Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2023-003372
UI-2023-003373

First-tier Tribunal No: HU/50888/2022
PA/50791/2022

THE IMMIGRATION ACTS

Heard at Field House
On 14 November 2023

Decision & Reasons Issued

8th December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

ASMA AKTER
MD RUHUL MIAH

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Shah, Taj Solicitors
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

DECISION AND REASONS

© CROWN COPYRIGHT 2023

Introduction

1. This is the continuation of an appeal by the Appellants against the decision of the First-tier Tribunal (Judge Bartlett) in which the Judge dismissed their appeals against the Secretary of State's decisions to refuse human rights and international protection claims.

2. The grounds of appeal to the Upper Tribunal are prolix and confused. In respect of the Second Appellant (A2) the primary assertion is that there was material evidence that should have caused the Judge to depart from Devaseelan and in doing so to find that A2 was a Rohingya from Myanmar. There is also an assertion, although from paragraph 14 of the grounds it is very difficult to ascertain the legal basis of the assertion, that the Judge erred in the consideration of the length of A2's residence. In respect of the First Appellant (A1) the grounds are all based upon A2 being Rohingya and not Bangladeshi. It is said at paragraph 15 of the grounds that as A1 gave consistent evidence of A2 having told her from the time they met in 2010 that he came to the UK in 2002 and is Rohingya that this should have been corroborative of his claim.

3. Permission to appeal was refused by Judge Karbani in the First-tier Tribunal on 3 August 2023 but on renewal to the Upper Tribunal was granted by Judge Gill on 11 October 2023 on the basis that

   "It is arguable that Judge of the First-tier Tribunal Bartlett may have erred in law in reaching her decision on each of these appeals, as argued in the grounds".

   The grant of permission does not give any indication of which of the grounds was thought to be arguable.

4. A Rule 24 response was filed by the Respondent dated 31 October 2023. Mr Shah had not seen this response and I handed him a copy in court. Noting that it opposed the appeal Mr Shah said that he was content to proceed.

Submissions

5. For the Appellant Mr Shah went through the grounds of appeal. His main point was that the latest CPIN on Myanmar, which being produced in 2019, came after the 2017 First-tier Tribunal decision dismissing A2's protection appeal, shows that the language of the Rohingya is similar to southern Bengali and that as the evidence of the A2 was that he had mixed with Sylheti people since he came to the United Kingdom in 2002 his ability to

speak Sylheti should not have been held against his claim to be from Myanmar. The Judge was also wrong to refer to a passport application being made in 2010 when it was in fact a travel document application. Mr Shah also referred to the period of residence of A2 submitting that he had always claimed to have been in the United Kingdom from 2002.

6. So far as the decision of the First-tier Tribunal to proceed rather than adjourning when the issue of length of residence was raised Mr Shah accepted that he had been given time to take instructions and that, having done so, he agreed that there was no further evidence to produce in this respect and that he had been content to proceed on that basis. He did not apply for an adjournment.

7. Turning to A1 Mr Shah said that it was speculative for the Respondent to say that they will return as a family unit as the Respondent has not shown that A2 can get a passport. If A1 were to return to Bangladesh alone or with their child she would fall within a protected particular social group. He accepted that this argument was dependent on a decision being made that A2 was not Bangladeshi. Finally Mr Shah said that the 2017 decision is short and lacks reasoning in regard to length of the residence of A2.

8. Ms Ahmed for the Respondent said that Judge Bartlett’s decision was clear and carefully constructed. Judge Clarke in the 2017 appeal did not accept that A2 was Rohingya. The fact that A2 speaks Sylheti was not the only reason. The Judge also noted the vagueness of his knowledge of Myanmar. He made an adverse credibility finding. The discussion of passport and travel document is a distraction. Judge Clarke found that the A2 was not credible and there was very little, if any, information or argument put forward to cause Judge Bartlett to depart from his decision.

Discussion

9. A1 is a 39-year-old citizen of Bangladesh and A2 is a 44 year old who claims to be a citizen of Myanmar but who was found to be a citizen of Bangladesh when his appeal against refusal of international protection was determined in 2017. A1 claims that she is a member of a particular social group who will face persecution or serious harm as a lone woman with a child on a return to Bangladesh and A2 claims that he arrived in the United Kingdom in 2002 and therefore is entitled to leave to remain as a person who has spent more than 20 years in this country. A1 and A2 are married and they have a child together who is now 5 years old. It is accepted that the child is entitled to Bangladeshi nationality. The Respondent’s case is that they are a married couple both from Bangladesh and that they can return as a family unit.

10. A2’s appeal against refusal of international protection came before the First-tier Tribunal in 2017. In his decision Judge Clarke found that A2 was citizen of Bangladesh and not Myanmar as claimed. He gives detailed

reasons for this finding. Judge Clarke made no finding as to length of residence in the United Kingdom. A2 applied for permission to appeal to the Upper Tribunal. His application was refused and he became appeal rights exhausted in February 2018. In his current application and appeal A2 maintains that he is a citizen of Myanmar who arrived in the United Kingdom in 2002 and that Judge Clarke got it wrong.

