



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/08274/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 4 December 2017

Promulgated

On 19 December 2017

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

M R I

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Khan, Counsel instructed by SEB Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

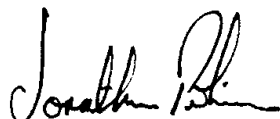
DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order because this is a protection case and there is invariably a possibility in cases of this kind that publicity will itself create a risk.
2. This is an appeal by a citizen of Bangladesh against the decision of the First-tier Tribunal dismissing his appeal against the decision of the respondent on 26 September 2016 refusing him asylum or other form of international protection.

3. Put simply the challenge to the decision is that the judge's reasoning is inadequate.
4. I have found this a very difficult case to resolve. I have noted the First-tier Tribunal's reasons for refusing to give permission including reliance on **R (Iran) and Others v SSHD [2015] EWCA Civ 982** and Mr Avery's entirely realistic, but ultimately unpersuasive, submissions that the Decision and Reasons is good enough. It passes the fundamental test that the appellant knows why he lost. He lost because he was not believed.
5. I also note the reasons for permission being granted by Upper Tribunal Judge Plimmer who summarised her reasons for giving permission as it being arguable that the fact-finding about the asylum account is inadequate and arguable that the judge has not given proper reasons for rejecting evidence described as "self-serving".
6. It is indeed arguable. My difficulty is that I must resolve the argument and make a decision.
7. The appellant is a citizen of Bangladesh. There is evidence that he supports the BNP in the United Kingdom and has supported it in Bangladesh. There is evidence that he has been injured significantly, he says by Awami League Party activists.
8. The difficulty I have is that although the judge has given clear reasons for finding large tranches of the appellant's evidence to be unreliable or unimpressive the only positive reason given for disbelieving him is the lateness of his claim. Clearly that is potentially an entirely appropriate reason but the judge has not examined the appellant's explanation for making his claim late. For much of the time the appellant has been in the United Kingdom he had leave to be there. Although he could be criticised for not making a claim for asylum if he needed protection his failure to claim asylum in the United Kingdom when he was already there lawfully might not be as suspicious as, for example, living in the United Kingdom for a prolonged period without permission and then claiming asylum only after his lack of status came to the attention of the authorities.
9. I realise that in this case there have been significant periods when the appellant was present in the United Kingdom without leave. However I am not satisfied that the lateness of the application, without considering the explanation for the lateness, is sufficient reason to disbelieve the appellant.
10. Similarly I am not satisfied that the weak evidence relied upon by the appellant could be discounted lawfully without clearly considering the evidence as a whole.
11. The judge was perfectly entitled to observe, as may well be the case, that false documentation is readily available in Bangladesh and therefore any document in Bangladesh may well be given less weight than would be appropriate for documentation from countries where forgeries are not so readily available. However the fact that unreliable or misleading documents are readily available does not mean that the particular documents relied upon are in any way unsatisfactory. This is not something the judge has explored.

12. Similarly, whilst the use of the phrase “self-serving” is probably undesirable, the judge has given entirely sensible reasons for being unimpressed by the evidence provided by the appellant’s mother. He was entitled to come to the conclusion that it was written for the benefit of the Tribunal rather than the benefit of the appellant to whom it was addressed. However the fact that it is unreliable or of limited value does not of itself make it untrue. Neither does it necessarily undermine any other evidence.
13. I am satisfied that the adverse credibility findings are not set against the apparently unchallenged evidence that the appellant has had considerable involvement in political matters in the United Kingdom and has made clear assertions of his involvement leading to serious ill-treatment in Bangladesh.
14. As I indicated at the beginning I have found this a difficult case to resolve. Perhaps it is almost inevitable that in the circumstances I have to say that the decision is not safe and I set it aside and direct that it be decided again in the First-tier Tribunal. None of the existing findings stand. The judge dealing with it again must make up his or her own mind about the criticisms of the evidence and must be careful to set any adverse findings in the context of the evidence as a whole including evidence the appellant has a damaged finger and scarring on which he relies.

Signed



Jonathan Perkins, Upper Tribunal Judge

Dated: 18 December 2017