



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

Appeal Number: PA/00035/2017

THE IMMIGRATION ACTS

Heard at Field House

On 24 April 2018

**Decision &
Promulgated**

On 08 May 2018

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**JA
(ANONYMITY DIRECTION MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss. D. Ofei-Kwatia, Counsel, instructed by Kalam Solicitors

For the Respondent: Mr. I. Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Herbert, promulgated on 1 November 2017, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant asylum.
2. I have made an anonymity direction, given that this is an asylum appeal.
3. Permission to appeal was granted as follows:

“However it is arguable that the findings may be tainted by certain factual errors.

In determining credibility the Judge relies heavily upon the delay in claiming asylum. Although the dispute arose in March 2015, the threats arose in Feb/June 2016. The appellant is criticised for not reporting matters to the Manchester police [para 72] when in fact he had [24]. Further it is said that the Judge underestimated the number of references to the appellant in the documents supplied.”

4. At the hearing, following brief submissions from Mr. Jarvis in which he accepted that the credibility findings were “extremely problematic”, I set aside the decision and remitted the appeal to the First-tier Tribunal to be remade.

Error of Law

5. Mr. Jarvis referred to section G of the Respondent’s bundle, which contains emails between the Appellant’s witness, Mr. S, and the Manchester Police. Further, he referred to paragraph 43 of the Reasons for Refusal Letter in which the Respondent accepted that the documents showed that there was a land dispute in Bangladesh, and that the Appellant had been threatened. The Appellant’s evidence was that he made reports to the Manchester Police and he provided in his bundle emails evidencing the same.
6. I was referred to [72] of the decision. This states:

“Given the fact that Mr. KA is based in Manchester one would have expected at the very least there to have been matters that were sufficiently serious to report to the police given the importance the Appellant says that he has to this land dispute.”
7. Mr. Jarvis accepted that at [72] the Judge had mischaracterised the Appellant’s claim, given the documentary evidence found in the Respondent’s bundle at section G. This consists of emails between Mr. S and the Manchester police, which mention the Appellant. Mr. Jarvis accepted that the credibility assessment was infected by this error.
8. I find that the errors at [72] go to the heart of the Appellant’s claim as they relate to the threat to him. The fact that the Appellant and Mr. S had reported this to the police was evidenced in the Respondent’s bundle as well as in evidence from the Appellant. To criticise the Appellant for not doing something which the evidence showed that he had done clearly impacted on the Judge’s credibility findings. I find that this is a material error of law.
9. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party’s case to be put to and considered by the First-tier Tribunal. As the credibility findings are affected by this error, given the nature and extent

of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

10. There was a brief discussion at the end of the hearing regarding preservation of some of the findings in relation to the Appellant's witness. I declined to do so given the problems that can be caused by attempting to isolate findings in order to preserve some but not others. I note that the Respondent has accepted that the documents at section G, the emails between the witness and the police, are evidence that these threats have been reported. There is no dispute about this.

Notice of Decision

11. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside.
12. The appeal is remitted to the First-tier Tribunal to be remade.
13. The appeal is not to be heard by Judge Herbert.

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 his 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 2 May 2018

Deputy Upper Tribunal Judge Chamberlain