



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

Appeal Number: PA/00753/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 15 November 2017**

**Decision & Reasons Promulgated
On 26 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

**[A T]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Aziz, Legal Representative

For the Respondent: Mr Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. This is an appeal against the decision of First-tier Tribunal Judge Eldridge promulgated on 16 March 2017 dismissing the Appellant's appeal against a decision of the Respondent dated 11 January 2017 refusing his protection claim.

2. The Appellant is a national of Bangladesh. He was permitted to enter the United Kingdom in June 2011 as a student and had leave in that capacity until 29 June 2013. On 27 December 2012 he applied for further leave to remain on human rights grounds. That application was refused and a subsequent appeal to the First-tier Tribunal was dismissed on 7 August 2014. On 25 July 2016 he claimed asylum. His claim was based on his opposition political activities and, in consequence, he was the subject of adverse attention by ruling party members. The application was refused by the Respondent on 11 January 2017. The Appellant's appeal against that decision came before Judge Eldridge on 23 February 2017.
3. Judge Eldridge comprehensively set out the Appellant's claim and the proceedings that followed at [1] to [32]. In particular, he summarised the contents of the Appellant's screening and substantive asylum interviews and noted, in the former, he complained that he was suffering from depression. Judge Eldridge further noted the evidence of the Appellant and two witnesses. At the outset of his findings and conclusions Judge Eldridge stated that he had borne in mind the lower standard of proof and directed himself appropriately by reference to the Immigration Rules and noted that he was obliged to consider whether the Appellant's credibility was adversely affected by the provisions of section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (hereafter "the 2004 Act"). At [35] the judge expressly noted that these provisions were not in themselves determinative of the issue of credibility. Turning, firstly, to deal with these issues, Judge Eldridge stated thus:

"37. I have considered, firstly, the issues of delay in making a claim that have been raised by the Respondent. If there is any significant unjustified delay then that factor is capable of nullifying the Appellant's ability to claim the "benefit of the doubt" rules in Paragraph 339L and is also relevant to the assessment of his general credibility under section 8 of the 2004 Act.

38. There can be no doubt that there has been a very considerable delay in the prosecution of any claim for asylum. The Appellant is now aged 30 and he arrived in this country almost 6 years ago as a student. He may well have had leave to remain until the end of June 2013 but that is not a reason for him not pursue a claim for asylum (sic). The great majority of events upon which he relies happened before he left Bangladesh (although it must be acknowledged he also relates more recent interest in him). Even if his reason for not claiming asylum earlier was taken at face value, he waited just over another 3 years before doing so. He made an application at the end of 2012 and appeared before the Tribunal (Judge Ross) in July 2014. The only issue in connection with protection was that his representative informed the Tribunal that the Appellant only rely upon Article 8 and that he wished to pursue Article 3 or any issue of asylum then he would make a claim in due course (sic). He did not do so for another two years."
4. Accordingly, Judge Eldridge concluded at [39] that the "benefit of the doubt" could not be afforded to the Appellant as there was "no justification for the very considerable delay in claiming", and further concluded that the Appellant's general credibility was "severely adversely affected having regard to section 8 of the 2004 Act."

5. Judge Eldridge then proceeded to consider the Appellant's claims of his political activities in Bangladesh and in the United Kingdom, with reference to the Appellant's written and oral testimony, the evidence of the witnesses and the documentary evidence. Judge Eldridge identified various deficiencies in that evidence at [41] to [51] leading ultimately to his conclusion that the Appellant's claim was a fabrication.
6. In his omnibus conclusion Judge Eldridge stated as follows:

"52. In my judgement the Appellant has fabricated the bulk of this claim as a last-ditch attempt to remain in the United Kingdom after he had exhausted other avenues of application and appeal. I find it is reasonably likely that the Appellant had some involvement in student politics whilst in Bangladesh and that he had sought to extend that interest whilst in this country only for the purposes of his claim and appeal. I do not accept that he had ever held any significant office within the BNP or its student wing. I do not accept any of the three incidents upon which he seeks to rely. I do not accept he came to this country in fear of his life or that he has been sought or his family travelled or political reasons in Bangladesh and since he had been in the United Kingdom (sic). I consider he is an economic migrant and one can find no other means of remaining in this country other than international protection.

