



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

Appeal Number: PA/12556/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 25 September 2018**

**Decision & Reasons
Promulgated
On 10 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

and

**KHAN [K]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Representation:

For the Appellant: Mr M Haque, Legal Representative.

For the Respondent: Ms A Everett, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh who made an application for international protection. It was refused and he appealed and following a hearing, and in a decision promulgated on 5 March 2018, Judge of the First-Tier Tribunal Traynor dismissed the Appellant's appeals on asylum, humanitarian protection and human right's grounds.
2. The Appellant applied for permission to appeal which was granted on 23 March 2018 by Judge of the First-Tier Tribunal Grant-Hutchison. Her reasons for so granting were:-

“1. The Appellant seeks permission in time to appeal against a decision of the First-tier Tribunal (Judge Traynor) promulgated on 5 March 2018 whereby it dismissed the Appellant’s appeal against the Secretary of State’s decision to refuse his application for protection.

2. It is arguable that the Judge has erred in law for the following reasons: - (a) for possibly not giving the legal representative sufficient time to put forward his examination-in-chief including details of photographs of the Appellant’s political activities in the UK and in stopping the Representative in making submissions on the case papers when they were not introduced before through questioning; (b) by failing to set out the appropriate standard of proof; (c) although the Appellant may not have made any application on 9 January, 2008 this is immaterial it is arguable that Judge placed weight in his credibility assessment on the fact that the Appellant abandoned his motorbike and fled on foot which he finds to be highly incredible because he would more likely than not have been caught without taking into account that the Appellant had said that the road ended and there was a wall in front of them and that he had no choice but to abandon his motorbike; (d) by finding that the Appellant’s parents failed to report the attack without considering the objective evidence; (e) by failing to give adequate reasons why he rejects the documents lodged by the Appellant including failing to consider a newspaper report at Shyamal Sylhet which confirms the Appellant’s role within the BNP; (f) by placing weight on the fact that as a reason for claiming protection the Appellant had difficulty with his business, owed money and did not want to return which did not take account of the fact that the Appellant was running a successful business but he became indebted later but not prior to coming to the UK; (g) by failing to take into account the photographs and other evidence put forward including the evidence of his witness with regard to his sur place political activities and (h) by finding that it is unlikely for a person with a case against him to leave the country when the objective evidence has pointed out in the grounds for permission show that 99% of people attempting to leave the country, even if charged with crimes, would not normally face difficulties.”

3. The appeal initially came before me on 27 April 2018. Amongst other things it was suggested that the Judge had materially erred in not allowing examination in chief. Unfortunately, at that hearing the Appellant was represented by the same representative who had appeared in the First-Tier Tribunal. That therefore caused the Upper Tribunal hearing to be adjourned and I caused directions to be issued for the furtherance of the appeal. Those directions were:-

“1. Upon Deputy Upper Tribunal Judge Appleyard having adjourned the hearing of 27 April 2018, the following directions for the furtherance of this appeal are made:

A. The issues raised in the appeal relating to the conduct of the hearing before the First-tier Tribunal should be capable of being agreed between the parties. To this end:

- i. The Appellant's representatives shall prepare a draft schedule of material facts and forward the same to the Respondent within 14 days.
- ii. The Respondent shall, within a further 14 days, transmit her response to the Appellant's representatives.
- iii. The parties' representatives will then take any further necessary steps to reach agreement.
- iv. The agreed schedule / statement of facts will be forwarded to the Upper Tribunal within 6 weeks of the sending of this Order.

B. The Appellant's representatives should reflect on the choice of advocate to present the appeal hearing and should prepare a witness statement from the advocate who appeared before the First-tier Tribunal, paying attention to the Upper Tribunal's decision in BW Afghanistan [2014] UKUT 00568 (IAC)."

4. At today's hearing Mr Haque confirmed that the schedule of material facts to be agreed upon had been provided not only to the Tribunal but also to the Respondent along with a witness statement and all in compliance of the above-mentioned directions. Unfortunately, the Respondent had failed to comply with the directions.
5. Ms Everett acknowledged that that was the position. Further that consequently there had been discussions between the two representatives and it was agreed that by consent the Judge's decision contained material errors as argued in the grounds and that the appeal should be remitted to the First-Tier Tribunal to be heard de novo.
6. In the circumstances, albeit with some dissatisfaction with the Respondent's failure to comply with directions, I agree.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Traynor.

No anonymity direction is made.

Signed
2018

Date: 1 October

Deputy Upper Tribunal Judge Appleyard