



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005604

First-tier Tribunal Nos: PA/55581/2022
LP/00966/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 19 June 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR
(ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr E Terrell, Senior Home Office Presenting Officer
For the Respondent: Mr P Jorro, Counsel, instructed by Lawmatic Solicitors

Heard at Field House on 10 May 2024

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. The Respondent, to whom I shall refer as the Claimant, is a national of Bangladesh who arrived in the UK on 20 May 2011 with entry clearance as a student. He made subsequent applications to extend that leave but ultimately

further leave was refused on 21 March 2014. On 28 September 2017, the Claimant made an asylum application on the basis of his political involvement and support for the BNP. This was treated as withdrawn on 22 March 2018 due to his failure to attend an interview, but further submissions in support of a fresh claim were made on 10 September 2018 which were treated as a fresh asylum claim and refused in a decision dated 13 February 2019.

2. The Claimant appealed against that decision and his appeal came before First-tier Tribunal Judge Bonavero for hearing, which resulted in the appeal being dismissed in a decision dated 8 August 2019. The Claimant sought and obtained permission to appeal to the Upper Tribunal but in a decision and reasons dated 24 December 2019 the Upper Tribunal upheld the decision of the First-tier Tribunal.
3. The Appellant then made further representations following what he says was an attack on the family home in Bangladesh on 19 January 2020. This resulted in a further refusal decision on 18 November 2022, with the right of appeal. He appealed against that decision and his appeal came before First-tier Tribunal Judge Wright for hearing on 13 July 2023.
4. In a decision and reasons dated 26 July 2023, Judge Wright allowed the appeal on the basis at [38] that he was just satisfied that the Claimant had been charged and convicted of crimes in his absence; at [39] that the charges against him were politically motivated; at [42] that there was a real risk the Claimant would be imprisoned on his return pending an appeal and that he would be subjected to torture whilst in detention. The judge further found that he was able to obtain a passport because there were no police checks taking place on the renewals of passports [43]; the Claimant's *sur place* political involvement had been exaggerated [44] and his Facebook posts were likely to be found and this would add to the risk of persecution on return [45]. The judge further found that the delay by the Claimant in making an asylum claim seriously damaged his credibility in light of section 8 of the TCEA 2004 Act: [46] of the decision refers.
5. The Secretary of State sought permission to appeal on 1 August 2023, in time, on the basis that the decision of the First-tier Tribunal lacked adequate reasons in that the judge erred in failing to give reasons why he allowed the appeal on the basis of documents purporting to show that the Claimant had been charged and convicted in his absence in 2014. The Secretary of State asserted that no reasoning was given for why the documents were accepted as reliable, given the previous rejection of the Claimant's account by Judge Bonavero on credibility grounds. The Claimant failed to indicate why these documents were only provided in July 2023 and did not demonstrate that they were obtained by a genuine lawyer in Bangladesh as claimed.
6. Permission to appeal was granted by First-tier Tribunal Judge Hollings-Tennant on 15 September 2023 in the following terms:

"2. The grounds assert that the Judge erred in law by failing to give reasons for allowing the appeal based on documents relating to a conviction in absentia despite rejecting the rest of the evidence presented as unreliable. There is some merit in this assertion. Having found both the Appellant and Mr Badol to be unreliable witnesses and discounted most of the documentary evidence adduced as similarly unreliable, such that little weight could be placed on such evidence, it

was incumbent upon the Judge to explain why he reached the conclusion that the Appellant has been convicted as claimed. Whilst he quite properly refers to relevant authority, namely Tanveer Ahmed, it is not clear that the Judge applied the guidance therein to consider documents in the round.

3. *In the circumstances, I consider that the grounds have identified what is at least an arguable error of law. Permission to appeal is granted”.*

Hearing

7. Mr Terrell, on behalf of the Secretary of State, submitted that the grounds were very straightforward, they turned on the reliability of documentation which can be found at page 51 onwards of the composite bundle, firstly the untranslated documents in Bengali and then at page 59 a court order in relation to the Claimant. Mr Terrell drew attention to page 41 at [36] of the Claimant’s witness statement, where he explains that this results from an FIR that was made against him in 2014. Mr Terrell also sought to rely on the decision of Upper Tribunal Judge Rimington, who upheld the decision of Judge Bonavero at page 837 [3] where she considered the background to these charges and upheld the First-tier Tribunal Judge’s decision to dismiss his case. However, Mr Terrell accepted the Claimant did not have the relevant documents, i.e. the court order and court documents, at the time of those previous hearings before the First tier and Upper Tribunal.
8. Mr Terrell relied on the fact that there were newspaper articles before Judge Bonavero from *The Daily Alokito* and that the judge had found at [29], [35] and [38] that these were not reliable because the internal two pages in both newspapers were identical to each other, even though the articles relied on were different. In relation to the extant appeal decision, the key analysis is at paragraphs [32] to [43] and Judge Wright found the rest of the Claimant’s evidence almost entirely unreliable and did not believe it: see [15], [16], [18] to [26], [31], [44] to [45] and [46]. The key analysis is at [32] to [33] and Mr Terrell submitted that [33] was not sufficiently reasoned for the purposes of *Devaseelan* [2002] UKIAT 00702, given the damning findings by Judge Bonavero.
9. Mr Terrell submitted that it was not crystal clear whether Judge Wright had taken account of those findings in respect of the newspapers. Mr Terrell also sought to challenge the adequacy of reasons by Judge Wright at [35] where he stated: *“I have reviewed the documents, the apparent delay in obtaining them, and the appellant’s explanation for this”* and did not say why he has accepted the delay in obtaining the documents, which is unsatisfactory in light of his earlier finding in relation to the Claimant’s lawyer. Mr Terrell submitted it was perfectly open for the judge to find the documents were unreliable and that there was an error of law in the manner in which the judge looked at the documentation and set it aside.
10. In his submissions, Mr Jorro sought to rely on his skeleton argument dated 2 May 2024. He drew attention to the finding by Upper Tribunal Judge Rimington at [38], page 832 which provides:

“Taking all of these matters into account and applying Tanveer Ahmed principles to the various documents presented by the appellant, I reject his account of his treatment in Bangladesh. I do not accept that any of the

documents presented by the appellant are reliable. The appellant has not satisfied me that there is an FIR in existence, nor that he was ever attacked as a result of his activities on behalf of the JCD”.

