Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

# Hearing in the English Language: UI-2022-005621 (17 September 2023) (Upper Tribunal (Immigration and Asylum Chamber)

## Question(s) at stake:

Whether the first-tier judge erred in law when he found the appellant not credible and allowed the hearing to proceed without the assistance of an interpreter for the appellant.

## Outcome of the ruling:

The first-tier judge did not err in law when he found the appellant not credible and allowed the hearing to proceed without the assistance of an interpreter for the appellant.

## Topic(s):

- Immigration and Asylum

## Keywords:

- Applicant's credibility
- Assessment
- Asylum seeker
- Asylum procedures
- Refusal of asylum

## Tag(s):

- Interpreter

## Author(s):

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**Country:**

United Kingdom

**Official citation:**

Upper Tribunal (Immigration and Asylum Chamber) UI-2022-005621 (17 September 2023)

**Link to the decision:**

https://tribunalsdecisions.service.gov.uk/utiac/ui-2022-005621

**ECLI:**

No ECLI number / ECLI number unknown

**Date:**

17 September 2023

**Jurisdiction / Court / Chamber:**

Upper Tribunal (Immigration and Asylum Chamber)

**Remedy / Procedural stage:**

Appeal to the Upper Tribunal (Immigration and Asylum Chamber)

**Previous stages:**

- First-tier Tribunal, granting permission to appeal to the Upper Tribunal (Immigration and Asylum Chamber) (date unknown)
- First-tier Immigration and Asylum Tribunal (26 September 2022)
- Secretary of State (8 October 2021)

**Subsequent stages:**

No information found

## Branches / Areas of law:

Asylum law and human rights

## Facts:

The appellant, a Bangladeshi citizen, appealed the decision taken by the Secretary of State on 8 October 2021 to refuse his claim for international protection. This appeal was dismissed by the First-tier Tribunal. The appellant lodged a further appeal against this decision to the Upper Tribunal (para. 2).

The essence of the asylum claim was that the applicant feared persecution as a Bangladeshi National Party (BNP) member (para. 3). The appellant claimed that he was arrested by the police after giving a speech against the government at a rally (ibid.). Once freed upon payment of bail by his father, the appellant applied for a student visa to go to the UK. The visa was valid until 19 August 2020, and he arrived in the UK on 18 September 2019 (ibid.). The appellant's visa was curtailed due to the withdrawal of his sponsor on 7 November 2019. The appellant applied for asylum on 14 January 2020, claiming to fear the treatment he would face upon returning to Bangladesh (ibid.).

The Secretary of State did not consider the appellant's claim to be genuine. Similarly, the First-tier Tribunal dismissed the appeal, finding the appellant not credible on the basis of a number of discrepancies in his testimony (para. 4).

Only at the hearing before the First-tier Tribunal did the appellant's lawyer request an interpreter for the appellant's witness. However, the Secretary of State indicated that they would not cross-examine the witness and simply accepted the statement that had been submitted. As such, no request for an adjournment was put forward and the hearing proceeded in English (para. 11).

The grounds for the appeal before the Upper Immigration Tribunal raised the issues that (1) the judge failed to consider important evidence which affected the appellant's credibility assessment; and (2) no Bengali interpreter of the Sylheti dialect was provided, although one had been requested in a timely fashion. In particular, the appellant submitted that the first-tier judge encouraged him to proceed in the English language. Although the first-tier judge offered his support

in case of difficulties, in his appeal grounds the appellant argued that he felt uncomfortable as he was unable to fully express himself (paras. 5–7).

## Ruling:

The Upper Tribunal dismissed the appeal and addressed the two main issues as follows:

1. the first-tier judge did not err in law when he found the appellant not credible as a witness. The Upper Tribunal reasoned that the appellant's evidence "was so discrepant as to be wholly unreliable with respect to the claim that was being put forward" (para. 13). For instance, there were several inconsistencies concerning the dates of the events in Bangladesh, as well as a "document from the Human Rights Development Association (HRDA) of Bangladesh, dated 30th June 2021 [which] also confirms that the Appellant had not been involved in any antisocial or anti-state activities" (ibid.). Moreover, the appellant failed to show that any error in the judgment was a material one and that, as such, it affected the outcome of the case (ibid.).
2. The first-tier judge did not err in law in allowing the hearing to proceed in the English language without the assistance of an interpreter. The Upper Tribunal reasoned that the appellant had legal representation and that the parties all agreed to continue in English at the beginning of the hearing. This is because the parties held the view that the appellant spoke sufficient English (para. 6). The notes taken by the Presenting Officer, representing the Secretary of State, at the hearing before the first-tier judge confirm that that was the case.

In light of all the above, therefore, the Upper Tribunal upheld the First-tier Tribunal's decision (para. 14).

## Main quotations on cultural or religious diversity:

“At the hearing before me on 27th July 2023, Ms Bachu, for the Appellant, drew my attention to a Rule 15 statement from the Appellant which had just arrived this morning. This states that, ‘On the day of my hearing, I was told that there was no Bengali interpreter of Sylheti dialect was available despite requesting one. I was encouraged by the judge, that since I had a decent understanding of English from my time as a student in the UK, I should consider giving my testimony in English. The judge also offered his support if I were to get stuck.’ (At paragraph 2).” (para. 6)

“The Appellant’s statement goes on to say that, ‘I felt uncomfortable speaking in English directly because my asylum claim was very important to me, and I wanted to make sure I expressed myself accurately’ (paragraph 3). He goes on to say that, ‘I wasn’t familiar with how the UK court processes work, which added to my nervousness during the hearing …’ (at paragraph 5). The statement is dated 26th July 2023. Ms Bachu submitted that, ‘What he is saying is that the judge encouraged him to go ahead’, although ‘the appellant is not disputing that he agreed to go ahead but that he did so reluctantly …’”. (para. 7)

## Main legal texts quoted in the decision:

None

## Cases cited in the decision:

None

## Commentary

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Providing court interpretation is fundamental to ensuring fairness in asylum proceedings as it allows proper communication for the asylum applicant with the judge, lawyers, and other actors present at the hearing (fairness is a common law principle ensuring just outcomes and upholding due legal process; on the concept of fairness, see Galligan 1997: 52–60). However, there may be cases where it is difficult to find an interpreter who speaks the applicant’s first language. As a

consequence, attempts may be made to find an interpreter from a language that the applicant understands or to proceed in English (Henderson and Moffatt 2024: paras. 34.10–34.11). However, such alternatives are acceptable only if the applicant and his representative are convinced that the testimony can be given effectively (ibid.: 34.12).

In the case under study, the Upper Tribunal judge was satisfied that, despite the appellant later expressing reluctance for having proceeded in English, at the hearing before the first-tier judge all the parties had agreed to proceed without an interpreter. If there were any issues, the representative should have raised them at that stage. The wish of the appellant and his representative was to proceed in English, and no evidence was provided showing that such a choice distorted the testimony or impacted on the credibility of the applicant. In this regard, it should also be noted that, although not cited in the judgment under consideration, in the case of *Humadi v SSHD* [2002] UKIAT 00603, the Upper Tribunal stated “what is essential in order to prevent unfairness or detriment is that the appellant’s evidence is given without distortion or inaccuracy” (para. 9). It also added: “The mere fact that an adjudicator decides to receive evidence partly in English and partly in a witness’ native language does not constitute an error of procedure” (para. 9) (Henderson and Moffatt 2024: para. 34.13).

In another case, *MS (Trafficking – Tribunal’s Powers – Art. 4 ECHR) Pakistan* [2016] UKUT 00226 (IAC), the appellant’s willingness and ability to give testimony in English weighed in his favour in the Upper Tribunal’s assessment of his credibility:

“While the Appellant had the services of an interpreter at both hearings, he readily co-operated with the Tribunal in its suggestion that he endeavour to give his evidence in English if possible. This established that he had a good command of the English language and this, in turn, facilitated our task of assessing his credibility. The Appellant made no attempt to take advantage of the protective shield which the interpreter would have provided. We were impressed by his willingness to engage with the Tribunal throughout his evidence” (para. 15) (Henderson and Moffatt 2024: para. 34.14).

Eventually, the decision of whether to proceed or not in English is to be determined case by case in light of the witness's language ability, wishes, and the assessment made by the judge and the parties at the hearing. Any issue should be raised at that stage and a request for an adjournment presented in a timely fashion, if necessary. Whereas providing proper interpretation is important to ensure fairness, reasons of judicial economy must also be kept in mind if language issues are not raised at the hearing but presented as grounds of appeal. In this regard, see also Bianchini 2025.

## Literature related to the main issue(s) at stake:

### Specific legal publications/comments addressing the case

Henderson, Mark and Mohena Moffatt. 2023. "Interpretation at the Hearing". In *Best Practice Guide to Asylum and Human Rights Appeals*, Ch. 34*.* London: Electronic Immigration Network, available at <https://www.ein.org.uk/bpg/chapter/34#toc2> accessed 10 October 2025.

### General legal literature on the topic that may not be directly connected with the case

- Bianchini, Katia. 2025. "General Principles at Hearings with Court Interpreters: *TS (interpreters) Eritrea* [2019] UKUT 00351 (IAC)". *Cultural and Religious Diversity under State Law across Europe*, DOI:10.48509/CUREDI13UK021.
- Cohen, Juliet. 2001. "Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers". *International Journal of Refugee Law* 13: 293–330.
- Galligan, Danis J. 1997. *A Study of Administrative Procedures*. Oxford: Oxford University Press.

### General literature on the topic from other disciplines in the humanities and social sciences, in particular social and cultural anthropology

- Gibb, Robert and Anthony Good (2014). “Interpretation, Translation and Intercultural Communication in Refugee Status Determination Procedures in the UK and France”. *Language and Intercultural Communication* 14 (3): 385–399. [Reprinted in Phipps, Alison and Rebecca Kay (eds). 2015. *Languages in Migratory Settings: Place, Politics, and Aesthetics*. London: Routledge]

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**Suggested citation of this case-law comment:**

**Bianchini, Katia (2025):** Hearing in the English Language: UI-2022-005621 (17 September 2023) (Upper Tribunal (Immigration and Asylum Chamber), Department of Law and Anthropology, Max Planck Institute for Social Anthropology, Halle (Saale), Germany, CUREDI013UK023, https://doi.org/10.48509/CUREDI013UK023.