



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006670
First-tier Tribunal Nos:
PA/51591/2021
IA/06317/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23 April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

MK
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. S. Karim, Counsel instructed by Sarkers Solicitors
For the Respondent: Mr. C. Avery, Senior Home Office Presenting Officer

Heard at Field House on 21 March 2024

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 an appeal by the appellant against a decision of First-tier Tribunal Judge Colvin, (the “Judge”), undated, but heard on 26 July 2022, in which she dismissed the appellant’s appeal against the respondent’s decision to refuse his protection and human rights claim. The appellant is a national of Bangladesh who claimed protection on the basis of his political opinion.
2. Permission to appeal was granted by First-tier Tribunal Judge Landes in a decision dated 25 November 2022 as follows:

“2. I consider ground 1 is arguable. The specific interview questions about the threats were all in the context of what had happened in October. When the appellant was asked general questions right at the beginning of the interview about why he would be killed he started to explain in the context of what had happened in October (qn 38); it is apparent that at that time the appellant was going too quickly to enable everything to be interpreted. The appellant did respond to RFRL in his witness statement (see paras 20 - 21 in particular paragraph 21 explaining why the events in October were particularly important).

3. I consider that part of ground 2 is arguable. The judge does not refer to, or consider, the letter from Mr M describing the raid in October 2019 at all. The letter was from a person apparently independent so it is arguable the judge would have needed to explain (if this were the case) why she decided only to give it little or no weight.

4. Although I do not restrict the grounds which may be argued, I do not consider the judge erred as to the standard of proof or the expert report. The expert report was evidently based on the premise that the appellant’s factual account was correct and there is nothing to indicate that the judge, even if she assessed the evidence incorrectly, applied the wrong standard of proof. The judge was not requiring independent evidence, she was simply pointing out that she could not rely on the appellant or his family’s evidence alone given the significant damage she found done to the appellant’s credibility.”

3. In a Rule 24 response dated 15 December 2022 the respondent opposed the appellant’s appeal.

The hearing

4. The appellant attended the hearing. I heard oral submissions from both representatives, following which I stated that I found the decision involved the making of material errors of law. I set the decision aside and remitted the appeal to the First-tier Tribunal to be reheard. I set out my full reasons below.
5. The documents before me were contained in the Upper Tribunal bundle of 417 pages.

Error of law

Ground 1 - the Judge erred in the assessment of an important aspect of the appellant’s claim

6. Ground 1 asserts that the Judge was clearly concerned with the lack of the appellant’s response to not mentioning the attack in September 2019 in his asylum interview, as referred to at [23] and [30]. The grounds of appeal point out that the basis of the appellant’s claim as set out in summary in the

respondent's decision was that the appellant was attacked "on multiple occasions, including September" ([9] of the decision). The grounds of appeal state that this was taken from the appellant's witness statement dated 21 January 2021.

7. In relation to Q167 of the appellant's asylum interview the grounds state that it needs to be "analysed in the round and not in isolation". At Q165 and Q166 the appellant was asked about the meeting of 13 October. At Q167, he was asked "So what date were you threatened?" to which he responded, "I received a threat on the night of the 13th and also on the 14th". The interview continued at Q168 about the threat on 14 October. The grounds submit as follows:

"(i) The Applicant's case is clear, as stated in both his witness statements, he was attacked in September 2019. There is a clear difference between the threat in October and the attack in September.

(ii) AIR 167 was a specific question asking about threats, as opposed to any attacks in September, to which the Applicant answered.

(iii) AIR 167 is also, in the round, referring to a specific incident in October.

(iv) The Applicant has clearly addressed the attack in September in his appeal witness statement and his witness statement to the Respondent. Therefore, it was addressed by the Applicant."

8. In his submissions, Mr. Karim directed me to these parts of the evidence. He also referred to Q38 and Q39 of the asylum interview and submitted that the appellant had been told to answer the specific question. Q38 states:

"We will discuss problems that have happened in Bangladesh later on - I need you to tell me why you fear you would be killed specifically please if you returned to Bangladesh?"

Q repeated for app - reminded to answer question."

9. At Q39 it states:

"(Discussion with applicant to shorten responses/breaks in between so interpreter is able to complete translation and to answer questions they are being asked specifically as this will allow all information needed to be captured during interview)"

10. Mr. Karim further referred to the appellant's witness statement dated 21 January 2021, and to the letter from the appellant's representatives to the respondent of the same date. This states:

"In September 2019 the applicant was attacked by those who were involved in corruption. They punched on his face. back and top part of the body. They intended to kill him, but the general public came forward and saved him from their hand. He [was] admitted to Sylhet Sadar hospital, and he stayed there for two nights. After the incident, he went to the police station to file a case against those people who attacked him; however. the police was reluctant to take his case because they were involved with BCL and the administration does not work against the current ruling party."

11. Finally he referred me to the appellant's appeal statement where the appellant set out details of the attack from [14] to [19], mirroring his previous statement, and then at [20] addressed the respondent's decision stating:

“The Respondent was confused with the materials facts, the respondent stated at paragraphs 37- 38 that my version is contradictory. I invite the respondent to read my statement with attention to understanding the facts.”

