

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: PA/00999/2018**

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision & Reasons Promulgated** |
| **On 25th May 2018** | **On 12th June 2018** |
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**Before**

**DEPUTY upper tribunal judge ROBERTS**

**Between**

**MR M.J.H.**

(ANONYMITY DIRECTION MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Karim of Counsel

For the Respondent: Miss Kiss, Senior Home Office Presenting Officer

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity direction is made. As a protection claim, it is appropriate to do so.

**DECISION AND REASONS**

1. The Appellant, a citizen of Bangladesh (born 17th August 1991), appeals with permission against the decision of the First-tier Tribunal, dismissing his appeal against the Respondent's decision of 5th January 2018 refusing his protection claim.

**Background**

1. The Appellant's claim to protection is that he became involved with politics and was a member of Islamic Chatra Shabbir (ICS) the student wing of Jamaat-e-Islami. As a member of ICS he was harassed and threatened by Bangladesh Chatra League (BCL) the student wing of Awami League. A summary of the Appellant’s claim was set out by the First-tier Tribunal’s in its decision and is reproduced here:

“2. The Appellant claims that he became involved in politics because his father was active with the local branch of Islamic Chatra Shabbir (ICS) which is the student wing of the Jamaat e Islami (JI) party in Bangladesh. The Appellant claims that his father was president of the Moghbazar branch of JI in 2006 and that he was general secretary of the corresponding branch of ICS in 2008 and its president in 2009.

3. The Appellant claims that a false police report was filed against him on 1 January 2010 alleging he had been engaged in protesting and damaging property and charging him with explosives offences. The Appellant claims that the charges were fabricated. The Appellant claims that on 2 January 2010 his home was attacked by a Awami League activists (sic) that he received a blow to the head which required him to spend five days receiving medical treatment. As a consequence of these experiences the Appellant started applying for a student Visa to come to the UK so he could escape Bangladesh. The Appellant first applied for a student Visa on 13 January 2010 which was refused in March 2010 and he applied again and was eventually issued a Tier 4 student Visa on 18 October 2011 which was valid for three years. The Appellant came to the UK on his initial student Visa and then secured an extension of leave valid until 2 October 2016.

4. The Appellant claims that he returned to Bangladesh on 2 May 2016 and that whilst he was in Bangladesh further false charges were filed against him on 5 May. The Appellant claims that he left Bangladesh on 16 May 2016 flying on to the UK. The Appellant did not claim asylum on returning to the UK but did claim asylum on 28 September 2016. I note that the refusal letter contains an allegation that the Appellant was found working in a restaurant in the UK by a compliance team in August 2017 but I have received no independent evidence of that.”

**First-tier Tribunal Hearing**

1. At the hearing before the FtT, the judge noted the basis for the Respondent's refusal. Essentially the Respondent found the Appellant's claim to be lacking in credibility. It was not accepted that the Appellant's was a member of ICS on account of:
   * 1. the Appellant's inability to describe the party manifesto to the level of detail to be expected from someone with his claimed profile; and
     2. two documents which were produced by the Appellant to show that false allegations were made against him in 2010 and 2016 by Awami League were not accepted as credible documents
2. The judge heard evidence from the Appellant and noted the documentary evidence which had been placed before him. This included various statements, including one from the Appellant's brother who is currently living in Cyprus. He also considered photographic evidence that the Appellant had submitted through his representatives following his substantive interview on 3rd March 2017. The photographs were of injuries said by the Appellant to have been sustained by his mother and a neighbour as a result of an attack upon them by Awami League, who had visited the house looking for him.
3. The FtTJ also noted that there was a delay by the Appellant in claiming asylum. He further noted that the Appellant had claimed that there was a failure on the part of the Home Office to follow proper interview procedures in that the Appellant stated that he was nervous at interview and not offered a break.
4. After consideration of the evidence, the judge dismissed the appeal.

**Onward Appeal**

1. The Appellant sought permission to appeal to the UT. In summary the grounds asserted the following;
   * + 1. procedural unfairness and a perception of bias in the judge’s conduct of the hearing;
       2. an improper assessment of evidence;
       3. inadequate findings in respect of evidence;
       4. inadequate reasons for assessment of weight given to evidence;
       5. failure to make findings; and
       6. failure to make findings with specific reference to the Appellant's complaint that the Home Office interview was procedurally unfair.
2. Permission was granted in the following terms:

“1. The appellant seek permission to appeal against a Decision of the FtT (Judge Seelhoff) who, in a Decision and Reasons promulgated on 19 March 2018 dismissed the appellant's appeal.

2. The grounds of appeal assert inter alia that (1) there has been procedural unfairness and a perception of bias; (2) an improper assessment of evidence; (3) inadequate findings in respect of evidence; (4) inadequate reasons for assessment of weight given to evidence; (5) failure to make findings; and (6) failure to make findings.

3. In relation to Ground 2, the appellant contends that the Judge erred in undertaking a comparison of documents from other appeals which he had heard. The Judge states at [68] “I am very concerned at the appearance of the … report … The paper is somewhat unusual in that it has a grid feature which I have not seen regularly on Bangladeshi documents of this sort.” It is an arguable error of law for a Judge to refer to forms of evidence presented to him in other appeals and use that earlier evidence as the basis upon which to assess evidence before him. The form and contents of documents from Bangladesh is not a matter of judicial knowledge. Whether the form of documents regularly seen before is authentic is a matter upon which the appellant would be bound to have the opportunity to comment. Absent the evidence, the appellant is at a disadvantage.

4. I grant permission to appeal as an arguable error of law arises on at least Ground 2. I do not limit the scope of appeal which may be argued. I observe however, that something more than a statement from the appellant himself may be needed to successfully argue Ground 1 [bias and perception of bias].”

1. Thus the matter comes before me to decide if the FtTJ’s decision contains such error of law that it requires to be set aside and re-made.

**Error of Law Hearing**

1. Before me, Mr Karim appeared for the Appellant and Miss Kiss for the Respondent. Mr Karim in his submissions followed the lines of the grounds seeking permission. He handed in the decision in **ML (NIGERIA) [2013] EWCA Civ 844**.
2. In regard to Ground 1, he referred me to [52] to [54] of the FtT’s decision. In support of his contention that the FtTJ had cross-examined the Appellant, he relied upon the Appellant’s signed statement dated 27th March 2018. This statement was referred to by the FtTJ granting permission.
3. Unfortunately no copy of that statement was contained in the papers before me nor had Miss Kiss been served with a copy. Mr Karim of course did have a copy. The statement is short in form. I confirmed with Mr Karim that this was the only extra evidence that was to be submitted. Since this was a short statement, copies of it were obtained and a copy served on Miss Kiss. Miss Kiss, having seen the statement confirmed she was content to proceed.
4. Mr Karim invited me to look at the series of questions outlined in [52] to [54], and said that they are illustrative of procedural unfairness and perception of bias in the judge’s conduct of the hearing. This is because the judge had sought to cross-examine the Appellant. So far as Ground 2 is concerned, that followed on from, and linked to, Ground 1. He said that not only had the judge fallen into error in his questioning of the Appellant, but equally he had fallen into procedural error in his questions relating to the documentary evidence concerning the two First Information Reports. The judge had entered into speculation, and it was not open to the judge to compare documents in this case with those he had seen in other cases.
5. So far as Grounds 3, 4 and 5 are concerned, Mr Karim submitted that the judge had failed to adequately engage with the evidence placed before him. In particular, the Appellant's brother had forwarded a letter of support, there was photographic evidence of the attack on the Appellant's mother, medical evidence relating to the Appellant's mother’s neighbour who was present at the attack, and evidence of news coverage of the attack. The judge had made no properly reasoned findings on this evidence.
6. Finally in Ground 6 it was asserted that the Appellant had raised issues relating to the procedure adopted at his substantive Home Office interview. The judge failed to make relevant findings in respect of this aspect of the Appellant's claim. Cumulatively these matters meant that the decision was flawed and therefore unsustainable. The matter should therefore be set aside and remitted to the First-tier Tribunal for a fresh hearing.
7. In response Miss Kiss defended the FtTJ’s decision. She too referred to the series of questions at [54] to [56] and submitted that a proper reading of the decision showed that far from exhibiting bias, the judge was clearly concerned in seeking clarification. This is something a judge is entitled to do. He was completely transparent in what he was saying and it was certainly not a case of the judge constantly interrupting. The series of questions had to be looked at in the context of the very full account the judge had given in his reasons for dismissing the appeal and looked at in the context of the case as a whole. She submitted that the decision contained a very detailed account of the evidence and addressed the main points in dispute. There was much in the Appellant's evidence that was inconsistent. A full reading of the decision would show that the reasons given for dismissing the appeal were properly grounded and therefore adequate.
8. At the end of submissions I reserved my decision which I now give with reasons.

**Consideration**

1. The first and second Grounds of Appeal raise serious allegations about the judge’s conduct at the hearing. In his statement dated 27th March 2018, the Appellant said, “I want to state that I find the trial Judge Mr Seelhoff is biased against me and he has also cross-examined me on various issues along with Home Office Presenting Officer. He said he knows about Bangladesh and his brother in law was in Bangladesh.” That statement together with an examination of [52] to [54] of the judge’s decision represents the totality of the evidence alleging bias.
2. I find firstly that I can dispose fairly briefly with the complaint in the Appellant’s statement concerning reference made to a brother-in-law in Bangladesh. I find no such reference to a brother-in-law in Bangladesh anywhere in the FtTJ’s decision. I can see no reason why the judge should make such a statement, but nor can I conclude that it could not have occurred. The grounds seeking permission seem to suggest that the comment is linked with Ground 2. However in the absence of any further context or detail, it is hard to see how a judge commenting (and I am not satisfied that it is established that he did) about having a brother-in-law in Bangladesh can amount to bias. Such a comment, if made, merely seems superfluous.
3. Dealing with the more serious allegation in the Appellant's claim it is correct that Mr Karim’s submission, in relation to the question of bias, said that it was more a question of whether there was an appearance of bias rather than actual bias.
4. The correct approach when dealing with apparent bias is well established. The test for apparent bias involves a two stage process. The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the judge was biased.
5. With that approach in mind, I have considered matters as a hypothetical observer would. Firstly, it is clear that the Appellant was represented throughout the hearing by a legal representative, his solicitor. The Appellant confirmed his evidence which was by way of statement and was asked supplementary questions by his representative to which he responded [37]. The Appellant was then cross-examined by the Home Office representative and was asked a number of questions, all of which are recorded in the decision.
6. At [52] to [54] following the Respondent’s cross-examination, the judge asked a series of questions relating to documentary evidence concerning arrest warrants which the Appellant had submitted as part of his case. The Appellant was also asked why he had joined an organisation which is documented as being violent. In my judgment that series of questions, on a reading of them, can be categorised as no more than the judge anxiously seeking to clarify matters. This was no doubt because the arrest warrants and the Appellant's involvement in his claimed political activities formed central parts to his case. I see no evidence that the judge in any way interrupted the Appellant, nor that the Appellant was not allowed to respond. Indeed, on the contrary, the Appellant has provided answers which are duly recorded.
7. I also acknowledge that the Appellant was represented throughout the proceedings, by a competent representative who was there to protect the Appellant’s interests. There is no note of his representative seeking to make any sort of intervention or representation that the judge’s questions were so onerous or improper as to give the appearance of bias. Equally I note there is no statement from the representative supportive of what is essentially a bare statement from the Appellant which asserts that as a result of the “cross-examination” by the judge the decision should be set aside because the judge appeared to be biased.
8. The Appellant's representative re-examined the Appellant and a full note of the re-examination is set out in the decision. Accordingly, for the foregoing reasons I find that the Appellant has not made out his case as regards Ground 1.
9. So far as Ground 2 is concerned, the judge is criticised it is said for attempting to assess the age of the documents (First Information Reports) and for his reference to the grid features on those documents [68]. This is on the basis that the judge said he has not “regularly” seen this type of document. Mr Karim made much of this ground, submitting that the above amounts to a material error in that it illustrates procedural unfairness.
10. I find that [68] needs to be read in conjunction with [52]. I find that the judge is properly noting that the documents appear to be on the same paper. In the questions that he posed to the Appellant, he has sought to clarify points which were troubling him regarding the documents. This was an appropriate line of enquiry given the Respondent's decision questioning the veracity of these documents (reasons for refusal letter [51]).
11. His remark about the unusual features of the grid is, I find, superfluous. Had that been the sole question mark over the FI Reports, then matters may have taken a different turn but, as it was, there were several concerns enumerated by the judge over these documents. The finding regarding the grid feature, even if erroneous, is in my judgment insufficient reason to render the decision unsustainable. There was much to discredit the Appellant’s account and reliance on these documents. The judge gave thoughtful consideration to the evidence of the provenance of the documents, noted several unexplained discrepancies on the face of the documents and noted that the Appellant had returned to Bangladesh to see his ill mother at a time when he claimed there were false charges against him on serious matters.
12. Neither do I find any merit in the other grounds, which cumulatively in my judgment amount to no more than a disagreement with the findings made by the judge.
13. It is clear that the judge kept in mind the evidence of the Appellant's brother and the other evidence in the form of photographs of injuries to the Appellant's mother and her neighbour but found he could place little weight upon them. It is said that the judge has failed to make sufficient findings on this important evidence. I disagree. A proper reading of the decision shows that the judge not only mentioned this evidence but commented upon it. It is clear the judge was aware of the evidence but equally clear that he was unpersuaded by it when looking at it in the context of the Appellant's core claim. The judge found with good reason that the Appellant’s core claim lacked credibility and therefore the above evidence did not assist him.
14. I find likewise with regard to Ground 6, the claim made that the Appellant had an unfair Home Office interview. The Appellant claims that he was not offered a break in interview and that he was somewhat hurried because the interviewer was busy on the phone. In fact the judge refers to the complaint raised about the Home Office interview in [84], [85] and [86]. It is clear from a reading of those paragraphs that the judge does not accept the substance of the claim. The judge notes that the Appellant was asked both at the start and finish of the interview the standard questions of whether he was feeling well. As far as I can ascertain from the papers before me, the interview looks on paper, to be a standard form one. The Appellant, I note, was interviewed in English and so it is not a question of anything being lost in translation. I also note that the Appellant is educated to degree level in business management. No doubt it would seem surprising to the fair-minded observer that an educated man, who speaks English, was unable to interrupt the interviewing process to say he required a break and that he was feeling hurried.
15. Altogether therefore for the foregoing reasons I am satisfied that the decision of the FtT contains no material error. The decision accordingly stands and this appeal is dismissed.

**Notice of Decision**

The decision of the First-tier Tribunal promulgated on 19th March 2018 contains no error of law. The decision therefore stands.

**Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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 both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed C E Roberts Date 10 June 2018

Deputy Upper Tribunal Judge Roberts