



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

Appeal Number: PA/04336/2016

**THE IMMIGRATION ACTS**

**Heard at Hatton Cross**

**Decision & Reasons**

**On 30 November 2017**

**Promulgated  
On 28 December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**N H  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr K M E Mawla, Solicitor from Lexpert Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge Ford (the judge), promulgated on 4 April 2017, in which he dismissed the Appellant's appeal against the Respondent's decision of 18 April 2016, refusing his human rights and protection claims.
2. The Appellant's case was based on the assertion that he was a Rohingya Muslim who had been brought up in Bangladesh, and that he had been either trafficked to the United Kingdom and/or been exploited whilst in this country over the course of many years.

### **The judge's decision**

3. The Appellant's appeal had previously been adjourned in November 2016. This was on the basis that he had intended to complete paperwork in respect of a referral to the National Referral Mechanism relating to his claim to have been trafficked to the United Kingdom. At that point he had yet to complete the relevant documentation and therefore a judge agreed to adjourn. When the matter came back before the First-tier Tribunal on 3 April 2017, Judge Ford refused a further application to adjourn the case. The judge noted the previous adjournment but concluded that he was able to undertake his own assessment of the relevant evidence and issues relating to trafficking. He concluded that it was not unfair or unjust to proceed notwithstanding the absence of a decision under the NRM (see paragraph 13).
4. Having assessed the evidence before him the judge rejects all core elements of the Appellant's account, finding him to be entirely untruthful. He specifically finds that the Appellant was not a Rohingya Muslim, was not trafficked to the United Kingdom, had not been in this country as long as he had claimed, and had not been a victim of trafficking whilst here. The appeal was dismissed on all grounds.

### **The grounds of appeal and grant of permission**

5. There are five grounds of appeal, relating to the alleged unfairness in failing to adjourn, particular factual findings set out in paragraphs 30 and 31, and the judge's approach to Article 8.
6. Permission to appeal on all grounds was granted by Upper Tribunal Judge Plimmer on 20 September 2017.

### **The hearing before me**

7. At the outset of the hearing Mr Mawla confirmed that he was only relying on grounds 1 to 3. In respect of the judge's refusal to adjourn pending a decision by the NRM, Mr Mawla submitted that the Tribunal could "only" undertake an assessment of a trafficking issue for itself if there had already been an NRM decision. He then moved away from that position somewhat and submitted that it would at least have been better for the judge to have had an NRM decision before making his own assessment of the relevant issues in the context of the Appellant's appeal. Mr Mawla submitted that the judge was wrong in paragraph 30 to have found that the Appellant's Muslim faith supported a conclusion that he was Bengali and not a Rohingya, given that the Rohingyas themselves were of the Muslim faith. In respect of paragraph 31 Mr Mawla submitted that the judge should not have taken the failure to approach the UNHCR or Red Cross as undermining the Appellant's credibility.
8. Mr Walker submitted that the First-tier Tribunal is able to make findings on trafficking issues for itself without having to wait for any decision by the

NRM. He accepted that the judge's reason in paragraph 30 was poor but submitted that this was not material. In respect of paragraph 31 Mr Walker submitted that the judge was entitled to rely on this particular point.

### **Decision on error of law**

9. As I informed the parties at the hearing, I conclude that there are no material errors of law in the judge's decision.
10. In respect of the refusal to adjourn the appeal for a second time, the judge clearly had the correct test of fairness well in mind when considering the application. Having regard to relevant case law including MS [2016] UKUT 00226 and AS (Afghanistan) [2013] EWCA Civ 1469 (neither of which was apparently cited to him), the judge was entitled to proceed on the basis that he could undertake a full assessment of the trafficking issues within the context of the appeal before him. I do not read the case-law as *requiring* there to be an existing decision by a competent authority before the First-tier Tribunal has any jurisdiction to evaluate issues of trafficking for itself.
11. Trafficking claims arise under the head of the Refugee Convention or Articles 3 and/or 4 ECHR on a fairly regular basis. The First-tier Tribunal is well-able to assess evidence and make relevant findings thereon. I appreciate that if there is an existing NRM decision this will be relevant to the Tribunal's task. I also acknowledge that if the judge had accepted that the Appellant had in fact been trafficked then relevant materials, including the Trafficking Convention and procedural safeguards under Article 4 ECHR would come into play. However, the absence of an NRM decision does not preclude the Tribunal from making an assessment of the relevant issues. Further, the judge in this case decisively rejected the Appellant's claim of having been trafficked to the United Kingdom and having been exploited whilst here. I also note the passage of time between the initial adjournment of the appeal in November 2016 and the appeal before the judge in April of this year. The Appellant would clearly have been aware of the nature of his case and the need to prepare for an appeal hearing accordingly. In summary there was no unfairness on the part of the judge when refusing to adjourn the appeal for a second time.
12. In respect of paragraph 30 of his decision, I find that the judge did err in relying on the reasons stated therein that the Appellant's Muslim faith tended to show that he was Bengali, the inference being that this counted against him being Rohingya. It is of course the case that the Rohingya are identifiable in large part by their Muslim faith. Therefore, the reason provided in fact neither detracted from the Appellant's case nor added to it. Although there is an error here I agree with Mr Walker that it is in no way material to the judge's findings as a whole.
13. In respect of paragraph 31, the judge was in my view entitled to take into account the failure of the Appellant to even approach the UNHCR and/or the Red Cross in order to try and locate his family. It is clear from the

wording of the paragraph that the judge was relying on this point only as a fairly peripheral reason and it did not form the core basis for his rejection of the Appellant's claim as a whole.

14. As mentioned earlier, the grounds relating to Article 8 have not been pursued before me. Even if they had been, there are no errors whatsoever in the judge's approach to Article 8. He took all relevant matters into account and correctly directed himself to the relevant law.

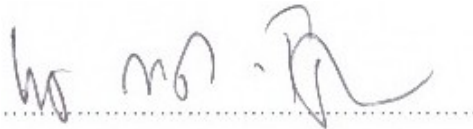
**Notice of Decision**

**There are no material errors of law in the First-tier Tribunal's decision.**

**The decision of the First-tier Tribunal stands.**

**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 their 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.



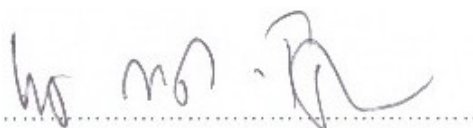
Signed  
2017

Date: 21 December

Deputy Upper Tribunal Judge Norton-Taylor

**TO THE RESPONDENT**  
**FEE AWARD**

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



Signed  
December 2017

Date: 21

Deputy Upper Tribunal Judge Norton-Taylor