



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

**Case No: UI-2023-003073**  
**First-tier Tribunal No:**  
**PA/51861/2021**  
**IA/04869/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 01 November 2023**

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**MAFB**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr A Pipe of Counsel, instructed by Sydney Mitchell Solicitors  
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

**Heard remotely at Field House on 23 October 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. By the decision of the First-tier Tribunal (Judge Oxlade) dated 3.4.23, the appellant, a citizen of Bangladesh who came to the UK as a student in 2011 and overstayed, has been granted permission to appeal to the Upper Tribunal against

the decision of the First-tier Tribunal (Judge Freer) promulgated 6.3.23 dismissing his appeal against the respondent's decision of 5.5.22 to refuse his claim for international protection made in 2019 on the basis of political opinion arising from association with the BNP party.

2. Having heard and taken into account the helpful submissions of the two legal representatives, I reserved my decision to be provided in writing, which I now do.
3. In summary, the grounds supported by Mr Pipe's oral submissions assert that in finding the appellant's claim not credible the First-tier Tribunal (a) & (b) failed to accord proper weight to the evidence of two witnesses, (c) giving no weight to their letters, and placing undue reliance on the background evidence as to the ability to produce false documents in Bangladesh. It is also argued that the judge erred in finding the claim undermined by the fact that the appellant had been granted bail despite facing a serious charge. Mr Pipe also argued (d) that the judge was in error by requiring corroboration of his account that he was granted bail in criminal proceedings, and (e) expected the appellant as a former law student to know that he could have made a refugee claim years before he claims to have become aware for the first time in 2016. The claim was not made until 2019, and didn't attend the asylum intake unit until 2018, some 7 years after arrival in the UK and only after expiry of his student leave.
4. In granting permission, Judge Oxlade considered it "an arguable error of law to fail to give proper weight to the evidence of witnesses... who had been found credible on their own claims and submitted documents post-interview, where time had been given to do so. All grounds may be argued."
5. There are a number of troubling statements in the decision of the First-tier Tribunal. I agree with Mr Pipe's submissions in some aspects as to the way in which findings were expressed. In other respects, the challenged findings were accurate and open to the judge on the evidence. For example, Mr Pipe complained that at [53] the judge applied "diminished weight" to the letters of the two witnesses drafted only after the appellant had his substantive asylum interview (but before the respondent's decision was made). I agree with Mr Wain's submission that the chronology was accurate and that whilst the appellant had been invited to submit further evidence, such evidence coming into existence only after his claim had been raised and challenged in interview cannot be given the same weight as evidence pre-dating the interview. I find no error of law in this regard.
6. It is not entirely clear to me what the judge intended to convey when commenting at [54] that the two witnesses were never believed by the Home Office and their accounts were only accepted by Tribunal judges considering their claims and then only on the lower standard of proof. I agree with the submission that it is not to be held against the witnesses that only the Tribunal believed them and not the Home Office. However, I do not find that is what the judge did. It is clear from a reading of the decision as a whole that the judge did not apply a higher standard of proof to the witness evidence. The judge was undoubtedly entitled to point out that the appellant had not been mentioned in their respective appeals in 2014 and 2015. Furthermore, although they claimed to have known the appellant in Bangladesh and met him again in the UK in 2018, they provided no evidence about the appellant's claim to be a wanted criminal for a number of years. Whilst the judge expressed surprise at this, I do not accept Mr Pipe's submission that the judge was requiring corroboration by this approach and note that the judge made a specific self-direction at [55] that corroboration was not required. Weight is a matter for the judge assessing the evidence and cogent reasons were provided for according limited weight to the evidence of the

witnesses when considered in the round. I do not accept that the findings can be regarded as irrational.

