



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/12223/2019

THE IMMIGRATION ACTS

Heard at Field House in a hybrid hearing
23 August 2021

Decision Promulgated
13 October 2021

Before

UPPER TRIBUNAL JUDGE CANAVAN
DEPUTY UPPER TRIBUNAL JUDGE BOWLER

Between

MAK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. We find that it is appropriate to continue the order. 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.

Representation:

For the appellant: Mr Jafferji, counsel, instructed directly, who attended by video link

For the respondent: Mr E. Tufan, Senior Home Office Presenting Officer, who attended in person

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 27 June 2019 to refuse a human rights claim.
2. First-tier Tribunal Judge Ford ('the judge') dismissed the appeal on human rights grounds with reference to Article 8 of the European Convention. The appellant claims that his removal would breach his human rights as a result of the risks faced by him in consequence of allegedly false charges having been laid against him for political reasons in Bangladesh. Having concluded that on the balance of probabilities the appellant was not at risk of being killed or subjected to inhuman or degrading treatment in Bangladesh, the judge concluded that there were no significant obstacles to his re-integration in Bangladesh.
3. Permission to appeal was granted by Resident Judge Zucker in a decision dated 21 January 2021 in which Judge Zucker decided that it was arguable that the judge misunderstood or misapplied the evidence.
4. The appellant has appealed on grounds which, in essence, submit that the judge failed to take account of relevant evidence, made inconsistent findings and made findings which were not supported by the evidence.
5. Although the grounds of appeal were not as clear or focused as we would expect, the parties agreed at the hearing before us that the First-tier Tribunal decision involved the making of errors of law for reasons identified in the grounds of appeal. Therefore we do not address the grounds in detail but we note, in particular, that:
 - a. paragraphs 72-75 of the judge's decision contain statements which are inconsistent. For example, the judge said at paragraph 72 that "the legal expert report does show that complaints have been filed with the Courts against this Appellant". She then proceeds to set out reasons why she is not satisfied that those are genuine complaints, but in paragraph 74 says (in contradiction to paragraph 72) that "I do not accept on the balance of probability that the Appellant is the subject of any complaint before the Courts in Bangladesh";
 - b. in paragraph 73 of the decision the judge says that she has assessed documents produced by the Appellant in accordance with the *Tanveer Ahmed* principles and finds them not to be reliable. It is unclear whether that conclusion is reached in relation to all of the documents produced by the appellant or just some of them;
 - c. while it was entirely appropriate to take into account delays in producing evidence, the conclusion in paragraph 73 and the decision as a whole fails adequately to address the weight to be given to the legal report prepared by Mr Taseb Hossain. Although its contents are noted to some extent in the judge's description of the evidence, her findings do not adequately address it. There is no reference to consideration of Mr Hossain's certificates and ID

documents provided with the report; or recognition that this is an unusually detailed report, which sets out in some detail the limitations on the author's ability to verify matters such as BNP and medical documents, as well as his inability to verify the letter from another lawyer, or indeed that lawyer's existence;

- d. overall, we are left unclear as to the weight given to the documents relied upon by the appellant and whether it has been found that FIRs have indeed been lodged with the courts in Bangladesh. The judge has not adequately addressed the risk (if any) to the appellant if he is arrested on return to Bangladesh if such FIRs have been lodged and are being pursued through the courts.
6. The appellant's immigration history provided in the papers indicates that he previously made a claim for protection in 2017 which was refused and certified as clearly unfounded by the respondent. Reference is made in the papers to judicial review applications, but neither party has been able to provide a copy of the judicial review decisions. The appellant has a human rights ground of appeal under section 84(1)(c) Nationality, Immigration and Asylum Act 2002 against the respondent's decision of 27 June 2019, yet for reasons which are not apparent to us, there appear to have been no arguments relied upon by his representatives under Article 3 of the European Convention.
 7. Given the agreed errors of law, the immigration history and potential need for Article 3 to be addressed we have decided that this case should be **remitted** to the First-Tier Tribunal for a fresh hearing. The appellant should be aware that this means that his case will be heard afresh and may be allowed or dismissed by the First-Tier Tribunal.

DIRECTIONS

8. In order to appropriately focus the substantive hearing, a First-tier Tribunal case management hearing should initially take place to clarify the scope and grounds of appeal. In addition, at such case management hearing the respondent should identify whether, and if so on what basis, she seeks to rely on an allegation of deception regarding a previous Tier 2 (General) application made by the appellant.
9. At least seven days prior to the case management hearing the **respondent** shall send to the appellant and the First-tier Tribunal:
 - (a) copies of the judicial review application filed in December 2017 to challenge the respondent's decision dated 10 November 2017 to refuse a protection claim and to certify the claim as 'clearly unfounded', as well as any relevant orders made by the Upper Tribunal in the judicial review claim;
 - (b) copies of the subsequent further submissions on protection issues said to have been made by the appellant and any decision made by the respondent in response;

- (c) the respondent's response to the report from Mr Hossain (which was only provided immediately before the hearing before First-tier Tribunal Judge Ford);
- (d) any evidence relied upon in relation to the allegation of deception in the Tier 2 (General) application.

10. Any background evidence relied upon by either party (including CPINs) must be provided in the relevant bundle in full in accordance with the First-tier Tribunal's directions for the conduct of the appeal following the case management hearing. Extracts from supporting evidence should not be provided.

11. Liberty to apply.

DECISION

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

The case is remitted to the First-tier Tribunal (Birmingham) for:

- (a) a case management hearing; and
- (b) a substantive rehearing of the appeal.

Signed

Date: 28 September 2021

T. Bowler

Deputy Upper Tribunal Judge Bowler