



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

Appeal Number: PA/02836/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On: 21 February 2020**

**Decision & Reasons Promulgated  
On: 5 March 2020**

**Before**

**UPPER TRIBUNAL JUDGE OWENS**

**Between**

**SR**  
(ANONYMITY DIRECTION MADE)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Sellwood, counsel instructed by Duncan Lewis & Co Solicitors

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge James, promulgated on 2 December 2019. Permission to appeal was granted by First-tier Tribunal Judge Fisher on 8 January 2020.

Anonymity

2. Such a direction was made previously and is reiterated below because this is a protection matter and the appellant has been diagnosed with PTSD.

### Background

3. The appellant, who is a national of Bangladesh, arrived in the United Kingdom on 20 September 2007 as a Tier 4 student. His leave continued until 28 June 2013. He then overstayed his visa and eventually claimed asylum on 4 January 2017. The basis of his claim is that he was an active BNP member who was attacked in Bangladesh. There are now false cases against him. He has been active for the BNP in the UK and has been attacked in the UK by Awami League activists. He would be at risk of serious harm from the Awami League if returned to Bangladesh.
4. By way of a letter dated 13 February 2018, the Secretary of State refused the asylum claim raising numerous concerns about credibility issues, not least the timing of the appellant's claim for asylum. The respondent did not accept that the appellant would be persecuted if returned to Bangladesh.

### The decision of the First-tier Tribunal

5. The appellant was identified as a vulnerable witness. It was decided at the outset of the appeal that it was not appropriate for him to give evidence. The Judge heard oral evidence from one witness Mr Ahmed. The judge acknowledged that the appellant was diagnosed with PTSD and depression but found him not to be a reliable witness for reasons set out in her decision.

### The grounds of appeal

6. The grounds of appeal were twofold. Firstly, that the Judge made material misdirection in law in that she applied too high a standard of proof and failed to take into account background evidence. Secondly, that the Judge failed to take into account material evidence by finding that a witness who had attended the appeal did not attend and placing no weight on his evidence; by failing to take into account the expert medical evidence and making other errors of fact.
7. Permission to appeal was granted on the basis that it was clearly an arguable error of law to reject evidence on the basis that a witness did not attend when the witness had attended and given evidence. While ground 2 was described as arguable, permission was not refused on any ground.
8. The respondent did not submit a Rule 24 response.

### Decision on error of law

9. At the outset of the hearing Mr Tarlow conceded that there was a material error of law and that ground 2 at paragraph 10 of the grounds was made out.
10. At the appeal the appellant did not give oral evidence. It is accepted by all parties that a witness Mr Ahmed, A BNP official in the UK, attended the appeal, adopted his two witness statements and gave evidence in respect of the appellant's 'sur place' political activities in the UK. The witness was cross examined and the Judge questioned him. At [31a] of the decision the Judge records that a witness attended the appeal. It is agreed that Mr Ahmed was the only witness in the appeal.
11. At [57] the Judge states;  
*'In regard to the witness statement of Shamin Ahmed claiming to be the organising Secretary of BNP-UK, Mr Ahmed failed to attend to give oral evidence at the hearing, and no documents to support the reasons why he was unable to attend were submitted. He thus was not present at the hearing to give evidence nor tender himself to cross-examination to test his evidence. Thus I give it no weight'.*
12. Mr Tarlow conceded that the Judge's failure to acknowledge that the witness attended the hearing, to record his evidence or analyse it was a fundamental error which rendered the proceedings unfair. He also conceded that the error was material because this evidence was crucial to the assessment of the extent of the appellant's political involvement with the BNP in the UK and thus risk to him on return. On this basis, I do not go onto consider any of the remaining grounds of appeal.
13. The error mentioned above suffices to render unsafe the decision of the First-tier Tribunal and I set aside that decision in its entirety.
14. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of his asylum appeal at the First-tier Tribunal and it would be unfair to deprive him of such consideration.

## **Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.**

**The decision of the First-tier Tribunal is set aside.**

**The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor, with a time estimate of 2 hours by any Judge except First-tier Tribunal Judge James.**

**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 their 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.

**Further directions**

There will a Case Management Review hearing prior to the substantive hearing for the parties to agree what if any measures should be put in place due to the appellant's vulnerability and to give further directions in respect of the voluminous evidence.

Signed: R J Owens  
2020

Date: 21 February

Upper Tribunal Judge Owens