



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

Appeal Number: PA/02341/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 22 March 2017**

**Decision &
Promulgated
On 26 May 2017**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MR RAZAKUDDIN SHIN
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Appearances:

For the Appellant: Mr G Franco, Counsel instructed by Schneider Goldstein
For the Respondent: Mr L Tarlow, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Burma, date of birth 23 November 1986, appealed against the Respondent's decision, dated 23 February 2016, refusing him asylum, Humanitarian Protection and on human rights

grounds. His appeal was heard before First-tier Tribunal Judge Kaler on 11 August 2016 who dismissed his appeal on 26 August 2016.

2. Permission to appeal that decision was granted by First-tier Tribunal Judge Parkes on 6 October 2016. On 10 November 2016, in a decision promulgated on 5 December 2016, Deputy Upper Tribunal Judge I A M Murray set aside Judge Kaler's decision promulgated on 26 August 2016 and a resumed hearing was listed before the Upper Tribunal on 22 March 2017.
3. The Appellant, a national of Myanmar, claims to have been born in Maungdaw, Rakhine in Burma. His date of birth is said to be 23 November 1986. The Appellant seems to have left Burma at the age of 4 in 1990 and entered Bangladesh unlawfully with his father and brother. The Appellant claims that his father was a Rohingya refugee. The Appellant, given his age at the material times, has very little recollection of life in Burma and his earliest recollections are of life in a refugee camp in Bangladesh until about 1994 when he lived elsewhere but finally in Sylhet.
4. The Appellant did not grow up in Rohingya culture but is a speaker of Bengali/Sylheti. The Appellant claims that he was brought to the United Kingdom and entered the United Kingdom by clandestine means in 2002, having travelled through various countries including India, Pakistan, Turkey, Greece and France. The Appellant says that he is a Sunni Muslim and that Muslims and Rohingya Muslims are not accepted within Myanmar, they are rejected by those of the Buddhist faith and are persecuted.
5. The Appellant says that he has been poorly educated and was brought to the United Kingdom and put to work; which he did for many years as a kitchen porter and in similar low-paid employment. The Appellant is clearly lacking in any in-depth knowledge of the Rohingya or of their history and culture or their traditions. His recollections of life in Bangladesh are simply living in a camp or outside of a camp and assimilating into Bangladeshi society. The Appellant says that his father made no effort to introduce the Appellant to the Rohingya way of life or its culture and

background. Accordingly he did not know Rohingya words or dialect and only spoke Bengali/Sylheti.

6. In considering the Appellant's evidence and recollection of his time in Myanmar or Bangladesh, I fully take into account his age at the material time, bearing in mind he was still a child when he left Bangladesh in 2002 and to this extent his knowledge of Rohingya customs, language and culture was neither necessary nor material to the life he was brought up with by his father. If the Appellant left Myanmar at the age of 4 in 1990, it is perhaps unsurprising he has no particular recollection of life there and, insofar as he was brought up in a refugee camp until 1994 before living outside of such a camp in Sylhet, when he was not being brought up in a Rohingya area or culture, it is understandable that his recollection of matters is very limited, bearing in mind his age and the circumstances in which he was living at the time. The Appellant has no entitlement or status in Bangladesh. He was not lawfully in Bangladesh and certainly the Bangladesh authorities have never given him status to reside there. He has not been granted refugee status in Bangladesh. The Appellant has no apparent status as a Rohingya Muslim in Myanmar and there is nothing to indicate that he could be safely returned there.
7. It is clear that there have been variations in the Appellant's account, for example, in an Asylum Intake Unit method of entry interview sheet in 2015 the Appellant said that he had left Myanmar when he was 10/11. In representations made on his behalf by Schneider Goldstein in December 2015, it was said that the Appellant had entered Bangladesh by clandestine means in 1990, remained in a camp at Teknaf, Cox's Bazar, Chittagong, until 1994, before living elsewhere in Bangladesh. In a statement of 10 December 2015, the Appellant said that, although he could not remember anything about Myanmar because he was very young at the time, he believed that his father had been harassed by the Burmese authorities and that their family had been persecuted along with other Rohingya Muslims. His mother had died in 1986 after his birth and persecution suffered by his parents was no longer tolerable and thus his

father had eventually decided to leave Myanmar in 1990 when he was 4 years of age.

