



IAC-AH-LEM-V1

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

Appeal Number: AA/09567/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 4th September 2015**

**Decision & Reasons Promulgated
On 17th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

J H

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondent: Mr R Sharma of Counsel instructed by Time Solicitors

DECISION AND REASONS

1. The Secretary of State appeals against the decision of Judge of the First-tier Tribunal Samimi (the judge) promulgated on 1st May 2015.
2. The Respondent before the Upper Tribunal was the Appellant before the First-tier Tribunal and I will refer to him as the Claimant.
3. The Claimant claims to be a citizen of Myanmar born 1st January 1986. He arrived in the United Kingdom illegally in February 2008 and claimed asylum on 2nd June 2014 claiming that if returned to Myanmar he would be persecuted because of his claimed Rohingya ethnicity.

4. The Claimant's application was refused on 31st October 2014 and his appeal was heard by the judge on 10th April 2015. The appeal was allowed on asylum grounds on the basis that the judge accepted that the Claimant had given a credible and consistent account.
5. The Secretary of State applied for permission to appeal to the Upper Tribunal. The grounds may be summarised as follows.
6. The judge in paragraph 13 of her decision had erred in stating that the Secretary of State accepted the Claimant's account to originate from Baguna in Myanmar and having fled to a refugee camp in Bangladesh. It was contended that this was incorrect and had not been accepted by the Secretary of State in the reasons for refusal letter dated 31st October 2014. It was contended that the judge had failed to give sufficient reasons for her conclusions.
7. The Claimant had produced a 'Rohingya refugee family book'. It was contended that the judge wrongly reversed the burden of proof, concluding that the burden rested upon the Secretary of State to prove that the book was false, and had referred to irrelevant case law.
8. Permission to appeal was granted by Judge of the First-tier Tribunal White for the following reasons;
 - a. The judge appears to indicate that the Respondent has accepted various elements of the Appellant's account (para 13) whereas the Respondent in the reasons for refusal letter at para 49 did not accept that the Appellant was a national of Myanmar; nor that the Appellant was of Rohingya ethnicity; nor that the Appellant lived in a refugee camp.
 - b. In the consideration of the reliability of the refugee book as evidence the judge has wrongly applied the guidance in Shen and AA (Nigeria) (thus placing the burden of proof upon the Respondent) rather than the guidance in Tanveer Ahmed (that the evidence should be looked at in the round) (paras 15, 16 and 17)."
9. Following the grant of permission the Tribunal issued directions that there should be a hearing before the Upper Tribunal to ascertain whether the First-tier Tribunal had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

The Secretary of State's Submissions

10. Mr Melvin relied upon grounds contained within the application for permission to appeal. Mr Melvin submitted that the judge was factually incorrect in paragraph 13 in stating that the Secretary of State had accepted the Claimant's account, as the reasons for refusal letter dated

31st October 2014 made it clear that the material issues in the account were not accepted.

11. In relation to the refugee book, it was contended that the judge should have relied on the principles in Tanveer Ahmed.

The Claimant's Submissions

12. Mr Sharma contended that the Secretary of State had misread paragraph 13, and the judge had not erred. The judge had in fact found that the Secretary of State had accepted that the Claimant's account was consistent with objective evidence, and this had been accepted by the Secretary of State in the refusal letter.
13. Mr Sharma submitted that in this case the Secretary of State had in fact alleged forgery, and therefore the judge had been correct to find the burden of proof rested upon the Secretary of State, and the burden had not been discharged. Reliance was placed upon paragraph 33 of the refusal letter which Mr Sharma submitted amounted to an allegation of forgery. Therefore the case law referred to by the judge was relevant.
14. At the conclusion of submissions I reserved my decision.

My Conclusions and Reasons

15. I will not set out paragraph 13 of the First-tier Tribunal decision in full, but I set out the following which has been challenged by the Secretary of State;
"The Respondent has accepted that the Appellant's account of having been brought up in the village of Baguna in Myanmar, the currency of Myanmar as well as the Appellant's overall account of his family fleeing Myanmar after the village was attacked in 1992 was consistent with the objective evidence confirming that Rohingya villages in Myanmar were attacked at that time resulting in many Rohingya families fleeing to refugee camps in Bangladesh. I therefore accept that the Appellant has provided a consistent account of having been born and brought up in Baguna, Myanmar and that his family were forced to flee to refugee camps in Bangladesh, after his father was killed in the course of the attacks against the Rohingya in 1992."
16. The Secretary of State did state at paragraph 20 of the refusal letter;
"It is also noted that the overall account that you gave of your family having to flee Myanmar after your village was attacked in 1992 is consistent with background information. Background sources confirm that Rohingya villages in Myanmar were indeed attacked at this time, resulting in many Rohingya families fleeing to refugee camps in Bangladesh."
17. It was also stated in paragraph 21 that the Claimant had correctly provided some brief general information about the Rohingya people, such as their religion, the clothes that they wear, and the food they eat.
18. However the Secretary of State went on to state in paragraph 28 that while there were some elements of the Claimant's account which were

consistent with external information, there were other elements which were not.

