



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

Appeal Number: PA061832016

THE IMMIGRATION ACTS

**Heard at Field House
On 6 June 2017**

**Decision & Reasons Promulgated
On 12 June 2017**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

JA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z I Simret, barrister employed by Simon Noble Solicitors
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Talbot, promulgated on 5 January 2017. Permission to appeal was granted by Deputy Upper Tribunal Judge Chapman on 5 April 2017.

Anonymity

2. Such a direction was made previously, and is reiterated below.

Background

3. The appellant entered the United Kingdom on 19 January 2014 with leave to enter as a Tier 4 migrant. That leave was extended in the same capacity until 21 October 2016. In the interim, the appellant was encountered working in breach of his visa conditions on 14 August 2015. The appellant made a human rights application on 7 September 2015, which was refused and certified. He lodged a judicial review claim to prevent his removal to Bangladesh, which was refused on 16 December 2015. On 8 December 2015, he applied for asylum.
4. The basis of the appellant's asylum claim was that he was an active member of the Islamic Chatro Shibir organisation (the student wing of Jamat-e-Islami) and had been arrested on two occasions. The appellant fears persecution by both the Bangladeshi authorities as well as members of opposing political groups. The Secretary of State rejected almost every aspect of that claim, on credibility grounds, in a letter dated 6 June 2016. The same letter mentioned that attempts had been made to verify the appellant's documents in Bangladesh and only a First Information Report was found on the records which showed that the appellant "*was released from the case and no charge was brought*" against him. There was no verification of the second arrest nor the bail document.

The hearing before the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the judge heard oral evidence from the appellant and submissions from both representatives. He declined a late request for a video recording to be shown. The judge accepted that the appellant was involved with the Shibir organisation as claimed and that the incident of 2011 was credible and may have led to the appellant's arrest and detention. He also found that the respondent's verification of the FIR supported this. The judge did not accept that the appellant was arrested in 2013 for a catalogue of reasons which are set out in the decision.

The grounds of appeal

6. The grounds of appeal argued that the judge failed to address the appellant's *sur place* claim; erred in the assessment of the appellant's credibility; applied an incorrect legal test; made assumptions or speculated; misconstrued the decision in *Tanveer Ahmed*; finding that documents had been fabricated without evidence of the same and in failing to give reasons for dismissing the humanitarian protection claim.
7. Permission to appeal was granted on the basis sought.
8. The respondent's Rule 24 response, received on 9 May 2017 indicated that the appeal was opposed. Regarding the *sur place* argument, it was said that expressing support for a political party was distinguishable from threatening the Prime Minister of Bangladesh. Support was expressed for the judge's credibility findings.

The hearing

9. The appellant attended the hearing promptly for 1000 hours. He showed me correspondence indicating that his representative would be arriving at 2pm because he had other business to attend to at a court in Romford in the morning. I asked the appellant to contact his representative to ask him to make his way immediately. The appellant's text message received no response. Having put the matter back, I asked my clerk to telephone Simon Noble Solicitors. She did so three times and her calls went unanswered. Nor was there any facility for leaving messages. In view of the appellant's inability to speak English and on the understanding that a representative would eventually appear I put the matter back in the list until after Mr Simret's arrival.
10. In terms of submissions, Mr Simret began by stating that the judge provided no explanation for dismissing the humanitarian protection claim. Secondly, no verification report was provided by the respondent; this matter was addressed in the second skeleton argument and the judge should have found in favour of appellant on this issue. Thirdly, the judge found no risk to the appellant owing to his activities in the United Kingdom and Bangladesh, however he had not considered the Facebook posts. Fourthly, Mr Simret complained that the judge had not explained in what way the appellant's account was inconsistent. Fifthly, the judge should have found the appellant credible notwithstanding that the medical evidence did not comply with the Istanbul protocol. Sixthly, the judge erred in finding it incredible that there was no supporting letter from the appellant's mother regarding the ongoing interest from the authorities and lastly, the judge did not apply the lower standard and should have found that the core of the claim was made out.
11. Mr Jarvis' detailed submissions can be summarised as follows. The appellant's criticisms were directed at the respondent and did not amount to material errors of law carried out by the judge. The grounds amounted to a series of disagreements which did not identify any legal error. It was not necessary for the judge to provide reasons for dismissing the humanitarian or human rights appeal, given his associated findings on the asylum claim. He further argued that the judge directed himself appropriately, followed that self-direction and was fair in reaching credibility findings favourable to the appellant. The outcome of the verification of documents had assisted the appellant, without which the judge might have rejected all aspects of the appellant's claim. There was no substance to the appellant's claimed activities in the United Kingdom and in any event, there was no background evidence showing that just being associated with Shibir led to persecution.
12. In closing, Mr Simret clarified that he was not saying that anyone involved in the Shibir organisation was at risk, but emphasising that the judge accepted that the appellant came to the attention of the police in 2011. This meant that the appellant would be on the radar of the authorities and would be monitored because he belonged to the student wing of a banned organisation. He also accepted that the appellant would not have known in 2011 that there was no risk in leaving Bangladesh on his own passport via the international airport and speculated as to why he would have chosen to travel in that manner if he was of adverse interest to the authorities. Mr Simret conceded that the appellant would not necessarily face a risk if he did not continue his activities in Bangladesh, however the appellant stated that he would do so. He contended that the objective evidence, in general, pointed to the appellant facing persecution for

