparent discrepancies, inadequately explained in the context of translation, the judge could properly conclude this was not a position where any such burden was on the Respondent.
16. Mr Shah recognised at the hearing before me that the remainder of his grounds relied on the success of the earlier first three grounds and accordingly, having found no merit in the first three grounds I do not provide any additional or further reasoning in respect of the final part of his grounds.
17. It follows that for all the reasons I have set out above I do not find that the judge's decision is vitiated by legal error such that it should be set aside and re-made. The decision dismissing the Appellant's appeal stands.

### **Notice of Decision**

18. The Appellant's appeal stands as dismissed at the First-tier Tribunal.

**E M Davidge**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**30 October 2023**