



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/04492/2015

THE IMMIGRATION ACTS

Heard at: Stoke-on-Trent
On 17th May 2016

Decision & Reasons Promulgated
On 31st May 2016

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

UMAR ALI HAJI
(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Maqsood, International Immigration Advisory Service
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant claims to be a national of Myanmar born in 1977. He made a claim for international protection stating he feared persecution there on account of his ethnic origin. The Appellant claims to be from the Rohingya ethnic minority.
2. The Respondent did not accept the Appellant's claims in respect of his nationality and ethnicity; the principle reason for this was that he had arrived in the UK on what appeared to be a valid Bangladeshi passport. The asylum claim was thereby rejected and a decision made to remove the Appellant under s10 of the Immigration and Asylum Act 1999.

3. The Appellant duly appealed to the First-tier Tribunal and the matter came before Designated First-tier Tribunal Judge McClure.
4. The determination notes that the Appellant called three witnesses to speak to his ethnicity and nationality. The Respondent had not been given any notice that these witnesses were to be called, so the Presenting Officer was given some time to prepare for cross examination. That yielded a result insofar as the Respondent was concerned: the gentlemen who claimed to be the President of the Arakan Rohingya Organisation UK was shown to be a failed asylum seeker, thought to be from Bangladesh [§42]. The determination addresses the evidence of this witness at paragraph 57, and for the reasons advanced by the Respondent, little weight was attached to it.
5. A second witness was identified as a Mr Nur Huda. Mr Nur Huda was brought from a Rohingya refugee camp in Bangladesh to live in the UK under the 'Gateway' programme. The sum of his evidence was that he had seen the Appellant in the camps; their fathers had been neighbours. This evidence is also addressed at paragraph 57, and it would appear that the Tribunal attached little weight to it on the grounds that it was based on hearsay, Mr Nur Huda recounting information given to him by his father.
6. The third and final witness is identified at paragraph 41 as a Mr Dil Mohammed. He is the Chairman of the Bradford Rohingya Community and was also transferred to the UK under the 'Gateway' programme. He stated that his organisation had interviewed the Appellant and his wife and finding them both to speak fluent Rohingya were satisfied that they were of that ethnicity, and were from Myanmar. The determination makes no findings about the evidence of that witness. This omission is the central ground of appeal advanced before me. Where a witness gives evidence, it is incumbent on the Tribunal to make clear findings on it: see for instance MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC). I am satisfied that the failure to evaluate the testimony of Mr Dil Mohammad, and to weigh it in the balance, was an error of law.
7. For the reasons which I explained to Mr Maqsood at hearing, this error is not however such that the decision must be set aside.
8. The Appellant arrived in the United Kingdom with a *prima facie* genuine passport, issued by the authorities in Bangladesh. Unless and until it is established that this document does not confer any rights to the citizenship – or protection of – that country, there was no error of law in the First-tier Tribunal treating that document as probative of the Appellant's Bangladeshi nationality. Where an asylum seeker has more than one country of nationality, or is entitled to such, Article 1A(2) of the Refugee Convention does not apply unless it can be demonstrated that he faces a real risk of harm in both countries: see for instance R v Special Adjudicator, ex p Abudine [1995] Imm AR 60 at 63, RR (refugee –

safe third country) Syria [2010] UKUT 422 (IAC), KK and ors (Nationality: North Korea) Korea CG [2011] UKUT 92 (IAC).

9. The Appellant does not deny that his passport was issued by the Bangladeshi authorities. He explains that he and his family were living in the UAE and in common with other Rohingya in the diaspora, had no papers with which to prove their identity. Needing some form of identification in order to remain living and working in the UAE the Appellant applied for a Bangladeshi passport. He states that in order to ensure that the document was issued he gave biographical details which were not true. Although his passport has been renewed more than once in the past, he now asserts that the Bangladeshi authorities have refused to renew it again, because they cannot verify the details that he originally supplied. There is no electronic record of him existing as a Bangladeshi national. That may or may not be the case. There was however no documentary evidence before the First-tier Tribunal to prove this to be so. Where there is *prima facie* evidence of dual nationality the burden lies on the applicant to show that he is not entitled to the protection of either nationality. Where nationality is disputed that burden will ordinarily only be discharged with the production of some evidence: see for instance MA(Ethiopia) v SSHD [2009] EWCA Civ 289. In that case the Court of Appeal held that the applicant would be expected to act *bona fides* and take reasonable steps to enable his or her return to the country in question. In that case this required the claimant to attend the Ethiopian embassy, tell them the truth and request a passport. If a claimant does this, and is refused, that will be sufficient to demonstrate that he or she cannot access the protection of that country.

10. This is the difficulty faced by the Appellant. He has now carried a Bangladeshi passport for many years. The Tribunal cannot know or be expected to guess at what the reaction of the Bangladeshi authorities might be if furnished with the information put forward in this appeal. They may deny the Appellant protection; they may be prepared to overlook the assertion that he supplied false information and simply treat him as a national. What is certain is that in the absence of evidence from the Bangladeshi authorities the First-tier Tribunal was not just entitled to dismiss this appeal, it was obliged to.

11. For the reasons set out above I need not address the remaining grounds of appeal as they relate to asylum. Ground 4 makes complaint about the way in which the Tribunal addressed Article 8. It is submitted that the Tribunal failed to consider the best interests of the Appellant's children, one of whom, being born in the UK is "stateless". These arguments turn on the same framework applied above. The child in question has been born to a father who is entered the UK carrying a valid Bangladeshi passport, and a mother who entered on an equally valid Pakistani document. If the Appellant wishes to demonstrate that his child is stateless, some evidence of the same must be supplied.

Decisions

12. The decision of the First-tier Tribunal does not contain any error such that it should be set aside. The decision is upheld.
13. I was not asked to make a direction for anonymity and in the circumstances I see no reason to do so.

Upper Tribunal Judge Bruce
26th May 2016