



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

Appeal Number: PA/12219/2017

THE IMMIGRATION ACTS

Heard at Field House

On 4th October 2018

Decision & Reasons

Promulgated

On 19th October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**JH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. M. K. Islam, Taj Solicitors

For the Respondent: Ms. A. Everett, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Henderson, promulgated on 2 July 2018, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant asylum.
2. As this is an asylum appeal I make an anonymity direction.
3. Permission to appeal was granted as follows:

“It is arguable that the Judge has attached insufficient weight to the available evidence in relation to the chronology of events affecting the Appellant giving rise to the claimed fears and the chronology in relation to reference to such fear on the part of the Appellant. At paragraph 38 of the decision the Judge refers to a verification report. It is unclear what burden and standard of proof has been applied in the context of paragraphs 38 and 39 of the decision. At paragraph 35 of the decision the Judge has referred to the waiver by the Appellant of legal professional privilege. It is unclear whether this was a complete or partial waiver. At the conclusion of paragraph 35 of the decision the Judge states that the Appellant did not explain why his solicitors had advised him not to claim asylum at that stage. In the light of the significance of that it is unclear whether the Judge, having explained legal professional privilege, sought clarification as to the extent of disclosures by the Appellant in relation to the extent of the waiver of legal professional privilege. It is arguable that an analysis in relation to the existence or otherwise of very significant obstacles has been affected.”

4. At the hearing, following submissions from both representatives, I stated that I found that the decision involved the making of a material error of law. I gave brief reasons for my decision which I set out in full here. I set the decision aside and remitted the appeal to the First-tier Tribunal to be reheard.

Error of Law

5. As I stated at the hearing, I will focus in my decision on the issues raised by the consideration of the documents at paragraphs [37] to [39] and, in association with that, on the findings at [49].
6. At [37] the Judge considers the charge sheet and court documents. He states:

“37. The charge sheet and court documents naming the appellant as the fourth defendant were in RB at sections E and F. These show a charge sheet dated 20 July 2016 which relates to the incident on 30 March 2016 relating to the discovery of weapons and ammunition at the appellant’s father’s premises. The appellant said that he had obtained these documents from a friend.

38. The respondent produced a Verification Document (RB-K1-2) dated 30 October 2017 from the British High Commission in Dhaka. This reported a site visit to the Sreemangal Police Station Moulvibazar. This noted that an officer at the Police Station located the register and manually searched the records and confirmed that the Charge Sheets and the dates in the register did not match the documents submitted by the appellant. The High Commission representative was also allowed to check the register himself.

39. In the light of the evidence submitted by the respondent I can place no reliance on the Charge Sheets and other court documentation presented by the appellant. There is no evidence to support the appellant’s statement that he is wanted by the Police in Bangladesh.”

7. In her submissions Ms. Everett accepted that this challenge to the decision had greater merit, first because there was no formal direction regarding the burden and standard of proof, and secondly there was no assessment of the Appellant's rebuttal.
8. The Judge states at [37] that the Appellant said that he obtained these documents from a friend. However, the Judge has given no consideration to the Appellant's evidence as set out in his witness statement as to what he did after receiving the reasons for refusal letter. At [20] of his statement it states:

"In relation to the documents that I provided in relation to my claim, the Respondent raised an issue that the documents are not genuine. The Respondent claimed that an officer from British High Commission, Dhaka had visited Shreemongal Police Station on 10/10/2017 and verified the documents; and produced [a] report that the documents are false. I would like to inform the learned judge that firstly I had no control over documents. After my screening interview, I contacted the solicitor in Bangladesh and requested him for copies of the cases filed against me and my family. He said he will get it for me. After some time he sent me the documents by post which I gave to the Respondent. I did not verify the documents with any other officials in Bangladesh until the Respondent raised issues. Further to the Respondent's decision, I requested one of my friends to query about the cases and the documents. He went to the Shreemongal Police Station and spoke to the officer in charge, Mr KI, who confirmed that no one from British High Commission has visited or enquired about me or the cases on that day or any later dates. Mr I has provided a letter confirming that they do have record of the cases in their police station. He could not provide an official letter as the request was made unofficially; however, he confirmed that if any official organisation (like the Respondent) make a formal request, they can provide the same on their letter head page. I invite the Respondent to commence further verification or demand for the letter/evidence if they still have doubts regarding the genuineness of the cases and documents. I confirm the learned Judge that I have done my best to defend the Respondent's allegation and to establish my situation."

