



IAC-AH-KEW-V1

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

Appeal Number: AA/07102/2015

**THE IMMIGRATION ACTS**

**Heard at Centre City Tower, Decision & Reasons Promulgated  
Birmingham  
On 19<sup>th</sup> November 2015**

**On 4<sup>th</sup> December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**ALI AHMAD  
(ANONYMITY ORDER NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer

For the Respondent: Mr R Sharma of Counsel, instructed by Lawland Solicitors

**DECISION AND REASONS**

**Introduction and Background**

1. The Respondent before the Upper Tribunal was the Appellant before the First-tier Tribunal and I will refer to him as the Claimant. The Claimant is male and claims to be of Rohingya ethnicity from Burma with a date of birth of 1<sup>st</sup> January 1986. The Claimant claims to have arrived in the United Kingdom on 20<sup>th</sup> January 2005 and claimed asylum on 26<sup>th</sup> February

2015 fearing persecution if returned to Burma because of his Rohingya ethnicity.

2. The application was refused on 27<sup>th</sup> March 2015, the Secretary of State not accepting that the Claimant had given a credible account, and not accepting that he is a Burmese Rohingya. The Secretary of State believed that the Claimant is a Bangladeshi national.
3. The Claimant's appeal was heard by Judge Hubball of the First-tier Tribunal (the FTT) on 6<sup>th</sup> August 2015. The FTT believed the Claimant's account, found him credible, and on the basis that he is a Burmese Rohingya, allowed the appeal on asylum grounds. There is no separate finding in relation to human rights.
4. The Secretary of State applied for permission to appeal to the Upper Tribunal. In summary it was contended that the FTT had failed to engage adequately with the evidence concerning matters which were in contention between the parties.
5. It was contended that the FTT had not addressed the concerns raised by the Secretary of State in the refusal letter dated 27<sup>th</sup> March 2015 at paragraphs 22-28.
6. It was contended that the Appellant's account of the camp in which he lived, conflicted with the established background evidence and the FTT had not given reasons for preferring the Appellant's evidence. It was further contended that the judge had not addressed the Appellant's claimed residence in the UK since 2005, which the FTT accepted despite there being no evidence to support this claim, and despite the FTT making an adverse credibility finding pursuant to section 8(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (the 2004 Act) by reason of the Claimant failing to make an asylum claim until February 2014.
7. Permission to appeal was granted by Judge of the First-tier Tribunal Froom in the following terms;

"The Respondent disputed the Appellant's claim to be a Rohingya from Burma. The judge found he was a Rohingya and allowed his appeal. In essence the grounds complain the judge did not address all the Respondent's reasons for refusal.

I grant permission because it is arguable the judge failed to give adequate reasons for his decision in that he did not address the Respondent's arguments, as set out in the refusal, concerning the inconsistency between the Appellant's account of the camp he claims to have lived in and the background evidence. In fact, the majority of the judge's positive findings of fact are unreasoned."
8. The Claimant did not lodge a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

9. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FTT had erred in law such that the decision should be set aside.

### **The Secretary of State's Submissions**

10. Mr Mills relied and expanded upon the grounds contained within the application for permission to appeal. I was asked to find that it was wholly unclear why the FTT preferred the Appellant's evidence to the evidence provided by the Secretary of State. Mr Mills submitted that the FTT had not engaged with the issues raised in the decision to refuse.
11. I was asked to note that the FTT had found the Claimant's credibility to be damaged pursuant to section 8 of the 2004 Act. I was asked to find that the FTT on a number of occasions throughout the decision had accepted and believed evidence given by the Claimant without giving adequate reasons.

### **The Claimant's Submissions**

12. Mr Sharma submitted that adequate reasons had been given by the FTT. I was referred to paragraph 93 in which the FTT had stated;

"93. I have had an extensive opportunity of hearing oral evidence from the Appellant in this appeal. Notwithstanding the damage to the Appellant's general credibility under section 8(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, I found the core of the Appellant's evidence to be consistent and truthful to the lower standard of proof of a reasonable likelihood or serious possibility."
13. Mr Sharma pointed out that the FTT had made specific reference in paragraph 107 to the Danish report on Rohingya refugees in Bangladesh, which was the background evidence relied upon by the Secretary of State. The FTT had considered that report at paragraph 114, and therefore it could not be said that the FTT had disregarded the background evidence.
14. Mr Sharma submitted that the grounds relied on by the Secretary of State amounted to a disagreement with the findings made by the FTT but did not disclose a material error of law.

### **The Secretary of State's Response**

15. Mr Mills pointed out that paragraph 93 did not contain any reasons why the FTT found the core of the Claimant's evidence to be consistent and truthful.

