Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/07919/2017**

THE IMMIGRATION ACTS

Heard at Manchester **Decision & Reasons**
On 2 May 2018 **Promulgated**
On 9 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

HUSSAIN MUHAMMAD JAHANGIR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Moksud of International Immigration Advisory Service
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Knowles promulgated on 15 September 2017, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 20 February 1977 and is a national of Bangladesh. On 7 August 2017 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Knowles ("the Judge") dismissed the appeal against the Respondent's decision. The appellant lodged grounds of appeal, and on 22 November 2017 First-tier Tribunal Judge Chamberlain granted permission to appeal stating

> 3. I have carefully considered the decision. Although the section entitled "findings", is from [31] onwards, the Judge's findings on the events which led the appellant to claim asylum are contained in only three paragraphs, [35] to [37]. At [34] he states that if the appellant was attacked previously by the state, there will be a risk on return. However, his consideration of the core of the claim, and of this attack, consists of consideration of the documents [35], stating that the appellant has been inconsistent, but without examples or reasons, [36], and consideration of the time before he fled Bangladesh [37]. At [38] he states that he found core elements of the appellant's account not to be true, but does not give more detail.
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> 4. It is arguable that the decision is insufficiently reasoned. I extend time and grant permission.

The Hearing

5. (a) Mr Moksud moved the grounds of appeal. He told me that the Judge's decision is tainted by an inadequacy of reasoning and that the Judge did not properly consider the background materials. He focused on [34] to [39] of the decision and told me that the Judge has not properly analysed the evidence nor has the Judge explained where he found inconsistency. He told me that the Judge has not set out adequate credibility findings.

(b) Mr Moksud emphasised that the appellant has lived in the UK for more than nine years. He told me that the Judge's consideration of article 8 ECHR grounds of appeal is limited to [42] of the decision only, and is inadequate. He urged me to allow the appeal and to set the decision aside.

6. For the respondent, Mrs Aboni told me that the Judge had correctly directed himself in law and provides adequate reasons for finding that the appellant was neither a credible nor a reliable witness. She told me that from [35] the Judge considers the appellant's claim and rejects it. She told me that the Judge considered documents submitted by the appellant and found them not be genuine. She told me that that finding seriously undermines the appellant's credibility. She told me that the findings in relation to inconsistency and dishonesty are adequately set out. Mrs Aboni told me that the Judge made findings well within the range of reasonable findings available on the evidence presented. Mrs Aboni told me that at

[42] the Judge carried out an adequate proportionality assessment because the appellant did not submit evidence driving at article 8 ECHR grounds of appeal. She urged me to dismiss the appeal and allow the decision to stand.

Analysis

7. The respondent's decision was made on 7 August 2017. The appellant lodged his notice and grounds of appeal with the First-tier Tribunal on 17August 2017. The grounds of appeal refer to article 8 in generic terms only. In reality, the focus in the grounds of appeal is on the appellant's asylum claim. The appellant submitted additional grounds of appeal on 11 April 2017. Those additional grounds of appeal pursue the asylum claim and articles 2 and 3 ECHR. There is one paragraph about article 8 which is also in generic terms. The penultimate sentence of that paragraph says

> If she and her children are returned to Nigeria…

It is clear that sentence does not relate to this appellant.

8. The appellant's evidence came from his witness statement dated 13 September 2012. There is nothing in that witness statement which pursues article 8 ECHR grounds of appeal. Before the First-tier Tribunal the appellant's representative relied on a skeleton argument which addressed the asylum claim only.

9. At [42] of the decision the Judge records that the appellant does not claim that he has established article 8 family life in the UK, and that no evidence in relation to article 8 private life was led.

10. In Sarkar v Secretary of State for the Home Department [2014] EWCA Civ 195, the Court of Appeal indicated that, although Article 8 and section 55 were mentioned in the Notice of Appeal, where no evidence had been adduced or submissions made before the First-tier Tribunal to support a claim under Article 8 of the ECHR, it could be treated as abandoned. The Court of Appeal said that even if that was wrong where there was no evidential basis for the First tier Tribunal to find in the appellant's favour in those circumstances the Upper Tribunal could not be said to have erred in refusing to allow permission to appeal on that ground. Additionally, when re-making the decision following the grant of permission to appeal on an unrelated ground, section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007 did not require the Upper Tribunal to carry out a complete rehearing of the original appeal.

11. In BM (Iran) (2015) EWCA Civ 491 the Appellant sought to argue that the FTTJ failed to take into account the Respondent's policy against removal to Iran in the Article 8 exercise. The Court of Appeal held that the First-tier could not be said to have erred in law by failing to have regard to a point that was not raised before it. It was not an obvious point and there was nothing in the case law to alert the First-tier to it, let alone support it.

No evidential foundation had been laid down for it and the material before the First-tier did not even contain the policy on which the argument was based

12. The Judge's article 8 consideration is brief, but that reflects the evidence that was placed before the Judge. The Judge's record that article 8 was not pursued is accurate. There is no merit in the second ground of appeal.

13. The first ground of appeal is that the Judge's findings in relation to credibility, consistency, and delay in claiming asylum are inadequately reasoned. At [35] the Judge finds that the appellant relies on false documents. At [36] the Judge simply says that he finds that the appellant has been inconsistent in explaining how he knows who attacked him and he threatened him. The Judge does not explain why he finds the appellant's evidence is inconsistent, nor does he compare strands of evidence to demonstrate the inconsistency.

14. At [37] the Judge bemoans the lack of evidence to explain how the appellant was able to evade Awami League supporters between 2006 and 2008. At [38] the Judge finds that the appellant lied to the UK immigration authorities and produced false documents. In the first sentence of [39] the Judge finds that the appellant has not told the truth.

15. The difficulty is that the Judge's findings of fact are far too brief and do not contain adequate reasoning. Perhaps ironically, there is an inconsistency between the first sentence of [35] and the only sentence of [36] of the decision. Despite the fact that the Judge finds that the appellant's account has not changed, he finds that the appellant gives an inconsistent account.

16. The Judge summarises both the appellant's position and the respondent's position in 15 paragraphs between [8] and [23] of the decision, but the Judge's findings of fact are limited to 5 short paragraphs between [35] and [39] of the decision. The decision contains an inadequate analysis of the evidence and inadequate reasons for rejecting the appellant's account.

17. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

18. As the decision is tainted by material errors of law I must set it aside. I am asked to remit this case to the First -tier. I consider whether or not I can substitute my own decision, but find that I cannot do so because of the extent of the fact-finding exercise necessary.

Remittal to First-Tier Tribunal

19. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

> (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
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> (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

20. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re-hearing is necessary.

21. I remit this case to the First-tier Tribunal sitting at Manchester to be heard before any First-tier Judge other than Judge Knowles.

Decision

The decision of the First-tier Tribunal is tainted by material errors of law.

I set aside the Judge's decision promulgated on 27 September 2017. The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed Paul Doyle Date 8 May 2018

Deputy Upper Tribunal Judge Doyle