



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number:
PA/04840/2018

THE IMMIGRATION ACTS

Heard at North Shields

On 12 April 2019

Prepared on 15 April 2019

Decision & Reasons

Promulgated

On 1 May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**S. A.
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Reynolds, Counsel for E1 Solicitors

For the Respondent: Ms Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Bangladesh, made a protection claim in March 2016 upon being arrested on suspicion of immigration offences whilst using the identity SA. In the course of making that protection claim he claimed to have

most recently entered the UK in 2004 following the grant of entry clearance as a work permit holder. The Appellant's initial protection claim was based upon the claim that he had been at risk of harm from his father in Bangladesh since before he left that country, as a result of a land dispute with his father. Latterly the Appellant claimed that this was a misunderstanding of the protection claim that he had tried to make, and he had claimed that the land dispute was not between the Appellant and his father, but between the Appellant's family, and others. He also claimed to be at risk of harm because he and his father were supporters and members of the BNP.

2. In the course of advancing his protection claim the Appellant admitted that he had pursued in the identity AJ, a dishonest application for ILR, based upon the lie that he had entered the UK in 1996, and had compounded that lie by pursuing an appeal to the Tribunal on that basis. He had made no claim in the course of that appeal that he faced any risk of harm upon return to Bangladesh.
3. The protection claim was refused on 1 February 2017, and the Appellant's appeal against that decision was then heard and dismissed by First Tier Tribunal Judge Davey in a decision promulgated on 17 October 2018. The Judge concluded that the Appellant's evidence was wholly unreliable, and rejected his claim to be at risk of harm in Bangladesh as fiction.
4. The Appellant's application for permission to appeal was granted by Upper Tribunal Judge Gill on 18 December 2018 on the basis it was arguable the Judge had failed to indicate that he was applying the correct low standard of proof when considering the evidence relied upon by the Appellant, although the grant of permission was not limited to that ground.
5. A Rule 24 Notice was lodged on 9 January 2019 in response to the grant of permission to appeal. In it the Respondent asserted that the grounds were in reality no more than a disguised disagreement with the Judge's decision, and that his adverse findings were well open to him on the evidence. It was asserted that it was of pivotal importance that the Upper Tribunal recognised; (i) the extent of the Appellant's dishonesty in his dealings with the Respondent, and the Tribunal, and, (ii) that his behaviour was simply inconsistent with that which was reasonably to be expected of an individual who had arrived in the UK with a genuine belief that he was at real risk of harm in his own country.
6. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence. Thus the matter came before me.

The challenges

7. Mr Reynolds did not appear below, and he was not the author of the grounds. As Mr Reynolds put the matter the Appellant advanced two challenges to the decision.
8. First, it was asserted that the Judge's approach to the credibility of the Appellant's evidence was flawed as a result of (a) his failure to make an adequate self direction as to the applicable low standard of proof, and, (b) an excessive concentration upon the s8 issues raised by the Appellant's dishonesty. It was argued that the result was that none of the adverse findings of fact were safe. Thus grounds 1 and 2 were taken together, and it was argued the appeal should be remitted for rehearing afresh.
9. Second, it was asserted that the Judge's approach to the Article 8 appeal was flawed as a result of his failure to recognise that the Appellant was genuinely a carer to his uncle. Accordingly it was argued that both the Article 8 rights of the Appellant, and his uncle were engaged by the decision under appeal; Lama (video recorded evidence - weight- Article 8 ECHR) [2017] UKUT 16. The extent of the interference in the lifestyle of the Appellant's uncle that would result from the Appellant's removal from the UK was said to be such as to render the decision disproportionate, even after having had due regard to the relevant public interest.

The challenge to the credibility findings

10. The central difficulty for the Appellant's challenge to the adverse credibility findings is that when the decision is read as a whole, it is in my judgement quite clear that the Judge did apply the correct standard of proof to the evidence. The Judge may not have spelled out at any length a self direction as to the burden and standard of proof, but the failure to do so in some formulaic style does not, of itself, disclose an error of law in his approach. What is important is substance, rather than some formulaic style.
11. I am satisfied that in this decision this experienced Judge did have the correct standard of proof in mind, and that he was applying it. Thus he referred to "a real likelihood" that the activities in the UK relied upon by the Appellant "were likely to generate any adverse interest in him by the AL government". In paragraphs 32 and 33 and 36 the Judge referred to the absence of a "risk" to the Appellant because the evidence he relied upon as creating such a risk was not credible. In contrast there is no passage in the decision that Mr Reynolds on behalf of the Appellant, can point to as indicating through the Judge's choice of language that he was applying (or even might have been applying) the wrong standard of proof.

