



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/06690/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 23rd of March 2018**

**Decision & Reasons
Promulgated
On 13th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MR MASHUK MIAH
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Aslam of Counsel

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS FOR FINDING AN ERROR OF LAW

The Appellant

1. The Appellant is a citizen of Bangladesh born on 1st of July 1977. He appeals against a decision of Judge of the First-tier Tribunal Farrelly sitting at North Shields on 10th of August 2017. The Judge dismissed on the papers the Appellant's appeal against a decision of the Respondent dated 29th of June 2017 to refuse to grant the Appellant international protection.

2. The Appellant entered the United Kingdom in 2004 with entry clearance as an overseas domestic worker. He made a number of unsuccessful applications thereafter before finally applying for asylum in January 2016. It was the refusal of this application in June 2017 that gave rise to the present proceedings.
3. The Appellant's claim was that he came from a political family who had supported the Bangladesh National Party (BNP) and had been threatened by supporters of the rival party, the Awami League. He also claimed to have taken part in demonstrations in the United Kingdom. The Judge was not satisfied that the Appellant's claim was true being significantly influenced by the circumstances under which the claim was made namely that the Appellant was about to be removed.
4. The Appellant appealed against this decision arguing that any inconsistencies could be explained because he had a tendency to forget things when under pressure such as when he was interviewed by the Respondent. The current plight of BNP activists in Bangladesh was not understood.
5. Permission to appeal was granted by Judge of the First-tier Tribunal Parkes on 16th of November 2017 who found it arguable that Judge Farrelly had taken brevity too far in this case. There were no explicit findings on the consistency of the Appellant's accounts, the sur place claim barely obtained a mention at [14] and there were a number of typing errors which did not inspire confidence. It did not follow that the Appellant would eventually succeed but the decision merited further consideration. The Respondent did not reply to the grant of permission.
6. When the matter came before me counsel for the Appellant argued that the Judge was wrong to find at [10] that the Appellant was not mentioned on a number of documents from Bangladesh such as the First Information Reports in the Appellant's bundle. In fact, the Appellant was mentioned on each of them. For the Respondent it was conceded that [10] was not entirely clear. I indicated at the close of submissions that I found there was a material error of law and that I would remit the case back to the First-tier to be reheard with no findings preserved. There were no objections to this course of action. I now give my reasons for this course.

Findings

7. The difficulty in this case was that the Judge was dealing with the matter on the papers. It is not entirely clear why the Appellant opted to have his case determined on the papers, the box requesting a paper hearing was ticked on page 3 of Form IAFT-5. The assessment of credibility was inevitably going to be an important part of the case which would normally require the Appellant to give oral testimony and be cross examined thereon. Although there was reference to the Appellant being nervous, there appears to be no medical reason advanced as to why the Appellant was not prepared to give oral evidence. The case at 1st sight might not appear to be strong but it still required careful analysis even if

it was to be dismissed. The Appellant had a poor immigration record and the Judge's finding that the Appellant's claim for protection was only made because the Appellant was about to be removed was one potentially open to the Judge on the evidence.

8. The difficulty was that that appears to be the only reason the Judge found as to why he rejected the appeal. The analysis at [10] of the documentation from Bangladesh did not fully explain what the difficulties with the documents might be. The sur place claim was rejected in one sentence at [14]: "The suggestion he took part in demonstrations in the United Kingdom has not been developed". Arguably more needed to be said about that aspect of the claim if it was to be rejected.
9. I have some sympathy for the position that the Judge found himself in given the unusual course of events surrounding this appeal. Unless there is strong medical evidence indicating that the Appellant is unable to attend to give evidence, it will be essential for him to attend to be cross examined on his account on the next occasion. I therefore set aside the decision of the First-tier Tribunal and remit the matter back to the First-tier to be reheard by any Judge save Judge Farrelly, with no findings of fact preserved. The Appellant should file and serve a detailed statement at least 14 days before the next hearing setting out his case including his reasons why he delayed making an asylum claim for so long.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and I have set it aside. I direct that the matter be remitted back to the First-tier to be reheard.

Appellant's appeal allowed to that limited extent

I make no anonymity order as there is no public policy reason for so doing.

Signed this 5th of April 2018

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Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

No fee was payable and therefore there can be no fee award.

Signed this 5th of April 2018

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Judge Woodcraft
Deputy Upper Tribunal Judge