



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11007/2016

THE IMMIGRATION ACTS

Heard at Field House
On 2 March 2018

Decision & Reasons Promulgated
On 8 June 2018

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

AKM MASHFIQUE HUSSEIN CHOWDHURY
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Kerr, Counsel instructed by Karis Solicitors Ltd
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a national of Bangladesh, brings a challenge to the decision of Judge Ghani of the First-tier Tribunal dismissing his appeal against the decision made by the respondent on 4 October 2016 refusing his international protection claim.
2. The appellant relies on two grounds. The judge is said to have erred (1) in failing to consider the report provided by Azurist lawyers based in London and Dhaka; and (2) in failing to consider that as an absconder and someone facing serious criminal charges

the appellant was likely to be detained and subjected to prison conditions contrary to Article 3.

3. I will not rehearse the submissions I heard from Mr Kerr and Mr Duffy save to say that they addressed all pertinent issues.
4. I consider the appellant's grounds are made out.
5. Dealing with the first ground, in response to the decision of the respondent rejecting all the FIR evidence submitted by the appellant as unreliable in light of COI reports on documentation in Bangladesh, the appellant sent the said evidence to an organisation called Azurist who then carried out an investigation in Dhaka and sent a report entitled "Due Diligence and Authentication Report on Court Documents" dated 16 May 2017. The judge made reference to this in the following terms:

"The Appellant has submitted various documents in support of his claim. He has also obtained a report from Azurist to confirm the existence of these documents. The Country of Origin Information Report on which the Respondent relies in Paragraph 47 of the refusal, states that many false documents exist. It is relatively easy to verify these documents. It states the content of genuine documents is often questionable. The rampant corruption in various levels of the Government weakens the integrity and the credibility of officially issued documents. Forged and fraudulently obtained documents are readily available in Bangladesh and are frequently submitted in support of entry clearance applications. The Respondent submitted a report of fraudulent documents on Bangladesh covering period 2011 to 2015 which states 'it seems to be very easy to get access to several types of (fraudulent) documents. It has been noted that details of documents are often changed even though the documents have been issued by the Authorities. These documents have to be viewed in line with the principles in the case of **TANVEER AHMED 2002 UKAIT 00439.**'"

6. Two evident problems attach to the judge's treatment of the Azurist evidence. First, it is difficult to see anything in this paragraph that engages with the Azurist report. Specifically, it does not question the credentials of the authors or the methodology used or the reliability of the conclusions reached. Rather it simply disregards it by reference to the generic problem with documentation in Bangladesh identified in background COI. Second, if what the judge meant to say was that he was discounting the report, not because it was unreliable but because the court documents could still not be genuine (because details of documents are often changed, etc.), then it was incumbent on him to explain that. He failed to do so.
7. As regards the appellant's second ground, it relates to a finding made in the alternative: paragraph 37 begins "if his claim was to be believed". At first sight it seems not to have force because the judge's finding was that the appellant would not face detention because "he would probably set bail if he returns". On closer inspection however, the judge's reason for arriving at this assessment was that the appellant's family has links with the judiciary (paragraphs 37 and 34). Yet based on the appellant's

own account these family connections had not prevented the appellant's brother from being detained for 27 months and to be only released "because his medical condition had deteriorated greatly in detention." The judge at least needed to explain why he thought the appellant would get bail when his brother initially failed. Mr Duffy sought to argue that the fact that eleven years had elapsed since the brother's arrest would make it unlikely that the same treatment would be meted out to the appellant. However, that was an issue that needed to be considered by the judge but was not and unlike the brother, the appellant (if his story was true) would be returned as an absconder. Hence, despite citing **SH (Prison conditions) Bangladesh** [2008] UKIAT 00076, the judge did not effectively engage with the potential issue of whether detention pending bail made the detention unduly lengthy and/or oppressive in light of COI evidence.

8. Given that the judge's alternative findings at paragraph 37 are equally problematic as his approach to evidence and credibility assessment, I see no alternative to setting aside his decision for material error of law and remitting it to the FtT (not before Judge Ghani) for consideration de novo. The appellant is not to assume from this that he will necessarily succeed next time, but the failures of the judge in the decision before me entitle him to a further opportunity to make his case.

To conclude:

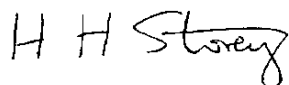
The decision of the FtT Judge is set aside for material error of law

The case is remitted to the FtT (not before Judge Ghani).

No anonymity direction is made.

Signed

Date: 7 June 2018



Dr H H Storey
Judge of the Upper Tribunal