



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

Appeal Number: PA/05847/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 25 January 2019**

**Decision & Reasons
Promulgated
On 19 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**MR MOJAMMIL [K]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Miah of Counsel

For the Respondent: Mr Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh. His date of birth is 6 April 1966.
2. The appellant appealed the respondent's decision to refuse his protection and human rights claim dated 6 April 2018.
3. The appeal was dismissed by Judge S Meah in a decision promulgated on 29 November 2018. The judge did not find the appellant to be a credible witness. The judge found the appellant would not be at risk on return to Bangladesh.

4. The grounds claim various errors of law on the part of the judge. Firstly, that *“he closed his mind on credibility at the outset and allowed that to cloud and fetter his judgment in respect of the evidence.”* Further, that the incorrect standard of proof had been applied in the assessment of the appellant’s credibility and in any event, the judge gave insufficient reasons for rejecting the appellant’s evidence.
5. Judge S P J Buchanan granted permission on 28 December 2018 inter alia as follows:

“2. The grounds of appeal [GOA] contend that the FTTJ arguably erred because

‘(2) ... the IJ closed his mind on credibility at the outset and allowed that to cloud and fetter his judgment in respect of the evidence.’

There is a series of challenges thereafter including the contention at (9) that ‘the incorrect standard of proof has been applied in the assessment of the appellant’s credibility.’

3. *There is a heading between paragraphs [8] and [9] of the decision which reads;*

‘Burden of Proof’.

Paragraph [9] sets out the burden without mention of the standard of proof to be applied. At paragraph [38] it is concluded by the FTTJ that ‘the appellant has failed to show to the requisite burden of proof that he qualifies for asylum.’ It is arguable that the FTTJ has conflated burden with standard of proof as contended in GOA (9).”

6. There was no Rule 24 response.

Submissions on Error of Law

7. Mr Miah relied upon the grounds although they had not been prepared by him. Mr Miah submitted that the judge had closed his mind on the appellant’s credibility at the outset and allowed that to cloud and fetter his judgment in respect of the evidence. That was shown by the judge’s approach to the evidence, in particular at [20]. The judge started his analysis on credibility with a finding that the claim was incredible which showed he had made up his mind before he had commenced his analysis on credibility. Further, the judge had imposed a much higher burden of proof upon the appellant. This was a protection claim and the judge had clearly not adopted the lower standard.
8. Mr Lindsay submitted that the judge had not erred in the manner in which he approached the evidence and that I should find that he had not erred.

Conclusion on Error of Law

9. I find the grounds are nothing more than a complaint regarding the judge's findings and conclusion rather than raising any error of law.
10. The permission to appeal granted by Judge Buchanan says that at [9] the judge set out the burden without mentioning the standard of proof. Further, at [38] the judge had arguably conflated the burden of proof with standard of proof such that the incorrect standard of proof had been applied in the assessment of the appellant's credibility. It is worth setting out paragraphs [9] and [38]:

"[9] The burden is on the appellant to show there are substantial grounds to believe he meets the requirements of the Protection Regulations and that he is entitled to be granted humanitarian protection in accordance with paragraph 339C of the Rules and that his return to Bangladesh will cause the UK to be in breach of the 1950 Convention.

...

[38] In totality, and having considered all of the evidence placed before me in the round, I find that the appellant has failed to show to the requisite burden of proof that he qualifies for asylum or any kind of international protection in the UK. I therefore find that his appeal must fail. I find the RFRL contained a fully reasoned decision in this appellant's case and I uphold the conclusions reached in this."

11. I do accept that the judge did not set out the standard of proof at [9]. I also accept that at [38] he refers to "..... the requisite burden of proof" in error for the requisite standard of proof. I have carefully considered the decision as a whole and have taken into account what Mr Miah has put to me as well as the contents of the grounds. There is nothing in this carefully reasoned, comprehensive decision to suggest that the judge was unaware of the appropriate lower standard of proof and that he failed to apply the same.
12. It is true that the judge commenced his substantive findings at [20] with a wholesale adverse credibility finding but the judge was not obligated to order his findings in any particular way. He had heard the evidence. He was recording his findings and conclusions. The judge did not believe the whole of the appellant's claim. He did not err by stating at the outset that he did not accept that the appellant was a truthful witness. The judge set out in almost five pages of A4 from [20] - [36] exactly why it was that he considered the appellant had fabricated his claim and the background to it merely to achieve regularised status in the UK. Those were findings that the judge was clearly entitled to reach on the evidence before him. The judge gave extremely strong and cogent reasons for his decision. He made no material error of law in his findings or conclusion.

Notice of Decision

13. The judge did not materially err in his decision which shall stand.

No anonymity direction is made.

Signed
Deputy Upper Tribunal Judge Peart

Date 25 January 2019