8. The Appellant describes growing up in the refugee camp in Bangladesh in difficult circumstances due to their illegal status. His father sent him to the UK in 2002, died in 2006 and his brother left Bangladesh to work in Malaysia in 2007. Since 2010 the Appellant has lost contact with his brother.
9. The Appellant's Asylum Interview Record dated 11 December 2015, is extensive in length and he repeats that he left Myanmar when he was only 4 years of age, has no recollection of the matter or of his mother and he has little actual recollection in detail of his father's life or the business his father conducted in Myanmar: Although he believes that it was attacked by Buddhists and his father was prevented from working. He essentially says his father did not share recollections of events or encourage him to remember events and that he encouraged the Appellant to live in the present rather than dwell on the past.
10. The Appellant said that the reference in the earlier interview where it is recorded he had referred to leaving Burma at 10 or 11 years of age was an interpretation mistake at the time of the interview and not his understanding of events. The Appellant confirmed that he only spoke Bengali and Sylheti and did not speak Rohingya because he was very small at the time and he was not taught to do so.
11. The Appellant's account of life in the refugee camp in Bangladesh is one of deprivation. Similarly the Appellant believes that his father left the camp and travelled outside of it to work but it is clear the Appellant has no real recollection of where he went to work or what they did or the extent to which he accompanied his father. These matters are not particularly dealt with in interview in any depth but it is fair to say the Appellant's recollection of those matters is very thin. The Appellant says that his journey to the United Kingdom was arranged by his father and that once

he got here he was put to work and essentially provided with food and accommodation where he worked largely in the restaurant trade.

12. The Appellant therefore stayed for many years in the United Kingdom working because that was the arrangement that had been made and he believed that he had to stick to it for fear of the man, who he claimed had put him to work, in what is now referred to by the Appellant as 'slavery'. It should be said that there has been no consideration of a case based on modern day slavery by the Respondent, the Competent Authority nor it seems did the Appellant's representatives raise it as an issue. The Appellant says that he was poorly paid which seems to be because Mr Kober was only passing on some of the Appellant's wages and at times had taken all of them to recover the costs of bringing the Appellant to the United Kingdom.
13. The Appellant's evidence addressed the friendships he had made with Bangladeshis in the United Kingdom. The Appellant did not claim asylum until 2015 and had illegally resided in the UK and worked here without making an asylum claim. It therefore is the case that his behaviour falls to be considered in the context of Section 8(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The Respondent therefore follows the line that the Appellant is in fact a national of Bangladesh and it is doubted whether the Appellant was a Burmese national at all.
14. Additionally it is held against the Appellant by the that he does not have sufficient knowledge of the Rohingya or of life in Rohingya society or of his family history concerning life in Burma if he lived there. The Appellant is also criticised, by the Respondent, because the Appellant explains gaps in his knowledge by reference to the fact that his father did not wish to talk about matters in the past, avoided the issues and really did not tell the Appellant about life in Burma, bearing in mind it ultimately appears, the Appellant's entirely consistent account is that he left at the age of 4. It is not incredible that the Appellant's father would not reveal anything to the

Appellant about Rohingya Muslims other than that they were treated badly, perhaps the point takes the matter no further.

15. Quite simply it comes down to whether or not, to that low standard of proof identified in Sivakumaran (1998) ImmAR 97, Ravichandran (1996) ImmAR 147 and Karanakaran [200] EWCA Civ 11, the Appellant has shown that he is likely to be a Rohingya faced with the attitudes which are contained in the background evidence of the Rohingya people and the ill-treatment and discrimination that they have faced in Myanmar or Bangladesh.
16. I note Respondent asserts that because the Appellant lived in a refugee camp for a number of years and that there must have been other Rohingya in the camp, the Appellant would have had contact with them and have learned Rohingya. The failure to do so was regarded as “internally inconsistent and implausible” but on what basis the Respondent holds that view I do not know. The background evidence is not forthcoming on the issue. Similarly doubts about whether a person may leave the camp to work which the Respondent expressed again is not directly related to the evidence other than the generality of a UNHCR report in 2012 which says movements outside camps are only permitted if refugees have explicit permission from the Camp Commander and normally permits were only given for emergency medical treatment.
17. I do not know whether or not as a fact people would leave the camps to go and work but it seems to me that one source of that kind as to the generality cannot be regarded as determinative of all camps or locations where refugees were found in Bangladesh. It is also clear, on the Appellant’s account, that they left the camp and lived elsewhere, seemingly unlawfully and again that does not on the face of it appear to be out with the background information. The Appellant, in his evidence before me, was thoroughly cross-examined but maintained the general position referable to his statement as to his background. He did not seek to elaborate on what his father had ever talked to him about or the

circumstances of the camp in which he had lived or the period of time he had spent in Bangladesh. He believed that he would be identifiable in Myanmar, not least because of his religious faith but also because he was essentially not a Burmese speaker or a speaker of any Burmese dialects.

