



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/10551/2013

THE IMMIGRATION ACTS

Heard at Laganside Courts, Belfast

Determination

Promulgated

On 31 October 2014

On 7 November 2014

Before

The President, The Hon. Mr Justice McCloskey

Between

AI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant: Mrs Donnelly of Law Centre (NI)

Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. I grant anonymity to the Appellant: please note the acronym above.
2. This appeal has its origins in a decision made on behalf of the Secretary of State for the Home Department (the "*Secretary of State*"), dated 24 October 2013, whereby the application of the Appellant, a national of

Bangladesh now aged 35 years, for asylum was refused, on the ground that a well founded fear of persecution for one of the proscribed reasons had not been established. It was further determined that the Appellant does not qualify for humanitarian protection. She did, however, secure the benefit recorded in the following passage:

“Consideration has been given to whether your removal from the UK would breach your right to respect for private and family life under Article 8 [ECHR]

It is noted that you claim that your child is a British citizen and that your ex husband is also a British citizen. Based on the documentary evidence you have provided to substantiate this, these aspects of your claim are accepted and it has been decided to exercise discretion in your favour and grant you limited leave to enter/remain in the UK because of your family life.”

3. The Appellant’s appeal against the refusal of asylum was dismissed by the First tier Tribunal (the “FtT”). Some of the core issues in her unsuccessful claim for asylum and ensuing appeal are encapsulated in the following passages in the Notice of Appeal:

“The Appellant maintains that she would be at risk from the authorities in Bangladesh if returned there, in particular the Awami League, members of the Bangladesh National Party and the Bangladesh armed forces

She is at risk of persecution owing to her imputed political opinion and the risk of persecution from her husband’s family in Bangladesh

She was arrested and detained by the Bangladeshi armed forces whilst living in Bangladesh owing to her husband’s political activities.”

The FtT dismissed the Appellant’s appeal. As appears from [36] – [38] of its determination, the Appellant’s case was considered not credible and this was the essential reason for the dismissal.

4. One aspect of the Appellant’s case was that her estranged husband, also a Bangladeshi national, had acquired British citizenship pursuant to a successful asylum claim in the United Kingdom. As recorded in [11] of the determination, no independent verification of this assertion was available. It would appear that the Judge rejected it, without any consideration of the Appellant’s evidence, on the ground that such verification was an essential proof which had not been established. At first instance, it was contended that one of the errors of law contaminating the Secretary of State’s refusal decision was a failure to address and resolve this discrete issue. On appeal to this Tribunal, the same complaint was levelled against the FtT. The other three grounds of appeal, in summary, were:

- (i) In the determination of the FtT, consideration was given to an issue which had not been previously raised either in the refusal decision or at the hearing, namely the lack of evidence, particularly Court orders, arising out of the breakdown of the Appellant's marriage, giving rise to procedural unfairness and/or constituting the impermissible intrusion of an improper consideration.
- (ii) *Ditto*, the issue of the Appellant's asserted failure to claim asylum in other countries prior to her arrival in the United Kingdom.
- (iii) *"The Judge erred in law making irrational findings or failing to give adequate reasons for findings or failing to take account of fact or opinion on material matters concerning the Appellant's general credibility and fear of return to Bangladesh."*

Permission to appeal was granted in fairly general terms.

5. Upon the hearing of the appeal, Mr Mills, on behalf of the Secretary of State, disclosed the following. Arising out of diligent searches carried out by him, it has now, belatedly, been established that the Appellant's estranged husband did indeed claim asylum in the United Kingdom, in 1997, unsuccessfully. This was followed by an appeal. While there is at present no information about the outcome of the appeal, this can be ascertained from a file in long term storage in London, retrievable within approximately three days. Regrettably, the file is not available at present. Mr Mills acknowledged that this further information bears directly on one of the cornerstones of the Appellant's case. He conceded that the absence of this information at first instance gave rise to unfairness to the Appellant, rendering the decision of the FtT unsustainable. When questioned by me, Mr Mills was also disposed to accept, correctly in my view, that the other grounds of appeal, particularly the first and second of those tabulated above, possess some merit: the cross references in this respect are to [29] and [31] of the determination.

DECISION AND DIRECTIONS

6. I decide and direct as follows:
- (i) The decision of the FtT is set aside.
 - (ii) I remit the appeal to a differently constituted FtT for the purpose of remaking the decision.
 - (iii) The "missing" file, noted above, will be served on the Appellant's representative and lodged with the FtT within 21 days of today.

- (iv) Thereafter, the relisting before the FtT will be on the first available date.

Bernard McCloskey.

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE

UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER
Date: 31 October 2014