



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02766/2018

THE IMMIGRATION ACTS

Heard at Field House
On 22nd June 2018

Decision & Reasons Promulgated
On 13th July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MD RUMEL [A]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Miss Z Ahmad, Home Office Presenting Officer
For the Respondent: Mr P Jarro, Counsel instructed by Londonium Solicitors

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh born on 5th June 1991. The Appellant applied for entry clearance as a Tier 4 (General) Student visa on 4th January 2010 which was granted until 30th October 2012. Thereafter the Appellant overstayed. He was

subsequently arrested on 1st August 2017 and claimed asylum on 15th October 2017. The Appellant's claim was based on a contention that he had a well-founded fear of persecution in Bangladesh on the basis of his political opinion. That application was refused by notice of refusal dated 13th February 2018.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Metzger sitting at Taylor House on 28th March 2018. In a Decision and Reasons promulgated on 10th April 2018 the Appellant's appeal was allowed on asylum and human rights grounds.
3. On 18th April 2018 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. Those grounds consisted of a contention that it was submitted that the judge's credibility assessment was irredeemably flawed. It was noted that the judge had found the Appellant's account to be consistent, but it was submitted that he did not apply this criteria to plausibility. At paragraphs 4 to 7 of the Grounds of Appeal (which I have considered) the Secretary of State sets out the basis upon which it is contended that the judge did not apply the criteria to plausibility. Further, it is contended that the judge had given very brief and sparse reasonings for his assessment and that they did not adequately explain the reasons for allowing the Appellant's overall claim and that there had been no anxious scrutiny. On that basis the Secretary of State seeks to find that there are material errors of law which render the decision of the First-tier Tribunal Judge unsafe.
4. On 1st May 2018 First-tier Tribunal Judge Birrell granted permission to appeal. There is no Rule 24 response before the Tribunal.
5. It is on that basis that the appeal comes before me solely to determine whether there is a material error of law in the decision of the First-tier Tribunal Judge. I note that this is an appeal by the Secretary of State, but to ensure consistency through the appeal process Mr [A] is referred to herein as "the Appellant" and the Secretary of State as "the Respondent". Mr [A] appears by his instructed Counsel Mr Jarro. The Secretary of State appears by her Home Office Presenting Officer, Miss Ahmad.

Submissions/Discussion

6. Miss Ahmad suggests that it is important to note the history of this matter, reminding me that the Appellant arrived in 2010 on a Tier 4 (General) visa and that it was five years after his leave had expired and some two weeks after he had been caught working in Torquay that the Appellant made an application for asylum.
7. Rather surprisingly Miss Ahmad takes me to the Appellant's skeleton argument that is produced for this hearing and seeks to rely thereon on judicial authority referred to therein as being in support of the Respondent's position. Of course authorities are to be read as appropriate guidance and they can be used by both sides. She submits that the Appellant contends that he has been at risk in Bangladesh. She submits that the judge has addressed this at paragraph 10 in his decision, and in making his findings has made no findings on the documentary evidence and has failed to give reasons for inconsistencies which he has accepted.

8. She submits that the judge failed to point out that the Appellant was required to leave the UK at the end of his visa in April 2012, or that the judge has failed to address the issue that it was some five years later, and two weeks after he was detained, that the Appellant claimed asylum. She submits that the Appellant is an economic migrant and that the judge has given superficial consideration to Section 8 of the 2004 Act. She contends that the judge has firstly failed to give reasons on material matters, and secondly, failed to take into account facts which are material. She submits that it is unclear in the judge's reasons as to why the judge's decision does not reflect why he accepts certain documents and that the judge has given no reasons in paragraph 11 for accepting documentary evidence and no reasons for the way the Appellant has dealt with the inconsistencies of his evidence. She contends that there are material errors of law consequently disclosed, asked me to set aside the decision and to remit it to the First-tier Tribunal for rehearing.
9. Mr Jarro points out the starting point is that the Appellant gave his evidence to the Home Office. He accepts that he applied very late, but that the only issue was credibility and that the Secretary of State's case centres on what they contend to be a series of inconsistencies and lack of detail. However, in the manner in which the case is addressed in the Notice of Refusal, he points out that the Secretary of State has quite properly, at paragraph 45 therein, invoked the authority of *Tanveer Ahmed*. He submits that because of the lack of detail little weight is given to documentary evidence and that the judge has noted that and consequently the only issue relates to its credibility. He points out that the judge is aware that documents can be forged and he takes me to paragraph 10 of the judge's findings where he has concluded that the inconsistency of the Appellant's evidence are of a limited extent and he submits that these were findings the judge was entitled to make.
10. Prior to that he has set out, he submits, the issues at paragraph 9 and made findings that he was entitled to at paragraph 10. He submits that the issues have been brought to the attention of the Home Office and that the finding that has been made relates to the Appellant's involvement in political activities. He submits that the judge found the Appellant on such matters to be credible and he has given weight to the documentary evidence produced to the Home Office. It is not a matter of concern he submits to the Appellant that the Home Office had said that it is not for them to verify documents. He agrees the case law in principle as set out within his skeleton argument. He in no way seeks to challenge it but submits that even though it is argued by Miss Ahmad that it supports her, he equally suggests that it supports the analysis adopted by the judge. In conclusion he submits that the challenge is effectively one of an adequacy of reasons and that whilst the findings of the judge are brief he submits they are sufficient. In such circumstances he asked me to dismiss the appeal.