18. The Appellant did not elaborate upon his evidence about life in the camp in Bangladesh nor events there. The Appellant did not enlarge upon the issue of the business his father had had in Myanmar or any of those circumstances. The Appellant confirmed that he attends a mosque in East Ham in London and that he follows the Sunni Muslim faith. The Appellant said he had no friends in the United Kingdom of Rohingya background and he had not learned more of it and its culture whilst here. The Appellant essentially repeated that his work in the United Kingdom had largely been subject to exploitation and used to recover the costs of bringing him to the United Kingdom. In addition he relied upon statements of support not least from one Mohammed Ahmed, whose statement was drawn to my attention.
19. Mr Mohammed Ahmed, a British national but of Bangladeshi origin, born 20 December 1985, has known the Appellant since 2006 when he was working in a restaurant and they became good friends. He speaks well of the Appellant's reliability, honesty and trustworthiness. He says that he is aware Rohingya refugees are treated badly by the authorities and general public in Bangladesh because of their unlawful status. He believes they suffer mistreatment and abuse on a daily basis and live a helpless life. He says he would be devastated if the Appellant was forced to return to Bangladesh where he would have no lawful status and suffer persecution. He believed the Appellant was extremely hard working and an asset to the UK. Mr Ahmed does not give any opinion as to whether the Appellant is a Rohingya from Myanmar.
20. The background evidence, particularly the paper on Rohingya refugees in Bangladesh and Thailand, published by the Danish Immigration Service in 2011, concerns a number of issues raised in this appeal. It is clear in that

report that the Muslim population from northern Rakhine state in Burma are known as the Rohingya, that is the area the Appellant claims to originate from and that some 28,000 Rohingya are registered as living in two official refugee camps in Bangladesh and some 200,000 unregistered Rohingya live in surrounding towns and villages outside of the two camps. It is said that there are approximately 750,000 stateless Rohingya in Burma in the northern Rakhine state. In addition, Malaysia is host to some 90,000 Rohingya refugees and asylum seekers. It is clear that there have been large flows from time to time of refugees into Bangladesh. Prior to 1991 and 1992 there was a flow of people who it was said had been forcibly evicted by the Burmese Army and mistreated. It seems that during 1991 and 1992, that is after the Appellant with his father and brother left Burma, further compulsory land and property acquisition, confiscation, rape, summary executions, physical torture, the destruction of mosques, religious activities banned and Muslim leaders harassed were characteristic of that period.

21. The current situation, in 2011, was that the Rohingya in the northern state of Rakhine faced systematic and endemic discrimination, fundamental and basic human rights being denied, forced labour and ill-treatment, including discrimination leading to forced deportation and the restriction of movement owing to the enduring condition of statelessness: The result of the Rohingya's historic difficulty in obtaining citizenship, particularly following an Act called the 1982 Citizenship Act, which led to land confiscation, forced relocation, evictions through violent means which were widespread and endemic.
22. It appears that it is common ground that it is quite difficult to distinguish between Rohingya and Bangladeshi citizens because the main distinctive factor is the language which is similar but different. However, it would seem that many Rohingya who have been living in Bangladesh for a number of years learned Chittagonian/Bangla dialect in order to assimilate, avoid discrimination and stigma of being a Rohingya. It appears that Rohingya in Bangladesh follow the same cultural and

religious practices as the local Muslim Bangladeshi population and there are no obvious differences between the two communities culturally or religiously. Whilst inside the camps the Rohingya have their own mosques and there are madrassa schools for boys and girls teaching the Quran in Urdu. Differences in religious practices nevertheless seem to show that the Rohingya have sought to integrate into Bangladesh. Their appearance is similar and it is difficult to differentiate them. The struggle for survival by Rohingya has in many cases eclipsed their cultural and religious practices, making it difficult to differentiate their unique practices. It appears that Rohingya in origin who are inside the refugee camps are categorised as 'Myanmarese refugees', whereas Rohingya outside the camps are 'undocumented Myanmarese nationals'. There is no exact figure for the number of undocumented individuals but there may be at least 300,000 or more. It was said amongst other things that there were some 250,000 undocumented Rohingya in Cox's Bazar and in other places including Chittagong as well as Dhaka.

23. It appears that UNHCR (Bangladesh) have not been permitted to register newly arriving Rohingya since mid-1992 and according to estimates something like 200,000-400,000 undocumented Rohingya are currently residing in various towns and villages outside refugee camps in Cox's Bazar.
24. However many Rohingya there are in Bangladesh, it seems that they are generally tolerated by the local people but there is competition for jobs in the local labour market and the Rohingya are also of interest to powerful people who want cheap labour available. The government of Bangladesh therefore accepts responsibility but does not want to encourage further refugees. Some have been repatriated. It is to be noted that many areas where the Rohingya are settling, for example Cox's Bazar and Chittagong, are some of the poorest parts of Bangladesh. Thus it is thought that there is a pull factor to Rohingya to leave Myanmar and to integrate and get assistance in Bangladesh. What is clear from the Danish report is just to what extent and how large the Rohingya population is in Bangladesh and

the stresses it places on facilities there. In addition there is plainly resentment that the Rohingya are at the heart of organisational problems in Bangladesh and the over-populated and poorer areas are subject to all sorts of pressures.