9. The Appellant provided the letter from KI (page 27 of the Appellant's bundle). This is addressed To Whom It May Concern and states as follows:

"This is to certify that Mr. JH, Date of Birth 04/12/1991, S/O: SH, Vill: Birahimpur, under Sreemangal police station, Dist: Moulvibazar, One G.R case (police case) no 15/16 is pending to honorable chief judicial Magistrate court of Moulvibazar. Accused JH is an absconder. Therefore, honorable chief judicial Magistrate court of Moulvibazar issued a warrant which is pending in our Sreemangal police station."
10. The letter is signed and the stamp underneath states KI, BP No-8102024648, Officer in Charge, Shreemongol Police Station, Moulvibazar."

11. There is no reference in the decision to the Appellant's evidence as set out in his witness statement, or to the letter from KI. I find that the Judge has considered the Respondent's evidence at [38] but has not considered the evidence provided by the Appellant in rebuttal.
12. Further, when considering the Respondent's evidence, I find that the Judge has made no reference to the burden or standard of proof applicable when the Respondent alleges that a document is false. There is no detailed examination of the DVR, and no assessment of whether, by its production, the Respondent has met the required burden of proof on him to show that the document is false. This failure is especially significant given that the Appellant attempted to rebut the allegation and produced evidence in support which the Judge did not consider.
13. It was submitted by Ms Everett that, although this error went to the credibility assessment, this particular issue had been addressed by the Judge "in the alternative" at [49], and therefore was not material. This states:

"The newspaper reports referred to people named SH and JH being cited as defendants - but the charge sheets produced by the appellant were not verified by the British High Commission Report and I place no reliance on those Court documents. Even if the appellant were listed as a defendant, he could establish that he was in the UK at the time of both the alleged offences, and would be able to defend himself against those charges. The appellant said that this was not possible as there was no law and order in Bangladesh. The Home Office Fact-Finding Report of September 2017 noted that there was some corruption in the judiciary but that it was at the higher end and that anti-corruption initiatives were improving. The appellant has not shown (on the lower standard of proof) that he would be unable to defend the claims against him."
14. Ms Everett submitted that, even if the Judge had not properly considered the documents at [37] to [39], he had found that the Appellant would be able to defend himself with reference to the fact-finding report. She accepted that it may be difficult to ringfence credibility findings, but submitted that there were no flaws in the consideration at [49] where the Judge had dealt with this particular issue of credibility in the alternative.
15. However, I find that at [49] the Judge has again failed to consider the evidence which was before him. While I accept that he found that the Appellant would be able to defend himself against the charges as he was in the United Kingdom at the time, the Appellant countered this by saying there was no law and order in Bangladesh. The Judge's finding that he would be able to defend himself in the courts is based only on the Home Office fact-finding report of September 2017. While this is relevant evidence, as was pointed out by Mr. Islam, the Appellant had provided much more evidence regarding the situation in Bangladesh, the problems with law enforcement and the problems with corruption and the judiciary.

16. I was referred to the written submissions (pages 3 to 12 of the Appellant's bundle). I find that these show that the Judge was referred to the background evidence found in the Appellant's bundle from page 64 onwards. At pages 4 to 8 of the written submissions are references to the background evidence, with particular paragraphs quoted. This includes, inter alia, the Home Office Country Policy and Information Note of January 2018 and the Odhikar Human Rights Monitoring Report.
17. I find that the Judge has not carried out a proper assessment of the evidence when he finds that the Appellant would be able to defend the claims made against him in Bangladesh. There is reference only to one part of the background evidence. I therefore find that [49] is not an adequate answer to the Judge's failure to properly deal with the court documents and court proceedings.
18. I find that the credibility findings cannot stand, as there is an error of law in the consideration of the charge sheet and court documents, with reference to the evidence provided by the Appellant.
19. Given that I have found that the decision involves the making of a material error of law, I do not need to consider further the other grounds of appeal.
20. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. I have found that the credibility findings cannot stand, and therefore given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Notice of Decision

21. The decision involves the making of a material error of law. I set the decision aside.
22. The appeal is remitted to the First-tier Tribunal.
23. The appeal is not to be listed before Judge Henderson.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 15 October 2018

Deputy Upper Tribunal Judge Chamberlain