### **My Conclusions and Reasons**

16. I announced at the hearing that the FTT had materially erred in law and that I would issue a written decision giving my reasons for reaching that conclusion.
17. The FTT found that the Claimant's credibility was damaged pursuant to section 8(2) of the 2004 Act as he had failed to claim asylum until February 2014, having claimed to have arrived in the United Kingdom in January 2005. There is no error of law in that conclusion.
18. However, having found that the Claimant's general credibility was damaged, the FTT nevertheless recorded in paragraph 93 that it found the core of the Claimant's account to be consistent and truthful. The error made by the FTT is to fail to give adequate reasons for that finding, and to fail to give adequate reasons to explain why it preferred the Claimant's evidence to that given by the Secretary of State.
19. I set out below the head note to Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) which provides a summary of the principles to be applied in relation to adequacy of reasoning;

"It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost."
20. Credibility is a major issue in this appeal, and the Claimant's assertion that he is a Rohingya is central to his claim.
21. Material issues in relation to credibility and the Claimant's ethnicity were raised by the Secretary of State in the refusal decision dated 27<sup>th</sup> March 2015.
22. One of the issues raised related to the Claimant's language, in that he spoke Bengali and not Rohingya. It was contended by the Secretary of State that the Claimant had failed to address the issue as to why he was taught Bengali instead of Rohingya which was his parents' primary language.
23. In paragraphs 98-99 the FTT stated that it believed the Claimant's evidence that no one in the refugee camp spoke Rohingya and this was why he only spoke Bengali. The FTT gave no adequate reason for reaching this conclusion, which is contrary to the background evidence. The FTT had not engaged adequately with the issues raised by the Secretary of State, and gave no adequate explanation for reaching the conclusion that the Claimant's evidence was to be preferred to that of the background evidence.
24. Another issue raised related to the family/ration book used by the Claimant's family in the refugee camp. The background evidence indicated that such books are traded and there is a high level of fraud. At

paragraph 107 the FTT acknowledged the high level of fraud and that such books are traded but concluded that the book produced by the Claimant (which had not been produced at the date the Secretary of State refused the claim) was genuine and could be relied upon. No adequate explanation or reason is given as to why the FTT reached the conclusion that the book can be relied upon. There is no adequate explanation as to why the Claimant's evidence can be relied upon, despite an adverse credibility finding made pursuant to section 8(2) of the 2004 Act. The FTT noted that the names of the Claimant's family are in the book, but this is not an adequate reason for accepting it as genuine. It would be unlikely for the Claimant to produce a book said to belong to his family, if it did not contain his family details.

25. At paragraph 115 the FTT accepted the Claimant's evidence that he visited the Bangladeshi High Commission in London to try and obtain identity documents and also accepted that he went to the Burmese Rohingya organisation UK in London. No adequate reasons are given for accepting this evidence. There was no documentary evidence to confirm this, and the FTT has not adequately explained why the Claimant's evidence was accepted, notwithstanding the adverse credibility finding made pursuant to section 8(2) of the 2004 Act.
26. The FTT used the phrase "I accept" and "I believe" on a number of occasions in paragraphs 94-115, without giving adequate reasons to explain why the evidence was accepted or believed. I do not accept that paragraph 93 of the decision provides a satisfactory explanation.
27. The FTT has not complied with the principles set out in Budhathoki, in that adequate reasons for findings have not been given, and it is not clear to the Secretary of State, why the Claimant's evidence was accepted above that given by the Secretary of State.
28. The decision of the FTT is set aside with no findings preserved. The parties agreed, and I accept, having considered paragraph 7 of the Senior President's Practice Statement of 25<sup>th</sup> September 2012, that the nature and extent of the judicial fact-finding which is necessary for the decision in the appeal to be re-made is such that it is appropriate to remit the case to the First-tier Tribunal.
29. The appeal before the First-tier Tribunal will take place at the Birmingham Hearing Centre. The parties will be advised of the time and date in due course. The appeal is to be heard by a First-tier Tribunal Judge other than Judge Hubball. An interpreter in Bengali will be provided.

## **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal with no findings preserved.

## **Anonymity**

There was no order for anonymity made in the First-tier Tribunal. There has been no request for anonymity to the Upper Tribunal, and no anonymity order is made.

Signed

Date 25<sup>th</sup> November 2015

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

No fee award is made by the Upper Tribunal. The fee award will need to be considered when the First-tier Tribunal has heard this appeal.

Signed

Date 25<sup>th</sup> November 2015

Deputy Upper Tribunal Judge M A Hall