



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/14273/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
Heard on 8<sup>th</sup> August 2017  
Prepared on 24<sup>th</sup> August 2017

Decision & Reasons Promulgated  
On 29<sup>th</sup> August 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MR SHIBU PROSSAD SUSHIL  
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M Hossain of Counsel  
For the Respondent: Mr P Armstrong, Home Office Presenting Officer

**DECISION AND REASONS**

**The Proceedings**

1. The Appellant is a citizen of Bangladesh born on 15<sup>th</sup> of May 1973. He appeals against a decision of Judge of the First-tier Tribunal Zahed who dismissed the Appellant's appeal against a decision of the Respondent dated 13<sup>th</sup> of December 2016. That decision was to refuse to grant the Appellant asylum, the Appellant arguing that the decision also breached this country's obligations under Article 8 (right to respect for private and family life) of the Human Rights Convention.

2. The Appellant's claim for asylum was that if he were returned to Bangladesh he would face mistreatment from Muslim extremists because he was a Hindu. His neighbour was an extremist who was a member of an organisation called Jammāt - e - Islami and was trying to take over the Appellant's property. The Judge found that the Appellant had submitted false documents in support of his claim for asylum and that the Appellant had been inconsistent in his claim. No part of the Appellant's claim could be accepted because the Appellant had made it all up in order to remain in the United Kingdom. The Judge dismissed the appeal.
3. The Appellant appealed the dismissal of his asylum appeal and also argued that the Judge had not dealt with the Appellant's separate Article 8 claim. Permission to appeal was granted by Judge of the First-tier Tribunal Chohan on 22<sup>nd</sup> of June 2017 as there was nothing in the decision to suggest that the Judge had considered the Appellant's human rights claim. It was not clear from the decision whether human rights issues had been raised by the Appellants representative. Nevertheless, it was apparent from the legal representative skeleton argument that human rights issues were part of the Appellant's claim. On that basis, the Judge had erred.
4. Judge Chohan refused permission to appeal the dismissal of the asylum claim saying that the First-tier Judge had given careful consideration to all the evidence that had been presented and based on that evidence made adverse credibility findings. Those findings were open to the Judge and adequate reasons had been given.
5. The Respondent replied to the grant of permission by letter dated 12<sup>th</sup> of July 2017 stating that any claim under Article 3 usually stood or fell with an asylum claim. The grounds did not separately identify any Article 8 claim and it was not possible to see how one could have succeeded. Any suggested error was not material.

### **The Hearing Before Me**

6. When the matter came before me to determine whether there was a material error of law counsel for the Appellant (who had appeared at first instance) argued that the case should be remitted back to the First-tier because the Judge had not dealt with the separate Article 8 claim. It was acknowledged by the Presenting Officer that this was so. I explained to the parties that the First-tier Judge's record of proceedings which was on the court file showed that counsel for the Appellant in closing submissions relied on the skeleton argument submitted in support of the appeal. As was pointed out by Judge Chohan when granting permission to appeal the skeleton argument at paragraph 13 stated that the Respondent had failed to consider that there would be a serious breach of the Appellant's right to a private life if he were to be removed from the United Kingdom. The Article 8 claim was set out in approximately a page and ½ in the skeleton argument. It was clear therefore that Article 8 had been raised before the Judge and should have been dealt with in his determination.
7. There was no challenge before me to the Judge's dismissal of the asylum claim which as Judge Chohan pointed out was dismissed for adequate reasons. As the First-tier

had not dealt with an issue before it I considered that it was in accordance with the Senior President's practice direction that the Article 8 claim should be remitted back to the First-tier to be dealt with since otherwise the Appellant would be denied a potential avenue of appeal if the Article 8 claim were to be dismissed.

8. I canvassed submissions as to whether the case should be remitted back to Judge Zahed. This was objected to by counsel for the Appellant because the Judge had made a number of adverse credibility findings in dismissing the Appellant's asylum appeal. The Presenting Officer was neutral on the matter. I decided that the case should be sent back for the Article 8 appeal to be dealt with but the decision in relation to the asylum claim would stand. There was no material error of law in the Judge's dismissal of the asylum appeal and I concurred with Judge Chohan's view for the reasons he gave. As the Appellant lived in East London, the balance of convenience lay in remitting the matter back to Taylor House (rather than Hatton Cross where the First-tier had heard the matter) to be heard by any Judge of the First-tier Tribunal except Judge Zahed on the first available date. I therefore so order.

**Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law in relation to the Appellant's claim under Article 8. I direct that the Article 8 only appeal be remitted back to the First-tier Tribunal to be heard afresh. The decision of the First-tier Tribunal to dismiss the Appellant's asylum appeal did not involve the making of a material error of law and that decision will therefore stand.

Appellant's appeal under Article 8 allowed to the limited extent stated above.

I make no anonymity order as there is no public policy reason for so doing, the Appellant's asylum appeal having been dismissed.

Signed this 24<sup>th</sup> day of August 2017

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Judge Woodcraft  
Deputy Upper Tribunal Judge