



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

Appeal Number: PA/04115/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 21st September 2018**

**Decision & Reasons Promulgated
On 25th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**[A C]
(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Miss S Vidyadharan (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Devittie, which was promulgated on 21st June 2018, following a hearing at Taylor House on 1st May 2018. In the determination, the judge appears to have dismissed the appeal on asylum grounds, but to have allowed it on human rights grounds, whereupon the Respondent Secretary of State subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Bangladesh who was born on 1st January 1991. The essence of his claim was that he was a member of the BNP since 2005 when he was approximately 14 years of age and that he had remained a member until he left Bangladesh in 2010. He had submitted, he claimed letters from the BNP testifying to his membership, and several photographs, suggesting that he had been involved in demonstrations organised by the BNP. He claims he was attacked in Bangladesh because he was a member of the BNP and sustained stab wounds and injuries.

The Judge's Determination

3. The judge heard evidence from an official from the BNP in the UK who, when asked if he knew the name of the Appellant staggeringly suggested that he did not know who the Appellant was. The judge also observed that the Appellant had no photos of his UK activities in the BNP before 14th August 2017, which was after he had made his asylum claim. He also had not made his asylum claim at the earliest opportunity.
4. The judge went on to conclude that the Appellant did not manifest a profile of a person who was an active member of the BNP. He did not even know what the 18 point programme of the BNP was. Moreover, it was not possible for the BNP to take on a member aged 14 on a one-off payment, as the Appellant claimed.
5. The judge also stated that:-

“A feature of the Appellant’s evidence that in my opinion significantly undermines the credibility of his claim to have been a BNP member, is that the BNP official that he called to give evidence at this hearing was asked by the Tribunal to give the Appellant’s name. He was given an adequate opportunity to gather his thoughts on the point but he failed to recall the name of the Appellant. In my opinion the only reasonable inference to be drawn is that the evidence of this witness that he has known the Appellant for a number of years, through his participation in BNP activities, is fabricated” (paragraph 11(4)).
6. The judge concluded by the observation that:-

“I struggled to find the reason why, amongst the several thousand members the BNP of his age, this Appellant should be singled out for persecution to the extent that almost eight years after his departure the Awami league would still seek to persecute him in targeting him individually. I cannot accept that there is anything at all in his past profile, that justifies a level of intensity of interest in him ...” (see paragraph 11(5)).
7. At the end of the determination the judge said that:-

“even if one takes the Appellant’s case at its highest, he would in my opinion fail to establish that it would not be reasonable to expect him to relocate to a place of safety beyond the reach of the Awami league and in particular those he claims are still after him” (see paragraph 13).

8. The judge’s last paragraph of the determination is that:-

“I am satisfied on the basis of the findings I have made, that the Awami league and the authorities would not manifest any adverse interest in this Appellant. He does not have any profile of any activities prior to his arrival in the UK ...” (paragraph 14).

9. Under the heading “Decision”, the judge then wrote “The appeal is dismissed on asylum grounds”. However, surprisingly there is then another paragraph, which appears in an altogether different font, which states “The appeal is allowed on human rights grounds”. It even goes on to make an anonymity direction in the same font. Even more surprisingly, after the judge has signed off his name, in the fee award section, the judge states “I have dismissed the appeal and therefore there can be no fee award”.

Grounds of Application

10. In the Grounds of Application, the Respondent states that the decision of the judge was “quite clearly an error as, until the decision, there was absolutely no indication that the judge intended to reach this conclusion. There are no findings to support it”. It goes on to say that since there is no provision in the Procedure Rules to make an application under the Slip Rule” the only recourse is to appeal the decision.

11. On 25th July 2018 permission to appeal was granted by the Tribunal.

Submissions

12. At the hearing before me on 21st September 2018, there was no attendance by the Appellant, and nor was there any representative available. I took time to ensure that notice of hearing had been served, on the correct address, and in the correct way.

13. I then asked the court usher to take steps to telephone the Appellant’s representatives to see if an explanation was forthcoming as to why no-one was in attendance.

14. The court usher returned some 30 minutes later with a fax dated 20th September 2018 which states that “Please note that the Appellant has not instructed us to represent him for the hearing scheduled for 21st September 2018. Nevertheless he would like to rely on the documents he has already provided”.

15. For her part, Ms Vidyadharan, appearing, as Senior Home Office Presenting Officer, on the Respondent's behalf, submitted that this was clearly an error, and the judge had never intended to allow the appeal, and the fact that there was a separate paragraph in a different font, only served to demonstrate that something had crept into the determination which was not intended for this particular decision. She asked me to make a finding of an error of law and to remake the decision.

Error of Law

16. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007), such that I should set aside the decision and remake the decision. My reasons are those set out in the Grounds of Application, and the grant of application. It is plain that there is nothing whatsoever in the body of the decision that suggests that the judge ever intended to allow this appeal. Everything suggests the contrary.
17. The judge consistently makes highly critical findings of fact against the Appellant, commenting upon the entirely reprehensible conduct on the part of the Appellant in adducing a witness, who does not even know the Appellant, as a BNP official, which is to say nothing of the fact that the Appellant himself produced oral evidence that the judge found to have been lacking in all credibility.
18. I find that the decision to allow the appeal "on human rights grounds", following as it does, the decision to dismiss the appeal "on asylum grounds", was an error of law, and this is manifested no less in the fact that in the fee award the judge makes it quite clear that "I have dismissed the appeal and therefore there can be no fee award".

Remaking the Decision

19. I have remade the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. I am dismissing the appeal of the Appellant for the reasons that were already set out by the judge in his determination.

Notice of Decision

20. The decision of the First-tier Tribunal involved the making of an error of law such that it should be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal of the Appellant is dismissed.
21. No anonymity direction is made.
22. The appeal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Juss

20th October 2018