Upper Tribunal

(Immigration and Asylum Chamber) **Appeal Number: PA/14333/2018**

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 2 September 2019	**On 4 September 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

SHOFIQUE AHMED JAKARIA

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hossain of counsel

For the Respondent: Mr McVitie Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

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 Boylan-Kemp promulgated on 1 May 2019, which dismissed the Appellant's appeal against the refusal of a protection claim on all grounds.

3. Grounds of appeal were lodged arguing that the Judge made factual errors in relation to the date the Appellant joined the BNP; the Judge placed insufficient weight on the Appellants witness statement; he did not indicated the standard of proof he applied ; failed to allow for the impact of the passage of time on his recollection of events; failed to take into account the medical evidence and his Article 8 assessment was inadequate.

4. On 4 July 2019First tier Tribunal Judge Keane gave permission to appeal.

5. At the hearing I heard submissions from Mr Hossain on behalf of the Appellant that he relied on his grounds of appeal; the Judge simply rejected wholesale the Appellants account; he applied the wrong standard of proof; there was a factual error in the decision and he failed to take into account the Appellants length of residence in the proportionality assessment.

6. On behalf of the Respondent Mr McVitie submitted that the Judge applied the correct burden and standard of proof ; the weight he gave to the evidence was a matter for him; the medical evidence from his GP appeared to be manufactured for the purpose of the claim and finally having found numerous inconsistencies the Judge was entitled to reject the asylum claim. In relation to Article 8 there was no evidence of his private life in the UK other than his presence for 14 years. There was no evidence of what he had done other than work illegally.

7. In reply Mr Hossain on behalf of the Appellant submitted that the Article 8 assessment was incomplete.

Law

8. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or

evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

9. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him.

10. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration. In Mibanga v SSHD [2005] EWCA Civ 367 Buxton LJ said this in relation to challenging such findings:

> "*Where, as in this case, complaint is made of the reasoning of an adjudicator in respect of a question of fact (that is to say credibility), particular care is necessary to ensure that the criticism is as to the fundamental approach of the adjudicator, and does not merely reflect a feeling on the part of the appellate tribunal that it might itself have taken a different view of the matter from that that appealed to the adjudicator."*

11. As to the duty to give reasons I take into account what was said by the Court of Appeal in MD (Turkey) [2017] EWCA Civ 1958 at paragraph 26:

> *"The duty to give reasons requires that reasons must be proper, intelligible and adequate: see the classic authority of this court in Re Poyser and Mills'*

Arbitration [1964] 2 QB 467. The only dispute in the present case relates to the last of those elements, that is the adequacy of the reasons given by the FtT for its decision allowing the appellant's appeal. It is important to appreciate that adequacy in this context is precisely that, no more and no less. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons is, in part, to enable the losing party to know why she has lost. It is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case some error of approach has been committed."

Finding on Material Error

12. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

13. In suggesting that the Judge's overall approach to the evidence was flawed the grounds identify one factual mistake made by the Judge, that he records that the Appellant claimed that he joined the BNP in 1968 as one of three dates he gave for this event which is a clear error as he was born in 1969. Counsel was unable to identify any other error made by the Judge that may have impacted on his findings or reflected an absence of anxious scrutiny: given the number of adverse credibility findings in the decision as a whole I am satisfied that this one error of fact could not have made a difference and does not fairly reflect the careful and detailed analysis made by the Judge.

14. The decision is challenged that the Judge gave insufficient weight to the Appellants witness statement. The Judge of course recorded that he had been provided with a witness statement from the Appellant as part of the bundle (paragraph 8) but he heard oral evidence from the Appellant who started by adopting that statement (paragraph 11). The Judge has clearly taken into account as he must the totality of the Appellants evidence, not just his written statement, in assessing his claim and reaching the various adverse findings he made giving what weight he felt appropriate to that evidence.

15. It is argued that the Judge '*did not exactly indicate which standard of proof he applied'*. This is manifestly incorrect as the Judge sets out at paragraphs 5-7 the legal framework and explicitly set out the burden and standard of proof that is applicable in each of the issues he was required to determine and he was not required to repeat it in respect of each and every finding he made. Mr Hossain was unable to identify for me any example of where this standard had not been applied to the evidence before him. Mr Hossain appeared to conflate this with weight which is of course a matter for the Judge.

16. The Judge is criticised that failing to take into account the passage of time since the events described may have had an impact on his recollection and explained the inconsistencies identified by the Judge. The Judge set out this argument as made by Mr Hossain before the First-tier Tribunal at paragraph 13 and sets out why he rejects this explanation at paragraph 20 and it was open to him to find that the number and types of inconsistencies were not explained by the passage of time.

17. In relation to the Judges assessment of the medical evidence I am satisfied that the Judges analysis of that evidence at paragraph 21-22 was fair and he reached conclusions as to weight that were reasonably open to him. He did not accord the evidence no weight but gave it little weight as the evidence from the hospital in Bangladesh does not state the reason for the Appellants admission to hospital and therefore confirm the Appellants claim that he had been shot in the way he claims. The Appellant bears the burden of proof and it was not, as Mr Hossain apparently argued, for the Respondent to try and obtain this information from the hospital but for the Appellant to obtain such additional evidence if he chose. The GP records record a claim made some time later that the Appellant had been shot and the Judge was entitled to find this took the matter no further as the GP did not examine the Appellant and confirm that he had a gunshot wound he simply recorded that this was a claim he made.

18. In relation to the Article 8 assessment the Judge dealt with this at paragraphs 26 -30. The Judge was bound to take into account that the Appellants claim was a private life one only as he had no partner or child in the UK. The Judge was prepared to accept he had a private life given the length of residence but he

would have been entitled to note that contrary to the assertion of Mr Hossain there was no evidence of integration other than his oral evidence : he produced no evidence of any engagement with the community other than working illegally, there is no evidence of friends in the local community. The absence of clear evidence of the nature and quality of his private life beyond length of residence would inevitably have limited the weight he could accord the Appellants private life.

19. In relation to his private life given his length of residence the only requirement of the Rules that was relevant was paragraph 276ADE(vi) and he gave adequate reasons why there were no 'very significant obstacles' to his reintegration in that he had rejected his asylum claim so there was no risk, he had lived there the majority of his life, spoke the language and understood the culture. The Judge nevertheless went on to consider if there were exceptional circumstances and there is no suggestion that any were identified by Mr Hossain. He also applied the provisions of s117B of the Nationality Immigration and Asylum Act as he was required to do and looking at all of the evidence concluded that it was proportionate for the Appellant to return to his home country. This was a finding reasonably open to him in the circumstances.

20. I am therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning applying the correct standard of proof.

CONCLUSION

21. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

22. **The appeal is dismissed.**

Signed Date 3.9.2019

Deputy Upper Tribunal Judge Birrell