



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/00110/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at: Field House
On 22nd May 2017**

**Decision Promulgated
On 31st May 2017**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**JA
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Bonavero, Counsel instructed by Blakewells
Solicitors

For the Respondent: Mr McGirr, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Bangladesh date of birth 20th December 1985. He appeals with permission¹ the decision of the First-tier Tribunal (Judge Manyarara dated 9th February 2017 to dismiss his appeal on protection grounds.

¹ Permission was granted on the 27th March 2017 by First-tier Tribunal Judge Keene

Anonymity Order

2. This case involves a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Timeliness

3. The determination of the First-tier Tribunal was promulgated on the 9th February 2017. The application for permission to appeal was not received until the 14th March 2017. That was out of time. I am prepared to extend time. Having had regard to the material before me, including an ‘activity report’ confirming receipt of a fax, I accept that the Appellant’s representatives did initially try to fax the application to the Tribunal on the 24th February 2017, and that they were, it seems wrongly, advised that the transmission went through.

Error of Law

4. The Appellant claims to have a well-founded fear of persecution in Bangladesh for reasons of his imputed political opinion. The crux of his case is that his brother is a leader of Jamaat-e-Islami, and that the current government of Bangladesh have sought to have him, and those associated with him, arrested. The government is run by the Awami League, who are Jamaat-e-Islami’s political opponents. False criminal charges have been levied against his brother.
5. The First-tier Tribunal considered this account, and rejected it for want of credibility.
6. The short point made in this appeal is that the First-tier Tribunal made a fundamental error of law in that when it evaluated the plausibility of the account, it did so without any reference to country background material that had been expressly relied upon before it. Mr Bonavero made a number of other submissions about the reasoning – or rather lack of it – but his central argument was that the Tribunal must have erred in failing to weigh in the balance evidence about Bangladesh capable of demonstrating that this claim was, at the very least,

plausible.

7. Examples of such evidence can be found in the 'Country Information and Guidance' report published by the Home Office in February 2015: *Bangladesh: Opposition to the Government*. At 2.4.1 the report states that during 2013 members of Jamaat-e-Islami faced pressure from the government, including the police raiding its headquarters. At 2.5.5 the CIG reports that the Assistant General-Secretary of the organisation was executed and that police shot protesting activists dead. This evidence was consistent with the Appellant's claims that both his brother and brother-in-law had been forced into hiding by a government campaign to kill or imprison high-profile members of the party.
8. Mr McGirr agreed that on the face of the determination, the evidence in question was not considered by the First-tier Tribunal. He submitted however that this was not a material error. Plausibility in the context of the prevailing political situation will not necessarily establish that a claim is credible. He pointed out that the determination of the First-tier Tribunal might well have been the same, even if the Tribunal had expressly had regard to the country background material.
9. The parties agree that the failure to weigh all of the available evidence in the balance was an error of law. Mr McGirr is right to say that the decision *might* well have been the same, but I cannot however be satisfied that it *would* have been. Consistency with the background material was a factor that would have to be weighed in the Appellant's favour, and it was not. It follows that the error of law must be held to be material: all of the credibility findings are affected and the decision accordingly must be set aside.
10. The parties agreed that in the circumstances the only appropriate course of action would be that the Upper Tribunal remit the matter to the First-tier Tribunal to be heard afresh by a judge other than Judge Manyarara. I agree.

Decisions

11. The decision of the First-tier Tribunal contains an error of law such that the decision must be set aside in its entirety.
12. The matter is to be remade in the First-tier Tribunal.
13. There is a direction for anonymity.

Upper Tribunal Judge Bruce
26th May 2017