Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07297/2014

THE IMMIGRATION ACTS

Heard at Newport	**Decision & Reasons Promulgated**
On 6 October 2015	**On 20 October 2015**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SC
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr I Richards, Home Office Presenting Officer
For the Respondent: Mr D Neale, Counsel

REMITTAL AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) in order to protect the anonymity of SC who claims asylum. This order prohibits the disclosure directly or indirectly (including by the parties) of the identity of the SC. Any disclosure or breach of this order may amount to a contempt of court. This order shall remain in force unless revoked or varied by a Tribunal or court.

Introduction

2. SC (whom I shall refer to as the "claimant") is a national of Bangladesh who was born on 10 November 1991. He entered the United Kingdom on 6 June 2011 with a Tier 4 (Student) Visa valid until 31 December 2013. That visa was subsequently curtailed because of poor attendance. As a consequence, the claimant's leave expired on 22 July 2012. On 7 July 2014, he claimed asylum. On 29 August 2014, the Secretary of State refused the appellant's claim for asylum, for humanitarian protection and under Articles 2, 3 and 8 of the ECHR. On 1 September 2014, the Secretary of State made a decision to remove the claimant to Bangladesh by way of directions under s.10 of the Immigration and Asylum Act 1999.

The Appeal

3. The claimant appealed to the First-tier Tribunal. In a decision promulgated on 9 February 2015, Judge James allowed the claimant's appeal. Although the Judge refers to allowing the appeal under the Immigration Rules, it is clear from reading the determination that the judge allowed the appeal on asylum grounds on the basis that the claimant's return to Bangladesh would breach the Refugee Convention. The judge accepted that the claimant had been a supporter and member of the BNP in Bangladesh and had been subject to attack by supporters of the Awami League and that he was at risk from supporters of the Awami League on return and that the Bangladesh authorities would not provide a sufficiency of protection from such attacks on return.

The Appeal to the Upper Tribunal

4. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that the judge had failed to give any or any adequate reasons for his findings in favour of the claimant.

5. On 4 March 2015 the First-tier Tribunal (Judge Parkes) granted the Secretary of State permission to appeal.

6. Thus, the appeal came before me.

Discussion

7. The Secretary of State's challenge is on a single ground namely that in paragraphs 49-53 of his determination, the judge failed to give any or any adequate reasons for his findings in favour of the claimant and his account of what he said had occurred in Bangladesh before coming to the UK.

8. Under the heading "Findings and Conclusions," Judge James said this at paragraphs 49-53:

> "49. I have looked at all the evidence in the round to include both written and oral evidence whether I have specifically referred to it or not and I make the following findings.

50. I am not satisfied that the evidence of the Appellant is credible in all respects. There are too many inconsistencies to make his evidence acceptable without question. I am satisfied that the Appellant is a supporter of the BNP and that he is following his family's political persuasion in this respect. I am satisfied that he became a member of the Chatra Dal and later the Juba Dal being the youth and student branches of the BNP. I am satisfied that he was active in promoting the BNP and was active in organising BNP events. I am satisfied that he was appointed as a local official be it Organising Secretary of State or General Secretary for part of Chittagong and that he would have been well known among BP supporters and probably opponents of the BNP as well.

51. I am satisfied that he was subjected to an attack from Awami Legue supporters on 7 November 2009. I have noted the inconsistencies in his accounts of this event but accept the core element of his evidence that he was attacked on that day. I am satisfied that he received injuries on that day consistent with the scarring that he now has. I am satisfied that when this incident was reported to the police, whether by the Appellant or his brother, the police took no action. I am unable to conclude that this was because of the police not taking action against Awami League personnel in general or the fact that the Appellant was unable to identify any person to the police.

52. I am satisfied that the attack on the Appellant was politicised by the creation of a poster calling for revenge. While the Appellant was unaware of such a poster it is clear that the attack was used as a rallying call to the BNP supporters and brought his name into sharper political focus. I am satisfied that as a result of this attack the Appellant and his family have made arrangements for the Appellant to travel to United Kingdom. I have significant doubts that the arrangements were entirely legitimate and it is clear that on his arrival in the United Kingdom he was exploited by whoever received him at the airport. Since arriving in the United Kingdom he has been treated very poorly by many of those he met until his recent involvement with charitable organisations.

53. I have read and reviewed the wealth of documentary materials supplied by the Appellant. I am satisfied that political violence is well established in Bangladesh. That violence has resulted in serious injuries and deaths. I have noted recent reports of the deaths of BNP supporters. I am satisfied that if the Appellant was returned to Bangladesh there is a real risk that his history of support for the BNP will either be remembered or will soon come to light. As a result I am satisfied that the Appellant would become a target for those opposed to the BNP and he would face a real risk of being attacked for his political beliefs."

9. Mr Richards, on behalf of the Secretary of State submitted that paragraphs 49-53 contained only "findings" but not any "reasons." He accepted that if the judge had given reasons elsewhere then that might be sufficient but, he submitted, the judge had given no reasons earlier in his determination although he had set out at some length the evidence and

the parties' submissions. Mr Richards pointed out that in paragraph 50 in the first two sentences, the judge had stated that he was "not satisfied" that the claimant's evidence was credible in all respects given that there were "too many inconsistencies" to accept his evidence without question. Consequently, the judge was, Mr Richards submitted, required to give reasons for his findings and in paragraphs 50-53 he had simply stated his findings.

10. On behalf of the claimant, Mr Neale made essentially three submissions. First, he accepted that the judge was required to give sufficient reason and he drew my attention to the Upper Tribunal's decision in Shizad (Sufficiency of Reasons: Set Aside) [2013] UKUT 00085 (IAC) where it was stated in the head note that:

> "Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which the appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge."

