



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/00546/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at City Centre Tower, Decision & Reasons
Birmingham Promulgated
On 1st June 2017 On 13th July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

P A

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Turner of Fountain Solicitors

For the Respondent: Mrs M Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a citizen of Myanmar born on 1st February 1988. He first entered the UK illegally sometime in 2008 and applied for asylum on 17th August 2015. That application was refused for the reasons given in the Respondent's letter of 11th January 2016. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Ghani (the Judge) sitting at Birmingham on 22nd August 2016. He decided to dismiss the appeal for the reasons given in his Decision dated 2nd November 2016.

The Appellant sought leave to appeal that decision, and on 14th March 2017 such permission was granted.

Error of law

2. I must first decide if the decision of the Judge contained a material error on a point of law so that it should be set aside.
3. The Judge dismissed the appeal on asylum and humanitarian protection grounds because he was not satisfied that the Appellant was credible and he did not believe that the Appellant was an ethnic Rohingya from Myanmar. The Judge gave various reasons for his finding as to credibility which included his conclusion that the Appellant did not speak the Chittagong Bangla Dialect and therefore was unable to speak his native language. Further, the Judge did not accept that the Rohingya Refugee Book produced by the Appellant was genuine and worthy of significant weight.
4. At the hearing before me, Mr Turner argued that the Judge had erred in this conclusion. Despite a Direction to do so, the Respondent had failed to produce the Refugee Book given to the Respondent by the Appellant, and the Judge had come to his conclusion about that Book by reference to a copy of the same contained in the Respondent's Bundle. The Refugee Book was a vital piece of evidence and the Judge should not have come to any conclusions in respect of it without seeing the original. Further, the Judge had speculated as to the provenance of the Book. It had not been the fault of the Appellant that the Book was not produced and forensically examined. The Book would have established the credibility of the Appellant.
5. Mr Turner went on to submit that the Judge had speculated as to the Appellant's inability to speak his native language. He had attached insufficient weight to the explanation given by the Appellant as to that inability, and the Judge had not engaged with the evidence of a linguistic expert contained in the Appellant's Bundle which provided further explanations.
6. In response, Mrs Aboni referred to the Rule 24 response and argued that there were no such errors of law. The Judge had considered the absence of the original Refugee Book and as explained at paragraph 4 of the Decision had come to a conclusion open to him that he could proceed with a copy. It was the contents of the Book which were important, not its appearance. The Judge had analysed the contents of the Book carefully and gave sufficient reasons for deciding to attach little weight to it. Further, the Judge had made a finding concerning the Appellant's inability to speak his native language which was open to him and which he fully explained. That decision was not in conflict with any of the objective evidence.
7. At the hearing I reserved my decision which I now give.

8. I find no material error of law in the decision of the Judge which I therefore do not set aside. It is deplorable that the Respondent failed to comply with the Direction of the Tribunal to produce the original Refugee Book. However, there was a complete copy of it in the evidence before the Judge and the Judge explained at paragraph 4 of his Decision why he decided he could proceed on the basis of that copy without seeing the original Book. Such a decision was within the discretion of the Judge and has not resulted in any prejudice to the Appellant. The decision of the Judge is therefore in accordance with the overriding objective given at Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. This is particularly so because as recorded at paragraph 4 of the Decision, the Appellant's representative at the hearing indicated that he was content to proceed without the original being before the Tribunal and did not make any application in respect of the Respondent's failure to produce the original. He had left the decision whether to proceed or not to the Judge. It is apparent from what the Judge wrote later in his Decision that he had been able to come to a proper conclusion concerning the weight to be attached to the Book without seeing the original. It was not argued that the copy was defective in any way. The Judge fully explained his finding in respect of the Book at paragraphs 29, 33 and 34 of the Decision.
9. The Judge dealt with the issue of the Appellant's language at paragraph 36 of the Decision. He came to a conclusion open to him in respect of the Appellant's inability to speak his native language and which he fully explained. He did not find credible the reasons given by the Appellant for his inability to speak his native language. In coming to this conclusion, the Judge relied upon the objective evidence supplied by the Danish Immigration Service Report of 2011. The Judge was entitled to prefer this evidence to any expert linguistic evidence produced by the Appellant.
10. In any event, the Judge gave a number of other reasons for his adverse credibility finding. The Judge identified a number of inconsistencies and implausibilities in the evidence of the Appellant, and found the Appellant's credibility damaged by operation of Section 8(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.
11. For these reasons I find no material error of law in the decision of the Judge which therefore I do not set aside.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal made an order for anonymity which I continue for the same reasons as those given by the First-tier Tribunal.

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

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 their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 12th July 2017

Deputy Upper Tribunal Judge Renton