



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10969/2016

THE IMMIGRATION ACTS

Heard at Field House
On 11 May 2018

Decision and Reasons Promulgated
On 22 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

MOKSUDUR RAHMAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Franco (counsel) instructed by Schneider Goldstein
Immigration Law

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Somal promulgated on 5 October 2017, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 07/07/1989 and is a national of Bangladesh. On 29/09/2016 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Somal ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 16/02/2018 Upper Tribunal Judge Finch gave permission to appeal stating

The appellant is appealing against the decision by the First-tier Judge Somal to dismiss his appeal against the decision by the respondent to refuse to grant him asylum.

The First-tier Tribunal Judge failed to adopt the approach recommended in Karanakaran v SSHD [2000] EWCA Civ 11 and give appropriate weight to different parts of the evidence before reaching an overall assessment of the credibility of the appellant's case. In addition, as this was an asylum appeal, corroborative documentary evidence of his political activities should not have been required.

Furthermore, the appellant could have been expected to give additional details of this case in his witness statement and oral evidence.

The appellant has also produced a number of court documents and a letter from his attorney at law. These were potentially significant pieces of evidence and the First-tier Tribunal Judge should have addressed their provenance, authenticity and content in some detail and provided cogent reasons for finding that they could not be relied upon.

It was not sufficient to merely state on paragraph 38 of her decision that "I find given my serious concerns about his credibility, which goes to the core of his account, these documents he has now produced are not reliable" and, in paragraph 39, that such documents are easily produced in Bangladesh.

As a consequence, it is arguable that First-tier Judge Somal's decision contained arguable errors of law and, therefore, it is appropriate to grant permission to appeal.

The Hearing

5. (a) For the appellant Mr Franco moved the grounds of appeal. He told me that (although it is not mentioned in the grounds of appeal) the hearing before the First-tier Tribunal lasted only about 15 minutes. He told me that there is no significant challenge to the appellant's credibility, and that is reflected at [30] of the decision. He relied heavily on the grant of permission to appeal.

(b) Mr Franco told me that the Judge has failed to assess the provenance, authenticity and content of documents relied on by the appellant. He took me to [38] and [39] of

the decision and told me that the Judge takes a superficial glance at the documents before dismissing them because she finds the appellant is neither a credible nor a reliable witness. He told me that the Judge has not given anxious scrutiny to each strand of evidence.

(c) Mr Franco told me that the decision makes no reference to the appellant's submissions, despite recording the submissions for the respondent. He said there was inadequate attention paid to objective evidence. He urged me to allow the appeal and set the decision aside.

6. (a) For the respondent, Ms Everett told me that the decision does not contain errors, material or otherwise. She took me to [6] of the decision, where the Judge confirms that she heard evidence from the appellant and his wife, that the Judge heard submissions from both the appellant's representative and the respondent's representative, and that the Judge has taken all of the evidence into account.

(b) Ms Everett took me through the decision & told me that the Judge makes clear, sustainable, findings in relation to the appellant's overall credibility and in doing so considered each strand of evidence, including the documents, in the round. She told me that the Judge took account of the appellant's witness statement, the transcript of his asylum interview and the appellant's oral evidence before giving good reasons for finding that the appellant was neither a credible nor a reliable witness.

(c) Ms Everett asked me to dismiss the appeal and allow the decision to stand.

Analysis

7. There is no suggestion in the grounds of appeal that there has been procedural unfairness. The duration of the hearing before the First-tier is entirely irrelevant. Between [4] and [6] of the decision the Judge summarises the proceedings. What is clear from the decision is that if the hearing lasted only 15 minutes the Judge spent a great deal longer considering the evidence and writing the decision.

8. Permission to appeal was granted because of concerns about the manner in which court documents and a letter from a Bangladeshi attorney-at-law have been dealt with by the Judge.

