



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001934
First-tier Tribunal No:
PA/51120/2021
IA/04522/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 26 April 2023

Before

UPPER TRIBUNAL JUDGE LINDSLEY
DEPUTY UPPER TRIBUNAL JUDGE COTTON

Between

MS
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Lewis, of Counsel, instructed by Lexwin Solicitors
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 28 March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Bangladesh born in 1987. He arrived in the UK in 2010 with entry clearance as a Tier 4 general student, which was extended until 10th April 2014. He was served with removal notices on 3rd October 2013 as a result of being found working in a restaurant, but was not removed from the UK. On 16th September 2016 the appellant claimed asylum. His application was refused and his appeal dismissed by Judge of the First-tier Tribunal Atreya in a decision promulgated on 5th May 2017.
2. Whilst dismissing the appeal Judge Atreya accepted that there was a land dispute between the appellant and his brother arising out of the appellant's marriage against the family's wishes; that his brother may have made some indirect threats to the appellant following his marriage; and that appellant's wife's family may have disapproved of their marriage. He attempted to appeal the decision but all application were refused and on 3rd November 2017 he became appeal rights exhausted.
3. On 21st February 2018 the appellant made further submissions. These were accepted as a fresh claim but refused in a decision of the respondent dated 24th February 2021. His appeal against this decision was dismissed by First-tier Tribunal Judge RA Singer in a determination promulgated on the 7th December 2021.
4. Permission to appeal was granted by FE Robinson on 11th January 2023 on the basis that it was arguable that the First-tier judge had erred in law in failing to consider material evidence, in particular arrest warrants and letters from the appellant's mother and spouse.
5. The matter came before us to determine whether the First-tier Tribunal had erred in law, and if it had so erred whether any error was material and the decision should be set aside.

Submissions – Error of Law

6. In the grounds of appeal it is argued, in summary, firstly that the First-tier Tribunal failed to consider material evidence namely: documents relating to his arrest in 2009 as a result of his being the organising secretary at Moulvisbazar government college for the Bangladesh Islami Chatra Shibir; the appellant's mother's letter which is very detailed and sets out risks relating to the appellant due to a false case/ death threats and his involvement with Islami Chatra Shibir; the disownment advertisement in the newspaper excluding the appellant from his inheritance; the letter from Mr Miah's minor son; the letter from Stephen Timms MP; and the references from the Labour Party.
7. Secondly, it is argued, that there was a failure to consider adequately the following evidence: the text messages containing threats in the context of threats from the appellant's brother having been found in the

previous decision of the First-tier Tribunal and the fact that the witness Mr Miah had confirmed that the voice message threats were from the brother; and the letter from the appellant's spouse. The court documents, police documents, the lawyer's documents were all dismissed as unreliable due to the fact that forged documents are freely available in Bangladesh.

8. Thirdly, it is argued, that the contention that the appellant had fabricated his claim at paragraph 80 of the decision is perverse given the starting point of some positive findings by the previous First-tier Tribunal and the additional documents in this appeal, with the only reasoning going to an inconsistency between the appellant and his witness, Mr Miah, as to when the appellant's father died, which was not relevant given the father had disinherited the appellant.
9. Fourthly, it is argued, that the First-tier Tribunal erred in law by finding that the appellant's father had not died as he claimed, and as was accepted by the previous First-tier Tribunal, based on vague evidence of the witness Mr Miah who said that he believed that the appellant's father had been at the property when he visited for 10/15 minutes in 2018 but that he was not sure as it was dark. It is argued that such a finding is not consistent with the approach needed as per Devaseelan.
10. Fifthly, it is argued, that the First-tier Tribunal erred in law in failing to consider the question of risk from the appellant's brother-in-law and his influence with the authorities and risk from his father-in-law. The appellant has provided some evidence to support the contention that his brother-in-law started a false case against him in February 2012, and that his brother-in-law is involved with the ruling Awami League. There is insufficient consideration and reasoning in relation to this aspect of the case. There is also reference in the papers to a false case brought against the appellant by his father-in-law, and no reasoning to this aspect of the case appears in the findings.
11. The respondent chose not to submit a Rule 24 notice.
12. Before us, and in addition to the arguments outlined above and in the appellant's skeleton argument, the appellant argued that the First-tier Tribunal had not secured procedural fairness, in that the First-tier Tribunal departed from the previous judgment's finding that the appellant's father was dead, without giving notice to the appellant of this being in issue and giving the appellant a chance to answer questions on the point. The appellant said that this argument was outlined as a ground of appeal in para 19 of the grounds of appeal.
13. The respondent submitted that procedural unfairness was not argued in the grounds of appeal and nor was it raised in the First-tier Tribunal. Questions about the appellant's father were put to the appellant in the First-tier Tribunal and the judge refers to the appellant's evidence changing on this topic and to the appellant intervening from the back of

the room when a witness was giving evidence on this topic. This must have been, said the respondent, because the appellant knew this was a problematic topic for his case – he clearly knew that the evidence of the death of his father was in issue. The respondent submitted that the First-tier Tribunal was entitled to depart from the previous judgment if there are facts, or if there is evidence, that are new.