25. The 2015 UNHCR overview of Bangladesh presents a very familiar picture but identifying the continuing intercommunal conflict in Rakhine state being the basis of significant internal displacement. The 2013 Country Report by the US DoS identifies that the UNHCR had estimated about 800,000 Muslim Rohingya in northern Rakhine state who were stateless and that figure did not include stateless persons in the rest of Rakhine state include stateless IDPs. It was said that the Rohingya experience severe legal, economic and social discrimination, controls on their movement with the displaced population being particularly vulnerable to trafficking and exploitation. There certainly was nothing to suggest at that stage any likely improvement.
26. Restraints which have been placed on Rohingya have impeded integration. It is said by the UNHCR :-

“Finally, it should not be forgotten that the Rohingya are one of the world’s largest and most prominent groups of stateless people, an issue which has attracted considerable international attention as a result of the UNHCR’s recent advocacy efforts in this area.”
27. It seems to me that, whilst the evidence of particular influxes in the 1970s and in the early 1990s are identified, it does not exclude others leaving at different times and it would be surprising if it simply was the case that only influxes occurred in those periods although obviously the numbers involved were very substantial.
28. The general stance that Bangladesh takes towards Rohingya is that repatriation rather than integration is the correct solution but the UNHCR does not hold out particular hopes that that is likely to be effective as that report notes

“There are relatively few options for UNHCR to pursue in Bangladesh. Resettlement has been stopped. Voluntary repatriation to Myanmar is currently not foreseeable. Local integration cannot be officially pursued. Self-reliance remains the only option but without freedom of movement or right to work this remains an elusive quest.”

29. On a fair reading of the report, the UNHCR is essentially powerless to do much about the numbers and conditions in which Rohingya live in Bangladesh or are excluded from Myanmar.

30. I take into account the summary of these matters and the conditions faced by Rohingya sourced in the UK Country of Origin Information Service on Bangladesh of September 2012 which states in relation to Rohingya refugees

“They live in squalor, receive very limited aid and are subject to arrest, extortion and detention. Unregistered refugee women and girls are particularly vulnerable to sexual and physical attacks.”

31. It describes Rohingya being turned back at the borders of Myanmar by the Bangladesh authorities and the limitations on refugee protection available there. The documentation also shows the extent to which Rohingya in seaborne flight from Myanmar risk a great deal, including death, but are prepared to take those risks. It seems to me that even if an element of them are economic migrants, the fact is that they have and are prepared to take the extremely hazardous route of fleeing persecution in Myanmar but it seems to me self-evident that there are very significant obstacles to their integration into Myanmar.

32. I found the Appellant was generally credible and discharged the burden of proof to the low standard, bearing in mind he was a child and very young at most material times in Myanmar and Bangladesh. His father was the one who controlled the Appellant’s destiny in 2002. He was an ill-educated child when brought to the UK in 2002. I find the Appellant was not brought up as a Rohingya.

33. I find on the evidence the Appellant's claim set with the background evidence shows the Appellant is stateless in Bangladesh and faces the real risk of poverty, hardship and destitution contrary to Article 3 ECHR as inhuman and degrading treatment. It does not seem to me since he is not entitled to return to Bangladesh that he can reasonably be considered to be obliged to integrate there.
34. Similarly, if the Appellant can be returned to Myanmar, I find there is a real risk, notwithstanding his ignorance of Rohingya ways, that he would be identifiable as coming from Rakhine State, a Muslim by faith, who has not lived in Myanmar for many years nor been assimilated in local ways. The Myanmar state is on the evidence complicit in the mistreatment of Rohingya. The Appellant would have no family or local network or connections to provide protection or assistance on return. The background evidence does not suggest there is protection by the Myanmar state or local population to which the Appellant could have recourse. Given the well publicised dislike of Rohingya I do not find internal relocation is not a reasonable option even assuming he would be allowed to enter and move to the north of Myanmar.

DECISION

The appeal is allowed under the Refugee Convention and Article 3 of the ECHR.

ANONYMITY ORDER

No anonymity order was requested nor is one required.

FEE AWARD

The appeal has succeeded but on the basis of the evidence and matters arising after the date of the Respondent's decision and upon a different appraisal of the evidence. No fee award is appropriate.

Signed

Date 5 April 2017

Deputy Upper Tribunal Judge Davey