



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01923/2013

THE IMMIGRATION ACTS

Heard at Field House
On 8 August 2013

Promulgated
On 13 August 2013

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

MR MOHAMMAD IBRAHIM HOSSAIN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Solomon of counsel instructed by Dean Manson solicitors
For the Respondent: Mr P Deller a Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a citizen of Bangladesh born on 1 January 1971. He has been given permission to appeal the determination of First-Tier Tribunal Judge Lucas who dismissed his appeal against the respondent's decision of 26 February 2013 to give directions for his removal from the United Kingdom following the refusal of asylum.
2. The appellant claimed asylum on the basis of past persecution and the fear of future persecution in Bangladesh because of his Ahmadi faith. He was born a Sunni Muslim and converted to the Ahmadi faith when he was between 10 and 12 years of age. He claimed to have been attacked on three occasions because of his faith. The first was in 1986 when he was kidnapped, ordered to renounce his faith and badly beaten when he

refused to do so. He was admitted to hospital where he remained for three days. He was sent to prison in August 1987 because of his conversion and held for 56 days before being released. In August 2010 he had planned to build an Ahmadi mosque on land owned by his family. A mob assembled and he was badly beaten with an iron rod. Damage to his head required nine stitches and he was kept in hospital for a month. He did not leave Bangladesh until December 2012.

3. The respondent accepted the appellant's nationality, his date of birth and that he was of the Ahmadi faith. His account of events in Bangladesh was either doubted or disbelieved. The appellant appealed and the judge heard his appeal on 26 April 2013. Both parties were represented; the appellant attended and gave evidence.
4. In paragraph 70 of the determination the judge accepted, albeit with obvious reluctance, that the appellant was of the Ahmadi faith. He found the appellant not to be a credible witness, rejected his account of events and concluded that in the circumstances notwithstanding his faith he would not be at risk on return to Bangladesh. He dismissed the appeal on asylum, humanitarian protection and human rights grounds.
5. The appellant applied for and was granted permission to appeal by a judge in the First-Tier Tribunal. The grounds argue that the judge erred in law in a number of respects. He made a factual error as to the identity of the patient in the Police Case Injury Report, failed to give any objectively supported reasons for the conclusion that the appellant would have known how to claim asylum in the UK, erroneously criticised the appellant for failing to provide corroborative evidence and failed to take into account the medical evidence as the scarring on the appellant's head. The respondent served a Rule 24 letter arguing that there was no error of law and that the judge was entitled to reach his conclusions.
6. I informed Mr Deller that I was concerned about aspects of the determination relating to the adverse credibility finding in particular the judge's treatment of the medical evidence. In paragraph 68 the judge said; "There is no medical report in this case. The letter that has been produced from the appellant's GP does (not) make any mention or findings at all with regard to the injury or scar that the appellant is said to have suffered in 2010." The word "not" which I have placed in brackets, was omitted but I conclude that this was a typographical error. The passage does not make any sense without it. This conclusion flies in the face of what the judge said in paragraph 28 where he recorded a letter from the Figges Marsh Surgery and a named GP. The judge quoted from the report including the passage; "I can confirm that he has scar marks of approximately 10 - 14 stitches in his head. The incident took place in 2010. Following the head injury, he developed sleep disturbance, low moods, flashbacks and withdrawal from his daily activities and phobias of public interactions".
7. Mr Deller indicated that he was concerned about the determination. It appeared to him that there were strong indications that the judge erred in law by reaching his adverse credibility finding before giving reasons for this. On behalf of the respondent he

conceded that there were material errors of law in the determination and that the decision should be set aside. It was not a safe determination.

8. I find that the judge erred in law. His treatment of the medical evidence as to the appellant's scarring is flawed for the reasons I have set out. This is raised in paragraph 7 of the grounds of appeal. If the judge had properly considered the medical evidence it should have impinged on his consideration of the photographs and his conclusion that these were not of the appellant. The psychiatric report has not been properly considered. One of the reasons the judge gives for rejecting it, that there was no medical evidence to establish the cause or age of any head injuries sustained by the appellant, is flawed because there was such evidence. The other reason, in paragraph 69, is in large part impermissibly circular. The judge rejects the psychiatric evidence because he found the appellant not credible. In respect of the adverse credibility findings generally the judge put the cart before the horse concluding, in paragraph 49 and before giving any reasons, that the appellant "has failed to discharge the appropriate burden of proof upon any submitted grounds" (the judge's emphasis) and, in paragraph 53, before giving most of his reasons, that; "the Tribunal places no weight at all upon the appellant's claim to have been targeted or persecuted in Bangladesh". These errors are such that the findings of fact and credibility cannot stand. The decision should be set aside.
9. I set aside the judge's decision. As there has not been a full and effective hearing in the First-Tier Tribunal I agree with the representatives that the redetermination of this appeal should take place before a judge in the First-Tier Tribunal at Hatton Cross.

DIRECTIONS

- a) Arrangements have already been made for the case to be listed at Hatton Cross on the 11th November 2013.
- b) Time estimate two and a half hours.
- c) Bengali speaking interpreter required.
- d) To be heard by any First-Tier Tribunal judge other than Judge Lucas.

Signed:.....
Upper Tribunal Judge Moulden

Date: 9 August 2013