



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/12312/2010

THE IMMIGRATION ACTS

Heard at Field House
On 12 September 2013
Prepared 13 September 2013

Determination Sent
On 26 September 2013

Before

UPPER TRIBUNAL JUDGE REEDS
UPPER TRIBUNAL JUDGE RINTOUL

Between

Z L
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Jacobs, Counsel, instructed by Legal Resource Partnership
For the Respondent: Mr R Walker, Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals with permission against the determination of the First-tier Tribunal Judge Turquet, promulgated on 12 October 2012 dismissing his appeal

against the decision of the respondent made on 17 August 2012 to refuse his claim for asylum and to remove him from the United Kingdom.

2. The appellant is citizen of Burma, born on 4 June 1976. He is a Muslim and is married. His case is that he came to the adverse attention of the authorities while assisting with Cyclone Nargis relief in 2008, was ill-treated and forced to sign an undertaking not to participate in political activity. He later left Burma having obtained a visa to come to the United Kingdom, where, since 2009 he has engaged publicly in opposition to the regime. His brother was arrested in 2010 in Burma on account of political material the appellant sent him; he is still in detention, whereabouts unknown. The appellant's activities have become known to the regime and as a result, he faces detention and ill-treatment on return and is therefore a refugee.
3. The respondent accepts the appellant's nationality and religion; his membership of the Burmese Muslim Association ("BMA-UK") since 2010; his participation in aid distribution and cyclone relief efforts in 2008; and, his participation in oppositionist events in the United Kingdom. She does not however accept that he had in the past come to the adverse attention of the Burmese authorities, nor that they arrested the appellant's brother on account of political articles sent to him in 2010 by the appellant, nor that he is still in detention; or, that the authorities have visited the appellant's family home in Yangon on 27 June 2012 with a warrant for his arrest. She considers that he would not be at risk on return to Burma.

Procedural history

4. This appeal was heard by the First-tier Tribunal on 1 October 2010 and was dismissed by Judge Turquet in a determination promulgated on 12 October 2010. On 2 December 2010, following a renewed application, Upper Tribunal Judge Allen granted permission to appeal to the Upper Tribunal.
5. The appeal was then heard by Designated Judge Woodcraft who, in a determination promulgated on 8 March 2011, held that Judge Turquet's determination did not involve the making of an error of law, finding that it in the light of TL & Others (sur place activities - risk) Burma CG [2009] UKAIT 00017, had been reasonable to conclude that the Burmese authorities would have seen the appellant as a hanger-on and thus not of adverse interest.
6. Permission to appeal to the Court of Appeal was granted on limited grounds by Stanley Burnton LJ on 4 August 2011. Subsequent to that on 4 January 2012 the appeal was allowed by consent and remitted to the Upper Tribunal for a de novo hearing on the basis that, amongst other reasons, a new Burma Country Guidance case was pending before the Upper Tribunal. That decision, TS (Political opponents -risk) Burma CG [2013] UKUT 00281 (IAC), was promulgated on 10 June 2013.

7. On 23 April 2013 the Upper Tribunal directed that it would hear evidence and make findings of fact on all issues. Following further directions from the Upper Tribunal the parties produced a Schedule of Issues. The respondent has agreed to items 1-11 (but not the number of demonstrations set out at item 10). She disputes items 12-14.
8. The Schedule of Issues is as follows:-

Undisputed Issues

Based on the available evidence and objective information, the Appellant (ZL) believes that the following points can be agreed with the Respondent.

1. The Appellant's identity (ZL) and that he is Burma/Myanmar national. He submitted his Myanmar passport to the SSHD at his asylum screening interview on 23 July 2010.
2. The Appellant's Myanmar passport had expired on 23 December 2013.
3. The Appellant still had valid leave to remain when he applied for asylum, and since then he has un-interrupted Temporary Admission as his appeal process is still on-going.
4. He has no criminal records in the UK, as far as he is aware.
5. The Appellant is a Muslim
6. Muslims are oppressed in Myanmar. There have been frequent violent anti-Muslim attacks all over Myanmar in recent years. Especially, the '969' campaign in Myanmar requires the majority Burmese Buddhist people to make a complete socio-economic boycott on minority Muslim people. These facts are all supported by objective information abundantly available within public domain, some of which the Appellant has already submitted in the Consolidated Bundle.
7. Myanmar government does not make adequate efforts to protect Muslim minority people, and is even seen as complicit on some occasions, as documented by the Human Rights Watch in their report of 22 April 2013.
[Http://www.hrw.org/sites/default/files/reports/burm0413webcover_0.pdf](http://www.hrw.org/sites/default/files/reports/burm0413webcover_0.pdf)
8. The Appellant has been and remains a member of the Burmese Muslim Association (BMA-UK) since early 2010, as evidenced by his BMA-UK member card, letter from BMA-UK, and written and oral evidence from witnesses from BMA-UK members, Mr Than'; Zin at the First Tier Tribunal hearing and Mr Mating Maung Gyi at the Upper Tribunal *de novo* hearing.
9. The Appellant took part in aid distribution and cyclone relief efforts in 2008 in Myanmar with his friend Mr Z N, as corroborated by Mr Z N's written and oral evidence, information and photographs from Brighter Future Foundation website, and additional photographic evidence submitted by the Appellant in the Consolidated Bundle.
10. The Appellant has attended about 60¹ oppositionist political events in the UK, as corroborated by the photographic evidence submitted in the Consolidated Bundle.

¹ This number is disputed by the respondent.

11. Myanmar country information, especially current political situation, and risk on return to Myanmar for oppositionist political activists are as found by the Upper Tribunal in TS (latest Burma/Myanmar Country Guidance)

Issues in Contention

12. The Appellant's political history in Myanmar:

- that he took part in student demonstrations in 1996
- that he took part in the September 2007 Saffron Uprising
- that he encountered problems with the authorities due to his involvement in Cyclone relief efforts in 2008

13. Regarding the Appellant's brother:

- that he asked the Appellant to provide him with a trove of political news articles from exile Myanmar websites
- that the Appellant sent such political news articles in 2010 with a family friend who visited London in April 2010
- that he was arrested in Myanmar as he shared these political news articles with his colleagues, and the authorities also wanted to question the Appellant regarding this matter
- that he is still in detention in Myanmar

13. Although the Appellant could find, and has submitted, photographs of his oppositionist political activities in the UK from as early as February 2010, he could not find photographs of three events which he attended in 2009.

14. With the intensifying of the authorities' scrutiny and monitoring of known Muslim activists and their families in Myanmar, the authorities visited the Appellant's family home in Yangon on 27 June 2012 with a warrant for him, searching the house for any evidence of political cooperation between him and his family in support of Muslim organizations and movements in Myanmar. The Appellant has submitted the original arrest warrant and its certified English translation in the Consolidated Bundle.

9. We heard evidence from the appellant as well as submissions from both representatives. In addition we had the following documents before us:

- (a) Respondent's bundle ("RB").
- (b) Appellant's consolidated bundle ("AB").
- (c) Schedule of issues.
- (d) Chronology, list of political events attended and additional statement of the appellant, 12 July 2013.
- (e) Human Rights Watch Report "All You Can Do is Pray" Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims, 22 April 2013.

- (f) Home Office Operational Guidance Note on Burma, 23 July 2013 (“2013 OGN”).
 - (g) Letter from Jamiat Ulama El-Islam (“Jamiat”), Rangoon, 16 July 2013 plus translation.
 - (h) Newspaper article - “Myanmar’s ‘969’ crusade breeds anti-Muslim malice”, 27 March 2013.
 - (i) Article from Voice of America News, 21 August 2013 re UN Human Rights Envoy, Quintana.
 - (j) Skeleton argument from Mr Jacobs.
10. The appellant gave evidence in Burmese with the assistance of a court interpreter, after confirming that he understood her. He adopted the contents of his witness statements as well as his asylum interview [C90 to C101] as his evidence-in-chief, adding that he had been to now nearly 60 political events in the United Kingdom and he believed the Burmese authorities knew what he had been doing as he had demonstrated in front of the Burmese Embassy many times. It was evident that cameras are installed and that as officials in the embassy all come from a military background, they would probably know who he is. He also referred us screenshots from the internet showing that he appears in uploaded videos [D40, D42, D43, D45].
 11. The appellant also referred to the photographs (AB, Annex D) showing him in a leading role at demonstrations. He was able to name one of the speakers [D75] as Win Naing, adding that the nickname of the speaker in D49 was “Kopauk” who is part of the same organisation as him, BMA-UK and that the speaker in D93, is Aung Aung from the Burma Liberation Front (“BLF”). He added that in that photograph Aung Aung was shouting slogans and that it was his turn next.
 12. The appellant explained that a photograph at D94 was “Prayers for Burma” in which slogans were shouted rather than speeches being made.
 13. The appellant said that if returned to Burma now, he would continue to protest against the government and would always continue to do this. He said that there are religious struggles taking place and the people who are suppressing Muslims are not arrested; he said that because of that he would continue to demonstrate. He said that if there were any organisations he would join them but there is no branch of the BMA in Burma. He said that the Burmese Muslims need to know why they are suffering and he would give them the evidence of what is going on. He said that he would organise with them, and would protest against the government. He said that at first he would start with meetings, form a group, and then carry out demonstrations. He said that at present Muslims are suffering very much.
 14. The appellant said that he had obtained the arrest warrant as his sister in Burma had telephoned him and told him about it. She said that she had given it to a person visiting London who gave it to him. He said that the summons was on account of him being suspected of being a Muslim activist in Britain.

15. When asked about the document relating to his brother from the Jamiat, he said that he had obtained it as his solicitor had asked for information. He phoned his sister in Rangoon; she had obtained it and had been forwarded to him by DHL. He had not been contact his family since the end of June as he did not want to call regularly as all the phones are tapped.
16. In cross examination, the appellant said he had not asked his sister to go to Jamiat in particular, but just told her that his solicitor wanted a letter as evidence to show that his brother is still in jail in Burma. He said that prior to that, his sister had not known where her brother is although she had approached the organisation some time ago to enquire; but at that point they had not been able to say. He said that his family had from 2011 onwards enquired about his brother but only his sister had spoken to Jamiat.
17. At this point as it became clear that there were some difficulties with the appellant's evidence as he was trying to understand the questions in English before they were translated, and consequently, his answers were becoming confused. We did not, however, consider that it was necessary at this stage to adjourn the hearing, instead advising the appellant to wait for questions to be translated into Burmese for him and to use the names of individuals rather than pronouns.
18. The appellant said that the arrest warrant had been passed to him by a family friend, Daw San Da, his family having received the arrest warrant when officials had come to the family house in Burma on 27 June 2012 to search for evidence. On 29 June 2012 his family had telephoned him to explain what had happened, his sister telling him that they had not found anything in the house but that the officials were looking for him and knew he was in the United Kingdom. His sister did not say how they knew that.
19. The appellant said that he did not think that his wife's parents had been visited by the authorities on account of his involvement in politics. His wife was in contact with her family and they had not mentioned having any problems.
20. Asked why it had taken so long to find out where his brother is, the appellant said that he only knew about "it" in the middle of 2011 and that his sister had told a telephone conversation. It was put to him that twelve months had elapsed before he found out about "it" to which he replied "Yes." He was asked why his sister had not told him in 2010 that their brother had been arrested, replying that it is very difficult to phone Burma from the United Kingdom as payment must be in dollars and there is no other way to communicate. He did not know why she could not write to say that his brother had been arrested but thought that they had not informed him as they were very frightened.
21. The appellant said that the memory stick he had given to a friend to take back to Burma contained pictures of him and the friend London as well as material relating to the 2010 election campaign, including articles downloaded from magazines and websites accessible in the United Kingdom.

22. In re-examination, the appellant said that when interviewed on 3 August 2010 he had said that he had last spoken to his family in July 2010 when his sister had gone to a friends house, spoken to him on the phone and told him that their brother had been arrested. He confirmed that his claim for asylum was based on the fact that in July 2010 his brother had been arrested. He said that, in cross examination, when referring to "it" he meant that it was only in the middle of 2011 that he found out where his brother was being imprisoned.
23. In response to our questions, the appellant said that on return to Burma he would start by campaigning in the area where he lives as there are many Muslims in his township. He said that he had been told that the Buddhists had attacked houses and Muslim schools.

Submissions

24. Mr Walker relied on the refusal letter subject to the issues which had been agreed. He accepted that the appellant was identifiable at various demonstrations outside the Burmese embassy but not that he sent a memory stick back to Burma or that his brother had been arrested. He submitted that it was unclear when the appellant found out that his brother had been arrested, and his evidence in cross-examination contradicted what he had said at interview.
25. Mr Walker submitted that the appellant had been involved in demonstrations and had given speeches but that this was not to the high level referred to in TS, the appellant there being involved in the higher end of the scale, plotting to overthrow the Burmese government and so the appellant was not likely to come to the adverse attention of the authorities was his activities in the United Kingdom and due to the cyclone relief several years ago.
26. Mr Jacobs relied on his skeleton argument, submitting that the appellant's evidence was consistent and detailed; and, that on the basis of TS, there was a real risk that the appellant would be monitored actively on return to Burma, given his profile of voicing opposition to the regime from within the United Kingdom, activities which are documented on the Internet, and in the public domain. He submitted that the appellant would, if returned to Burma, continue to be active in opposition to the regime and would, as a politically active Muslim, seeking to mobilise in his own area, be at significant risk of persecution. He submitted that it was evident that the Burmese regime was complicit in violence against Muslims, and that there is evidence of attacks on Muslims across Burma, not just Rohingyas.

Decision and Reasons

27. In coming to our determination we have considered the totality of the evidence before us and we have applied throughout the lower standard of proof applicable to asylum claims. The burden is on the appellant to show that he has a well-founded fear of persecution or that there are substantial grounds for believing that his rights under the Human Rights Convention would be breached. In order to qualify for international protection the appellant must meet the requirements of the

Qualification Regulations and the provisions set out in the Statement of Changes in Immigration Rules (CM6918, 18 September 2006), both of which implement Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or a person who otherwise needs international protection and the content of the protection granted.

28. In assessing the background evidence which has been produced to us we observe first that it is not suggested that the recent country guidance case, TS, is incorrect in its analysis of the current situation. We do, however, consider that it is important to remember that the changes which have occurred in Burma are relatively recent and certainly since the appellant left the country. In assessing what he says happened to him in the past, and what happened to his brother in 2010, that the regime clamped down on any opposition with considerably greater force than at present.
29. It is not disputed that Muslims are oppressed in Myanmar or that there are violent attacks on Muslims across the country (see schedule of issues para 6). We note that what was agreed between the parties is supported by the background evidence of campaigns against Muslims across the whole country. We note with particular concern the "969" campaign whereby Buddhist shopkeepers are encouraged to place a sign bearing those numbers in their windows, nationalist monks urging followers to avoid all shops unwilling to fix the emblem to their store fronts, a symbol indicating that the business is owned and run by Buddhists. The rhetoric underpinning the campaign tends to present Muslims as not being Burmese, the offensive term "kalar" meaning "guest" being used to describe them.
30. There is little evidence of the authorities trying to stop the campaigns although we do acknowledge that curfews and patrols have been imposed in Rangoon in an attempt to stop the violence although this does result in Muslims having to shutter their shops by sunset.
31. We consider that the issue of the inter-communal strife concerning Muslims is of significant concern to the Burmese authorities not least because of the extent to which it draws significant criticism from abroad, particularly with respect to the Rohingya.
32. Turning to the issues specific to the appellant, we note that in the aftermath of Cyclone Nargis in 2008 the Burmese regime blocked large-scale international relief efforts and generally obstructed the provision of outside aid. Burmese civil society groups did mobilise but a significant number of aid workers were attacked, arbitrarily arrested and some later put on trial, as is noted in the Human Rights Watch Report, "I Want to Help My Own People" – State Control and Civil Society in Burma after Cyclone Nargis [AB, B37 to B141]. We note that the military erected roadblocks in the area more closely linked to corruption than providing security [B54], that the authorities tried to deter private aid distribution outside government control [B61] and targeted activists for harassment, arbitrary arrest and in a number of cases lengthy prison sentences for organising activities that the regime viewed as threatening its control [B83]. Some of those arrested were later released but others

were put on trial as is confirmed also by Amnesty International [see International Report 2010 – Myanmar, AB, B147].

33. The appellant's account of him being questioned by military personnel during the cyclone relief is consistent with the background information. There is, however, little to support his claim that it was only after he returned to Rangoon that he was arrested, detained and ill-treated. The appellant has provided photographs of himself recovering from injuries but these are not determinative of this issue. In any event, it is unlikely that adverse interest in the appellant on the part of the authorities was of any lasting significance, given that he was able to leave the country having obtained a passport and it was evident that they knew he had a friend in the United Kingdom, Z N.
34. In assessing the appellant's credibility, we remind ourselves that it is possible for us to accept some parts of the appellant's account but to reject others. It does not necessarily follow that if an appellant is not believed in all parts of his claim that none of it is true; it is not unknown for asylum seekers with good claims to seek to embellish them unnecessarily and we note that the core of the appellant's claim is the risk he faces on return to Burma flows from political activities undertaken in the United Kingdom which are not in dispute.
35. We find it improbable that the appellant would, knowing the risk, have given a memory stick to a friend of the family to take to his brother. Whilst we accept that there may be reasons why he would want to send material unobtainable in Burma to his brother, we found the explanations for putting someone at risk to be vague and implausible. We also consider it implausible in the context of the brother's arrest that the authorities would, as the appellant states (Witness Statement, 29/7/2010 [25]), have told the appellant's mother that they done checks on him by contacting the Burmese Embassy in London and that they knew he was politically active in the United Kingdom. It is somewhat convenient that the Burmese authorities would have given sufficient information to the appellant's family to ensure that he would not return to the country, which is presumably not what they had in mind, and at the same time to provide him with a prima facie strong case to be granted asylum.
36. We further find it somewhat implausible that the authorities would, some two years later, search the appellant's home in Rangoon when, if they were keeping him under surveillance in the United Kingdom, they would have realised that he is not there. Why they would then have given him further evidence to support his asylum claim is beyond us. That said, it is difficult to know how a regime such as the Burmese regime which acts with impunity would act on particular information. It is evident from the evidence given in **TS** that the actions of the state are difficult to predict given that in a system where there are no checks and balances, local officials can in effect do what they want, ignoring or following legal procedures as they wish.
37. Even allowing for the difficulties arising through giving evidence through an interpreter, the appellant's evidence with respect to his brother's continued detention and the search in 2012 was somewhat evasive.

38. That said, the appellant's evidence when giving evidence about his political activities and intentions was clear, direct and detailed. It is consistent and is supported by numerous photographs showing him at demonstrations on different dates, including those where he is standing as part of those about to give speeches or, in some cases, where he is giving a speech.
39. In addition, it is not in dispute that the appellant is a member of the BMA UK and it is clear from the demonstrations that he has been participating and leading demonstrations in that capacity. His activities have continued for over three years and in the light of that we find it improbable that he has not come to the attention of the Burmese authorities, given the extent and sophistication of their surveillance in the United Kingdom, as set out in TS. We are satisfied that they know of their activities and his identity. We are satisfied also that they are aware that he is a politically active Muslim. The evidence establishes that he has demonstrated on at least 60 occasions.
40. It was not submitted to us that the appellant's activities were in bad faith, nor was there any effective cross-examination of the appellant on his intentions on return to Burma.
41. We consider that the appellant has set out clearly and credibly what he would do if he returned to Burma. He has said that he would look out for organisations in his local area, talk to local Muslims and if there were no organisations spread the word about how they are being oppressed and start to hold meetings with a view to forming an organisation and then to construct demonstrations.
42. Despite the concerns we have about the veracity of the appellant's account of his brother being arrested and having sent material to Burma, his evidence as to his activities in this country is well supported by documentation and photographs which confirm it and we note that the respondent made no submission that the appellant's activities had been conducted in bad faith. There was no submission either that the appellant would not participate in demonstrations on return.
43. Taking all these factors into account and viewing the evidence as a whole, whilst we do not accept the appellant's account of being ill-treated in Burma in 2008 or his account of his brother being arrested or still being in detention, we do accept that the appellant has created a significant profile in the United Kingdom through participation in and leading demonstrations. We accept that his activism is in good faith, and that he will continue to be a politically active Muslim on return to Burma and will, as he claimed, seek out other Muslims to mobilise them.
44. Having made these findings, we consider then what is likely to happen to him on return, bearing in mind the guidance given in TS:
 1. *In order to decide whether a person would be at risk of persecution in Burma because of opposition to the current government, it is necessary to assess whether such activity is reasonably likely to lead to a risk of detention. Detention in Burma, even for a short period, carries with it a real risk*

of serious ill-treatment, contrary to Article 3 of the ECHR and amounting to persecution/serious harm within the meaning of the Qualification Directive.

2. *A person is at real risk of being detained in Burma where the authorities regard him or her to be a threat to the stability of the regime or of the Burmese Union.*
 3. *The spectrum of those potentially at risk ranges from those who are (or are perceived to be) actively seeking to overthrow the government to those who are in outspoken and vexing opposition to it. Whether a person is in need of protection will depend upon past and future political behaviour. This assessment has to be made against the background of a recently reforming government that carries a legacy of repression and continues to closely monitor those in opposition. The evidence points to a continuing anxiety over the break up of the state and the loss of its power.*
 4. *The question of risk of ill-treatment will in general turn upon whether a returnee is detained by the authorities at any stage after return.*
 5. *A person who has a profile of voicing opposition to the government in the United Kingdom through participation in demonstrations or attendance at political meetings will not for this reason alone be of sufficient concern to the Burmese authorities to result in detention immediately upon arrival. This is irrespective of whether the UK activity has been driven by opportunistic or genuinely held views and is regardless of the prominence of the profile in this country.*
 6. *A person who has a profile of voicing opposition to the Burmese government in the United Kingdom can expect to be monitored upon return by the Burmese authorities. The intensity of that monitoring will in general depend upon the extent of opposition activity abroad.*
 7. *Whether there is a real risk that monitoring will lead to detention following return will in each case depend on the Burmese authorities' view of the information it already possesses coupled with what it receives as the result of any post-arrival monitoring. Their view will be shaped by (i) how active the person had been in the United Kingdom, for example by leading demonstrations or becoming a prominent voice in political meetings, (ii) what he/she did before leaving Burma, (iii) what that person does on return, (iv) the profile of the people he or she mixes with and (v) whether a person is of an ethnicity that is seen by the government to be de-stabilising the union, or if the person's activity is of a kind that has an ethnic, geo-political or economic regional component, which is regarded by the Burmese government as a sensitive issue.*
 8. *It is someone's profile in the eyes of the state that is the key to determining risk. The more the person concerned maintains an active political profile in Burma, post-return, the greater the risk of significant monitoring, carrying with it a real risk of detention.*
45. We accept that he has attended approximately 60 events and has given speeches. We therefore find that, accordingly, the appellant has a profile of voicing opposition to the Burmese regime in the United Kingdom. We are satisfied that as a result he is likely to be monitored on return and we accept also that this will, in the light of the frequency of his attending events and his identification with the Muslim cause, will result in the monitoring being more intensive. We are satisfied, bearing in mind the lower standard of proof, that the appellant will continue to act as he has done in the past. We accept that, as he said, he would attempt to mobilise local Muslims and to protest against oppression. Given that he will be involved with and attempting to mobilise a religious minority, which is a sensitive issue, we are satisfied that there is a significant risk of the appellant being detained and thus ill-treated. We are

satisfied therefore that the appellant is at risk of persecution on return to Burma on account of his political and/or religious beliefs. We therefore allow the appeal on Refugee Convention grounds. We also allow the appeal on human rights grounds as we are satisfied that the ill-treatment which the appellant faces would be in breach of the United Kingdom's obligations pursuant to Article 3 of the Human Rights Convention.

46. In the circumstances, it is unnecessary for us to consider the other grounds of appeal.

SUMMARY OF CONCLUSIONS

- 1 The determination of the First-tier Tribunal did involve the making of an error of law. We set it aside.
- 2 We remake the determination by allowing the appeal on refugee and human rights grounds.

Signed

Date

Upper Tribunal Judge Rintoul