19. The Secretary of State stated the following at paragraph 49;

“In summary, you have failed to meet all of the conditions of paragraph 339L, and it has been decided not to award you the benefit of the doubt. It is therefore not accepted that you are a national of Myanmar, nor is it accepted that you are of Rohingya ethnicity. It is also not accepted that you lived in a refugee camp in Bangladesh.”

20. The judge in paragraph 13 concludes that because the Appellant has provided a consistent account, the account is accepted. I find that the judge has given inadequate reasons for reaching this conclusion. I set out below the head note in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC);

“It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they won or lost.”

21. The judge did not adequately engage with the reasons given by the Secretary of State for refusing the Claimant’s application, and did not adequately analyse the evidence, taking into account that the Secretary of State specifically rejected the Claimant’s account of his nationality and ethnicity, and his claim to have lived in a refugee camp in Bangladesh. The judge did not address the point made by the Secretary of State, that part of the Claimant’s account was not consistent with background evidence.

22. This amounts to an error of law. The judge has not adequately explained her reasons, so that the Secretary of State can understand why no weight has been given to the points raised in the refusal letter.

23. In relation to the assessment of the refugee family book, I find that the judge materially erred in law. The judge correctly set out the burden of proof in paragraph 4 of her decision, acknowledging that the burden rested upon the Claimant. This however is not the case if an allegation of forgery is made by the Secretary of State, as the burden then rests upon the Secretary of State.

24. The Secretary of State considered the family book in paragraphs 29-37 of the refusal letter. At paragraph 33 it is stated;

“33. It is noted that inside the book, on page two, your name is listed, as well as your mother’s and brother’s name. However, where your name is listed, it appears that a correction has been made over it, and it appears that this name may have been changed.”

25. The Secretary of State concluded at paragraph 37;

“37. For the reasons given above and considering the document submitted in the round, it is considered that you have not shown that this document can be relied upon. Therefore, little weight can be given to this document.”

26. The Secretary of State had, earlier in the decision at paragraph 30, made specific reference to the principles in Tanveer Ahmed [2002] UKIAT 00439.
27. The two cases referred to by the judge are not relevant. Shen (paper appeals; proving dishonesty) [2014] UKUT 00236 (IAC) gives guidance as to consideration of dishonesty in paper appeals. This is not a paper appeal.
28. AA (Nigeria) [2010] EWCA Civ 773 gives guidance upon the consideration of false representations, and concludes that dishonesty must be proved. I do not find that the Secretary of State made an allegation of forgery in the refusal letter. In my view it was made quite clear that it was for the Claimant to prove that the family book could be relied upon. This is consistent with the principles in Tanveer Ahmed which are that in asylum and human rights cases it is for an individual Claimant to show that a document on which he seeks to rely can be relied upon. A decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round. Only very rarely will there be the need to make an allegation of forgery, or evidence strong enough to support it. The principles in Tanveer Ahmed were confirmed in MJ Afghanistan [2013] UKUT 00253 (IAC). The judge made no reference to the Tanveer Ahmed principles and this is a material error of law as those principles should have been considered, and the judge should have considered whether the Claimant had proved that the family book could be relied upon.
29. For the reasons given above the decision of the First-tier Tribunal contains material errors of law and is set aside with no findings preserved.
30. The decision needs to be re-made and I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having taken into account paragraph 7.2 of the Senior President’s Practice Statement of 25th September 2012 which states;
 - ‘7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that;
 - (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party’s case to be put to and considered by the First-tier Tribunal; or
 - (b) the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective

in rule 2, it is appropriate to remit the case to the First-tier Tribunal.'

31. In my view the requirements of paragraph 7.2(b) apply, in that this is an asylum appeal where extensive fact-finding needs to be carried out.
32. The parties will be advised of the date of the First-tier Tribunal hearing in due course. The hearing will take place at the Hatton Cross hearing centre and be heard by a First-tier Tribunal Judge other than Judge Samini.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

The First-tier Tribunal made an anonymity direction. I continue that direction pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. As a consequence there is a prohibition on the disclosure or publication of documents or information relating to the proceedings or any matter likely to lead members of the public to identify the Claimant.

Signed

Date 10th September 2015

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

No fee award is made by the Upper Tribunal. This is to be considered by the First-tier Tribunal.

Signed

Date 10th September 2015

Deputy Upper Tribunal Judge M A Hall