9. Between [7] and [28] the Judge summarises the evidence placed before her. Between [25] and [28] the Judge records the documentary evidence the appellant relies on. Between [30] and [41] the Judge sets out her consideration of the evidence, which leads to her findings of fact.

10. At [31] to [40] the Judge explains why she rejects the appellant's evidence. As part of that consideration, the Judge considers the appellant's account of requesting documentary evidence from Bangladesh at [35]. At [37] the Judge lists the documents produced and at [38] and [39] the Judge gives reasons for finding that the documentary evidence is not reliable.

11. There is a distinction between (i) the evidential weight to be attached to a document (the document's reliability) and (ii) the question of whether the document is a forgery. Where a claimant seeks to rely on a document then, in the normal course, the burden lies on the claimant to show that it is a document that can be relied on. It does not follow, however, from this exercise that the document is a forgery. There must be strong evidence before a Judge makes a positive finding that a document is forged.

12. In Tanveer Ahmed (Starred) 2002 UKIAT 00439 the Tribunal had in mind that the decision maker should decide how much evidential weight a document should be given in the first instance. Reference is made in that decision to the evidential weight to be given to documents. Then, at paragraph 35, the Tribunal said "*In all cases where there is a material document it should be assessed in the same way as any other piece of evidence*". Thereafter, as the Tribunal went on to point out "*A document should not be viewed in isolation. The decision maker should look at the evidence as a whole or in the round.*"

13. In MT(Syria) 2004 UKIAT 000307 the Adjudicator had stated: "*In view of my findings on the Appellant's credibility, I give no weight to these documents.*" The Tribunal concluded that the Adjudicator had not weighed the document as part and parcel of the process of looking at the evidence in the round to assess credibility but had effectively reached his credibility findings without reference to the document and then assessed the document on the basis of those flawed findings. He had fallen into the trap identified by the Court of Appeal in Ex parte Virjon B 2002 EWHC 1469, in which the Adjudicator had assessed a medical report on the basis of his credibility findings rather than reaching his findings on the basis of all the evidence including the medical report.

14. In the case of AR (Pakistan) v Upper Tribunal [2017] CSIH 52 the court considered the approach to documents. One could not simply rely on doubts as to the veracity of the account given by the claimant as a reason for rejecting documents which, on their face, supported his claim. A holistic approach requires the overall assessment to be made after all of the evidence has been considered and assessed. One might ask - do the documents support the claim? If yes, is there any reason arising from the documents themselves to doubt their authenticity? If no, how does this affect, if it does affect, doubts that have arisen as to the claimant's account? In the court's view if the doubts are used as an *a priori* reason to undermine and reject the documents, there is an obvious risk that supportive evidence is being wrongly excluded from the overall assessment.

15. Although the Judge has carried out a clear analysis of the appellant's own evidence, inadequate consideration is given to the documentary evidence. The Judge has used the finding that the appellant is neither a credible nor a reliable witness to dismiss the documentary evidence. What is required is an analysis of those documents, addressing their provenance, authenticity and content and then a decision on the weight which can be given to each piece of documentary evidence and the impact that evidence has on the appellant's overall claim.

16. I find that the treatment of the documentary evidence between [37] and [39] of the decision amounts to a material error of law. I set the decision aside.

17. I consider whether I can substitute my own decision but find that I cannot because there would be an artificial separation between the appellant's evidence and the documentary evidence. A holistic approach to each strand of evidence requires to be taken. I therefore find that none of the Judge's findings of fact can stand.

Remittal to First-tier Tribunal

18. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

19. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re-hearing is necessary.

20. I remit this case to the First-tier Tribunal sitting at Nottingham to be heard before any First-tier Judge other than Judge Somal.

Decision

The decision of the First-tier Tribunal is tainted by material errors of law.

I set aside the Judge's decision promulgated on 5 October 2017. The appeal is remitted to the First-tier Tribunal to be determined afresh.

Signed *Paul Doyle*
Deputy Upper Tribunal Judge Doyle

Date 17 May 2018