even the slightest criticism of the Prime Minister of Bangladesh, as evidenced by a person sentenced to 5 years in absentia for such conduct. Finally, Mr Simret said that it was irrelevant that the respondent's verification process favoured the appellant because the judge used it to criticise the credibility of the appellant.

13. At the end of the hearing, I reserved my decision.

Decision on error of law

14. The strongest ground was perhaps the argument that the judge failed to address the appellant's claim that he would face persecution in Bangladesh owing to post-flight political activities. There is no substance to this claim of continued political activity in the United Kingdom and the judge did not fail to consider the appellant's evidence, both oral and written, on the topic. At [13] the judge records what the appellant had to say about his political activities in the United Kingdom, which included the following; "*He has not become formally involved in any political organisation since coming to the UK.*" There is no challenge to the judge's understanding of the appellant's evidence. In the same paragraph, the judge further records the appellant's testimony that he has made comments on Facebook about the political situation in Bangladesh and that he has "*over 4,000*" Facebook friends. That is the full extent of the appellant's (claimed) political activity since arriving in the United Kingdom three years ago.

15. Tucked at the back of the appellant's bundle were 78 pages of material which give the appearance of being copies of the Facebook postings of someone with a similar, albeit not identical, name to the appellant. The judge summarised this evidence at [20], noting that the posts "*appear to relate to a variety of different topics (not all relating to Bangladesh).*" As the overwhelming majority of this material was not translated into English, the judge's use of the term "*appear*" was apt. In view of the absence of translations (let alone certified translations) as required by the Practice Directions, most of this evidence was inadmissible in any event. Furthermore, a dozen pages of this material related to posts from 2012 and 2013 and thus if the Facebook content is likely to pose a problem for the appellant, it is notable that it did not do so prior to him leaving Bangladesh. There was no evidence before the judge as to the security settings put in place by the appellant and thus there was no evidence that the Bangladeshi authorities would be reasonably likely look view the posts. For the foregoing reasons, the judge's treatment of the Facebook evidence was entirely appropriate.

16. It is argued that the judge applied a higher standard of proof and that he erred in the assessment of the appellant's credibility. At [25] the very experienced judge directed himself appropriately as to the correct standard of proof and it would be surprising if he did not follow his direction in the following paragraphs. In addition, on credibility, the judge demonstrated that he followed his self-direction by making findings favourable to the appellant, such as at [32] and he did not simply reject his evidence in its entirety, notwithstanding many concerns as to the credibility of the claim.

17. One complaint mischaracterises the judge's comments at [29] as requiring corroboration. The judge's criticism relates to the appellant's failure to provide detailed evidence regarding his claim that the Bangladeshi authorities continued to show an adverse interest in him. In fact, the judge records that the appellant provided "*no detail*" about the visits despite being in regular contact with his mother and that he had never asked his mother to provide a statement giving

details of these visits. Clearly, it was the lack of detail about alleged police interest in the appellant which led the judge to consider this to be a further matter which adversely affected the appellant's credibility, not the absence of a letter from his mother or other individuals.

