



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

Appeal Number: PA/05442/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 October 2019**

**Decision & Reasons Promulgated  
On 18 October 2019**

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

**Z. A.  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No attendance

For the Respondent: Mr. I Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal against a decision of First-tier Tribunal Judge Griffith ('the Judge') issued on 26 July 2019 by which the appellant's appeal against a decision of the respondent to refuse to grant him international protection was dismissed.
2. Judge of the First-tier Tribunal Murray granted permission to appeal on all grounds. I shall address the contents of this grant in more detail below.

## **Anonymity**

3. The Judge did not issue an anonymity order. This is a matter in which the appellant has sought asylum. I am mindful of Guidance Note 2013 No 1 concerned with anonymity orders and I observe that the starting point for consideration of anonymity orders in this chamber of the Upper Tribunal, as in all courts and Tribunals, is open justice. However, I note paragraph 13 of the Guidance Note where it is confirmed that it is the present practice of both the First-tier Tribunal and this Tribunal that an anonymity order is made in all appeals raising asylum or other international protection claims. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('the 2008 Rules') I make an anonymity order in the following terms:

'Unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any formal publication thereof shall directly or indirectly identify the appellant. This direction applies to amongst others the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings and I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim being known to the public.'

## **Hearing of Appeal in the Absence of the Appellant**

4. The Tribunal received a letter from Winston Rose Solicitors, dated 4 October 2019, in which it was confirmed that they were without instructions and wished to come off the Tribunal record. Efforts were made by the Tribunal on the morning of the hearing to ascertain as to whether the appellant intended to attend the hearing. A member of the Tribunal staff contacted the appellant by telephone at approximately 10.25 in the morning. The appellant stated that according to a letter he had received a letter from the Home Office his appeal had been listed in error. He was not coming to the hearing and he confirmed that he was content for the matter be decided by the Judge. Upon inspection of the file it is much more likely than not that the appellant is referring to the Rule 24 letter issued by the respondent, dated 13 September 2019, in which it is observed that there was a likelihood that permission to appeal had been accidentally granted by a slip of the pen.
5. I considered Rule 38 of the 2008 Rules when assessing the appropriateness of continuing the hearing in the absence of the appellant. I was satisfied that the appellant was notified of the hearing as his previous solicitors confirmed that they were aware as to it having been listed when seeking to come off record. This evidences that they received the notice of hearing on the appellant's behalf. I further considered that it was in the interests of justice to proceed with this hearing as the respondent ensured that she had taken steps to be represented, and Mr

Jarvis confirmed that he was ready to proceed. I further observed that the appellant had consented for this matter to be decided in his absence. In such circumstances I confirmed at the hearing that I would proceed in the appellant's absence.

## **Background**

6. The appellant is a national of Bangladesh and is presently aged 37. He entered this country unlawfully in 2000 with the assistance of an agent. In 2005 he applied for indefinite leave to remain outside of the Immigration Rules. The respondent refused the application and the appellant's appeal was dismissed on 7 October 2008.
7. On 14 October 2015, he made an application for leave to remain on human rights (article 8) grounds relying upon his private life rights. The application was refused by way of a decision dated 22 February 2016 and was certified by the respondent as being clearly unfounded under section 94 of the Nationality, Immigration and Asylum Act 2002. Preparations were made for the applicant's departure from this country, but he failed to report and was considered to have absconded as of 22 March 2016.
8. The appellant applied for asylum on 7 November 2017. He detailed two reasons for seeking international protection. Firstly, he asserted a fear of ill-treatment at the hands of the brother of a former girlfriend from whom he had split in 2001. He further relied upon his having joined the Bangladesh National Party ('the BNP') whilst present in this country in 2016. He confirmed that his political activities had been revealed to persons in Bangladesh through Facebook postings, leading to members of his family being threatened. The respondent refused the claim by way of a decision dated 24 May 2019.