12. The Judge was perfectly entitled to reach the conclusion that the Appellant had lied both to the Respondent and to the Tribunal about when he entered the UK, and, that he had pursued a dishonest application for ILR based upon that lie. After all, those lies were admitted before him by the Appellant.
13. Moreover the Judge was obliged to take note of the undisputed fact that the Appellant had used a different identity when pursuing the application for ILR, and the appeal against its refusal. Again, no other conclusion was rationally open to him.
14. The Judge did look at, and consider, the explanation proffered by the Appellant for that behaviour. He was obliged to do so in order to consider what weight he could attach to that behaviour when considering the reliability of the evidence that the Appellant relied upon in the course of the appeal with which he was seized. The conclusion that he reached, namely that the Appellant's explanation for his deceptive behaviours was itself false, was again one that was well open to him, and it was adequately reasoned.
15. There was no excessive focus upon s8 issues. Given the Appellant's admitted past conduct, the Judge was obliged to consider whether this post arrest protection claim was another fiction. I accept as Ouseley J did in CJ (on the application of R) v Cardiff County Council [2011] EWHC 23, the importance of the approach in Tanveer Ahmed v SSHD [2002] Imm AR 318. Documentary evidence along with its provenance needs to be weighed in the light of all the evidence in the case. Documentary evidence does not carry with it a presumption of authenticity, which specific evidence must disprove, failing which its content must be accepted. What is required is its appraisal in the light of the evidence about its nature, provenance, timing and background evidence and in the light of all the other evidence in the case, especially that given by the claimant.
16. The Judge made a clear finding that the FIR documents relied upon by the Appellant were false [29]. He did so after looking at the evidence in the round, and after giving adequate reasons for that conclusion. He was entitled to reach that conclusion on the evidence before him, and arguably any contrary conclusion would have been perverse, since the documents described the Appellant as having been present in Bangladesh in February 2018, and as having been arrested and questioned then. Even on his own account that was plainly untrue.

The challenge to the Article 8 appeal decision

17. It was argued on behalf of the Appellant before the Judge that in any event his position as a carer for an uncle meant

that he should be granted leave to remain on the basis of a “private life” Article 8 claim. In a 56 paragraph witness statement, over 10 pages, only three short sentences were devoted to this element of his case;

Moreover I live with my uncle MA and I look after him as a primary carer. We are dependent on each other and we have strong ties. There my removal from the UK will break the family unit in the UK

18. The uncle’s evidence was that he was dependent emotionally upon the Appellant, who in turn was financially dependent upon him. He said he had received (unspecified) kidney surgery, suffered ill health, and could not perform daily tasks. Thus the Appellant helped do the shopping, took him to medical appointments, and reminded him to take his medication. GP records relating to the uncle’s health were produced [ApB p145-153]. These did not record any need for the Appellant to provide care services of any kind to his uncle, and Mr Reynolds did not seek to suggest that they did.
19. The Judge noted that the evidence placed before him did not explain why it was claimed that the Appellant should be the only person able to provide any care required, and considered that any care needs of the Appellant’s uncle could be met either by other family members, or by social services. Mr Reynolds, correctly, did not seek to argue that this was a misunderstanding of the evidence [37].
20. I also note from the decision of First-tier Tribunal Judge KSH Miller dismissing the Appellant’s appeal conducted in the identity AJ against the refusal to grant him ILR, that it was the same uncle who gave false evidence as to when the Appellant entered the UK.
21. Whilst both the Appellant, and his uncle, undoubtedly have a “private life” in the UK, it is quite clear that the evidence placed before the Judge failed to give a reliable, comprehensive and proper picture of what that life actually consisted of. Thus, the Judge was perfectly entitled to conclude that he was not satisfied that either the Appellant’s or his uncle’s Article 8(1) rights were engaged by the decision under appeal [38].
22. In any event, even if the Judge were wrong about that, (and I am very far from accepting that he was) the Appellant’s case before the Judge, as it was before me, was based upon the simple assertion that as a carer for a British citizen it was (without more) disproportionate to remove the Appellant from the UK. That argument is in my judgement based upon a complete mis-understanding of the decision in Lama (video recorded evidence – weight – Article 8 ECHR) [2017] UKUT 16. It is not enough to establish simply that a claimant is to

- some degree a carer for a third party in order to render in all circumstances their removal from the UK disproportionate.
23. The evidence in this case fell well short of establishing that the removal of the Appellant would prevent a third party who was receiving care from him, from being able to remain in the UK, and continue to make a significant contribution to the society of the UK. The facts of this case are not those of Lama. Indeed the evidence in this appeal falls well short of establishing that the Appellant's removal would have any material effect upon the third party in question. In any event, the entire basis for the decision in Lama itself, has recently been questioned in Thakrar (Cart JR, Article 8, Value to Community) [2018] UKUT 336.
 24. In this case, any "private life" relationship relied upon as existing between the Appellant and uncle as carer, must have been established whilst the Appellant was present in the UK unlawfully. In the circumstances the Tribunal is required to give little weight to it; s117B(4).
 25. The Judge also noted that the Appellant did not demonstrate either fluency in English, or, financial independence. Thus the public interest in his removal was enhanced by these failures, in addition to the enhancement to the public interest in his removal that was already afforded by his previous dishonesty; AM (s117B) Malawi [2015] UKUT 260, Rhuppiah [2018] UKSC 58.
 26. In the circumstances the Judge's decision upon the Article 8 appeal was well open to him, and was adequately reasoned. I am satisfied that on the findings of fact made by the Judge no Tribunal properly directing itself could have come to any other decision than that the appeal should be dismissed. Thus, in my judgement, the Appellant has failed to demonstrate any material error in the Judge's approach to the Article 8 appeal.

Conclusion

27. Accordingly, notwithstanding the terms in which permission to appeal was granted, I confirm the Judge's decision to dismiss the appeal. There is no material error of law in the approach taken by the Judge to the appeal that requires his decision to be set aside and remade.

DECISION

The Decision of the First Tier Tribunal which was promulgated on 17 October 2018 contained no material error of law in the decision to dismiss the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 29 April 2019

A handwritten signature in black ink, appearing to be 'JM Holmes', written in a cursive style with a long horizontal flourish extending to the right.