



IAC-BH-PMP-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: AA/07630/2013  
AA/07632/2013  
AA/07631/2013

**THE IMMIGRATION ACTS**

Heard at Bennett House, Stoke  
On 8<sup>th</sup> October 2014

Decision & Directions Promulgated  
On 10<sup>th</sup> November 2014

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GARRATT**

**Between**

**SHAMSOON NAHAR**

First Appellant

**JEBUN NESA HEBA**

Second Appellant

**MEHRUN NESA MEHRBA**

Third Appellant

**(ANONYMITY DIRECTION NOT MADE)**

**and**

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

Respondent

**Representation:**

For the Appellants: Mr M Schwenk, of Counsel instructed by Paragon Law  
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. On 11<sup>th</sup> February 2014 Designated Judge of the First-tier Tribunal Campbell gave permission to the appellants to appeal against the determination of Judge of the First-tier Tribunal N P Dickson in which he dismissed the appeal against the decision of the respondent to refuse asylum, humanitarian and human rights protection for the first named appellant and to issue removal directions. The second and third named appellants are the minor daughters of the first named appellant and separately appealed against the removal decisions made against them consequent upon the decision against the first appellant. They are all citizens of Bangladesh.
2. In granting permission Designated Judge Campbell noted that the first named appellant claimed to be at real risk of return to Bangladesh following the breakdown of her marriage after years of domestic abuse from her husband who was a man of some influence in the Awami League. Judge Dickson had found that the appellant's claims were not credible.
3. The grounds of application contended that the judge had erred in finding that documentary evidence showing that the first appellant had suffered abuse had little weight when an expert's report gave detailed reasons for the conclusion that the documentary evidence was genuine. The judge had appeared to base his finding on information to suggest that there was no difficulty in obtaining false documents in Bangladesh. The judge had also failed to give reasons for rejecting the first named appellant's brother's evidence and had failed to take into account the first named appellant's explanation for the absence of mention in a Medical Report of the serious injuries inflicted by her husband. Additionally the judge had failed to give reasons for rejecting the appellant's account of receipt of documents from Bangladesh.
4. Designated Judge Campbell thought all grounds were arguable because there appeared to have been insufficient engagement with the report and no assessment of the brother's evidence and a failure to take into account the first named appellant's explanation in relation to medical evidence.

### **Error on a point of law**

5. At the Upper Tribunal hearing before me the appellant was not present. I heard submissions from both representatives in relation to the alleged errors on points of law and then, having concluded that the determination does show material errors such that it should be re-made, remitted the appeal for consideration afresh by the First-tier Tribunal sitting at Nottingham. A summary of the submissions made and my conclusions and reasons follow.
6. Mr Schwenk argued that the first named appellant had put forward a factually complex account to support her claim to have been a victim of domestic violence which, if true, would entitle her to refugee status because, I infer, of the absence of protection from the state because of the husband's political status. He argued that the expert report and its addendum gave evidence to authenticate the documents yet the judge had failed to deal specifically with these even though the expert's comments were summarised in the determination. The only reasoning was given in paragraph 70. Further, the judge had failed to explain why he rejected the evidence of the first named appellant's brother when reaching conclusions about the appellant's evidence in paragraph 64. Further, the judge had not considered the appellant's rebuttal statement (page 1 of her main bundle) which explained why the

Medical Report had not mentioned burns and cuts. This evidence had simply been rejected by the judge at paragraph 64. Finally, the judge had not taken into consideration the appellant's explanation (page 4 of the rebuttal statement) about the envelope in which she had received a document from a Dr Hossain.

7. Mr McVeety drew attention to the response of 26<sup>th</sup> February 2014 which argued that the judge had directed himself appropriately and was entitled to reject the evidence submitted. He pointed out that, in relation to the medical report, the appellant had said that she was bleeding when she arrived at hospital so her explanation that her husband had attempted to cut and burn her was inadequate. Further, he thought that the appellant's explanation about the envelope and the letter was similarly inadequate. However, he conceded that the reasons given by the judge for rejecting the evidence of the brother were brief but argued that the judge was entitled to consider all the evidence in the round and, in any event, the brother was not an independent witness. Additionally, he argued that the judge was right to indicate that the expert could not give evidence about credibility but only the features of the evidence he examined. The judge's consideration of documents was, he submitted, adequate.
8. In conclusion, Mr Schwenk maintained that the brother's evidence had been ignored and that he was an independent witness as his statement showed. The expert had also conducted a forensic examination which corroborated the authenticity of the documents referring to the detail in each. In relation to the medical report the appellant could have been bleeding from her mouth as she explains.

### **Conclusions**

9. The determination is comprehensive and well written and summarises much of the significant amounts of evidence put before the judge. However, I am satisfied that the grounds point to errors on the part of the judge in failing to refer to and comment upon significant areas of the appellant's evidence before reaching conclusions which, in material areas, are inadequately reasoned.
10. The judge summarises the report of Dr Chandra in some detail and accepts his expertise in relation to domestic violence and the validity of documents. However, his rejection of the documentary evidence in paragraph 70 is plainly for the sole reason that objective evidence shows that there is no difficulty in obtaining false documents in Bangladesh. There is no cogent explanation for rejecting the experts views. The appellant's supporting evidence required a more analytical approach, particularly when the expert had pointed to information in the documents which would not have been there if they had been false.
11. Additionally, in relation to documentation, the judge does not show that he took into consideration explanations given by the appellant. At paragraph 64 the judge rejects the appellant's claims in relation to the incident said to be supported by a medical report on the basis that the report makes no mention of burns or cuts of any description despite the appellant's explanation that her husband had attempted to assault her and, although she was bleeding, it was in her mouth where her teeth had loosened (page 3 of the statement). The judge appears to have overlooked the explanation when concluding that the medical report was not consistent with the description of injuries given by the appellant.

12. As to the evidence of the first appellant's brother, no specific reasons are given for rejecting it. The first sentence in paragraph 64 of the determination contains the conclusion that the brother's evidence along with that of the appellant is not credible but goes no further. In relation to the receipt of documentation from Bangladesh the judge also appears to have overlooked the appellant's explanation (page 4 of her rebuttal statement) to the effect that the documents submitted to the respondent did not come in the envelope sent to the Home Office. The appellant's claims in this respect were not commented upon before the judge reached the conclusion that the Home Office conclusions about the letter from Dr Hossain were to be preferred.
13. All of the matters to which I have referred above were clearly material to the judge's conclusion that the appellant's asylum claim was not to be believed. As that conclusion is affected by the errors to which I have referred the appeal must be heard afresh. So it is appropriate to remit the appeal to the First-tier Tribunal having regard to the provisions of paragraph 7.2 of the Practice Statement by the Senior President of 25<sup>th</sup> September 2012.

### **DIRECTIONS**

1. This appeal is remitted to the First-tier Tribunal sitting at Nottingham for hearing afresh on 5<sup>th</sup> December 2014.
2. The appeal should not be heard before Judge of the First-tier Tribunal N P Dickson.
3. The time estimate for the hearing is four hours.
4. A Bengali (not Sylheti) interpreter will be required.
5. The time estimate is four hours.

### **Anonymity**

The First-tier Tribunal did not make an anonymity direction nor do I consider one appropriate before the Upper Tribunal.

Signed

Date

Deputy Upper Tribunal Judge Garratt

**8<sup>th</sup> October 2014**