



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal number: PA/07300/2019

THE IMMIGRATION ACTS

Heard at: Field House  
On: 8 January 2020

Decision & Reasons Promulgated  
On 24 January 2020

Before

Upper Tribunal Judge Gill

Between

Mr Nurul [I]  
(Anonymity Direction not made)

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr M Uddin, of Cranbrook Legal.  
For the respondent: Mr T Lindsay, Senior Presenting Officer.

Decision and Directions

1. The appeal appeals against a decision of Judge of the First-tier Tribunal Grimmett (hereafter the "judge") who, in a determination promulgated 16 October 2019 following a hearing on 19 September 2019, dismissed his appeal against a decision of the respondent of 17 July 2019 which refused his further representations concerning his asylum, humanitarian protection and human rights claims.
2. The appellant claimed that he was a national of Burma/Myanmar and a Rohingya Muslim. He arrived in the United Kingdom in March 2014 and claimed asylum on 9

June 2016. His asylum claim was refused on 4 February 2018. His appeal against that decision was dismissed by Judge of the First-tier Tribunal Courtney in a determination promulgated 9 April 2018 following a hearing on 19 March 2018. Judge Courtney did not accept that the appellant was of Rohingya ethnicity or a national of Myanmar.

3. The appellant made further representations on 11 June 2019 which were considered under para 353 of the Immigration Rules and which were the subject of the decision appealed against in the instant appeal.
4. The further representations included letters from Mr Khanus Miah dated 3 June 2019, Mr Dolil Miah dated 1 May 2019 and Mr Syed Nazmul Islam. There was also a "*Refugee Family Book*" (hereafter the "*Refugee Family Book*") said to have been issued to the appellant's family when they were living in a refugee camp called Mahishkum in Garjania Union in Bangladesh and a photograph with accompanying envelopes.
5. The appellant had submitted to the respondent the original of the Refugee Family Book. It was a booklet and a complete document. Unfortunately, the original of this book was not submitted to the judge. This was compounded by the fact that the respondent's bundle contained only some of the pages from the Refugee Family Book.
6. The judge was not satisfied that the appellant was a Rohingya Muslim from Burma. She gave her reasons at para 11-15 of her decision, which read:
  - "11. The new evidence of the appellant which was not before the first Judge is what is said to be a copy of the Refugee Family book, a photograph, witness statements from 2 friends and a declaration from the Chairman of Garjania Union Paryshad in Bangladesh. Mr Dolil Miah, the appellant's cousin, said in his witness statement that the appellant had asked him to make enquiries about his family book. Mr Miah said that he visited some (unnamed) camps without success but discovered a camp called Mahishkum in Garjania Union had been washed away. After making enquiries of those who used to live there he was advised to speak to the Chairman of the Garjania Union who made enquiries and found the appellant's family had left some belongings behind including an expired family book and photographs. The chairman would only hand them to a lawyer, which he did, and the documents were then passed to Mr Miah.
  12. Although the book is referred to as a Refugee Family Book it bears only one name "Ismael" described as the head of family and an "MCR" number. There is nothing to connect that book to the appellant save that his father's name is Ismail, a not uncommon name. In his interview before his first appeal [Judge Courtney] noted the appellant had said (paragraph 15 of the decision) that the appellant's father had a refugee family book which was white with the camp's name on it. The document he has produced does not name the camp.
  13. The two following pages do not appear to be part of the Family Book, as is suggested in the index, but are a Bangladesh Red Crescent Food Distribution Card which has 05 at its head but no MCR number and no name of the head of the family, and a "non food distribution form" with no name or MCR number on it. I can attach little weight to these documents as they are incomplete.

14. Mr K Miah's evidence is based upon what the appellant has told him and on the documents. Mr D Miah said that he was able to obtain the family book from Bangladesh but there was no book only an incomplete front page and the cards referred to above. The appellant's own evidence was that the camp he was in was washed away in floods when he was a child yet he now claims the book remained and was located many years later. I was not satisfied the appellant told the truth in light of the previous decision, the lack of any evidence before me of his nationality and the defects in the documents referred to above.
  15. The appellant was criticised in the first decision for failing to produce expert evidence of the language he speaks to show it is the dialect of a Burmese Rohingya Muslim but has still provided no evidence to show he speaks the dialect of those in the camps."
7. It was accepted at the hearing before me that the judge had misapprehended the evidence when she said at para 11 of her decision that Mr Dolil Miah was the appellant's cousin. In fact, the appellant was friends with Mr K Miah who asked *his* cousin, Mr D Miah, to make enquiries about the appellant's family and background in Bangladesh. However, it was also accepted that this misapprehension of the evidence was not material.
8. It can be seen, more importantly, that the judge attached weight to the fact that the copy of the Refugee Family Book before her was incomplete. Furthermore, if the respondent had produced the original Refugee Family Book to the judge, she would have noted as follows:
- i) It is not the case, as she stated in the first sentence of para 12 of her decision, that the book only mentioned one name, "*Ismael*". Other names were listed on a page entitled "*Members of family*" which included the appellant's name and his year of birth.
  - ii) Accordingly, contrary to the second sentence of para 12 of her decision, there was something to connect the appellant to the Refugee Family Book.
  - iii) Contrary to the last sentence of para 12 of the judge's decision, the name of the camp was stated on the second page of the Refugee Family Book.
  - iv) Contrary to the first sentence of para 13 of her decision, the "*Bangladesh Red Crescent Food Distribution Card*" and the page following it (entitled: "*Non-Food Item Distribution Card*") were part of the Refugee Family Book.
  - v) At para 13 of her decision, the judge noted that some pages of the Refugee Family Book had an MCR number and some did not. In this regard, if she had had the Refugee Family Book, she would have noted that this was a feature of the entire book. They were nevertheless part of one and the same book. Accordingly, if she had had the original of the Refugee Family Book itself before her, she might have accorded less weight to the fact that some pages had an MCR number and some did not.
  - vi) Accordingly, for the reasons given above, the judge erred in her assessment of the Refugee Family Book, through no fault of her own.
  - vii) The judge's assessment, at para 14 of her decision, of Mr D Miah's evidence concerning how he was able to obtain the book, relied upon her earlier

observations about the defects in Refugee Family Book. She therefore also erred in her assessment of the credibility of the evidence of Mr D Miah.

9. At the hearing before me, Mr Lindsay accepted that, through no fault of her own, the judge had erred in law in each of the ways described above and that, taken cumulatively, the errors were material. He therefore agreed that the judge's decision should be set aside and the decision on the appellant's appeal be re-made on the merits on all issues.
10. I agree. I am satisfied, for the reasons given above, that, through no fault of her own, the judge materially erred in law in her assessment of the credibility of the appellant's evidence that he is a Rohingya Muslim from Burma. I set aside her decision in its entirety.
11. In the majority of cases, the Upper Tribunal when setting aside the decision will re-make the relevant decision itself. However, para 7.2 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (the "Practice Statements") recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it is satisfied that:
- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
  - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."
12. The appellant has not had a fair hearing as a consequence of the respondent's failure to submit the Refugee Family Book to the First-tier Tribunal. Accordingly, in my judgment, this case falls within para 7.2 (a).

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside. This case is remitted to the First-tier Tribunal for the decision on the appellant's appeal to be re-made on the merits on all issues by a judge other than Judge of the First-tier Tribunal Grimmatt.



Signed  
Upper Tribunal Judge Gill

Date: 20 January 2020