



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/01198/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 19 June 2017**

**Decision & Reasons
Promulgated
On 31 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MR M A U
(ANONYMITY DIRECTION CONTINUED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Ume-Ezeoke, Counsel instructed by Pillai & Jones Solicitors

For the Respondent: Mr N Bramble, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Bangladesh, appealed the Respondent's decision, dated 19 January 2017, to refuse recognition as a refugee and

claims relating to those based on Humanitarian Protection and the ECHR. The appeal came before First-tier Tribunal Judge R L Walker (the Judge) who, on 5 April 2017, dismissed all grounds of appeal. Permission to appeal that decision [D] was given on limited grounds by First-tier Tribunal Judge Kelly on 3 May 2017 and the Respondent made a Rule 24 response on 22 May 2017.

2. The principal basis on which the attack is mounted is the assertion that the Judge applied the wrong standard of proof in considering the protection claim.
3. It is clear that at [D10] the Judge in somewhat pro forma style set out the burden and standard of proof being to the lower level. It seems to me, in view of [D11] where the Judge was referring to immigration cases and the balance of probability being the burden of proof, that that was a pro forma template but it shows plainly the material difference between a balance of probabilities and a lower standard of proof as referred to by the Judge to be applied. It therefore seems to me that [D11] actually shows that the lower standard was being applied because it was not an immigration case.
4. Equally, the Judge correctly recited the limited basis on which there is a burden of proof of showing that Article 8 or other ECHR Articles are engaged other than in a protection sense, and that is not the subject of an appeal.
5. The gravamen of the complaint is that essentially the Appellant answered a number of questions in interview correctly and that the Judge has failed to properly reflect that in the decision. In fact, what the Judge does, given paragraphs 20 to 26 of the Reasons for Refusal Letter, is note that the Secretary of State has identified shortcomings in the Appellant's claim to have been part of and active in the student wing of Jamaat-e-Islami which was called the 'Chhatra Shibir'. The Respondent in the Reasons for Refusal Letter does note answers given and identified, with reasons, why

some of those answers are disputed: As a result of which, rejected the claim of activities by the Appellant in Chhatra Shibir qualified the extent of such activities, even taking his evidence at its highest, gave rise to any interest in him in Bangladesh. In addition the Appellant had claimed, having been in the United Kingdom since 2009, that in mid 2016 he was subject to a false accusation of being involved in a murder and that he was accused of such matters arising from events in 2014 or thereabouts.

6. It is of note that the Judge looked at this evidence in the round and it was notably lacking in any confirmation that seemingly would have been available from his father or from Jamaat-e-Islami or Chhatra Shibir of his activities. There was no issue of a refugee sur place claim arising from the Appellant's activities in the United Kingdom.
7. It seems to me that the Judge did the best he could with the limited available information and did not apply a higher standard of proof. The paragraphs particularly recited on behalf of the Appellant do not evidently display a higher standard of proof being applied so much as reasons, even if they could be improved upon, why the Appellant's credibility was not accepted. In these circumstances the Judge doing the best he could on the evidence reached the conclusion that the Appellant's claim was not credible, the Appellant did not have the political profile claimed and there were no fabricated proceedings against him in Bangladesh sitting there. The Judge made the point, for what it be worth, that the Appellant through his family and connections in Bangladesh, let alone his party if he was a supporter as he claimed to be, had not taken steps to tackle the fabricated case.
8. It is plain, historically, that the Awami League returned to power for a second term in January 2014 and contrary to the usual turn and turnabout of political parties, the BNP did not, in coalition with Jamaat, or indeed any other party, obtain power as they may have hoped. Thus, there was a continuation of Awami League control, even from 2014, and yet it is not

until significantly later in 2016 that any adverse proceedings are commenced against the Appellant as claimed.

9. There plainly were fundamental reasons why the Judge had doubts about the Appellant's credibility. In the circumstances I find there was no material error of law made by the Judge and it seems to me, even if there had been, on the same material any other Judge dealing with this would have reached, in all likelihood, the same conclusion.
10. The grounds attacked the Judge for failing to consider Article 8. That ground was not given permission but it is quite clear that the Judge considered both Article 8 and the Appellant's wife's health which, regrettably, is poor. In the circumstances the criticisms made of the Judge generally by whoever drafted the application were misguided. The original Tribunal made no error of law as claimed.

NOTICE OF DECISION

11. The appeal is dismissed.
12. Anonymity direction continued.

DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 8 August 2017

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 8 August 2017

Deputy Upper Tribunal Judge Davey