



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02189/2018

THE IMMIGRATION ACTS

Heard at Field House
On 6 June 2018

Decision and Reasons Promulgated
On 20 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

AMEER ABDULLAH RANO KHAN
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Kotas (Home Office Senior Presenting Officer)
For the Respondent: Mr S Corben (for Shah Law Chambers)

1. This is the appeal of Ameer Abdullah Rano Khan, a citizen of Bangladesh born 1 January 1990, against the decision of the First-tier tribunal of 26 March 2018 to dismiss his appeal, itself brought against the refusal of asylum of 26 January 2018.
2. The Appellant arrived in the UK in 2008 as a student, extending his leave until 30 August 2015, though that last grant of leave was curtailed on 20 August 2014 to expire on 2 February 2015 following the revocation of his Sponsor's licence. He applied for leave to remain on private life grounds in February 2015, that application being refused on 10 June 2015, and certified so any right of appeal could be exercised only out-of-country. Having been served with notice of his removability on 26 January 2017 he subsequently claimed asylum on 19 May 2017.

3. His asylum claim was based on his membership of the BNP student wing (the Chatradal) which caused him to have problems with the opposing student wing. He held the position of Publication Secretary. He survived two attacks which he described as potentially deadly when distributing leaflets. The opposition leader behind those attacks had risen through the ranks and was now more influential, and could influence the authorities against him. The Awami League had threatened his family in 2014 and he had learned there was a warrant out for his arrest. His family had faced problems on a weekly basis since he had come to the UK and his family home had been raided by the security forces with a warrant to arrest him, and indeed the home had been bombed though no serious injury was caused.
4. He explained at interview in November 2017 that he had been in touch with his solicitors in Bangladesh and was aiming to obtain documentary evidence of the charges brought against him; he remained unaware of their detail. He had a wife and child in Bangladesh still. His wife lived with her own parents and so faced no problems because of him. He said that he had told the lawyer assembling his private life application in 2015 of his political problems but was told that he should not put forward such a claim absent having more evidence to hand.
5. The asylum application was refused because his apparent knowledge of the Chatradal was shallow and his account of political activity in the UK was vague. He had been unable to give a precise date for the allegedly serious attacks which was surprising had they been as potentially deadly as claimed, as was his inability to name the lawyer who he claimed was involved in his defence of the charges against him. His return to Bangladesh to marry was inconsistent with the dangers he claimed to face. His references to political activities were vague and he had apparently not attended a demonstration until 2015 notwithstanding that he claimed to have been attending various BNP programs since 2009.
6. Prior to the hearing before the First-tier tribunal his representatives had made a written adjournment application of 12 March 2018, on the basis that the Appellant had very recently heard of his mother's serious illness which had put him into a distressed state of mind, threatening his ability to attend his hearing. The judge who refused that application noted that the reply notice had indicated that the appeal was generally ready to proceed subject to some further evidence was due by way of legal documents, which was apparently in hand. The reply had also stated that no expert reports would be forthcoming. Nothing further was heard from the Appellant until this written adjournment application, which the Judge accordingly refused, on the basis that the Appellant's state of mind could be borne in mind on the hearing day.
7. At the hearing itself, the First-tier tribunal refused the renewed adjournment application. It gave lengthy consideration to the issue, noting the absence of evidence to show that the Appellant could not be contacted on the day of the hearing itself, and the lack of any medical evidence. There was no explanation for the enduring absence of evidence that had been consistently intimated as available from as long ago as May 2017. Having regard to the considerations identified in

Nwiagwe, the Judge concluded that it was not in the interests of justice to adjourn the hearing. It concluded that the Appellant's absence was more likely to be due to a lack of evidence to support his claim than to any genuine inability to participate in proceedings, and observed that, given its view of the matter, it seemed that the Appellant had deliberately absented himself from proceedings.