7. In relation to ground (e), it was undoubtedly open to the judge to disbelieve the appellant's claim that he only heard about the possibility of claiming asylum for the first time when meeting the two witnesses in London in 2016. The judge was entitled to note at [50] that the appellant was not unintelligent and had completed a two-year law degree in Bangladesh. It was undoubtedly relevant to the credibility assessment and s8 considerations when the appellant first knew that he could claim asylum. The finding was also relevant to the point made at [73] and [74] that the appellant might be expected to provide a rational analysis and good recall, being what the judge called "a capable person." Despite that, his evidence was noted to be vague and inconsistent as to knowledge of BNP Chahatradal.
8. In relation to ground (d), I am satisfied that the judge was fully aware that no corroboration was required, as it was consistently stated, including at [55] and [66], that corroboration was not required. At [11] the judge also referenced MAH (Egyt) [2022] EWCA Civ 216, to the same effect. The judge was entitled to question whether the grant of bail was consistent with being charged with serious criminal offences and the claim that the authorities were against him for political reasons. However, when stating that the appellant failed to produce any local legal expertise, it appears that the judge ignored the translated letter from the appellant's lawyer stating that bail had been granted. Whilst, the judge provided other reasons for doubting the appellant's factual claim on this aspect, it was perhaps speculation on the judge's part to make the assumption that unless proved otherwise, bail would not be granted in such a case. The impression created by the way in which the decision is drafted on this issue is that the judge was applying a higher standard of proof.
9. Furthermore, I have concerns about what I consider to be Mr Pipe's strongest point as part of ground (c): the statement at [65], "I find that all of his supporting documents are to be given no weight at all under Tanveer Ahmed." The appellant had provided a large number of documents that needed to be carefully considered. Mr Wain pointed out that the judge had referenced the documents at [4] and [5] Whilst the judge was entitled to point out the CPIN information as to the prevalence of fraudulent documents from Bangladesh, this does not justify in and of itself according no weight at all to the documents. There were other reasons cited which would have been sufficient to justify according limited weight to the documents but to state at the very outset of the written consideration that they are to be given no weight at all demonstrates an incorrect and flawed approach, amounting to a material error of law. If the judge intended to find that the documents were as a whole so unreliable, more cogent reasoning would have been required.
10. In all the circumstances, I agree with Mr Pipe's submission that when considered overall, the judge's approach was flawed, suggesting to the reader that a higher standard of proof had been applied and certainly providing inadequate reasoning to justify according no weight at all to parts of the evidence. Another judge may well have reached the same final conclusions and there were undoubtedly a number of concerns that may well have been sufficient to accord limited weight to the supporting evidence and perhaps also to find that in the round the claim could not be accepted as credible. However, the way in which the First-tier Tribunal decision was drafted in somewhat trenchant terms at least in respect of some parts of the evidence raises sufficient concern that the appellant's evidence was not fairly addressed.

11. In all the circumstances, and for the reasons explained above, the decision of the First-tier Tribunal discloses a material error of law and must be set aside to be remade.
12. I have therefore considered whether it should be remade in the Upper Tribunal or remitted to the First-tier Tribunal for a further hearing. In reaching that decision I have considered the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal:

"[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:

  - (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
  - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."
13. Both advocates submitted that the venue for hearing the appeal should be the First-tier Tribunal. I have considered their submissions in the light of the practice statement above. As it will be necessary for the appellant to give evidence and to deal with the evidential issues, further fact-finding will be necessary alongside the analysis of risk on return in the light of the relevant documentary evidence and in my judgement the best course and consistent with the overriding objective is for it to be remitted to the First-tier Tribunal for a further hearing. The Tribunal will be seized of the task of undertaking a credibility assessment and will be required to do so on the basis of the evidence available as at the date of the hearing. I do not consider it appropriate to preserve any findings of fact.

### **Notice of Decision**

The appellant's appeal to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside with no findings preserved.

The appeal is remitted to the First-tier Tribunal to be remade de novo.

I make no order for costs.

DMW Pickup

**DMW Pickup**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**24 October 2023**

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