



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

Case No: UI-2022-006726

First-tier Tribunal No:  
PA/53644/2021  
IA/10011/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 10 September 2024**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**KU**  
**(ANONYMITY DIRECTION MADE)**

**and**

**Secretary of State for the Home Department**

Appellant

Respondent

**REPRESENTATION**

For the Appellant: Mr M Khan, Lincolns Chambers Solicitors

For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

**Heard at Field House on 9 September 2024**

**DECISION AND REASONS**

**As the underlying decision is a decision to refuse a claim for international protection, 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.**

## **INTRODUCTION**

1. The appellant is a national of Bangladesh. He entered the UK with entry clearance as a student on 7 January 2011. On 21 March 2019 he made a claim for asylum. The claim was refused by the respondent on 9 July 2021. The appellant's appeal against that decision was dismissed by First-tier Tribunal ("FtT") Judge Abdar for reasons set out in a decision dated 18 August 2022.

## **THE GROUNDS OF APPEAL**

2. The appellant claims the decision of the FtT is vitiated by material errors of law in respect of the weight attached to the evidence of the appellant and his mother. The appellant did not give evidence at the hearing of the appeal. The evidence of his mother was set out in an Affidavit. The appellant claims that despite there being medical evidence, the judge erred in drawing a negative inference from the appellant's failure to give oral evidence. The appellant has been suffering severe depression and anxiety and has a poor memory. The appellant claims that in the circumstances the appellants oral evidence would not have assisted the court or benefited the appellant. The appellant had confirmed in writing that he was actively involved with the BNP and following his arrival in the UK he remained politically active. The respondent claims it is publicly known that the BNP has a number of different 'wings', and the judge misdirected himself in finding that the appellant had demonstrated a basic general knowledge of the BNP and not the detailed knowledge that may reasonably be expected from someone who was interested in politics and had become an active official of the party. The appellant claims that to the lower standard applicable in asylum claims, it is apparent that there were no material inconsistencies in the appellant's answers in interview and the answers provided are generally consistent with the background material. It is said that the judge failed to consider some of the vital background material and erred in his assessment of the Article 3 claim.
3. Permission to appeal was granted by First-tier Tribunal Judge Mills on 28 November 2022. He said:
  - "3. The grounds for permission are excessively lengthy and meandering, and in many respects simply reargue the case, rather than seeking to establish errors of law in the Judge's decision. However, I do find that arguable errors of law have been established by the challenge.
  4. Specifically, I find it arguable that the Judge has erred in his response to the Appellant's non-attendance at the hearing, which was said to be as a result of his medical condition. The Judge rejects this, finding that the evidence provided did not support a claimed inability to give evidence, and going on to draw an adverse inference from his failure to attend and be subject to cross-examination by the respondent.
  5. However, the medical evidence before the Tribunal included a diagnosis from an NHS consultant of 'cavernous haemangioma', which the NHS website defines as 'a cluster of abnormal blood vessels, usually found in the brain', symptoms of which include 'headaches... dizziness, slurred speech (dysarthria), double vision, balance problems... tiredness, memory problems and difficulty concentrating'.

In these circumstances, even absent a psychiatric assessment giving an express opinion that the appellant was unfit to give evidence, I consider it arguable that the Judge has erred in his approach.”