## **Hearing Before the First-tier Tribunal**

9. The appeal came before the Judge sitting at Taylor House on 8 July 2019. She found the appellant to be incredible as to his stated history and dismissed the appeal. In reaching this decision she relied, in part, upon the appellant's history. At [68] she reasoned:

*'I consider the appellant's immigration history is relevant to the assessment of his credibility. He only claimed asylum when he knew he was going to be removed and had absconded. His immigration history shows that he failed to leave the UK after attempting and failing on more than one occasion to secure leave under the rules or the ECHR. I find he claimed asylum when he did in order to delay his removal and for no other reason. I find the delay and the circumstances in which he claimed asylum are damaging to his credibility. I note that in previous applications he stated that he came*

*to the UK in order to improve his education and for a better life. I also note that in the 2008 appeal the judge made very serious adverse credibility findings against him.'*

10. As to the appellant's involvement with the BNP the Judge reasoned at [65]:

*'I also find his grasp of the party's aims, given his claim to have been a member for three years and an active participant, to be very weak. Both in his interview and oral evidence he was only able to give the most general information about the aims of the party, which is available in the public domain. Also, none of the letters of support (all recently dated) from individuals who claim to be his friends make any mention of his membership of, or association with, the BNP UK. I am not, therefore, satisfied he is a member of the BNP UK as claimed.'*

11. The Judge further reasoned as to the asserted fear from the ex-girlfriend's brother, at [66] - [67]:

*'The appellant also relied on his fear of reprisals from the brother of a former girlfriend with whom he was in a relationship when he was in his teens and to whom he has not spoken since 1998. His claim that he would be at risk from the brother seventeen years after his last telephone conversation with his former girlfriend in 2001 is not credible. His evidence regarding the brother is rather vague and contradictory in that he said in interview that he did not speak to the brother but that he had threatened to beat him if he continued the relationship and warned him not to go to school with her.*

*It is also surprising that he would put his former girlfriend's safety at risk by continuing to telephone her from the UK when her brother was present. He claimed that her brother would take the telephone, tell her off and beat her. Even if at its highest I am prepared to accept that he was friends with a girl of his own age which did not meet with the approval of her family, I do not accept, given the passage of time and the appellant's absence from the country, that the brother poses any risk to him. Furthermore, there is no evidence that the brother is associated with the student wing of the Awami League and in a position where he can exert influence over the party or over the police.'*

## **Grounds of Appeal**

12. The grounds of appeal are confusingly drafted. Paragraph numbers are non-sequential, and it is difficult to identify when one ground concludes and the next one commences. The drafting style suggests the use of a template for sections of the grounds with bald assertions being made in the absence of any express reference to the decision itself. Such approach to the drafting of grounds of appeal as adopted by Winston Rose Solicitors

is inappropriate and has the effect of diminishing the quality and efficiency of justice in immigration and asylum work.

13. Seven grounds of appeal are identified:

- (i) The Judge erred at [64] of the decision and reasons in requiring corroboration of the appellant's membership of the BNP.
- (ii) The Judge erred at [65] in failing to identify what questions if any the appellant was unable to answer about his association with the BNP.
- (iii) The Judge erred at [66] in failing to provide any or any adequate reasoning as to the rejection of the appellant's evidence contrary to *MK (duty to give reasons) Pakistan* [2013] UKUT 00641 (IAC).
- (iv) The Judge applied the wrong standard of proof.
- (v) The Judge failed to consider the case in the round.
- (vi) The Judge erred in '*failing to consider that the appellant's return would trigger the adverse interest in him by the girlfriend's brother and that the only reason that the interest is dormant is because the appellant is not within reach.*'
- (vii) The Judge failed to apply the low threshold as to the risk on return.

14. Judge of the First-tier Tribunal Murray granted permission to appeal. However, her reasoning confirms her actual intention had been to refuse to grant permission as can be observed at [2] and [3]:

*'The grounds assert that the Judge erred in requiring corroboration of the Appellant's membership of the BNP; failing to refer to the Appellant's witness' evidence; failing to provide adequate reasons; failing to take relevant factors into account and applying the wrong standard of proof and making findings on an erroneous basis.*

*There is no arguable error in the decision of the First-tier Tribunal. The Judge found at paragraph 64 that there was no satisfactory explanation as to why evidence had not been produced in circumstances where on the Appellant's account such evidence existed. The Judge gave adequate reasons at paragraphs 64 to 70 for finding that the Appellant's account was not a credible one and took all relevant evidence into account. There is no misdirection as to the standard of proof.'*

