



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004867
First-tier Tribunal Nos:
PA/52417/2021
IA/07397/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 11 September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

JA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Bond, Counsel, instructed by Leonard Solicitors LLP
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 15th August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the Appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant appeals the decision of First-tier Tribunal Judge Ripley who, in a decision and reasons promulgated on 23rd May 2022, dismissed the Appellant's appeal against the Secretary of State's decision to reject the Appellant's protection and human rights claim. The nub of the claim was that the Appellant is a national of Myanmar at risk of persecutory treatment on the basis of his Rohingya ethnicity. Over and above the Appellant's assertive evidence he relied on an original UNHCR Master Ration Card (MRC) document, subsequently lost by the Respondent, and a country expert report.
2. The judge found the Respondent's assessment that he was a Bangladeshi national, and not a Rohingya from Myanmar, to be correct because even to the lower standard of proof his claim to be a Myanmar Rohingya was not made out on the evidence.
3. In the grant of permission Judge O' Callaghan noted that the question of what weight should be placed on an expert report where an original UNHCR Master Ration Card (MRC) document, provided to the Respondent, had been lost by the Respondent, is one that could be properly considered.
4. The grounds overlap to some extent but in summary assert that the judge failed to take a holistic approach to the evidence that the Appellant is a Rohingya from Myanmar, in particular the judge failed to attach appropriate weight to the evidence of the expert report which had covered more than the card, failed, when taking account of the prevalence of forged documentation in Bangladesh to take account of a post hearing submission to the point that there is conflicting evidence about the prevalence of forged documents in Bangladesh, and was wrong to find the card was unreliable on account of dismissing the Appellant's own explanations for being in possession of the card, and failed to decide if the Appellant was of Rohingya ethnicity: instead merely deciding that he was Bangladeshi.
5. Counsel submitted that the judge appeared to consider it adverse that the Appellant's solicitors had not shown that they had requested the original document from the Home Office, whereas in fact the correspondence in the bundle, as conceded by Mr Terrell, showed that they had. I note that at paragraph 30 the judge comments there was a lack of evidence about the request for the return of the MRC card in the context of an effort to provide it to the expert. As counsel accepted before me the judge was right to say that there was no suggestion the expert had requested the original for their examination, further in the report there is no reference to the expert being put in difficulty as a result of working from a photocopy. As Mr Terrell pointed out there was also no suggestion the photocopy was unclear or erroneous in any regard. In the circumstances I find the point falls away.
6. Counsel submitted that the expert's positive assessment of ethnicity was properly resourced and took into account matters other than the card, such as language, and dealt with risks on return. Mr Terrell countered that the judge at paragraph 38 is not taking the language point as being determinative, but rather is pointing out that it does not help the Appellant that he speaks Sylheti as his preferred language, rather than Chittagonian Bengali which is closer to the Rohingya language. That is in line with the CPIN evidence. Further in light of the factual circumstances set out at paragraph 39 of having lived with Rohingya

speakers until his teens, the judge was entitled to take into account that the degree of Rohingya demonstrated did not assist him. I find that the judge has dealt with the language point properly.

