



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00647/2017

THE IMMIGRATION ACTS

Heard at Field House
On 7 September 2018

Decision & Reasons Promulgated
On 27 September 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

H A
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Franco instructed by Schneider Goldstein Immigration Law
For the Respondent: Mr N Bramble, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order in this appeal. The appellant will be referred to in these proceedings only as H A. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

1. The applicant appeals with permission against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse international protection under the Refugee Convention, humanitarian protection, or leave to remain

in the United Kingdom on human rights grounds and to set removal directions to his country of origin, Bangladesh.

2. The grounds for appeal are as follows:

- (i) The appellant complains that the judge declined to make an order for anonymity, in contravention of the Presidential Guidance given by the President of the FtTIAC in 2011 that all asylum appeals should be anonymised at case creation. The appellant asserts that the failure to anonymise his First-tier Tribunal appeal puts him at risk, but any risk to the appellant from the First-tier Tribunal decision is minimal as such decisions are not published. However, I consider it appropriate to make an order for anonymity in the Upper Tribunal, because the decisions we give are published;
- (ii) The appellant asserts that the judge made speculative findings based on his supposed intelligence and placed weight on his evidence concerning on his sexual orientation (he is either gay or bisexual on his account), although the appellant had specifically stated that he did not wish to rely on his sexual orientation in his asylum claim. It does appear that the sexuality issue formed part of the judge's assessment of his credibility;
- (iii) The appellant asserts that the Judge's Article 8 ECHR findings are inadequate. However, he has only ever been here as a student or an overstayer, and applying Part VA of the Nationality, Immigration and Asylum Act 2002 (as amended) the Article 8 claim was bound to fail, as under section 117B(4) and 117B(5), little weight could be given to his private life developed while he was here precariously or unlawfully;
- (iv) The appellant considers that the judge was not entitled to take into account the fact that he used an interpreter at the substantive hearing when before Judge Eldridge in 2015 he gave evidence in English;#
- (v) The appellant contends that *Tanveer Ahmed* was not properly applied in relation to the court documents and other original documents from Bangladesh based on the supposed failure of the authorities to prosecute other Odhikar activists involved with the appellant in the index events. That criticism is well-founded, because the document which appears at pages 59 to 61 of the appellant's bundle, indicates that all of the defendants received the same sentence, only the appellant's sentence being delayed pending his return to Bangladesh, because he had absconded. The judge dismissed the letter from Odhikar Human Rights Organisation because it did not mention the other convictions but the Odhikar Human Rights Organisation letter correctly reports the terms of the conviction;
- (vi) The appellant complains that the country background evidence has not been dealt with properly; and

- (vii) The appellant complains that the judge erred in saying that he had not produced medical evidence of his asserted injuries at the hands of the Awami League in March 2009. That is correct: medical evidence does appear in the bundle at pages 82 to 83 thereof.
3. Overall, the appellant contends that there is a lack of anxious scrutiny by the First-tier Tribunal. I note also that the judge failed to give himself the usual self-direction about the *Devaseelan* starting point which was the decision of Judge Eldridge in 2015 although it may be that the judge did give adequate reasons for departing from the credibility finding.
 4. Permission to appeal was granted by First-tier Judge P J M Hollingworth on the medical evidence point in particular and the *Tanveer Ahmed* point, either or both of which is capable of amounting to a material error of law.
 5. I am satisfied, for the reasons above, that the decision of the First-tier Tribunal contains a material error of law in that it lacks anxious scrutiny of documentary evidence and takes into account the appellant's sexuality, on which he expressly did not rely.
 6. The decision of the First-tier Tribunal will be set aside and re-made in the First-tier Tribunal with no findings of fact or credibility preserved.

DECISION

7. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed.

Signed: *Judith A J C Gleeson*
Upper Tribunal Judge Gleeson

Date: 25 September 2018