53. He would be returned to Bangladesh as a person who some 6 years ago had some interest in the student wing of the BNP. He did not hold any significant office. I accept that he may have attended some rallies and meeting whilst in this country. I have rejected his evidence and that of his witnesses that he is a political figure. He would be returned to Bangladesh as a person without any significant adverse profile and he has no well-founded fear of persecution for reasons of his political opinion (actual or imputed) or otherwise."
7. The judge thus concluded that the Appellant not entitled to asylum or humanitarian protection and, further concluded that the medical evidence was not sufficient to make out a claim on human rights grounds.
8. The Appellant sought permission to appeal which was initially refused by the First-tier Tribunal but subsequently granted on renewed application by the Upper Tribunal.
9. Essentially, the grounds assert, first, that the judge erred in finding the Appellant not credible and, secondly, undertook a flawed assessment of the evidence by not giving weight to such matters as he ought to have done.
10. The Respondent opposed the appeal in a Rule 24 response dated 4 October 2017.

Consideration

11. The basis of the Appellant's submissions as advanced on his behalf by Mr Aziz is that the judge was fixated by the Appellant's delay in claiming asylum and treated this as a determinative factor in his assessment of

credibility. This, Mr Aziz complained, was a “major flaw” in the judge’s assessment of credibility, and that he had not conducted that assessment with an “open-mind” taking into account the evidence “in the round” citing paragraph 19 of IT (Cameroon) v Secretary of State for the Home Department [2008] EWCA Civ 878, and that, he applied a higher standard of proof than that applicable to such claims.

12. Mr Jarvis, on the other hand, submitted that there was no material misdirection in law. He submitted that the judge was entitled to consider whether the Appellant had advanced a reasonable explanation for the delay and, failing that, he may not have been entitled to the “benefit of the doubt”. While Mr Jarvis acknowledged that the wording at [37] could have been clearer, he submitted that the judge’s assessment of the evidence was not flawed, and that the judge made other adverse findings that were open to him notwithstanding the issue of delay citing paragraph [30] of Y v Secretary of State for the Home Department [2006] EWCA Civ 1223.
13. In reply Mr Aziz reiterated that the judge’s overbearing emphasis on the issue of delay affected his assessment of credibility.
14. I consider that the central submissions advanced by Mr Jarvis are correct. Firstly, there is no merit in the submission that Judge Eldridge applied a higher standard of proof. Mr Aziz acknowledged that this complaint was not raised in the grounds of appeal and it is plain the judge’s legal self-direction was correct and not inappropriately applied during the course of his fact-finding. Second, the emphasis of the submissions advanced by Mr Aziz was that the judge was pre-occupied by the issue of delay which was determinative of his assessment of credibility. I do not accept that submission. Judge Eldridge was aware that the issue of delay and the applicable provisions of section 8 of the 2004 were not determinative of the Appellant’s credibility. Indeed, he expressly said so at [35]. It has not been shown that Judge Eldridge fell-foul of this principle. While the wording at [37] and [39] could have been clearer, the judge correctly identified that the issue of delay was equally applicable to the application of paragraph 339L of the Immigration Rules (see sub-paragraph (iv)) and section 8 of the 2004 Act. Judge Eldridge gave cogent reasons at [38] as to why the Appellant had not demonstrated good reason for not claiming asylum at the earliest opportunity and that finding was open to him on the evidence.
15. What is then argued is that the judge failed to engage in a global assessment of the evidence but, in my judgement, that contention is not made out because the judge clearly embarked upon an evaluative assessment of the evidence notwithstanding the issue of delay. That evaluative assessment included an analysis of the evidence of the Appellant, witnesses and the documentary evidence which the judge rejected for a myriad of reasons. The grounds of appeal boldly and generally assert that these findings are unfair, irrational, speculative and harsh. Mr Aziz did not directly address these complaints in his

submissions, but I have no hesitation in concluding that they are without merit. In my judgement, the findings of Judge Eldridge were properly based on the evidence and were entirely open to him. In fact, paragraph 52 is indicative of the fairness in his approach and the global assessment he made, given that he was prepared to accept certain claims made by the Appellant. Having done so, it was open to the judge to conclude that the Appellant's political profile would not place him at risk on return for the reasons he gave at [53].

16. In my judgment, the Appellant's criticisms of Judge Eldridge's Decision are essentially a disagreement with his evaluation of the approach to be taken and the weight to be attached to the evidence which was a matter for him. It cannot be said that the weight he accorded to the evidence was irrational. I conclude that the grounds of appeal and the submissions I received on the Appellant's behalf, do not, I find, identify an error of law. In all the circumstances, I find that the decision of Judge Eldridge is not in any way flawed for error of law but in fact comprehensively addresses all the issues raised by the Appellant.

Notice of Decision

17. The decision of the First-tier Tribunal contains no error of law and shall stand.
18. The appeal remains dismissed.

No Anonymity order was made by the First-tier Tribunal and none is sought from or made by the Upper Tribunal.

Signed

Date: 10 January 2018

Deputy Upper Tribunal Judge Bagral