



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

Appeal Number: HU084922015

THE IMMIGRATION ACTS

**Heard at Bradford
On 23 May 2017**

**Decision & Reasons
Promulgated
On 7 June 2017**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**DILDAR MIA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Shah, Taj Solicitors

For the Respondent: Mrs Pettersen, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Dildar Mia, was born on 1 January 1983 and claims to be stateless; the respondent claims that he is a citizen of Burma (Myanmar). He claims to have entered the United Kingdom in 2006 and claimed asylum in February 2013. The appellant did not attend for interview and absconded and so, on 5 April 2013, the respondent deemed his application

as withdrawn. On 23 June 2015, the appellant applied for leave to remain on the basis of his relationship with Sanzida Akhtar Choudhury (hereafter Ms Choudhury). The respondent refused that application considering that the appellant had failed to prove that he was in a genuine and subsisting relationship with Ms Choudhury. The appellant appealed to the First-tier Tribunal (Judge Turnock) which, in a decision promulgated on 26 September 2016, dismissed the appeal on human rights grounds. The appellant now appeals, with permission, to the Upper Tribunal.

2. In essence, there is one ground of appeal to the Upper Tribunal. In addition to Article 8 ECHR, the judge considered the appellant's position in respect of paragraph 276ADE of Appendix FM of HC 395. At [67] he found that there will be no very significant obstacles to the appellant's reintegration into Burma. As regards Ms Choudhury, the judge found at [57] that she had been born in Bangladesh although she is now a British citizen. Ms Choudhury has been living in the United Kingdom for a period of thirteen years. Curiously, the decision of the judge is silent as to whether or not it would be reasonable for Ms Choudhury to leave the United Kingdom to live in Burma with the appellant. Ms Choudhury and the appellant do not have children together. The judge appears to suggest [69] that the best course of action is for the appellant to return to Burma to make an application out of country for entry clearance as the partner of Ms Choudhury. In any event, it is not the judge's failure to deal with Ms Choudhury's position but is challenged in the grounds of appeal. Rather, it is the alleged failure of the judge to reach the correct decision as regards the appellant's Rohingya ethnic and religious origin. The appellant submits that the judge failed to recognise that he would be stateless if returned to Burma; in effect, not only would there be insurmountable obstacles to his reintegration in Burmese society, that he would, in effect, suffer persecution and ill-treatment on account of his Rohingya origins.
3. The main basis for this assertion is the Country Information Report of the Secretary of State. Mr Shah showed me the most recent copy (which postdates Judge Turnock's decision) which states at 4.2.1 that:

General elections took place in Burma on 8 November 2015. The elections were largely seen as fair although hundreds of thousands of people were not able or eligible to vote including Rohingyas who are not recognised as citizens and those affected by ongoing ethnic conflicts in seven areas of the country.
4. The judge did not have a copy of the Country Information Report before him or, indeed, any evidence (as opposed to submissions) dealing with the appellant's Rohingya status. I accept, however, that the earlier Country Information Report which would have been in existence at the time of Judge Turnock's decision (although not before him) would have been likely to make reference to Rohingyas in the same terms as the passage of the most recent report which I have quoted above. I say that because the elections in Burma which are referred to took place in November 2015, that is [4] at Judge Turnock's decision.

5. I have made a distinction above between submissions and evidence. I should clarify by stating that the appellant's written statement refers to his Rohingya origins and the problems this would cause if he is returned to Burma. That statement is, of course, evidence but there was no background material, expert report or other evidence relating to Rohingyas. Nor was there any material in the public domain, such as the Country of Origin Information Report. In addition to the appellant's statement, the Tribunal had before it written submissions in which the appellant's Rohingya origins are considered.

6. Judge Turnock did not avoid the issue of the appellant's Rohingya status in his decision. He appears to have drawn guidance from paragraph 403 of the Immigration Rules. The judge then went on at [65] to say:

The appellant must be able to discharge the obligation upon him to have had a proper application for citizenship of the country with which he was most closely connected. In effect before the appellant can say that he is stateless or a citizen of another country altogether he must where circumstances required have made reasonable endeavour to show whether or not he is a citizen of the country with which he is most closely connected.

I do not consider the appellant has done enough to demonstrate that he has been arbitrarily deprived of Burmese (Myanmar) nationality.

7. Mr Shah submits that that was not enough. He submits that the respondent should have been aware that her own country material indicated that the appellant will be rendered or treated as stateless upon return to Burma. The judge's decision that it will be reasonable to expect the appellant to return and there will be no significant obstacles to his reintegration was therefore perverse.

8. I disagree with Mr Shah. I do so for the following reasons. First, Mr Shah himself admitted that the appellant had chosen not to proceed with his asylum claim but instead to make an application on the basis of his family life with Ms Chaudhury. Mr Shah even stated that at the hearing before Judge Turnock the appellant's asylum claim had been very much treated as a secondary issue to his family life claim. In my view, that may have been done in order to be able to bring an appeal to the Upper Tribunal in the event that the Article 8 appeal did not succeed. If the appellant wished to prove by evidence that he could not return to Burma, then he should have done so. A bare assertion in his own written evidence together with a number of submissions from his representatives is not the same as discharging the burden of proof. Given that the appellant did not actually produce any objective material regarding his Rohingya origins, then he should not have been surprised that the judge found at [66] that the appellant had simply not discharged the burden of proof upon him. Secondly, the Country of Origin Information Report was not before the judge and I do not find there was any duty upon the judge before, during or following the hearing to make his own research even of materials which might be in the public domain. The appellant was professionally represented and it was for his representatives to lead the necessary

evidence to prove the case. It appears that, for whatever reason, they chose not to do so. I find that the judge has reached a conclusion which was available to him on the evidence adduced. His analysis is detailed and thorough and he has supported his conclusions with cogent reasoning. I do not find that he has erred in law for the reasons stated in the grounds of appeal or at all. It would have been helpful if the judge had dealt in greater detail with the position of Ms Choudhury (the judge found that Ms Choudhury and the appellant were in a subsisting relationship notwithstanding the respondent's doubt as to that fact) but, on the evidence before him, he found that it was reasonable to expect the appellant, an overstayer with no obvious ability to speak English or to support himself financially to return to Burma to make an out of country application for entry clearance. It also seems to me that there are no obvious obstacles to prevent Ms Choudhury and the appellant returning together to live in Burma on the basis of the facts as found by Judge Turnock. If Ms Choudhury chooses not to do that because she has been living in the United Kingdom for a period of time and is working here, that is a matter for her. Her decision on the matter does not render the couple travelling together to live in Burma unreasonable.

9. In the circumstances, I dismiss the appeal.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 6 June 2017

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 6 June 2017

Upper Tribunal Judge Clive Lane