8. The Tribunal did not accept that the Appellant was a credible witness. It considered whether it should give him the benefit of the doubt with respect to the lack of corroborative evidence but decided that the Appellant had not made a genuine effort to substantiate his claim: nothing had been forthcoming notwithstanding his statements from May 2017 onwards as to the potential availability of certain material.
9. His account was in general not coherent or plausible. He had said his father had died in 2005 but his 2008 application to come to the UK as a student had stated his father worked in a bank. He had cause to claim asylum from the time he arrived as a student but failed to do so, even in 2015 by which time he had instructed a lawyer. His inability to date the allegedly serious attacks on him with any precision counted against him. He had been inconsistent as to whether his wife and in-laws were being harassed. In all the circumstances it was not appropriate to give him the benefit of the doubt. His account was rife with inconsistency and the facts he advanced were not considered credible. Accordingly the historical facts that underlaid asylum claim based on pre-arrival events were not established. Given those findings, and in the absence of any clear evidence that he had been significantly active in the BNP in the UK, he clearly faced no real risk of persecution on a return to Bangladesh.
10. As to his private life claim to remain in the UK, whilst it was acknowledged that he had most likely established connections here during his decade of residence, he had only ever been present on a precarious basis and there was no evidence to suggest he was financially independent or that he spoke English well (indeed he had required an interpreter at interview).
11. Grounds of appeal of 10 April 2018 argued that refusing the adjournment had been unfair given the considerations identified in the case of *Nwaigwe*, and that the scepticism engendered by the considerations identified justifying the adjournment's refusal had infected the substantive determination of the appeal too. Furthermore the First-tier tribunal apparently held it against the Appellant that he had failed to provide a reply notice to the standard directions, notwithstanding that the Tribunal later acknowledged that one had come to light. It was unreasonable to expect medical evidence to be available on the day. However, the evidence now supplied showed that the adjournment application had been made in good faith on justified grounds. The findings on the asylum and Article 8 claims were also said to be flawed, though there was no particularisation whatsoever of the alleged deficiencies.
12. A printout from the Appellant's GP surgery of 15 March 2018 provided with the grounds of appeal stated that he Appellant had presented with symptoms of back

and neck pain, apnoea which disrupted his sleep, and ongoing depression, reporting that he was stressed because of his mother's ill health. The doctor discussed treatment options including the need to manage the ongoing problems via regular review with a GP, to continue with analgesia and a low dose of Amitriptyline to help with insomnia. A letter from Dr Islam's clinic in Dhaka stated on 12 March 2018 that S B, the Appellant's mother, had been admitted to Bangladesh Medical College hospital "last night"

13. The First-tier tribunal granted permission to appeal on 19 April 2018 on the basis that the decision arguably exhibited "highly prejudicial remarks" by reference to the Appellant having deliberately absented himself from proceedings.
14. Before me Mr Kotas argued that the adjournment refusal was fair and that the appeal had been lawfully determined having regard to the paucity of evidence before the First-tier tribunal. Mr Bellara for the Appellant argued that a prejudicial stance had been taken. The considerations in *Nwaigwe* had not been properly applied and an adjournment had clearly been the interests of justice.

Findings and reasons

15. I do not consider that the adjournment refusal was unfair. There is no public law error exhibited by the refusal by way of failing to take account of relevant considerations: the refusal is remarkable for its thoroughness. Nor, assessing the matter for myself, do I consider that the decision was unfair substantively. There was no medical evidence available for the First-tier tribunal to review for itself, and in those circumstances the proposition that the Appellant, a man of 28 who had successfully studied in the UK for a significant period, would be so upset by the news of his mother's illness that he would be unable to give coherent evidence, is inherently implausible. Besides, any competent advisor would be aware of the Vulnerable Witness Practice Direction which they could rely on in encouraging the trial judge who heard the evidence to give the appropriate leeway to its assessment.
16. Nor do I consider that the medical evidence which ultimately eventuated carries the day for the Appellant. In so far as it refers to him suffering from distress about his mother's illness, it does so in the context of a reference to a longer period of depression: yet this had not been raised in the case management reply as a reason that the proceedings might be deferred. It does not state in terms that the Appellant cannot give coherent evidence; it does not even suggest he is unfit to work. The proposed treatment regime does not readily invite an inference that he could not reasonably be expected to participate in legal proceedings.
17. As to the Judge's reasoning vis-à-vis the asylum claim itself, I consider that it is perfectly sustainable. The evidence does indeed suffer from the various defects cited above as to matters of inherent implausibility. There appears to be no particularised case as to the Appellant's asserted activities in this country; the grounds of appeal to the First-tier tribunal refer to well known maxims of refugee law and give a sparse and vague account of his claim, but do not condescend to giving any cogent detail.


18. The reality is that the Appellant had had a very significant period to put his case in order, having arrived in this country in circumstances where he was to later claim had had already suffered political persecution. He claims to have long associated with the BNP here, an organisation that must have institutional knowledge of the possibility of claiming asylum given some senior figures have been granted refugee status in the UK. He had instructed a solicitor in 2015, who apparently gave him (surprising) advice that he should not claim asylum until such time until he had more corroborative documentary evidence available. However, the supporting evidence has not eventuated (even by the time of the hearing before me), and it is telling that there is no particularised challenge to any of the findings on the substance of the First-tier tribunal's reasoning.
19. I accordingly find that the First-tier Tribunal made no material error of law. Its decision stands.

Decision:

The decision of the First-tier Tribunal was a lawful one.
The appeal is dismissed.

Signed:

Date: 8 June 2018

A handwritten signature in black ink, appearing to read 'M.A.S. Symes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Deputy Upper Tribunal Judge Symes