15. In the circumstances arising in this matter, as permission was stated as 'granted' in the Tribunal's standard document and there were no words of limitation the appellant is entitled to argue all grounds before the Tribunal.
16. A Rule 24 response was filed by the respondent and details at [2]:

*'The respondent opposes the appellant's appeal. It is clear from the reasons for decision that First-Tier Tribunal Judge Murray intended to refuse permission to appeal, and that the header 'Permission to Appeal is Granted' is a slip of the pen. Paragraph 3 of the reasons states that there is no arguable error, the judge gave adequate reasons for finding that the appellant's account was not credible, took all relevant evidence into account and that there is no misdirection as to the standard of proof.'*

### **Decision on Error of Law**

17. The grounds concerned with the application of the standard of proof and consideration of the case in the round, namely grounds (iv), (v) and (vii), have been drafted in a template nature and do not seek to specify where such error is said to arise within the decision. Upon careful consideration of the Judge's reasoning it is clear that these grounds have no meritorious basis.
18. As to the issue of corroboration, the appellant asserts that [64] of the decision provides clear evidence that the Judge required him to provide corroboration as to his membership of the BNP contrary to paragraph 339L of the Immigration Rules, and further having made this decision at the outset of her findings the Judge allowed this requirement to infect the remaining assessment and so she operated with a closed mind. It is well established that it is a misdirection to imply that corroboration is necessary for a positive credibility finding, however upon considering [64] it is clear that the Judge does not adopt this erroneous approach. She does not assert that without providing corroborating evidence the appellant could not succeed. Rather she comments that documents that could reasonably be expected to be produced had not been. A Judge is not required to leave out of their assessment the absence of documentary evidence which could reasonably be expected and is relatively easy to secure: *ST (Corroboration - Kasolo) Ethiopia* [2004] UKIAT 00119. The Court of Appeal held in *TK (Burundi) v Secretary of State for the Home Department* [2009] EWCA Civ 40; [2009] Imm AR 488 that where there are circumstances in which evidence corroborating the appellant's evidence was easily obtainable the lack of such evidence must affect the assessment of the appellant's credibility. It follows that where in assessing the appellant's credibility the Judge relied on the fact that there was no independent supporting evidence provided by the appellant that was easily obtainable and there was no credible account for its absence, she

committed no error of law when relying on that fact when rejecting the account of the appellant.

19. The appellant complains that at [65] the Judge failed to identify what if any questions he was unable to answer as to his association with the BNP. This is not an accurate reflection of the Judge's reasoning. She did not assert that the appellant was unable to answer questions correctly. Rather, she made a lawful evaluative judgment as to the limited general knowledge possessed by the appellant as to the aims and structure of the political party that he claimed to be active with. The appellant was made aware by the respondent by means of the decision letter that he was deemed to have provided poorly detailed answers as to his political involvement with the respondent observing *'your answers were vague and given your claimed membership it is considered reasonable to expect a level of detail when describing your motivation for joining the political party.'* The Judge was lawfully entitled to assess the evidence presented to her and to observe that it possessed a general quality reflecting information available in the public domain and did not exhibit the detailed knowledge expected of a political activist, a status the appellant asserted he held. She gave cogent and lawful reasons for her findings. There is no merit in this ground of challenge.
20. In all of the circumstances, though concise, the Judge's reasoning provides lawful reasons as to why the appellant's evidence was rejected. Clear reliance was placed upon his poor immigration history and the significant delay in claiming asylum. The Judge was entitled to assess the vague account provided in circumstances where the burden rested upon the appellant not only to establish his claim on political grounds but also to explain why the brother of an ex-girlfriend continued to hold significant hostility towards him some twenty years after the relationship had come to an end and seventeen years after he had last spoken to the brother. There are no merits in grounds (iii) and (vi).

### **Notice of Decision**

21. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
22. The decision of the First-tier Tribunal is upheld.
23. An anonymity order is made.
24. The appeal is dismissed.

Signed: **D. O'Callaghan**  
**Upper Tribunal Judge O'Callaghan**

Date: 15 October 2019

**TO THE RESPONDENT**  
**FEE AWARD**

The appeal is dismissed and no fee award is payable.

Signed: **D. O'Callaghan**  
**Upper Tribunal Judge O'Callaghan**

Date: 15 October 2019