



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/09480/2018**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 17 April 2019

**Decision & Reasons
Promulgated**

On 1 May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**MRA
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Harvey (counsel) instructed by Duncan Lewis & Co, solicitors

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

DECISION AND REASONS

1. To preserve the anonymity order deemed necessary by the First-tier Tribunal, I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge C Burns promulgated on 22/01/2019, which dismissed the Appellant's appeal

Background

3. The Appellant was born on 10/06/1979 and is a national of Bangladesh. On 19/07/2018 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 C Burns ("the Judge") dismissed the appeal against the Respondent's decision.

5. Grounds of appeal were lodged and on 22/03/2019 Upper Tribunal Judge Kamara granted permission to appeal stating, *inter alia*,

"It is arguable that the Judge failed to make findings on a material matter, specifically whether court documents could be relied upon, in line with the expert evidence to that effect. Secondly, the Judge arguably failed to adequately evaluate the expert's claim that the person who prepared the respondent's document verification report, in relation to the FIR, attended the wrong police station."

The Hearing

6. (a) For the appellant, Ms Harvey moved the grounds of appeal. She told me that this case turns almost entirely on consideration of documents. Two of the documents are newspaper articles, the third document is an FIR and the fourth document is an arrest warrant. The evidence before the Judge included of evidence two experts, yet the Judge preferred evidence from the respondent's DVR. Ms Harvey told me that the Judge's consideration of the expert evidence was flawed and does not follow the guidance given in Mbanga v SSHD [2005] INLR 377. She told me that the Judge's decision to prefer the respondent DVR is unsafe and unsustainable.

(b) Mr Harvey told me that there is an evident conflict in the Judge's decision when the last sentence of [8] of the decision is compared with the Judge's finding at [28]. She told me that the finding at [28] is wrong. Ms Harvey produced correspondence from the respondent to the appellant's solicitors, dated 17 September 2018, which confirms that the respondent holds the original 24 pages of the FIR report produced by the appellant at interview. In addition, letters of 24 and 25 September 2018 from the respondent confirm that the respondent holds the original newspaper clippings.

(c) Ms Harvey took me through the respondent's documentation verification report and compared what is contained there with the expert reports relied on by the appellant. She then took me to [64] of the

decision and told me that the Judge does not reconcile the accepted fact that the author of the document verification report went to the wrong police station to examine records of FIR. Ms Harvey relied on the guidance given in both Mbanga v SSHD [2005] INLR 377 and Tanveer Ahmed (Starred) 2002 UKIAT 00439.

(d) Ms Harvey asked me to set the decision aside and remit this case to the First-tier Tribunal to be determined afresh.

7. Mr Walker told me that, having received confirmation that the respondent holds the original documents, he could no longer defend the decision and that [64] of the decision contains a clear error of law. He joined with Ms Harvey in asking me to set the decision aside and to remit this case to the First-tier Tribunal for a *de novo* hearing.

Analysis

8. At paragraph 24 of Mbanga v SSHD [2005] INLR 377 Wilson LJ said "What the fact finder does at his peril is to reach a conclusion by reference only to the applicant's evidence and then, if it be negative, to ask whether the conclusion should be shifted by the expert evidence."

9. The appellant relied on two expert reports. Between [38] and [41] the Judge summarises Dr Amundsen's report. In the final sentence of [40] the Judge focuses on Dr Amundsen's narration that there are many forged letters confirming party membership & many forged FIRs to be found in Bangladesh. Between [42] to [45] of the decision the Judge considers the report prepared by Dr Hoque. In his report, Dr Hoque finds that the documents relied on by the appellant are genuine and that the document verification report relied on by the respondent is fundamentally flawed because, to check the records of FIR, the author of the document verification report visited the wrong police station.

10. The Judge considers the document verification report produced for the respondent between [46] and [48].

11. At [64] the Judge is critical of Dr Amundsen's conclusion, incorrectly saying that Dr Amundsen had not considered whether or not the documents examined could have been produced as a package of fraudulent documents. There is an unresolved conflict between the second, third and fourth sentences of [64].

12. Both parties now agree that the appellant has produced original documents which are still in the hands of the respondent. The existence of the original documents undermines the Judge's findings at [64]. The Judge's analysis of the expert reports is incomplete. The Judge's findings in relation to the DVR at [64] are inadequately reasoned

13. The Judge starts [65] with a bold statement that she prefers the respondent's DVR evidence. That bold statement is not adequately

reasoned. The Judge does not properly explain why she rejects the evidence of two experts, so that the Judge's findings at [64], [65] and [66] contain material errors of law.

14. Parties agents agree that the Judge's findings at [64], [65] and [66] are unsafe and should be set aside. Because the Judge's decision contains material errors of law I set it aside. I consider whether or not I can substitute my own decision. There was an inadequacy of fact finding in the First-tier Tribunal. I find that none of the First-tier Judge's findings of fact can be preserved. One of the central issues in this case is whether or not the appellant faces politically motivated prosecution. That is a question which cannot be answered without further evidence and clear fact-finding. I am asked by both parties' agents to remit this case the First-tier Tribunal. The material error of law in the decision relates to an inadequacy of fact finding. I cannot substitute my own decision. A further fact-finding exercise is necessary.

Remittal to First-Tier Tribunal

15. 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
- (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.

16. 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.

17. I remit the matter to the First-tier Tribunal sitting at Birmingham to be heard before any First-tier Judge other than Judge C Burns.

Decision

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**mulgated on 22 January
First-tier Tribunal to be**

Signed

Date 25 April 2019

Deputy Upper Tribunal Judge Doyle