### **THE HEARING OF THE APPEAL BEFORE ME**

4. The entire focus of the submissions of Mr Khan at the hearing before me was upon the conclusion reached by the judge at paragraph [30] of his decision that the lack of oral evidence from the appellant reduced the weight the judge placed on the appellant’s evidence. I invited Mr Khan to draw my attention to the evidence that was before the FtT regarding the appellant’s health and his inability to give evidence, any special measures that might have assisted, and explaining why any inconsistencies should be treated with caution.
5. Mr Khan referred me to:
  - a. A letter from the appellant’s GP, Dr Andrew Twist dated 15 May 2019 which confirms the appellant is “suffering from depression and anxiety and is struggling to cope with everything including concentration at present”. Dr Twist noted the appellant was due to attend an asylum interview on 30 May 2019 and suggested that appointment should be postponed. Dr Twist went on in his letter to say that the appearance symptoms were “worse this month because of Ramadan and he is trying to fast in addition to his mental health problems,”.
  - b. A letter from Bethnal Green and Globe town CMHT dated 2 November 2021 in which it is noted that the appellant was referred by his GP in September 2021 because of ‘anxiety and depression’ and his past medical history included “Cavernous Haemangioma’.
  - c. A letter from the appellant’s GP dated 8 February 2022 confirming the appellants ‘active problems’ include ‘Cavernous Haemangioma’.
6. Mr Khan accepted there was no psychiatric or psychological report before the FtT that indicated that following an expert examination and assessment, the appellant’s mental health is such that he should not be required to give evidence, that he should be treated as a vulnerable witness, or, that any information provided by him interview should be treated with caution.
7. Mr Khan submits the judge referred to the medical evidence that was before the Tribunal. The judge noted, at [28], that the appellant complained of headaches and not being able to recall details a number of times when he was interviewed on 27 November 2020. The judge found, at [29], that the appellant had complained of symptoms of headaches, an inability to concentrate and of poor memory long before the interview and had sought medical assistance for those symptoms even before the claim for asylum. The judge also noted the appellant has been diagnosed with depression and anxiety.
8. Mr. Khan submits that when granting permission to appeal, FtT Judge Mills noted that ‘Cavernous Haemangioma’ is defined on the NHS website

to include symptoms of memory problems and difficulty concentrating. Mr Khan accepts there was no evidence to that effect before the FtT and that the observation made by Judge Mills appear to be based on his own research. Mr Khan submits however that in all the circumstances the judge erred in concluding that the lack of oral evidence from the appellant reduces the weight to be attached to the appellant's evidence. Mr Khan submits the decision of the FtT should be set aside and the appeal should be remitted to the FtT for hearing afresh to give the appellant to adduce further evidence and if he wishes to, to give evidence.

## DECISION

9. The assessment of the risk upon return and the credibility of the claim advanced by an appellant is always a highly fact sensitive task. Judge Abdar was required to consider a number of factors. They include, whether the account given by the appellant was of sufficient detail, whether the account is internally consistent and consistent with any relevant specific and general country information, and whether the account is plausible. The ingredients of the story, and the story as a whole, have to be considered by reference to the evidence available to the Tribunal. Judge Abdar was required to resolve what had happened in the past, and whether the appellant would be at risk on return in the future.
10. In reaching my decision, I have reminded myself of the restraint which an appellate body must exercise when considering an appeal against the decision of a specialist judge at first instance. Appellate Courts do not lightly interfere with findings of fact made by a trial judge. In *Henderson v Foxworth Investments Ltd* [2014] UKSC 41, [2014] 1 WLR 2600, Lord Reed (with whom Lords Kerr, Sumption, Carnwath and Toulson agreed) said at paragraph 67:
 

"in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified".
11. The judge set out the background to the appellant's claim and referred to his immigration history at paragraphs [3] to [9] of the decision. The judge recorded, at [15] that the appellant did not attend the hearing. The judge's analysis of the evidence and his findings are set out at paragraphs [20] to [62] of the decision. The judge noted, at [22] that the appellant's failure to attend the hearing had denied the respondent an opportunity to cross-examine the appellant.
12. The judge noted, at [22], that Mr Ahmed relied upon the appellant's incapacity to give oral evidence. The medical evidence considered by the judge was set out at paragraphs [23] to [26] of the decision. At paragraph [27] the judge said:
 

"I invited Mr Ahmed to refer me to evidence which attests to the Appellant's incapacity and/or inability to give oral evidence. Mr Ahmed was unable to

refer me to such evidence and relies on the medical evidence which I have detailed above.”

13. Having considered the evidence before the FtT, the judge said:

“In the Appellant’s statement, the Appellant pleads that “the answer to my questions did not reflect my circumstances. I respectfully ask the court to disregard all inconsistencies and contradictions based in my answers”, paragraph 17. However, the medical evidence makes no mention of the Appellant’s incapacity or inability to give oral evidence, with or without reasonable adaptations, which is a consideration that I also take into account. The Appellant did not attend the hearing to assist the Tribunal with oral evidence, including under cross-examination, and I do find the Appellant’s lack of oral evidence to lower the weight I place on the Appellant’s evidence.”
14. Having considered the medical evidence the judge went on to address the core of the appellant’s account. It is clear that in considering the appellant’s account of his activities, the judge had in mind throughout, the health of the appellant. For example, at paragraph [33] of his decision the judge said:

