



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

Appeal Number: PA/07771/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 8th August 2017**

**Decision & Reasons
Promulgated
On 10th August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MR MAH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim of Counsel instructed by MQ Hassan Solicitors
For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Bangladesh, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 13th July 2016 to refuse his application for asylum in the United Kingdom. First-tier Tribunal Judge Farmer dismissed the Appellant's appeal. The Appellant now appeals to

this Tribunal with permission granted by First-tier Tribunal Judge Kelly on 20th June 2017.

2. At the outset of the hearing Mr Karim submitted that the decision to grant permission on one of the grounds and refuse on the remaining grounds was not effective as the decision to refuse leave on those grounds had not been accompanied by a notice informing the Appellant of the right to apply to the Upper Tribunal for permission to appeal in accordance with the guidance in the case of **Ferrer (limited appeal grounds; Alvi) [2012] UKUT 00304 (IAC)**. Mr Nath did not object to this submission and I therefore heard submissions on all grounds.
3. Mr Karim submitted that there were three errors in the decision of the First-tier Tribunal. He firstly contended that there was an error in the First-tier Tribunal's decision in relation to the Appellant's claim that he received treatment in hospital after being attacked in June 2009. He submitted that at paragraph 12 (where he set out the background to the appeal) and paragraph 26 the First-tier Tribunal Judge made a mistake of fact in that he noted that the Appellant claimed that he was taken to Chhatak General Hospital. The judge concluded that this conflicted with the newspaper report submitted by the Appellant which referred to him being taken to a hospital in Sylhet [26]. However Mr Karim submitted that this was an error because at paragraphs 22 and 23 of his witness statement the Appellant said that he was initially taken to Chhatak General Hospital and he was then taken to hospital in Sylhet City for treatment, (paragraph 23 of the Appellant's witness statement). In Mr Karim's submission this was a material error because the judge took this as a negative aspect to the Appellant's credibility at paragraph 26 and again at paragraph 28. He argued that this mistake led the judge to reduce the weight attached to the newspaper report.
4. Mr Nath did not dispute that this appears to be a mistake of fact, however he submitted that this was not material because it is clear that the judge made a number of adverse credibility findings and when the decision is looked at in the round this was not a material error.
5. In my view at first glance it appears that the position advanced by Mr Nath could have merit. However, on examination it is clear that the judge's conclusion at paragraph 26 that there is a conflict between the Appellant's witness statement and the newspaper report weighed in her assessment at paragraph 27 where she considers another newspaper report and paragraph 28 where she concludes in relation to the two newspaper reports:

"I find that when looking at the evidence in the round these articles do not support the Appellant's account and undermine his credibility about the attacks he claims to have happened. The information contained in them is inconsistent with his account and his evidence about how and what he obtained from his friend is a further inconsistency and undermines his credibility".

6. It may well be that the Appellant's evidence about how he obtained the evidence was inconsistent but it is clear from this paragraph that the judge considered that the inconsistent content of the newspaper report was a significant factor in her assessment of the Appellant's credibility. Whilst the judge did go on to assess other matters at paragraphs 29 and 30, in my view these are mainly about elements of evidence that should have been obtained rather than an assessment of the evidence that was before her.
7. I bear in mind Mr Karim's submission that a mistake of fact of this nature is of particular importance in a protection claim in circumstances where the Secretary of State had accepted that the Appellant is an Ahmadi and bearing in mind the lower standard of proof. I accept his submission that, in this case, where one central aspect of the evidence is tainted by a mistake of fact, it is not possible to say that had the judge not made that mistake he could not have reached a different conclusion.
8. Mr Karim also submitted that there was an error in the judge's approach to Section 8 of the Asylum and Immigration Treatment of Claimants, etc.) Act 2004. He relied on the case of **SM (Section 8: Judge's process) Iran [2005] UKAIT 00116**. He submitted that the judge erred in looking at Section 8 first and reaching adverse credibility findings based on the delay in the Appellant seeking asylum. I do not accept that submission in this case. Whilst the judge did look at Section 8 first this did not taint her assessment of the evidence.
9. Mr Karim raised a further issue, which had not been raised in the grounds of appeal. He argued that the judge also erred in her approach to Section 276ADE in that she failed to consider whether there were insurmountable obstacles to the Appellant returning to Bangladesh in light of the fact that he is an Ahmadi. Mr Karim accepted that it appeared that there were no express oral submissions in relation to Article 8. I see no merit in this submission given that the judge did give consideration to paragraph 276ADE and no complaint is made in relation to this in the grounds. In any event the latter two grounds are immaterial in light of my findings above.
10. In light of my conclusion that the mistake of fact at paragraph 26 tainted the credibility findings the parties were in agreement with that the appropriate way to deal with this appeal going forward is for it to be remitted to the First-tier Tribunal for a decision to be made afresh.

Notice of Decision

11. The decision of the First-tier Tribunal contains a material error of law such that it should be set aside.
12. The appeal is remitted to the First-tier Tribunal to be heard afresh.

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

Date: 9th August 2017

Deputy Upper Tribunal Judge Grimes

To the Respondent
Fee Award

No fee is payable therefore there is no fee award.

Signed

Date: 9th August 2017

Deputy Upper Tribunal Judge Grimes