18. Another of the judge's findings which were singled out for criticism was regarding the appellant's discrepant evidence regarding how he spent the time between him being released on bail in March 2013 and his departure from Bangladesh in January 2014. Mr Simret argued that the judge had unfairly focused on a discrete comment in the appellant's asylum interview where he had said that he "*never ventured out at all*" and compared that to the appellant's oral evidence as to his political activities in Bangladesh during those 9 months. This criticism is unwarranted. At [27], the judge set out everything the appellant had to say about this period when he claimed to be in hiding. To summarise, the appellant told the interviewing officer that he stayed with various people and did not venture out from the time he claimed to have been released from prison in March 2013 until he left for the airport in January 2014. As the judge records, the appellant gave a markedly different account of this time during his oral evidence; stating that he continued to carry out his party functions as ward president, attend meetings and conspicuously participate in street protests. The judge records that the appellant was unable to provide any reasonable explanation for this obvious contradiction. There is no error here.
19. The judge had serious concerns about the credibility of the appellant's account owing to a lack of correlation between his oral and written testimony and what the documents he relied upon purported to show. Furthermore, the judge considered the appellant's delay in seeking asylum despite opportunities to do so and the lack of clarity in his oral evidence. The judge provided sustainable reasons for concluding at [33] and [34] that his evidence as to events in 2013 was unreliable; that the medical evidence was deserving of only limited weight and that the background evidence did not indicate that the appellant would face persecution based on his past involvement with Shibir.
20. Mr Simret argued that the judge erred in failing to give reasons for dismissing the humanitarian protection and human rights claims. He did not develop this ground in any meaningful way. Indeed, in Mr Simret's skeleton argument produced for the hearing before the First-tier Tribunal, he states, "*The appellant also qualifies for humanitarian protection under paragraph 339C of the Immigration Rules, for the reasons set out above and below.*" The reasons set out above the reference to humanitarian protection related to the Refugee Convention and the reasons below were brief submissions in relation to Articles 2, 3 and 5, all of which concerned only the appellant's fear of ill-treatment owing to his political activities. The Article 8 claim simply stated that this Article was engaged. In this case the appellant's human rights and humanitarian protection claims stood or fell with the asylum aspect and the judge dismissed all three grounds of appeal. He cannot be criticised for failing to address arguments which were never made.
21. The grounds argued that the judge reached finding that the appellant's documents had been fabricated without evidence of the same. Mr Simret invited me to find that the judge wrongly placed weight on the references to verification set out in the refusal letter, despite no document verification reports (DVR)

having been provided. There is no indication that Mr Simret attempted to persuade Judge Talbot not to consider the summary of the DVR set out in the refusal letter. On the contrary, Mr Simret's skeleton argument was based on a failure to verify. In any event, the Home Office verification procedures assisted the appellant by corroborating part his claim, which the judge accepted at [32-33] owing, at least in part, to that corroboration. While the judge rejected other aspects of the appellant's claim, this was not based on the respondent's inability to obtain verification of all incidents relied upon but owing to inconsistencies in his evidence and his poor immigration history.

22. Mr Simret made much of background evidence showing that at the time the appellant left Bangladesh there was no computerisation at the airport. Contrary to what he argued, the judge did not find that the appellant would not have been able to leave Bangladesh if he was wanted. What the judge did find, at [27] was that it was *"implausible that he would have taken the risk of departing the airport through normal channels using his own properly issued passport despite the issue of arrest warrants against him."* Therefore, what the judge considered implausible was the appellant's conduct rather than the fact that he encountered no problems at the airport.
23. The grounds argue that the judge made no findings as to the appellant's fear of non-state agents in the form of supporters of other parties. The appellant's evidence on this point amounted to a mere assertion that he would be at such risk in his witness statement and oral evidence at [16]. Given that the judge had recorded the oral evidence on the point and had considered all the evidence before him, there is no reason to conclude that his global finding at [34] that the appellant was not at risk of persecution in Bangladesh was not also referring to the risk from other groups. Indeed, in that same paragraph, the judge quotes extensively from the background material, referring to reports of ongoing high levels of politically motivated violence perpetrated by the security forces, opposition and government activists and student wings.
24. The fact that the judge accepted that the appellant used to be politically active in a discrete area of Sylhet until 2013 does not automatically indicate that he would be at risk of ill-treatment if removed to Bangladesh now, as Mr Simret implied. The background material was considered by the judge and relevant sections reproduced in the decision, however Mr Simret did not draw my attention to any evidence to suggest that past association with the student faction in question led to a real risk of persecution. Furthermore, the appellant's own evidence, set out at [27] was that he carried out his ward-based political activities in Bangladesh including standing conspicuously at the head of demonstrations until his departure, without adverse incident. Accordingly, the judge's finding at [33] that if the authorities had any real adverse interest in the appellant, it would have been easy to re-detain him, is wholly sound.
25. For the foregoing reasons, the judge made no errors of law in his decision and reasons.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is upheld.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed T Kamara

Date 28 July 2017

Upper Tribunal Judge Kamara