



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL
APPEAL NUMBER: PA/06801/2018

THE IMMIGRATION ACTS

Heard at: Field House
On: 4th October 2018

Decision and Reasons Promulgated
On: 19th October 2018

Before

Deputy Upper Tribunal Judge Mailer

Between

S M
ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr I Khan counsel, instructed by Westgate Solicitors
For the Respondent: Ms K Pal Senior Home Office Presenting Officer

DECISION AND REASONS

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The appellant is a national of Bangladesh, born on 21 July 1983. He appeals with permission against the decision of First-tier Tribunal Judge Loke, dismissing his asylum, humanitarian protection and human rights claims. The appellant had no evidence to substantiate his assertion that he has been resident in the UK since 1999.

2. Judge Loke found that the 'account' the appellant gave was not credible [34]. She came to that view because of the vagueness of his account regarding his alleged political activities.
3. She found that s.8 of the 2004 Act applied to him in two ways: first, the fact that he had not made an asylum claim previously despite his claim that he had been resident here for 19 years damages his credibility. She did not find it credible that although he told his Bengali friends about his problems, he was never advised to claim asylum and therefore claimed that he never knew the process [36].
4. Secondly, the giving of a false alias to the immigration officers when he was encountered on 14 January 2014 damaged his credibility. He initially gave a false alias and stated that he had leave to remain in the UK. That is not in dispute [37].
5. The appellant then gave his real name to the immigration officers. The Home Office indicates that he stated that he wished to return to Bangladesh. In oral evidence however he denied that. At Q145 of the substantive asylum interview, he was asked why he told the immigration officers that he was happy to return to Bangladesh. His response was that whatever he said was because he was frightened. He thought they were going to send him back and he was sorry for what he said.
6. She noted that the appellant did not deny having stated that he was happy to return to Bangladesh in his asylum interview. Despite his oral evidence, she did not find him credible. Furthermore, she found that he would have disputed the comment in the interview if he had not said what was claimed by the immigration officer.
7. She accordingly found that he did indeed tell the immigration officers that he was happy to go to Bangladesh. Accordingly, the fact that he was willing to return damages the credibility of his case generally [38].
8. She stated that she considered the arrest warrant and charge sheet 'with care' at [39]. It was contended that the documents should have been verified by the respondent and that the decision in PJ applied. However, the documents before her "were of a far less clear provenance to the documents before the Court in PJ. There was no evidence as to how they had been obtained.
9. The appellant gave evidence that the documents produced after his appeal was filed, were obtained by means of a man he knew as Razul. However, the charge sheet and arrest warrant were obtained for the purpose of the appellant's initial application. There is no evidence as to how these documents were obtained. She therefore did not find that this is an exceptional case which required the respondent to have conducted verification checks before rejecting the documents [40].

10. She had regard to the report of a Home Office fact finding mission conducted in May 2017, and published in September 2017. One source noted that 'forced or fraudulent' police or court documents are not easily obtainable because of counter signature processes and the fact that all documents can be checked against a database.
11. However, Judge Loke noted that in the very same report at Annex D., the official told the delegate that there was no national police computer system in place. Crimes can only be reported to a police station within the jurisdiction of where the crime occurred. The officials said that forged and fraudulent documents, for example, arrest warrants and/or court summons were easily obtainable [41].
12. She found that there was no evidence as to the provenance of these documents. She applied Tanveer Ahmed and found that these documents carry little weight [42].
13. Further, she stated that the appellant's account of his political activities is vague and lacking in detail. In his interview as to what he had to do to join the BNP, his answers provided no details about what he had to do. That damaged his credibility [43].
14. When asked why he joined the BNP, his response was because "it is a good party, that's why." However, he was unable to demonstrate any knowledge of the tenets or principles of the BNP which she would expect, given his claims to have been Broadcasting Secretary [44].
15. Despite being pressed, the appellant provided no details as to his responsibilities as Broadcasting Secretary [45]. Nor did he provide any further details about his role or responsibilities in his witness statement. None was provided in oral evidence. She considered the submission that with respect to the BNP age limit, it was possible for the appellant to have joined the Youth Wing which did not require an age limit. She found that was possible; however, in his witness statement the appellant confirmed that he was a member of the JCD. The country guidance states, unequivocally, that senior members appoint JCD members who must be over the age of 18 - [47].
16. Whilst she might have been open to the possibility that the age limit was waived in his case, she found his account not to be credible [48].
17. She noted that the appellant claimed in his witness statement that there may have been 'interpretational' difficulties at his asylum interview. He claimed to have been scared and may not have understood the questions. However, she noted at [15(iii)] that he indicated that whilst he was scared, and may not have understood the questions, he then said that he was able to understand the interpreter. She found that he did not have problems with the interpreter. His answers given at interview demonstrate that he understood the questions. In any event, none were corrected or