Analysis and conclusions – Error of Law

14. With regards to the submissions on procedural unfairness, We were directed to paragraph 19 of the grounds, which say (in so far as were told is relevant):

The FTT had no sufficient basis to depart from those findings [the previous findings of the FTT], given the extensive new evidence which on the whole supports and develops the A's claim. The FTT did not have sufficient basis to depart from the previous findings in light of clear evidence of fraud or the concealment of a material fact or the emergency of new sufficiently compelling relevant evidence. Indeed, the R had not argued within the decision that the previous determination was to be departed from. In these circumstances, it wasn't open to the FTT to depart from those findings.

15. In our judgment, this ground was clearly addressing the question of the guidelines in Devaseelan and while the wording of the ground is less precise than it could be in making the point, this does not mean that a procedural unfairness ground can subsequently be ascribed to it. We do not accept that procedural unfairness was raised in the grounds of appeal. Further, there was no formal application to add a ground of procedural fairness to the grounds of appeal. We note that counsel who was present at the First-tier Tribunal hearing settled the grounds and it was open to the appellant at that stage to include a ground of procedural unfairness if it were appropriate. We therefore refused to permit an oral amendment of the grounds at the hearing to include a challenge on procedural fairness grounds.
16. At paragraph 56 the First-tier Tribunal directs itself to the guidelines in Devaseelan. It is clear that the First-tier Tribunal understood that the findings of the First-tier Tribunal were the starting point for the decision at paragraph 57 of the decision, but finds that due to the problems of the appellant's credibility which have arisen in the hearing before it that it can no longer be accepted that the appellant's father is dead, and thus that there is a property dispute over the inheritance with the appellant's brother. It is accepted that the families may have been unhappy with the appellant's marriage but not that they were sufficiently powerful or connected to put the appellant at risk.
17. The First-tier Tribunal gives sufficient reasons for the position that the appellant's father has not been shown to be dead due to the inconsistencies with the evidence of the witness Mr Miah at paragraph

57(c) of the decision, and the fact that the Bangladeshi lawyer refers to the appellant being disinherited at paragraph 57(d) and (i) but not to his father being dead and at paragraph 57(e) the fact that the document from Mr Haque (Union Parishad chairman) in relation to the hostility to the appellant from his wife's family also refers to the father having renounced the appellant and his elder brother being owner of the property through deed rather than inheritance. Similarly, there is no mention of the father being dead in the letter from the President of Islami Chatra Shibir Moulvisbazar district unit or in the letter from the appellants' uncle, Mr Muktus Miah. The court document of a case brought by the appellant's wife's family relating to the marriage is discussed at paragraph 57(n) and identified issues of the father being alive and accused in 2017 when the appellant said he was dead in 2016.

18. We find that the conclusion that it has not been shown that the appellant's father is dead is sufficiently rationally reasoned at paragraph 58 of the decision.
19. The text messages and voice messages are detailed at paragraph 57(p) and it is noted that Mr Miah could corroborate the voice being that of the brother. The First-tier Tribunal determined at 57(j) that the text messages are capable of supporting the appellant's case but that there is no independent evidence of their provenance - there is no evidence that they were independently obtained or how they were obtained. We find that the text messages were not rejected on this basis (as the appellant argues they were) but that the judge placed the assessment that there is no evidence of their provenance into the scales as he weighed the evidence.
20. The evidence provided to the First-tier Tribunal does not include expert evidence on the genuineness of the documents he offered in evidence. The evidence supporting them being genuine is therefore the appellant's witness evidence. The First-tier Tribunal does not fall into the trap of finding that a lack of credibility in one aspect of the appellant's evidence necessarily means that all his evidence lacks credibility, but properly associates the credibility of the documents with the appellant's credibility in the absence of other evidence that the documents are true.
21. The First-tier Tribunal had properly directed himself on Devaseelan and goes on to assess all of the relevant areas of evidence and how they interplay with each other. The doubt over the death of the appellant's father which arises in the context of all of the evidence is given appropriate weight in our judgment because his death is so central to the appellant's account. The impact this has on the credibility of the appellant is then properly reflected in the credibility given to the other evidence in this case because it is the appellant's witness evidence that he relies on to prove the supporting documents are genuine/ should be given weight.

22. We determine that the First-tier Tribunal departed from the previous First-tier Tribunal decision in line with Devaseelan. The First-tier Tribunal took the previous determination as a starting point and then took into account evidence that had not been brought to the attention of the previous judge (including the evidence of the appellant and his witness Mr Miah) which was materially different to that previously presented by the appellant. It was appropriate for the First-tier Tribunal to place importance on the evidence surrounding the death of the appellant's father: The inconsistencies found in that evidence seriously undermine the credibility of the appellant; in the absence of independent evidence going to the credibility of the documents offered by the appellant in evidence (such as verifying expert evidence, evidence that they were independently obtained or even a comprehensive explanation as to how they were obtained) the credibility of the documents is strongly tied to the credibility of the appellant.
23. We are satisfied that the First-tier Tribunal took into account all the relevant evidence in coming to the decision. The tribunal is not expected to mention every document they consider, and we are satisfied that the entirety of the evidence has been looked at in the round. To require otherwise would lead to unnecessarily long determinations.
24. Finally, we note that the appellant does not challenge the First-tier Tribunal determination that, had the appellant proved other aspects of his case, there would not be at real risk of serious harm as he could find safety by way of internal relocation. Even if the appellant had succeeded on the grounds argued before us, his appeal would have failed on this basis rendering the grounds ultimately immaterial to the outcome of the appeal.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. We uphold the decision of the First-tier Tribunal dismissing the appeal.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

D Cotton

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 April 2023