The Law

11. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to

give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

12. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

13. This case turns entirely on an adequacy of reasons challenge and whether or not the findings of the judge at paragraph 10 are sufficient. The decision is a short one but that in itself does not mean that it is inadequate. There are also findings made of adverse credibility. A proper approach to credibility will require an assessment of the evidence and the general claim and as such relevant factors will be the internal consistency of the claim, the inherent plausibility of the claim and the consistency of the claim with external factors of the sought typically found in country guidance. I accept that the burden of proof is on the lower standard and this case turns very largely on a construction of paragraph 10 of the judge's decision. I am satisfied therein that the judge has failed to give sufficient reasons to say why he has accepted the Appellant's evidence. To use the phrase:-

"I find that the apparent inconsistencies in the Appellant's evidence are of a limited extent and given the relevant standard of proof, I find the Appellant has established to the relevant standard that he is credible in relation to the background of his claim"

is insufficient. There is a requirement in a case of this nature for the judge to go into some detail as to what his findings are and the reasons why he has made them. There is an admission herein that there are inconsistencies but these have not been analysed by the judge. This has to be balanced against the seeming failure of the judge to completely ignore the fact in his findings that this is an Appellant who overstayed his visa in 2012 by some five years and only brings his claim after he is arrested some five years later.

14. Mr Jarro has referred me to the authority of *JT (Cameroon) v The Secretary of State for the Home Department* [2008] EWCA Civ 878 and I acknowledge the guidance given by that

case. However, this is not a case where the Secretary of State has paid mere lip service in his analysis of the material facts. They are considered in substantial detail between paragraphs 27 and 68 of the Notice of Refusal. To merely apply a *Tanveer Ahmed* approach to seemingly the whole of the decision is inappropriate. I note and acknowledge the way in which Mr Jarro has put his submissions, but overall I am satisfied that this is a judge who has in the briefest of reasons failed to adequately give reasons to inadequacies in the evidence as described in some detail in paragraphs 4 to 7 of the Secretary of State's Grounds of Appeal. Such failures show that the decision cannot be sustained and in such circumstances I find that there are material errors of law and set aside the decision and give hereinafter directions for the rehearing of this matter.

Notice of Decision

The decision of the First-tier Tribunal Judge contains a material error of law and is set aside. Directions are given hereinafter for the rehearing of this matter:-

- (1) That on the finding that there are material errors of law in the decision of the First-tier Tribunal Judge the decision is set aside and remitted to the First-tier Tribunal sitting at Taylor House on the first available date 28 days hence with none of the findings of fact to stand with on estimated length of hearing of 3 hours.
- (2) That the rehearing of this matter is to be before any Judge of the First-tier Tribunal other than Judge of the First-tier Tribunal Metzger.
- (3) That there be leave to either party to file and/or serve a bundle of further subjective and/or objective evidence upon which they seek to rely at least 21 days prior to the restored hearing.
- (4) That in the event of the Appellant requiring an interpreter his instructing solicitors to notify the Tribunal of the language requirement of that interpreter within seven days of receipt of this decision.

The First-tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. No application is made to vary that order and none is made.

Signed

Date 10/07/2018

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

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

Signed

Date 10/07/2018

Deputy Upper Tribunal Judge D N Harris