“I take into account the fact that the Appellant was being tested on matters after over 10 years of being in the UK and the Appellant’s medical conditions...”
15. The judge found, to the lower standard, that the appellant had demonstrated a basic general knowledge of the BNP but not the reasonably expected detailed knowledge of someone who was, as the appellant claimed, interested in politics in his 20s and became a very active official of the party. The judge found on the evidence that the appellant had failed to reliably demonstrate adequate knowledge and motivation for joining the BNP.
16. The judge found that even putting aside the inconsistencies in the appellant’s evidence owing to his medical conditions, of when the difficulties with the AL began, the appellant’s account that he was in hiding but nevertheless continued his studies at college as well as working as a private tutor and securing a new passport and entry clearance to the UK before fleeing Bangladesh on 6 January 2011, undermined the appellant’s account of events in Bangladesh.
17. The judge went on to consider the appellant’s account of his activities in the UK, and the threats received by his mother in Bangladesh. The judge concluded:

“43. On a holistic view and on the lower standard of proof, having taken the Appellant’s medical conditions into consideration, in my judgment, the Appellant is incredible and the Appellant’s evidence is wholly unreliable....

44. I am also not satisfied that the Appellant is involved in any recognised or affiliated BNP organisations in the UK or that any political activity of the Appellant in the UK has come to or will come to the attention of the AL in Bangladesh. In my view, the Appellant’s interest in politics in Bangladesh was no more than general interest in politics and I do not find the Appellant to have held any official position within the BNP in Bangladesh or elsewhere;

at best, the Appellant was a supporter of the BNP whilst in Bangladesh and the same in the UK.

45. In determining the Appellant's credibility, I also take into consideration the Appellant's immigration history. The Appellant's immigration history is not in dispute, as detailed at [4] to [8], and I find that the Appellant unreasonably failed to claim asylum at numerous opportune times and finally claimed asylum as a matter of last resort to remain in the UK; not out of a genuine fear of persecution on return.

46. I find that the Appellant has been in the UK in brazen breach of the laws since at least 12 November 2014, the date when the Appellant's removal decision was reserved on the Appellant, simply for the reason of preferring to live in the UK. The Appellant then made a last-ditch application for asylum and having done so, the Appellant is seeking to manufacture and concoct evidence to buttress the baseless claim.

47. Accordingly, in my judgment, the Appellant is not at risk of persecution or serious harm on return to Bangladesh on account of his involvement in politics in Bangladesh or for any other reason. Therefore, the Appellant's protection appeal falls to be dismissed."

18. The judge went on to address the appellant's Article 3 claim at paragraphs [48] and [49] of the decision. The judge found, based on the medical evidence before the Tribunal that the appellant's ill-health falls significantly short of the necessary threshold to engage Article 3.
19. It is clear from a careful reading of the decision that the judge considered the appellant's account of events and carried out a careful analysis of that evidence. The judge made findings that are adverse to the appellant without any opportunity to hear evidence from the appellant but having regard to the limited medical evidence before the Tribunal regarding the appellant's health. It was not the role of the judge to carry out his own research as to the appellant's medical conditions and the extent to which a diagnosis of 'cavernous haemangioma' might impact upon the appellant's ability to give evidence or the reliability of what he had said. In fact it would potentially have been an error of law for the judge to have stepped into the arena and to have carried out his own limited research in the way the judge appears to have done when granting permission to appeal. In any event, it is clear that the judge had in mind throughout, the medical evidence that was before the Tribunal.
20. The appellant simply disagrees with the findings and conclusions reached by the judge, but the findings are not irrational or unreasonable in the *Wednesbury* sense, or findings that are wholly unsupported by the evidence. The judge did not consider irrelevant factors, and the weight that he attached to the evidence either individually or cumulatively, was a matter for him.
21. It follows that there is no material error of law in the decision of First-tier Tribunal Judge Abdar and I dismiss the appeal before me.

#### **NOTICE OF DECISION**

22. The appeal is dismissed.
23. The decision of First-tier Tribunal Judge Abdar stands.

**V. Mandalia**  
**Upper Tribunal Judge Mandalia**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**9 September 2024**