11. The First-tier Tribunal Judge considered the established authority of Devaseelan and following the principle contained therein correctly decided that the starting point for the consideration of A2's claim to be from Myanmar was the decision of the previous judge. Mr Shah accepts that the previous decision is the correct starting point but asserts that more information is now available that should have caused Judge Bartlett to come to a different conclusion as to nationality and that Judge Bartlett should have found that his residence in the United Kingdom dates from 2002.

12. It is very difficult indeed to find any merit in these arguments. The Judge notes (paragraph 21) *"I have been provided with very little information to support a claim that I should depart from the 2017 decision".* Mr Shah, who represented the Appellants before the First-tier Tribunal, accepts that he was given the opportunity to take instructions as to length of residence and that having done so there was no further evidence to put forward. Indeed in this respect there is still no further evidence. Having claimed to have been in the United Kingdom between 2002 and 2007 A2 has submitted absolutely no personal or corroborative evidence of his residence in the United Kingdom during this period beyond his simple assertion that he was here and that he told his wife (A1) who he met in 2010 that he was here between 2002 and 2007. Nothing at all was put forward to show where he was living, who he was living with, how he was supported or what he was doing. Even if this aspect were to be looked at afresh today it would be impossible to find that he had met the burden of proof upon him to show on the balance of probabilities that he was in the United Kingdom during this period. In my judgment Judge Barlett was entirely correct to find that there was nothing other than his bald statement to show that he was resident in the United Kingdom prior to 2007.

13. So far as the 2019 CPIN is concerned Mr Shah is recorded as having referred to this in the hearing before Judge Bartlett and this is reflected in her decision. In the grounds of appeal Mr Shah suggests that the 2019 CPIN contains "material evidence to take a different approach". However the only aspect of the 2019 CPIN which Mr Shah puts forward as a change from the 2017 position is that the 2019 CPIN refers to the language of the Rohingya being unwritten and similar to that spoken in the south of Bangladesh. His position is that A2 speaking Sylheti, the dialect of the Sylhet area of northern Bangladesh is attributable to his mixing with the Sylheti community, including A1, in the United Kingdom. Every other

aspect of the 2019 CPIN raised in the grounds is dependent on a finding that A2 is Rohingya.

14. With respect to Mr Shah this is a very thin argument indeed. The 2017 decision records the finding that A2 was not from Myanmar was based not only upon language but also upon various other factors including but not limited to his lack of knowledge of Myanmar. In her decision Judge Bartlett quotes paragraphs 10 – 12 of Judge Clarke's decision in this respect. So far as the discrete issue of language is concerned Judge Bartlett notes the part of the CPIN that Mr Shah referred to and finds that this does not support the claim that the Rohingya speak Sylheti or that the Rohingya speak standard Bangladeshi. It is very clear that the Judge considered the 2019 CPIN and having done so finds that it is not a good reason to challenge the reasoning set out in the 2017 decision or depart from the conclusion.

15. Mr Shah also raises the issue of the 2010 travel document application in which A2 recorded his place of birth as Sylhet. Judge Clarke referred to this as a passport application which Mr Shah points out was incorrect. Ms Ahmed submits that this is a diversion. I must agree with this submission. The issue is not whether it was a passport application or a travel document application or indeed information recorded in any other way. The sole point, understandably found to be material by Judge Clarke, was that A2 recorded his place of birth as Sylhet. Indeed Judge Clarke points out (see paragraph 7 of her decision, that A2 gave the name of his village in Sylhet along with the names of the local police station and hospital as well as details of his parents and brothers.

16. Then other grounds raised in Mr Shah's written submissions relate to significant obstacles on return and the Article 8 consideration. These grounds effectively fall away with the finding that A2 is Bangladeshi. There is no reason why A1 and A2 cannot return as a family unit. They are both Bangladeshi as is their child. They speak the language, their very limited evidence of their life in the UK is that they have mixed with the Bangladeshi community. A1 travelled to and from Bangladesh on many occasions. Neither A1 nor A2 have given any meaningful evidence of their lives in Bangladesh or indeed in the United Kingdom. A2, as Judge Bartlett notes, gave details of his family in Bangladesh.

17. It is very clear that the Judge takes a comprehensive and holistic approach and in my judgment there is nothing in the Judge's approach or reasoning that fails to take account of material evidence, that is irrational or that could otherwise amount to an error of law.

Conclusion

18. The decision of the First-tier Tribunal did not involve the making of a material error of law.

19. The appeal is dismissed. The decision of the First-tier Tribunal stands.

Signed: **Date: 4 December 2023**

J F W Phillips
Deputy Judge of the Upper Tribunal