11. Mr Jorro drew attention to the fact that at page 700, [23] and [25] in the fresh claim refusal decision, the Secretary of State accepted that the Claimant was a low-level member and activist of the BNP. Mr Jorro submitted that the Claimant provided an explanation of how he obtained the documents and the judge also had the benefit of a skeleton argument which sets out not only the evidence relied on and the Court verdict but also the background evidence including the Respondent’s CPIN dated 10 February 2010, where the Home Office accept that nearly 300,000 BNP members are subject to false criminal cases or charges being brought against them. Mr Jorro submitted this was, therefore, a commonplace practice and normal methodology used by the authorities to suppress opposition in Bangladesh and this was the relevant context for the judge’s finding.
12. Mr Jorro further submitted that the Claimant had produced the court documents and explained how he got them. He sought to rely on his skeleton argument at [8d] in relation to the fact-finding mission report and the Home Office CPIN on documentation and the fact there was a contradiction within the Home Office’s own evidence, firstly that it was not easy to obtain false documents as compared to footnote 51 in the CPIN that it is easily obtainable, however the link to that footnote does not work. Mr Jorro maintained it was completely commonplace given the number of cases being brought against the BNP, even ordinary persons suspected of being opposition sympathisers. Mr Jorro submitted the Claimant had produced evidence to back up his claim, that he is one of a number of people accused and this is what the judge is looking at: [32]. The judge took account of that explanation, the CPIN and the background reports and clearly sets out and understands and applies the case law in terms of *Tanveer Ahmed* and *Devaseelan (op cit)*.
13. Moreover, crucially, the judge applied the Court of Appeal judgment in Karanakaran [2000] EWCA Civ 11. What he is very clearly saying is that the evidence of conviction and sentence is category 3 and he accepted the evidence on the Sivakumaran [1988] Imm AR 147 basis, i.e. the lower standard of proof. The judge reaches the conclusion he does on the key point of the reliability of the conviction and on the *Karanakaran* standard found that the Claimant has been convicted and risked detention and torture in light of the Home Office’s own evidence, see [42] which was based on the CPIN. Whilst the Home Office assert that there are insufficient reasons for the finding, the judge properly applied *Karanakaran* and essentially the Home Office was seeking reasons for reasons. The judge found, on the evidence as a whole, in the context of the background evidence, that he was prepared to accept that the Claimant was charged and convicted and he was prepared to accept that on the lower standard. This was not an error of law but a classic application of law based on the standard of proof and *Karanakaran*.
14. In reply, Mr Terrell submitted that the issue was not the Claimant’s level of involvement with the BNP in the UK but rather the source of historic links with the student wing of the BNP in Bangladesh and that this had not been conceded. He submitted that Judge Bonaverro’s decision was clearly sceptical. He further submitted that the evidence provided was not conclusive one way or another and it was easy to fake evidence and there was evidence as to that point beyond the one source, footnote 51 in the CPIN. Whilst it was relevant for the judge to take

account of what was said in the CPIN, ultimately the question was whether the judge had given sufficient reasons for finding the documentation was reliable and this was not a “*reasons for reasons*” case. It was unclear why the judge had accepted delay in obtaining the documentation given there were contradictory findings on that matter.

15. I found there was no error of law for the reasons set out in Mr Jorro’s skeleton argument and submissions and I announced my decision at the hearing. I now set out my reasons.

Decision and reasons

16. It is clear from the decision and reasons of First tier Tribunal Judge Wright that he disbelieved much of the Appellant’s account of the reasons he feared persecution on return to Bangladesh. However, in contrast to those findings, the judge was very clear as to what aspects of the Claimant’s claim he did accept: [4] above refers.
17. I find that it was open to the judge to accept material aspects of the claim, in light of the fact that, since the Claimant’s appeal was dismissed, he obtained the criminal sentence papers confirming he had been sentenced in absentia to 5 years imprisonment on 6 4.14. The context – that fraudulent documents are not easily obtainable and that the use and prosecution of false and politically motivated criminal charges against opposition supporters is commonplace in Bangladesh.
18. In a careful and detailed consideration of this evidence, the judge made clear that he had reviewed the documents and the Claimant’s explanation for the delay in obtaining them [35]; that he was considering the evidence in light of the *Karanakaran* principles and not applying a balance of probabilities standard and as noted above, he also directed himself with regard to *Tanveer Ahmed*, considering the adverse credibility findings and delay by the Claimant in claiming asylum. Gathering the elements together the judge concluded at [38] that the Claimant had been charged and convicted *in absentia*; that the charges were politically motivated [36] and [39] and that there would be a real risk of the Claimant being detained and tortured or subjected to persecutory treatment.
19. It follows that I find, contrary to the SSHD’s grounds of appeal, that the judge provided proper and adequate reasons for his findings, both in the Claimant’s favour and also for those adverse to him. The grounds of appeal amount to no more than a disagreement with the judge’s findings of fact, which were open to him on the evidence before him.

Notice of Decision

20. There is no material error of law in the decision and reasons of the First tier Tribunal Judge, whose decision is upheld.

Rebecca Chapman

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 June 2024