



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00895/2018

THE IMMIGRATION ACTS

Heard at Field House  
On 7<sup>th</sup> September 2018

Decision & Reasons Promulgated  
On 20 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

[R I]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jorro, Counsel

For the Respondent: Ms Kiss, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh born on 11<sup>th</sup> February 1992. The Appellant arrived in the UK on 24<sup>th</sup> May 2011 with leave to remain until 30<sup>th</sup> November 2014 as a Tier 4 General Student. A further application was made on 27<sup>th</sup> November 2014. Subsequent to that application consideration was made for leave to remain based on family and private life in January 2015 which was refused. Thereafter on 25<sup>th</sup> August 2015 the Appellant claimed asylum. The basis of the Appellant's claim is that in 2008 he joined the Islami Chhatra Shibir Party which is the student wing of Jamaat Islami and that in 2010 he was selected to become the general secretary for the party. Due to events that have happened subsequently thereafter his claim is that he fears ill-

treatment/persecution at the hands of the Bangladeshi Government and Awami League as a result of his membership and activity with the political opposition in the event that he returns to Bangladesh. The Appellant's application was refused by Notice of Refusal dated 10<sup>th</sup> January 2018.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Craft at Hatton Cross on 15<sup>th</sup> February 2018. Judge Craft in a very detailed decision dismissed the Appellant's appeal in a decision and reasons promulgated on 23<sup>rd</sup> April 2018.
3. On 8<sup>th</sup> May 2018 Grounds of Appeal were lodged to the Upper Tribunal. Permission to appeal was refused by Immigration Judge Foudy, 29<sup>th</sup> May 2018.
4. On 30<sup>th</sup> May 2018 renewed Grounds of Appeal were lodged to the Upper Tribunal. On 27<sup>th</sup> July 2018 Upper Tribunal Judge Rintoul granted permission to appeal.
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Mr Jorro. Mr Jorro has greatly assisted me by providing a detailed skeleton argument. The Secretary of State appears by her Home Office Presenting Officer, Ms Kiss.

### **Preliminary Issue**

6. There are several Grounds of Appeal raised and Judge Rintoul's grant of permission states

"I consider that it is arguable that initial Grounds 1, 2 and 5 are arguable. While there is less merit in the remaining grounds, permission is not arguable."

I am asked as a preliminary issue to determine how I view that sentence from Judge Rintoul. There is an approach properly adopted by judges and based on case law that unless within grant of permission there is a specific refusal to grant permission, then on the basis that other grounds have been granted permission that all grounds are arguable. My interpretation of Judge Rintoul's is consequently is that all grounds are arguable. It is perhaps appropriate to set out the grounds in question

- (i) that there is an error of law on future risk of persecution;
- (ii) that there has been a failure to take account of relevant considerations/evidence;
- (iii) that there has been a failure of the judge to consider the Appellant's inability to participate in the political process in Bangladesh in the future;
- (iv) that there is an error of law on the finding of the risks based on the Appellant's UK activities; and
- (v) that there are material errors of fact in the decision.

## Submissions/Discussions

7. Mr Jorro relies upon his skeleton argument which I have read and considered. He starts by advising me that it is accepted by the First-tier Tribunal that the Appellant was an active member of the student wing of Jamaat Islami and that he has been active in attending demonstrations, social media activity and in opposing false charges he contends were brought against him in 2013. However he points out that the Secretary of State in his Notice of Refusal gave a blanket rejection of credibility. He points out that there has been neglect in mentioning within the fact that it is recorded within the Appellant's witness statement that he had been beaten and I am referred to paragraphs 105 and 107 of the Appellant's asylum interview.
8. In the Notice of Refusal the Secretary of State has rejected on a "blanket level" the Appellant's credibility, accepting that he is a Bangladeshi national but otherwise rejecting his claimed membership of Shibir, that he has any political profile, that he was ever threatened or arrested or detained or been targeted in any way by the Government and the Secretary of State does not accept that the Appellant has any genuine and subjective fear on return to Bangladesh. At paragraph 44 of his determination the First-tier Tribunal Judge has recognised that the Appellant's credibility is central to determining this appeal.
9. However as Mr Jorro points out in clear contrast to the Secretary of State the First-tier Tribunal Judge accepted that the Appellant was the local secretary of Shibir, that he was threatened by political rivals and that he was arrested and detained in 2010. Where he considers there is a substantial and material error of law is the finding by the judge that the Appellant claims to have been beaten by the "Rapid Action Battalion" because the judge wrongly asserts that the Appellant has not raised this claim or allegation prior to the hearing and the judge finds it is inexplicable and therefore implausible that he would not have told the Secretary of State about this during his asylum interview.
10. To a certain extent the judge cannot be criticised here, in that he has relied on the Notice of Refusal. The error is to be found in the refusal letter where clearly the author of that letter has failed to consider the facts as set out fully by the Appellant. It is pointed out to me, that it is clear that the Appellant has raised the issues that he was beaten and such evidence has not been considered by the judge.
11. Ms Kiss accepts this position and concedes that that omission constitutes a material error of law. Such admission is very helpful to the development of this hearing.