12. He submitted that, contrary to the Judge’s finding at [23], the appellant had responded to the decision. The Judge had failed to engage with the evidence of the asylum interview, the appellant’s first witness statement, the letter from his representatives, or the appeal statement.
13. Mr. Avery submitted that the Judge had not erred, and that it was not right to say that she was not fully aware of what the appellant had said in his later statement. It was a late development in the appellant’s evidence not mentioned at his asylum interview.
14. I find that ground 1 is made out. At [23] the Judge states:

“The appellant in his witness statement and in his oral evidence claims that he was attacked and injured by members of the BCL in September 2019 after he advised the market businesses not to pay the money being requested by the BCL. It is noted that the appellant makes no mention of this attack at his asylum interview that took place in December 2019 but only refers to the threats he received from the BCL/Awami League on 13/14th October after he tried to organise a protest against the killing of Farad. Whilst this omission was not specifically put to the appellant at the hearing it was a credibility point raised in the refusal letter and not responded to in the appellant’s witness statement.”
15. At [30] she states:

“I have set out above in some detail the significant credibility issues that I consider go to the core of the appellant’s account. This includes the omission by the appellant to make any reference to the claimed September 2019 attack at the asylum interview.”
16. I find that, at his asylum interview, the appellant was told to answer the question that he was asked. He was told this first at Q38, and then a further explanation was given at Q39. As stated by Judge Landes when granting permission to appeal, “it is apparent that at that time the appellant was going too quickly to enable everything to be interpreted”. The Judge states that the appellant “only refers to the threats he received from the BCL/Awami League on 13/14th October” but she does not appear to have considered the interview record in any detail. She has stated that the asylum interview took place in December 2019, but in fact it took place on 15 December 2020. When the appellant mentioned these threats at his asylum interview he was answering specific questions. He had been told to answer the specific question, and that is what he was doing.
17. In his decision the respondent acknowledged that the September 2019 attack was part of the appellant’s claim. At [9D] it states: “You were attacked on two occasions by the BCL in mid-August and September (WS, 10, 12). They intended to kill you, but on one occasion you were saved by passers-by and hospitalised (WS, 13).” The respondent has acknowledged this part of the appellant’s claim by reference to his witness statement of January 2021.
18. Further, the appellant addressed the respondent’s decision in his appeal statement (see [11] above), contrary to the Judge’s statement at [23].

19. I find that the Judge has not given anxious scrutiny to the evidence before her in relation to the September 2019 attack. She has not considered the asylum interview in any detail, nor the appeal statement where the appellant responded to the respondent's concerns. I find that this error is material as it goes to a core element of the appellant's account.

Ground 2 - the Judge erred in the assessment of the expert evidence and the letters from Bangladesh

20. This ground refers to the failure in the Judge's assessment of the evidence from the expert, as well as the letters from his mother and brother, the letter from Mr. M. and the evidence from the hospital. In the grant of permission to appeal, focus is placed on the letter from Mr. M, which was therefore the focus of the submissions before me. Mr. Karim submitted that Mr. M. was an independent individual, not related to the appellant. However the Judge stated at [30] that she had no "independent" evidence, which was incorrect.
21. Mr. Avery submitted that the Judge did not have to refer to every piece of evidence before her and that she had focused on the key evidence. The letter could not be said to be material.
22. I find that Ground 2 is made out. I have considered the letter from Mr. M. It is an account of the attack on the appellant's home on 22 October 2019. The appellant was not there but his brother was caught, and only released when the attackers realised he was not the appellant. I find that is independent corroborative evidence of what took place on 22 October 2019.
23. At [11] when setting out the "following main documents" from the appellant's bundle there is no reference to the letter from Mr. M. There is no reference to it at [27] in the Judge's consideration of the attack on the appellant's home. At [30] the Judge states:

"I also find that there is no independent reliable evidence that the appellant's family have been threatened by the BCL, CL and/or Awami League and that little weight can be placed on the evidence of the witness as he accepted that he never directly heard any of the threats and generally seemed to have little knowledge of the appellant's family."

24. I find that the Judge had independent evidence before her that the appellant's family had been threatened. As to whether it is "reliable", the Judge has not made no assessment of it in order to establish whether she is going to attribute any weight to it. I find that the Judge's failure to consider this evidence is an error of law. I find that it is material as it goes to the core of the appellant's claim.

Ground 3 - the Judge erred in the application of the lower standard of proof

25. It is submitted, with reference to [30], that the Judge erred in requiring further independent evidence from the appellant. It was submitted that he had "produced a detailed account, provided an expert report, produced one witness to corroborate his claim, provided letters from his mother, brother and a local". It was submitted that the Judge had applied a "much higher [standard] than 'reasonable degree of likelihood'", and that there was evidence which clearly met the standard.

26. Judge Landes when granting permission did not consider that the Judge had erred in this respect, although she did not limit the grant of permission to appeal.
27. I have found above that the Judge has materially erred in her assessment of the evidence before her. However, I find that ground 3 does not identify an error in her application of the standard of proof. She had found the appellant to lack credibility. She had found that she could not therefore rely on his evidence or that of his family. She did not attach weight to the evidence of the witness for the reason given. That she had ignored other evidence is not relevant to the assertion in this ground that she applied the wrong standard of proof to the evidence before her. I find that this ground is not made out.
28. I find that the decision involves the making of material errors of law in the Judge's failure to give anxious scrutiny to the evidence before her. In considering whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade I have taken into account the case of Bezum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:
- “(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.*
- (2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal.”*
29. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b) when deciding whether to remit this appeal. The Judge failed properly to consider the evidence before her with the result that the appellant has not had a fair hearing. I therefore consider that it is appropriate to remit this appeal to be reheard in the First-tier Tribunal.

Notice of Decision

30. The decision of the First-tier Tribunal involves the making of material errors of law and I set the decision aside. No findings are preserved.
31. The appeal is remitted to the First-tier Tribunal to be reheard.
32. The appeal is not to be listed before Judge Colvin.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
6 April 2024