11. Mr Neale submitted that the judge's determination should be read as a whole. He had set out the evidence including the claimed inconsistencies and the claimant's explanation in some detail in particular in paragraph 28(a)-(x). Further, the judge had set out the submissions of both the respondent at paragraphs 33-38 and, importantly, the submissions made on behalf of the claimant at paragraphs 39-47 which dealt with the evidence and the claimed inconsistencies in it. Mr Neale drew my attention to paragraphs 14(a)-(f) of his skeleton argument for the hearing before me in which he addressed each of the judge's findings in paragraphs 50 onwards and the evidence and submissions set out by the judge which entitled him to reach those findings.

12. I accept that the judge's determination has to be read as a whole. Of course, as a matter of perfection a judge's reasons would be better placed in a single section of a determination leading to findings as a result of reasons given. However, it is not necessary for a judge to give reasons for his findings only in one place and, depending on a particular judge's style, sometimes reasons are dispersed throughout a determination. It is the adequacy or sufficiency of the reasons given in the determination as a whole which is crucial.

13. Further, I accept, as Shizad points out, that reasons need not be extensive providing that they give a brief explanation on the central issues and conclusions or findings made by a judge. As is often said: a determination must set out sufficient reasoning to entitle the parties (particularly the losing party) to know why they have won or lost.

14. Despite Mr Neale's sustained arguments to the contrary, I am unable to see any reasoning of significance in the judge's determination as a basis for his findings at paragraphs 50 onwards. Certainly, paragraph 50 onwards contains only findings. The case put by the respondent and appellant respectively is set out in the determination at paragraphs 33-47.

However, the judge does not at any point explain which of those submissions he accepts and which of those submissions he rejects and, importantly, why he did so. It is not possible to say that the judge has simply accepted all that the claimant put forward by way of submission as the basis upon which positive findings of fact should be made. As the judge himself made clear in paragraph 50, he did not find the claimant credible in all respects because of inconsistencies in his evidence. I am simply unable to discern any reasoning process indicating why the claimant's evidence has been accepted or rejected. Unfortunately, reading this determination neither party is in a position to know why they won or lost and I am in no position to understand the basis of the judge's findings which, in essence, emerge at paragraph 50 onwards in somewhat Delphic fashion.

15. Consequently, I am satisfied that the judge erred in law by failing to give any or any adequate reasons for his findings in favour of the claimant.

16. Mr Neale sought to retrieve the situation by relying upon something said by the Tribunal in Shizad. That is set out in paragraph 2 of the head note as follows:

> "Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her."

17. Mr Neale relied upon that statement and submitted that the Upper Tribunal could "perfect" the reasons by effectively stating that Judge James' conclusions were ones reasonably open to him on the evidence.

18. Whilst I accept that the Upper Tribunal will not set aside a decision where the error was not material or could not have made any practical difference to the outcome of the appeal that is not the situation here.

19. In this appeal, the credibility finding of the judge is flawed. In order to apply the Shizad approach I would have to be satisfied that the only factual findings open to the judge were those made in paragraphs 50-53. That would require the Upper Tribunal, in effect, to re-make the decision assessing the evidence in the light of all the submissions made. It would not be a case where the decision, despite an error of law, would stand. It would be set aside and re-made. Indeed, that was precisely what happened in Shizad where the Tribunal was considering an appeal where an error of law had already been found and the First-tier Tribunal's decision had been set aside. The Tribunal in Shizad was re-making the decision. Further, in doing so it was largely concerned with a factual matrix personal to the Appellant in that appeal which was accepted and was concerned with whether, given those facts, on the basis of the material the Appellant was at risk from the Taliban in Afghanistan. Here

there is no underlying factual basis because the error of law goes to the claimant's credibility and positive findings in respect of his account.

20. Despite, again, Mr Neale's reliance on Shizad, I do not consider that it can apply in this appeal in order to allow me to "perfect" the absence of reasons by the judge so as to conclude that his findings are necessarily the correct ones to make on the evidence. A brief reading of the evidence and the parties' submissions readily demonstrates that the fact-finding is nuanced and the judge's findings were not necessarily inevitable. Consequently, I reject Mr Neale's submission.

21. Finally, Mr Neale submitted that if I did not accept his previous submissions, this was a proper case where the appeal should be remitted to the same judge to provide the reasons which were absent from his determination. Mr Neale referred me to a decision of the Immigration Appeal Tribunal in Hussein [2002] UKIAT 0469 in which he indicated the IAT had done just that. Unfortunately, I was not provided with a copy of the IAT's determination and I have been unable to obtain one since the hearing. But, in any event, even if I accepted that in principle remittal to the same judge is possible, as indeed it is in some cases, it is not appropriate in this appeal.

22. I accept Mr Richard's submission that as the hearing was some nine months ago on 8 January 2015, it would not be appropriate to ask Judge James to revisit the appeal and, now retrospectively, supply the reasons which led him to make the findings in paragraph 50 onwards of his determination. I agree that the passage of time has now made this impractical and it is not in the interests of justice to do so. The proper course in this appeal is that it should be remitted to the First-tier Tribunal for a *de novo* re-hearing before a different judge who can consider the evidence again and make appropriate findings with adequate reasons based upon that evidence.

Decision

23. For the above reasons, the decision of the First-tier Tribunal to allow the appeal on asylum grounds involved the making of an error of law. That decision is set aside.

24. The proper disposal of the appeal, having regard to paragraph 7.2 of the Senior President's Practice Statement, is that the appeal should be remitted to the First-tier Tribunal for a *de novo* re-hearing before a judge other than Judge James.

Signed

A Grubb
Judge of the Upper Tribunal