Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: PA/10898/2018 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC	**Decision & Reasons Promulgated**
On 7 January 2021	**On 18 January 2021**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

(ANONYMITY ORDER MADE)

GH

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Mr C Timson of Counsel, instructed by Maya Solicitors

For the Respondent: Mr A McVeety, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. At the conclusion of the hearing I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a Bangladeshi national with date of birth given as 10.8.81, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 11.2.20 (Judge Holmes), dismissing on all grounds his appeal

against the decision of the Secretary of State, dated 4.9.18, to refuse his claim for international protection on the Convention grounds of actual or imputed political opinion as a former BDP supporter who had been attacked by the Awami League, who had instituted prosecution for criminal offences by lodging false accusations against him.

2. This appeal has some history to it. It was first dismissed by the First-tier Tribunal in October 2018 (Judge Drake) but by the Upper Tribunal's decision of February 2019 (Deputy Upper Tribunal Judge Chapman) was set aside and remitted to the First-tier Tribunal to be remade afresh. Hence the appeal hearing before Judge Holmes on 18.12.19.

3. Despite concluding at [32] of the impugned decision that it had not been shown that the FIR was "non-genuine", Judge Holmes found the appellant an unreliable witness, disbelieved his account, and applying Tanveer Ahmed [2002] UKAIT 00439, found the documents produced by the appellant to be unreliable. At [34] the judge was not satisfied that the appellant was ever a BNP member or supporter in Bangladesh, and that he had not engaged in any *sur place* Bangladeshi politics. In the premises, the appeal was dismissed.

4. The grounds are poorly drafted and somewhat difficult to follow. However, they make complaint that the judge erred in law in the following paragraphs of the impugned decision:

    i. Paragraph [25], where the judge accorded limited weight to the Rule 35 report. The judge appeared to accept that, at the highest, the evidence was that the appellant had been subject to past violence, but that there was no evidence of causation, or whether any or all of the scars were sustained on the same occasion. The grounds assert that if the judge accepted that he had been subject to past violence, it is unclear how the judge could come to the firm view rejecting the appellant's account.

    ii. Paragraph [28], where the judge noted that the appellant relied on what he claimed to be a a false criminal FIR filed against him in Bangladesh, together with arrest warrants and other related documents. The judge observed that whilst asserting that the documents were genuine, in his witness statement and oral evidence the appellant had provided no detailed account or any explanation of their provenance. Given the letter from the lawyer confirming he had been instructed by the appellant to act in his case, the judge considered that there ought reasonably to exist other correspondence which the appellant could easily have produced in support of the claimed lawyer/client relationship. The grounds assert that there was no issue that he did not have a lawyer "and it is unclear as to why he would submit privileged legal documents to support a lawyer/client relationship other than

the documentary evidence already adduced." It is submitted that the judge erred in the assessment of this documentary evidence and failed to take into account the "oral documentary evidence," whatever that means.

iii. Paragraph [30], in which it is asserted "the Judge indicates that he feels that the value of the verification report is further diminished, yet concludes that the FIR has been shown to be not genuine." This is challenged by the grounds, though it is far from clear on what precise basis.

5. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions made to me and the grounds of application for permission to appeal to the Upper Tribunal. The Tribunal has the respondent's Rule 24 reply, dated 27.7.20, which I have taken into account.

6. In relation to [25] and the first ground of appeal, the ground makes little sense other than a disagreement with the decision. The judge did take into account the Rule 35 report, noting that whilst the scaring was consistent with the description of the attack it was not definitive medical evidence of the causation of such scars. As set out above, the judge pointed out that evidence if such expert evidence had been adduced, which it was not, "the most it is likely to have proved would be that the appellant had been subjected to past violence." Observing that the scaring was not described as fresh at the time of the report in 2018, the judge was satisfied that the injuries were not then recent. However, the judge set out a number of difficulties with this evidence, including that it provided no evidence of causation, that is to when and in what circumstances the injuries were sustained, and that the report did not amount to "any reliable opinion on whether all of the scares, or any identifiable group of scars noted in the report had been sustained on the same occasion." The judge then concluded, "Ultimately, therefore, I find that the support that the rule 35 report provides to the appellant's case is limited." It is important to note that the judge did not discount the evidence entirely but evidently considered it in the round in the context of the evidence as a whole, in the round, as the judge confirmed at [8]. I am satisfied that no error of law is disclosed by this ground.

