



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002494

First-tier Tribunal No: PA/57435/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

3rd January 2025

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE WEBB

Between

MU
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Alam instructed by Legit Solicitors.

For the Respondent: Ms Rushforth, a Senior Home Office Presenting Officer.

Heard at Cardiff Civil Justice Centre on 20 December 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant appeals with permission a decision of First-tier Tribunal Judge Browne ('the Judge'), promulgated on 24 April 2024, in which the Judge dismissed

the appeal against the refusal of the Appellant's application for international protection and/or leave to remain in the United Kingdom on any other basis.

2. The Appellant is a male citizen of Bangladesh who at the date of the hearing before the Judge was said to be 41 years of age.
3. The Judge noted previous determinations and applications made and refused at [2] of the decision.
4. The Appellant relied on further representations in a statement of 7 February 2022, a reply of 9 January 2024, and some new evidence after 2021. The Judge records the Appellant claiming he became aware of a false case against him in Bangladesh in 2012, purportedly issued in 2004, and in July 2018 two further false cases made against him in Bangladesh, one in 2016 and one in 2018.
5. At [13] the Judge records details of the agreed facts, noting the Secretary of State accepted that if the claim is believed, fear on account of political reasons constitutes a Convention reason. The Appellant's nationality and role in the BNP in Bangladesh in 2000 was accepted and some limited UK demonstration activity, specifically that the Appellant was a low-level member of the BNP within Bangladesh in 2000 for a brief period of time, but it was not accepted that this would attract risk of serious harm/persecution on return.
6. Issues and facts in dispute are set out at [14].
7. The Judge's findings are set out from [23] of the decision under challenge. In this paragraph the Judge takes as the correct starting point the earlier decision of 2021 in which it was found the Appellant was a wholly unreliable witness of truth, having been found to have given contradictory and inconsistent evidence about a murder charge he claimed had been brought against him together with various other matters.
8. The Judge considers the new evidence and further representations at [34].
9. The Judge's assessment of the overall credibility of the claim is to be found at [52 - 54] in the following terms:
 52. Overall credibility In summary I find the appellant's reasons for delay in asylum claim for political belief inconsistent. He says he relied on poor advice, when otherwise making a claim for protection on the basis of human rights yet which he took to appeal and during which process he would be both gathering evidence and giving evidence. I find that in these circumstances; that after his leave expired he just chose to remain in the UK for the purposes of work and where a portion of his family live, even if after the Awami League had come to power. It is unsurprising that the Judge turned down his application to stay on human rights grounds in 2013. There was no mention of political party role and belief although he had at that stage mentioned a court case against him.
 53. He gave inconsistent evidence about a very serious charge of murder, including as to admission. Judge Davies findings that he made no mention of political activity back then involved scrutiny. His failure to refer to political belief and/or role at an earlier time indicates that he undertook no political activity in all these years and this in turn affects his credibility as to the reasons for his scars and political risk.
 54. Even if looking at the circumstances as a case of renewed interest in Bangladesh politics whilst in the UK, this information was also before Judge Rhys- Davies. The appellant has not shown by social media postings or public events that he has attended 60 plus demonstrations as claimed but he has shown he attended a few. His involvement in the UK does not arise until 2018- possibly 2017 if relying on BNP letter and he is as one in a small crowd opposing a State visit to the UK. He is not a speaker, has not shown he organises and publicised demos through his facebook account and that this could be seen back in Bangladesh.
10. This is a very long determination containing a great deal of detail which must be read very carefully. The Judge, having carried out the analysis under various

headings, dismisses the appeal on all grounds against which the Appellant sought permission to appeal.

11. Permission to appeal was granted by another judge of the First-tier Tribunal on 21 May 2024 the operative part of the grant being in the following terms:
 2. Ground 1 is said to be an error in fully considering the mental health evidence by reference to proportionality and very significant obstacles. It is further said that in relation to art 8 the judge ought to have considered the relevance of returning as a BNP supporter and the CPIN Political parties and affiliation, the full extent of the relationship with his sister's children, best interests of the children and the length of residence (18 years). In my view the judge has failed to weigh into the balance the very significant amount of time that the Appellant has been in the UK and arguably failed to consider the mental health issues in sufficient detail for the purposes of article 8, both of which are errors which arguably infect the whole article 8 analysis.
 3. Under ground 2 it is averred that the judge failed to consider the risk associated with the role of publicity secretary (see 40) and/or has made an error as to the nature of the Appellant's role. This is not arguable since the judge appears to have considered the publicity secretary point and given reasons.
 4. Ground 3 relies on various errors in the assessment of credibility including failing to look at matters in the round (giving undue weight to delay), confusing two letters, inadequate reasons for implausibility of not reporting the attack (para 43) and failing to consider an explanation given by the Appellant for the court documents not having a reference number (see 69). Arguably the credibility assessment is flawed by reason of the reliance on the Appellant's failure to report the attack (43 and 89) but not also discussing and giving reasons as to the Appellant's evidence about why he did not report to the police.
 5. Ground 4 relates to the scarring report - it is argued that inadequate reasons are given for the finding that scars could have occurred before the road traffic accident but before he registered with the GP (see 86- 87 and 95) - the argument being that logically they would have had to have happened when he got to the UK and that there would be no reason for mentioning historical scarring when registering with a GP. Arguably the judge's conclusion was speculative and without basis and affects the whole credibility assessment.
 6. Permission is granted on ground 1, 3 and 4 as there are arguable errors of law as set out above.
12. There is no Rule 24 reply from the Secretary of State.

Discussion and analysis

13. As we have noted above, this is a very detailed determination. It requires very careful reading. On a first reading it is easy not to appreciate the full extent of the Judge's findings. It is only on a second reading that it becomes clear that the Judge considered the evidence with the required degree of anxious scrutiny and has made relevant findings under separate headings supported by adequate reasons. We are able to understand the determination as an informed reader would be able to. Although some sections were in other parts of the determination to where we ourselves may have placed them that is an immaterial factor.
14. At the outset we provided the parties with our preliminary view that having undertaken the required analysis we would require persuading that there was any material error in the decision of the Judge. Mr Alam did his best to do so by making detailed submissions covering a number of aspects of the determination,

the evidence, and suggesting alternative findings the Judge should have made on the same.

15. We remind ourselves that when considering a decision of the judge below on appeal it is important to have regard to the guidance provided by the Court of Appeal Volpi v Volpi [2022] EWCA Civ 462 at [2], Ullah v Secretary of State for the Home Department [2024] EWCA Civ 201 at [26] and Hamilton v Barrow and Others [2024] EWCA Civ 888 at [30 - 31]. We have done so.
16. There are two points arising from Mr Alam's submissions which we have given particular consideration to. The remainder are, in the whole, claims the Judge failed to consider the evidence when the Judge clearly did and, (i) correctly took as her starting point pursuant to the Devaseelan principle the previous findings that have been made, (ii) considered the new material being relied upon by the appellant, (iii) considered whether that new material warranted a different finding, and (iv) explaining why it did or did not and what findings could properly be made in the determination.
17. The first point of the two points, made by reference to country material, related to circumstances in which the appellant left Bangladesh and a referral to the CPIN to the fact that if he faced charges or was suspected of the murder a particular factual matrix would apply which supported the appellant's appeal. The difficulty with this submission is that even though the country material may reflect the situation that exists in Bangladesh in particular circumstances, the Judge did not find the claims in relation to the murder credible or that there was any murder charge in existence that would have created the specific factual matrix the Appellant was seeking to rely upon. We find no legal error made out in the Judge's conclusions on that point.
18. The second issue relating to paragraph 276ADE of the Immigration Rules is a submission that the Judge had failed to factor into or deal adequately in the determination with the problems the Appellant would experience as a result of his involvement with the BNP, which were sufficient to amount to an insurmountable obstacle.
19. Even if there is not a heading in the determination in which this item is dealt with in isolation, the Judge clearly considered what was being said about any risk arising from the Appellant's involvement with the BNP but found no basis on which the appeal could be allowed. The Judge makes adequately reasoned findings in other parts of the determination in relation to this issue which cannot be ignored. The finding of the Judge is that the Appellant had not established an entitlement to a grant of leave on the basis of his private life, which is the section of the Immigration Rules in which paragraph 276ADE previously appeared.
20. Whilst Mr Alam referred to difficulties or problems that the Appellant may experience that is not the required test. Problems or difficulties do not amount to insurmountable obstacles.
21. We find no legal error material to the determination made out in either of these grounds.
22. We also raised with Mr Alam the issue of whether some of the matters on which he was making submissions had actually been raised before the Judge. Having looked at the skeleton argument provided for the purposes of the hearing before the First-tier Tribunal and the grounds of challenge, although the legal principles were raised the factual matrix on which it is said they were engaged, which the Judge is said not to have considered, do not appear to have been raised in the manner that they are being put today.
23. Submissions relating to the medical evidence are without merit in establishing material legal error. The Judge clearly took all the medical evidence into account, including the availability of treatment in Bangladesh and even if the Appellant had to travel some distance to get to hospital that did not establish, when the

case is considered as a whole, an entitlement to remain in the United Kingdom. The Judge specifically noted there was no application pursuant to Article 3 ECHR on medical grounds.

24. Submitting the Judge got things wrong or expressing disagreement with the findings made is not sufficient. Ms Rushforth in her submissions stated it was a detailed decision, the grounds amount to no more than disagreement, that the Judge had factored each element being relied upon by the Appellant into her assessment, that the Judge's findings were reasonably open to her, that the Judge approached the country evidence in a manner open to her, and that there was no material error of law.
25. We agree. Disagreement or desire for a more favourable outcome is not sufficient. Having considered the guidance from the Court of Appeal, the determination, and all the evidence and related matters, we do not find the Appellant has established legal error material to the decision to dismiss the appeal. The findings are clearly within the range of those reasonably open to the Judge on evidence and have not been shown to be rationally objectionable.

Notice of Decision

26. The First-tier Tribunal has not been shown to have materially erred in law. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 December 2024