expanded on in his answers, either in his witness statement or his oral evidence [49].

18. She had regard to the letters provided by alleged BNP members. However, given that she did not find the appellant credible, she did not find that the letters contained the truth of his position. [50]
19. She accordingly found that it is not reasonably likely that the appellant is wanted for prosecution in Bangladesh. He gave a skeletal and general account in interview which does not demonstrate as reasonably likely that he was present at either of the events referred to in his interview.
20. She noted at [53] that the newspaper articles produced contained a number of names, one of which is 'Suhel Miah, Press Secretary of the BNP'. Neither the appellant in his interview nor in oral evidence indicated that he is the person named in this article. His counsel initially stated that the appellant was not so named but then stated "yes." She found that the appellant is not named in the article. He claimed to be a broadcasting secretary for a local JCD wing of the BNP and not the Press Secretary of the BNP. Nor did the appellant at any stage claim that he suffered injury by shooting at these incidents.
21. She took account of photographs provided by the appellant, none of which included him in the pictures and are not evidence of his involvement in any BNP demonstrations [54].
22. He has not engaged in any BNP activities in the UK. He claims to have supported the BNP, however he is not a member. The extent of his claimed involvement is that he attends meetings and demonstrations. He provided no further details than that. There is no independent evidence of his playing any part in the BNP activity in the UK [55]. She did not find that it is reasonably likely that he has had any involvement with the BNP in Bangladesh or in the UK, or that he is wanted in Bangladesh in respect of his previous activities [56].
23. There is no documentary evidence of his assertion that he entered the UK in 1999. Taking his evidence at the highest, the earliest photographs he has produced in the UK were in 2007. Mr Ali gave evidence of knowing the appellant in 2007 [58].
24. When encountered by immigration officers on 14 January 2017, he informed them that he had entered the UK by lorry four years previously, namely in 2013. He does not deny stating this. She found that there is no credible reason why he would say he had only been resident for four years rather than the 18 years [59].
25. With regard to submissions concerning the risk of suicide, she directed herself in accordance with J v SSHD [2005] EWCA Civ 629. She found that the evidence that

was limited entirely to what is said in his asylum interview, did not meet the test. She went on to dismiss his Article 8 claim.

26. On 13 August 2018, First-tier Tribunal Judge Andrew granted the appellant permission to appeal on the basis that it is arguable that the Judge did not consider section 8 of the 2004 Act in the round, but appears to have taken this as his starting point. Further, the Judge made no findings in relation to the evidence of his witness. This may have affected her findings in relation to credibility. Further, at paragraph 66 of the decision she noted that the Judge referred to Sri Lanka. That is not the country from which the appellant comes.

The hearing before the Upper Tribunal

27. Mr Khan, who did not represent the appellant before the First-tier Tribunal, adopted the grounds of appeal. The decision did not reflect on Mr Ali's live evidence.
28. Section 8 should be the starting point for assessing the appellant's credibility and should not merely be taken in the round having already drawn a conclusion on credibility as a whole.
29. He referred to Mr Ali's witness statement dated 25 June 2018. Mr Ali stated in paragraphs 8-10, that he is aware of the appellant's immigration status and his circumstances in Bangladesh. Due to his circumstances, from time to time he has helped him whenever he needs help. Since last year, he has been living at his home. He has allowed him because of his circumstances. He is living free of charge and getting free meals too. They used to live in the same flat above the restaurant where they both worked. He became a family friend. All his children know him as their uncle.
30. In his evidence before the Tribunal, Mr Ali stated that the appellant told him he had been in the UK since 1999. He told him about his problems when they met. He also overheard conversations between him and the appellant and his lawyer about the warrants against him. He then advised the appellant to see a solicitor after he was arrested in 2017.
31. Mr Khan submitted that Judge Loke made no findings in respect of Mr Ali's evidence.
32. Ms Pal accepted that the Judge made an error in referring to "Sri Lanka" at [66]. However, this is not material. The Judge was well aware that she was dealing with an appellant from Bangladesh.

