



**Upper Tribunal
(Immigration and Asylum Chamber)**
No: UI-2023-005185

Case

First-tier Tribunal No: LP/01208/2023

THE IMMIGRATION ACTS

**Decision & Reasons
Promulgated**

January 2024 16th

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**M M I M
(Anonymity order made)**

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: Mr S Karim, Counsel

For the Respondent: Mr N Wain, Home Office Presenting Officer

REASONS FOR FINDING A MATERIAL ERROR OF LAW

Heard at Field House on 15 January 2024

The Appellant

1. The appellant is a citizen of Bangladesh born on 10 October 1985. He appeals against a decision of Judge of the First-tier Tribunal Dineen sitting at

Hatton Cross dated 6 November 2023. That decision dismissed the appellant's appeal against a decision of the respondent dated 19 October 2022 which in turn had refused the appellant's application for international protection dated 18 January 2019. The appellant first entered the United Kingdom on 26 September 2010.

The Appellant's Case

2. The appellant's case was that he was the District General Secretary in Bangladesh of an organisation called Bangladesh Islami Chattra Sena (ICS) which was regarded adversely by the authorities. He maintained that his involvement with that organisation was at a high level and as a result he had suffered persecution at the hands of the Bangladesh authorities. He was now a central committee member of the Bangladeshi Islami Front UK. In support of his claim he put forward an expert's report prepared by Mr Saqeb Mahbub dated 13 March 2023 which sought to verify documents the appellant said had been issued against him by political opponents in Bangladesh, these included First Information Reports and an arrest warrant.

The Decision at First Instance

3. The judge at first instance whilst accepting that the appellant had been involved with ICS because that had been accepted in a previous appeal, did not consider that the report of Mr Mahbub took matters any further in particular concerning the documents produced by the appellant. He considered there was insufficient evidence before him to justify departing from adverse findings made against the appellant in an earlier appeal dismissed in or about 2016. The judge commented: "*The appellant has not provided documentary evidence of the alleged warrant against him. I am not satisfied that I can attach weight to his evidence that any genuine FIR has been issued against him*". The judge dismissed the appeal.

The Onward Appeal

4. The appellant appealed against that decision arguing that the judge had given insufficient reasons for not accepting the new evidence before the tribunal, in particular the expert's report which had not been before the respondent when the respondent's refusal letter was written on 19 October 2022. There were five examples given in the grounds where the expert was said to have verified documents. Other grounds complained of the judge's treatment of: a scarring report (ground 2); the previous determination (ground 3) and the appellant's activities in Bangladesh (ground 4). There were also some generic remarks in ground 5 about the judge's treatment of the evidence generally. Permission to appeal was granted by the First-tier on the grounds that "*the Judge appears to have failed to take into account that in section 14 of the Report [by Mr Mahbub]... there is a section dealing with steps taken to authenticate the existence of the criminal cases pertaining to [the appellant].*"

The Hearing Before Me

5. In consequence of this grant of permission the matter came before me to determine in the first place where there was a material error of law in the decision of the First-tier Tribunal such that it fell to be set aside. If there was then I would make directions on the rehearing of the appeal. If there was not the decision at first instance would stand.
6. At the outset I was informed by the presenting officer that he and counsel for the appellant had had the opportunity of discussing the case before the court began sitting. The respondent's view was that there was a material error of law in the determination and that the first ground of onward appeal (in relation to the verification of documents) was in consequence made out. The respondent indicated that he could not accept the determination in the light of the fact that the judge had not dealt with the experts verification of court documents issued against the appellant. However the other grounds were not conceded. Counsel for the appellant confined his remarks to indicating that in the light of the respondent's concession the correct course of action was to set the decision aside and remit the matter back to the First-tier to be heard de novo.

Discussion and Findings

7. The judge was clearly not impressed by the experts report describing it as having: "*a greater resemblance to a learned academic article than a report concerning the history and circumstances of the appellant*". The report itself only came into existence after the respondent had written his refusal letter and thus a criticism of this report was not part of the respondent's case. I was concerned that if the respondent had conceded a material error of law on the judge's part in relation to matters dealt with in the refusal letter that might tend to undermine the refusal letter itself but that was not the case.
8. The issue was whether the judge had made a material error of law in disregarding the expert's evidence about FIRs, an arrest warrant and other documents about the appellant when they had been verified by the expert. If the judge's view was that the experts verification was not accepted, it was necessary to explain why that was the case. The authenticity of the documents impacted on an assessment of the appellant's credibility. The respondent had conceded a material error of law in the determination which therefore could not stand. I indicated that I would set the decision of the First-tier Tribunal aside and remit the matter back to a differently constituted First-tier Tribunal to be re-heard de novo with no findings preserved.

9. I appreciate that the respondent did not concede grounds two to five of the onward appeal (summarised at [4] above but they are inextricably bound with an assessment of the appellant's credibility which in turn is bound up with an assessment of the documents put forward in support of the appellant's claim to be in need of international protection. The next hearing therefore in the First-tier will need to consider the reliability of the documents put forward by the appellant in more detail.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and I set it aside. I direct that the case be remitted back to the First-tier to be heard de novo, not before Judge Dineen.

Appellant's onward appeal allowed to that extent.

I continue the anonymity order made at first instance.

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT