

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: PA/06248/2018**

**THE IMMIGRATION ACTS**

|  |  |
| --- | --- |
| **Heard at Field House**  **On 28 January 2019** | **Decision & Reasons Promulgated**  **On 1 February 2019** |
|  |  |
|  |  |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**KANISH FATIMA**

(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Symes (counsel) instructed by Universal solicitors

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Chana promulgated on 11 July 2018, which dismissed the Appellant’s appeal on all grounds.

Background

3. The Appellant was born on 5 January 1989 and is a national of Bangladesh. On 27 April 2018 the Secretary of State refused the Appellant’s protection claim.

The Judge’s Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Chana (“the Judge”) dismissed the appeal against the Respondent’s decision. Grounds of appeal were lodged and on 10 December 2018 Upper Tribunal Judge Frances granted permission to appeal stating inter alia

It is arguable that the Judge failed to properly assess the evidence of each of the appellant’s witnesses and made errors of fact in recording the evidence. It is arguable she failed to properly consider the background material on marked increase in violence since the 2014 elections in rejecting the evidence of all the witnesses on the basis that they had returned to Bangladesh. The grounds are arguable.

The Hearing

5 (a) For the appellant, Mr Symes moved the grounds of appeal. He told me that the appellant claims to be a political activist who publicly campaigned against the ruling party in Bangladesh, and who has continued her activities in the UK. He told me that the Judge found that the appellant is no more than a low-level activist who would not be at risk on return to Bangladesh. Mr Symes told me that the Judge’s findings are tainted by material errors of law.

(b) Mr Symes told me that there was significant evidence to support the appellant. He told me that the supporting evidence came from former MPs and political figures in the UK, from witnesses associated with Amnesty International as well as witnesses associated with Bangladeshi politics but told me that the Judge took a superficial view of the evidence and did not properly analyse the evidence and explain why evidence was rejected. He took me to [45], where the Judge says

All of the appellant’s witnesses claim that they are BNP activists…..

And told me that that is inaccurate.

(c) Mr Symes told me that the Judge had not taken account of background materials and failed to analyse the objective materials placed before her. He told me that the Judge mad errors in recording evidence. He explained that he does not have a statement from his instructing solicitors, but has been told that there was no interpreter available at the hearing. The absence of an interpreter prevented two witnesses from giving their evidence properly.

(d) Mr Symes told me that at [56] the Judge wrongly finds that the appellant can suppress her political leanings, and so failed to take account of the guidance given in HJ(Iran) [2010] UKSC 31.

(e) Mr Symes urged me to set the decision aside.

6. For the appellant, Mr Tarlow told me that the grounds of appeal are just a disagreement with valid and reasoned findings made by the Judge in a perfectly competent decision. He told me that from [32] onwards the Judge reaches conclusions well within the range of reasonable conclusions available to her. He told me that the Judge carefully assesses the appellant’s credibility, and at [46] looks at the appellant’s sur place claim. He asked me to dismiss the appeal and allow the decision to stand.

Analysis

7. Neither Mr Symes nor Mr Tarlow could tell me with any degree of certainty whether or not an interpreter was available. The appellant insists the was no interpreter. I have the record of proceedings, but the front page of the record of proceedings is missing so that I cannot tell from the Judge’s record of proceedings whether an interpreter was present. I have the preliminary hearing response form which makes it clear that the appellant requested an interpreter & intended to lead five witnesses.

8. The appellant provides a detailed witness statement in which she says two hours were spent on a fruitless search for an interpreter on the day of the appeal hearing, after which the appeal went ahead without an interpreter; that one of the witnesses could not give evidence and another struggled to give evidence without the assistance of an interpreter.

9. At [21] the Judge says

The appellant gave oral evidence through a Bengali interpreter….

10. At [52] the Judge discusses the evidence from one of the appellant’s witnesses, and records that the witness struggled to give evidence without the assistance of an interpreter. The Judge found that the appellant’s witness’ limited English damaged his credibility.

11. Mr Tarlow conceded that if there was no interpreter present then the decision contains a material error of law. It has consistently been the appellant’s position that the was no interpreter. There is a conflict between [21] and [52] of the decision. There is no reason why I should not accept the appellant’s detailed statement saying that there was no interpreter. The appellant’s statement together with a copy of the prehearing review reply notice was served with the application for permission to appeal. The respondent has consistently adopted a neutral position.

12. In the appellant’s bundle there are witness statements from five witnesses. There are also 16 supporting letters and emails. Between [21] and [34] the Judge summarises the evidence she heard. Between [36] and [61] the Judge makes findings of fact. The decision does not contain a meaningful analysis of the evidence of the appellant’s four witnesses.

13. The Judge’s error in recording that an interpreter was present when there was no interpreter is a material error of law. It is clear that an interpreter had been asked for. It is most likely that no interpreter was present. Proceeding without an interpreter raises the spectre of procedural unfairness.

14. The absence of analysis of the evidence of the appellant’s four witnesses is also a material error of law.

15. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal’s decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

16. The Judge’s findings of fact are inadequately reasoned. That is a material error of law. I set the decision aside. I have found that the Judge’s decision must be set aside because her fact-finding exercise was inadequate. I cannot substitute my own decision. A further fact-finding exercise is necessary.

Remittal to First-Tier Tribunal

17. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 a case may be remitted to the First-tier Tribunal if the Upper Tribunal 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.

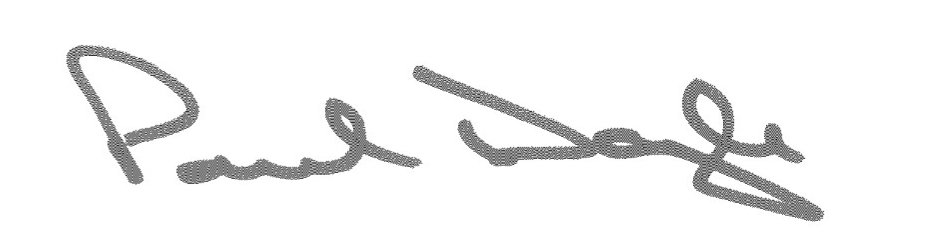
18. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

19. I remit the matter to the First-tier Tribunal sitting at Hatton Cross to be heard before any First-tier Judge other than Judge Chana.

**Decision**

**20. The decision of the First-tier Tribunal is tainted by material errors of law.**

**21. I set aside the Judge’s decision promulgated on 11 July 2018. The appeal is remitted to the First-tier Tribunal to be determined of new.**



Signed Date 29 January 2019

Deputy Upper Tribunal Judge Doyle