33. Although there was not a specific finding regarding Mr Ali's evidence, the Judge made extensive findings of fact from [34] onwards.
34. She considered the arrest warrant and charge sheet with care. She also had regard to the letters provided by alleged BNP members. She did not find that the letters contained the truth of the appellant's position.
35. She also had proper regard to photographs provided by the appellant.

Assessment

36. Ms Pal accepted that the Judge has made no specific finding in relation to the evidence of Mr Ali contained in his witness statement. She however had regard to his oral-7 evidence, and set out and summarised his cross examination at [16]. In particular he claims to have overheard conversations between the appellant and his lawyer concerning warrants against him.
37. However, the Judge has gone on to consider in some detail the appellant's claims relating to the arrest warrant and charge sheet.
38. She referred to the decision in PJ. She noted that in that appeal, the same documents had been independently obtained by two lawyers, both of whom had provided evidence of obtaining the documents by way of requesting them from the Court. The respondent did not dispute that the two persons were indeed lawyers in that case. Accordingly the Court held that in those circumstances, clear evidence by way of a verification check should have been made in order to find that those documents were not authentic [39].
39. As already noted, Judge Loke found that the documents before her were of a far less clear provenance. There was simply an assertion that the documents produced after his appeal was filed, were obtained by a man called Razul. She found however that the charge sheet and arrest warrant were obtained for the purpose of the appellant's initial application.
40. There was however no evidence as to how those documents were obtained. In those circumstances, she found that this was not a case which required the respondent to conduct verification checks before rejecting them.
41. She also had regard to the evidence at Annex D of the Home Office fact finding mission to which I have referred. Forged and fraudulent documents for example, arrest warrants and/or court summons, were easily obtainable.
42. Judge Loke has properly directed herself in accordance with Tanveer Ahmed. She noted that in considering whether the document is one on which reliance should

properly be placed, all the evidence must be looked at in the round. In the circumstances, she found that the documents carried little weight.

43. She has also properly considered that s.8 of the 2002 Act applied to him. In the decision granting the appellant permission to appeal, Judge Andrews noted that the Judge did not consider s.8 in the round but appears to have taken this as his (sic) starting point.
44. However, Judge Loke expressly stated at [34] that having considered all the evidence as a whole, including the background evidence, the documentary evidence and the credibility submissions on behalf of the appellant, she had come to the conclusion that the account given was not credible.
45. She came to this view because of the vagueness of the appellant's account of his alleged political activities. She then stated that she also found that s.8 applied to the appellant in the two ways that she identified at [36-38].
46. I find that Judge Loke has undertaken a detailed and careful assessment of the evidence. She has given proper reasons for her findings, including the contention that the appellant might have had 'interpretational difficulties' at the asylum interview. She also considered the letters provided by alleged BNP members.
47. She considered in detail the appellant's claims that he is wanted for prosecution in Bangladesh. She noted that he was unable to give any details as to how the alleged fight started. He simply gave skeletal and general accounts in the interview which did not demonstrate that it was reasonably likely that he was present at either event.
48. No point was raised as to her findings at [53], regarding the newspaper articles referring to Suhel Miah.
49. Nor was there any challenge to her finding that the appellant has not engaged in any BNP activities in the UK. Nor was there any challenge to her finding that the appellant did not enter the UK in 1999, as claimed.
50. The fact that she referred to Sri Lanka in her Article 8 assessment is clearly nothing more than an immaterial error. His whole claim was based on his activities in Bangladesh. She was well aware that he would be returned to Bangladesh.
51. The Judge has undertaken a detailed assessment and has given sustainable reasons for all her findings. There are no material errors of law.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of any material error on a point of law. The decision shall accordingly stand.

Anonymity direction continued.

Signed

Date 12th October 2018

Deputy Upper Tribunal Judge C Mailer