7. In relation to the second ground and [28] of the decision, the ground is in essence an assertion that the judge erred in expecting the appellant to have adduce further or better evidence of the claimed lawyer/client relationship, which was obviously relied on by the appellant to underpin the claim that false criminal proceedings had been filed against him. The judge accepted that corroborative evidence was not a legal requirement but considered that "where it could have been easily obtained its absence may be relevant to the assessment of credibility." I can find no fault with that statement. The assertion in the grounds that it is "unclear" why the appellant would submit further privileged legal documents is disingenuous. The obvious reason was carefully explained by the judge: that given the nature of the lawyer's letter confirming instructions to act, it would be reasonable to conclude that there must be more than that single letter of correspondence between the appellant and his lawyer, and that in those circumstances it would have been easy for the

appellant to adduce that correspondence in further support of his case. The point is patently clear, particularly where the respondent's case was and remained that there were no such criminal proceedings against the appellant and that the so-called 'legal documents' were not genuine.

8. In this regard, the grant of permission suggests that the the First-tier Tribunal Judge "applied more than the requisite lower standard of proof" and concluded that "there were material errors of law in the decision of the First-tier Tribunal". With respect, that was not for Judge Finch to determine when granting permission to appeal, in which the threshold test is whether the decision discloses an 'arguable' error of law. Further, as Mr McVeety submitted, with which submission Mr Timson could not disagree, the grant of permission was in relation to a ground neither pleaded nor identified as *Robinson obvious*. In point of fact, the grant of permission appears to be based on a misreading of [30] of the decision where the judge correctly referred to the balance of probabilities, as he was there dealing with the respondent's assertion that the documents relied on by the appellant were not genuine. Further, neither did the appeal turn on whether false accusations made against members of opposition parties in Bangladesh were prevalent, as the objective evidence indicates. In effect, that premise, the well-known device of political opponents in Bangladesh to make false criminal accusations against each other, is assumed in consideration of the appellant's case. The real question was whether the documents adduced by or on behalf of the appellant were either genuine or reliable as evidence that such false accusations had been levelled at him by political opponents, as claimed. In extensive detail set out between [22] and [32] of the decision, the judge carefully considered the documents, identifying various difficulties with their provenance and content. As set out below, the judge first found that the respondent had failed to demonstrate on the basis of the verification report that the FIR was not genuine, before considering what reliance could be placed on these documents in support of the appellant's case. I am not satisfied, therefore, that the judge required any higher level of proof than the lower standard of proof. I am satisfied and it is clear that the judge made a correct self-direction as to the burden and standard of proof between [8] and [11] of the decision, under the heading 'General legal points.'

9. In relation to the third ground and [30] of the decision, it is clear that the author of the grounds has misunderstood this part of the decision. At this point the judge identified the issue as being whether, on the balance of probabilities, the respondent had demonstrated that the FIR was not genuine. The judge immediately stated that he had no hesitation in stating that the evidence was not sufficient to show the FIR was not genuine, finding the document verification report to be "of diminished evidential weight", for the several reasons given at [30]. Whilst the appellant and/or his legal representatives believe the judge found the FIR not genuine, the judge made no such finding. Ultimately, at [32] the judge concluded that the FIR had not been shown to be "non-genuine". However, the judge went on at [32], applying Tanveer Ahmed principles, to conclude that the Bangladeshi documents, including

the letter purporting to come from the BNP branch in Oldham, could not be relied upon, or in other words, that the appellant failed to demonstrate that they were reliable in support of his case. That conclusion is fully reasoned and discloses no error of law.

10. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal on the basis of any pleaded ground.

Decision

The appeal of the appellant to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 7 January 2021

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

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

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 7 January 2021