## The Law

12. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

### **Submission on the Way Forward**

14. Where thereafter there is a difference of opinion between Mr Jorro and Ms Kiss is the approach that I am now asked to take. It is the submission of Mr Jorro that the First-tier Judge overall has made positive findings on the Appellant's credibility and that the unsustainable rejection by the First-tier Tribunal Judge of the Appellant's claim to have been beaten and physically tortured by the Rapid Action Battalion whilst in their detention prior to being handed over to the police and when set against the background evidence of political repression especially of the Jamaat-e-Islami and brutality in Bangladesh, the judge erred by actually not allowing the appeal on asylum grounds given his factual findings. He points out that there is an outstanding arrest warrant issued against the Appellant for what is clearly a false and politically motivated case in which he is described as a Shibir leader or activist and further that the Appellant has credibly demonstrated that he is at real risk of being persecuted on return for reasons of his political opinion. On that basis it is the submission of Mr Jorro that the appeal should be allowed outright and remade.
15. Ms Kiss rejects his approach, asks me to remit the matter, referring me in some detail to the findings of the judge at paragraph 47 of his decision, submitting that the Appellant knew there was another charge outstanding against him and still he failed to apply for asylum. Whilst noting that the First-tier Tribunal Judge may have found the delay to have been acceptable is she submits questionable and takes me to paragraph 54, and to the admission by the Appellant referred to in the First-tier Tribunal Judge's decision that he did not have a significant profile. It is Ms Kiss's contention that on rehearing, the decision of the First-tier Tribunal Judge may very well be reaffirmed.

### **Findings**

16. It is clear, as set out above, that there is a material error of law and the decision is consequently unsafe, in that all the factual evidence has not been properly considered

and it is quite possible that had it been so a different finding of credibility might have been reached. I acknowledge that a proper approach to credibility would require an assessment of the evidence and of the general claim and that in asylum claims relevant factors would be the internal consistency of the claim, the inherent plausibility of the claim and the consistency with external factors of the sort typically found in country guidance, but I acknowledge that the claimant need do no more than state his claim. Of course that claim would still need to be examined for consistency and in nearly every case external information would be available which could be checked. That would appear to be the facts in this case.

17. I consider that the correct approach is to remit this matter back to the First-tier Tribunal for rehearing. Whilst the fact remains the judge made credibility assessments without considering all the evidence, as Ms Kiss has pointed out there are areas that understandably still cause the Secretary of State to have considerable concern as to the overall credibility of the Appellant's testimony. It is only right in the interest of justice that all issues are reconsidered by another judge. In such circumstances the correct approach I believe in order to ensure fairness to both parties is for the matter to be remitted back to the First-tier Tribunal for a complete rehearing.

### **Decision and Directions**

18. I consequently give the following directions
  - (1) That on finding that there is a material error of law in the decision of the First-tier Tribunal Judge the decision of the First-tier Tribunal is set aside with none of the findings of fact to stand.
  - (2) The matter is remitted back to the First-tier Tribunal sitting at Hatton Cross on the first available date 28 days hence with an ELH of three hours.
  - (3) The appeal is to be before any Judge of the First-tier Tribunal other than Immigration Judge Craft.
  - (4) That there be leave to either party to file and serve an up-to-date bundle of such subjective and/or objective evidence upon which they seek to rely at least seven days prior to the restored hearing.
  - (5) That a Bengali interpreter do attend the restored hearing.
19. No anonymity direction is made.

Signed

Date 20/09/2018

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT  
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris