



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

Appeal Numbers: PA/02246/2018
PA/02247/2018

THE IMMIGRATION ACTS

Heard at Liverpool

On 18th September 2018

**Decision & Reasons
Promulgated**

On 31st October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MUNTASIR [B] (FIRST APPELLANT)
MUHTADI [B] (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms J Bond, Counsel

For the Respondent: Mr Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Bangladesh. They are brothers. They have applied for asylum on the grounds that they are members of the Bangladesh National Party and that they are at risk of persecution as they are wanted by the Awami League in Bangladesh. The Appellants' applications were refused by Notices of Refusal dated 1st February 2018. The Appellants' immigration history is set out in some detail in the decision of the First-tier Tribunal Judge.

2. The Appellants appeal against the refusal by the Secretary of State and their joint appeals were heard before Judge of the First-tier Tribunal Pickup sitting at Manchester on 16th March 2018. In a decision and reasons promulgated promptly on 20th March 2018 the Appellants' appeals were dismissed on all grounds.
3. Grounds of Appeal were lodged to the First-tier Tribunal on 20th March 2018. On 13th April 2018 Judge of the First-tier Tribunal Blundell granted permission to appeal. Judge Blundell noted that there were three Grounds of Appeal:
 - (i) that the judge had erred as he had failed to consider the case based on perceived public opinion;
 - (ii) the judge had erred as he had failed to resolve the conflict in the evidence about the prevalence of forged documents in Bangladesh; and
 - (iii) the judge had failed to consider whether the format of the original documents obtained from the court (the certified copies) was consistent with the format as described in the Bangladesh Gazette/Procedural Rules.
4. In granting permission to appeal whilst permission was granted on all three grounds so as to not limit the scope of the argument, Judge Blundell considered the first two grounds to be of very limited merit. He noted that the background material painted a bleak picture of the situation in Bangladesh but did not seem to support the contention that the Appellants would be at risk with the limited profile accepted by the First-tier Tribunal Judge and that the judge had seemed to resolve at paragraphs 105 to 108 the conflict which is highlighted in Ground 2.
5. It was on that basis, and particularly with regard to Ground 3, that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellants appear by their instructed Counsel, Ms Bond. Ms Bond is extremely familiar with this matter. She appeared before the First-tier Tribunal and she is the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer, Mr Whitwell.

Preliminary Issue

6. There is produced to me by Ms Bond a bundle of documents which Ms Bond is requested by her instructed solicitors to seek permission to adduce in evidence. This application is, after submission, refused generally on the basis that the issue before me is whether the judge materially erred in law based on the evidence that was before him.
7. However, the following factual scenario was put to me by Ms Bond. She advises that it was the intention of the Appellants' instructed solicitors to produce to the First-tier Tribunal an extract from the Bangladesh Gazette

with stamps and folios attached as an original document which it was submitted would confirm that the documents produced were in the format used by the government bodies in Bangladesh.

8. A request was made by fax transmission to the Tribunal at 11:48 a.m. on 19th March. That request urgently asked the judge to take into account the documents before reaching his decision and the letter was accompanied by the relevant pages of the Bangladesh Supreme Court Procedure Rules (known as the Bangladesh Gazette) describing the procedure for the preparation of copy documents by the court.
9. It is accepted that that fax was never placed before Judge Pickup who at the time it was sent was dictating his decision which was promulgated the following day. No criticism at all can be levelled at the First-tier Tribunal Judge.
10. The submission made to me by Ms Bond is that it is possible that the judge may have come to a different decision had he had the benefit of the original stamped copies of the Bangladesh Gazette before him. She reminds me that it is open to a party to place additional information before a judge prior to the promulgation of the decision. As the papers were not placed before Judge Pickup she contends there is a procedural irregularity which might well have created an unfairness and have led to a different decision had the papers been before the judge.
11. Mr Whitwell on behalf of the Secretary of State accepts this position. What is not accepted is the further submission made by Ms Bond that additional evidence over and beyond the papers mentioned above should be admitted in evidence, in particular an expert's report. She agrees that that report was not ready prior to the promulgation of Judge Pickup's decision. I refuse her application to admit it in evidence.
12. In such circumstances it is the agreement of all parties that the correct approach is to remit the matter back to Judge Pickup merely for him to consider the outstanding point. I have pointed out that on reconsideration Judge Pickup may possibly come to the same decision that he came to previously and if so, then whilst it would be open to the Appellants to seek to rely on Grounds 1 and 2 on a further application for permission, they must bear in mind the approach that was adopted by Judge Blundell when he originally granted permission. Further, it seems appropriate that the remitted hearing be dealt with on the papers.

Notice of Decision

- (1) The decision of the First-tier Tribunal Judge contains a material error of law based on a procedural irregularity limited to the failure of the administration to put papers before the First-tier Tribunal Judge for his consideration when those papers are lodged at the Tribunal prior to the judge promulgating his decision.

- (2) The appeal is consequently remitted back to the First-tier Tribunal sitting at Manchester reserved to First-tier Tribunal Judge Pickup, to be dealt with on the papers and with a recommended ELH of one and a half hours solely for the purpose that he may reconsider his decision based on further consideration of the additional papers that should have been before him.
- (3) That there be leave to either party to make written submissions to the First-tier Tribunal Judge with regard to the additional documents, such submissions to be made in writing within seven days of receipt of this decision.
- (4) No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris
2018

28th September

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris
2018

28th September