7. The judge has given detailed reasons as to why the expert's statement; *"The master card for the Registration of Refugees from Myanmar looked familiar to me: I have seen similar documents in previous cases. I have no reason to assume that they are not genuine"* did not provide particularly strong support for the authenticity of the document between paragraphs 28 and 32. Not least the expert is not clear if they are talking about this card or the earlier examples, nor what features are familiar. The grounds and submission ignore the very significant difficulties identified with the expert report, not just in the failures to deal with the details about the card but also with the expert's approach. As the judge continues at paragraph 29 the expert does not comment or deal with the point raised by the Respondent about the incomplete number. The judge noted additional difficulties with the expert's examination of the document. The expert examination appears to be limited because the expert refers to the document being undated which on its face is wrong. As the Respondent had pointed out not only were there dates on the document, they were contradictory. The incomplete examination leads to incoherence. As the Respondent points out as the Appellant's card was issued at a time when, on the expert's evidence, biometrics had not been introduced and fraud was easier.
8. Counsel argued that the judge had not considered her further submissions and took me to the further submission to the point that the CPIN evidence relied upon by the Respondent concerning the prevalence of forgery in Bangladesh needed to be considered in light of the counterargument that forgery was not a widespread problem in Bangladesh. This was as reported in the March 2020 CPIN at 5.2.3., where some of those interviewed referred to the difficulty of obtaining forgeries in the context of various categories of documents, and one interlocutor reported that overall forgery was not a problem.
9. I find this is not a meritorious point. The judge refers at paragraph 9 to the receipt and consideration of the submissions and so clearly had them in mind. There is nothing in the evidence referred to in the submission which the judge needed to explicitly deal with. As Mr Terrell for the Respondent pointed out the evidence is of a generalised reference, and an MRC is not a category of document referred to at all, whereas the evidence the Home Office had relied on is specific to the context of Myanmar Rohingya. Further as the reasoning at paragraph 37 indicates the judge is not simply relying on a blanket proposition of prevalence of forgery in Bangladesh but is nuanced, correctly identifying specific difficulties relevant to the Appellant's card. As the judge notes fraudulent use of Rohingya refugee documents is known and whilst much has been overcome by the use of biometric documentation the card produced by the Appellant precedes that biometric process.
10. Counsel argued the judge should have taken an overall assessment of the evidence of the card to include not just the expert but the Appellant's own evidence; in the context of which the judge was wrong to find that no weight could be attached to the MRC document on the basis that the Appellant could not be believed when he said that he had been provided the document by his mother and that he had retained it all of this time. The judge had wrongly taken the point that the Appellant would not have retained the document when in Bangladesh given the difficulties that might have arisen. An Appellant cannot be

required to behave in a way which would reduce his exposure to risk, and he had given a plausible explanation in terms of the link with his mother and the fact that the card was the only evidence of his identity as a reason to want to retain the card with him despite the risk attached.

11. I find that this argument does not take the grounds any further forward. As the earlier discussion shows the matters raised here are minor points and are not the significant reasoning provided by the judge.
12. A fair and complete reading of the judge's decision reveals that the judge dealt with the individual points raised by the parties between paragraphs 25 to 43 carefully identifying points which assisted the Appellant, which were neutral and which were undermining, before turning at paragraph 44 onwards to stand back and assess the evidence in its entirety.
13. Contrary to grounds the Judge's conclusion that the Appellant is a Bangladeshi was sufficient to dispose of the appeal. There was no need for a separate finding in respect of whether he is Rohingya. In reality the issue which was identified by the parties as being in issue before the judge was straightforward: is the Appellant a Rohingya Myanmar citizen or a Bangladeshi national and the decision he is Bangladeshi resolved the point. There was plenty before the judge which supported the conclusion that the evidence of the card was unreliable and the evidence insufficient to establish to the low standard that the Appellant is a Rohingya Myanmar national.
14. At the beginning of the hearing I raised with the parties my concerns about how an Appellant can seek to get verification of a document in circumstances where the Home Office have lost it and that, as the grant of permission identified, in those circumstances there was an issue as to the impact that that position may have on the weight to be attached to the expert evidence of the likely authenticity of the document. In the event having heard the submissions I find that this is not a case where production of the original would have assisted, not least there was no request for the original from the expert and the expert has not indicated any difficulties as a result of working from a photocopy.
15. At the end of the day the question was not whether the document could be found to be unreliable in the absence of the original but whether or not on the evidence as a whole the Appellant has established his nationality to the lower standard. In the context of the evidence that was submitted before the judge, the judge was entitled to reach the conclusion that the Appellant had not.
16. It follows for all of the reasons I have referred to that the Appellant does not succeed in his appeal before me.

Notice of Decision

The First-tier Tribunal decision does not reveal any material error of law and the decision dismissing the appeal stands.

E M Davidge

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

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31 August 2023