



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/10229/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 6th October 2017

**Decision & Reasons
Promulgated
On 17th October 2017**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MD S M

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim, Counsel, instructed by Liberty Legal Solicitors
For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Bangladesh born in 1977 and he entered the UK on 18th May 2010 on a student visa. His leave was extended to 30th April 2015 following which further applications were rejected. He was encountered working during an enforcement visit on 3rd April 2016 and served with removal directions whereupon he claimed asylum on the basis that if he were returned to Bangladesh he would be at risk of persecution on the basis of his political opinion as he is and was, during his time in Bangladesh, a member of the Bangladesh National Party. He asserted that he was a Publicity Secretary in the student wing of the BNP Chatro Dal (student wing) of the BNP. He claimed that he was threatened by members of the Awami League in 2003 and 2008 and was attacked in

2009 suffering injuries. He asserts that he remained involved with the BNP after coming to the UK.

2. In a determination promulgated on 10th November 2016, a Judge of the First Tier Tribunal dismissed the appellant's appeal on all grounds.

3. The appellant made an application for permission was made on the following grounds

(i) the judge accepted that the appellant had been attacked on one occasion in 2009 but did not accept the extent of his injuries. What was important however was not the level of injury as was argued but whether he was a victim of politically motivated attack. The earlier attack was of significance. At the hearing the judge refused an application for an adjournment for medical evidence. She later in her decision rejected the claimed extent of his injuries [82] asserting that the account in his asylum interview and the FIR were at variance. The judge, then however, appeared to criticise the lack of information [83] and [84] in relation to the attack.

(ii) the judge accepted that the appellant was able to provide basic information regarding the BNP and he was a low level member. Objective evidence showed that the Bangladesh authorities were kidnapping opposition members and other activists and leaders of the BNP had been targeted and arrested. The judge accepted at [76] that the appellant did not try to embellish his evidence but found that the claim in the letter from the Bangladesh Jatioabadi Chatra Dal was that he was a leader was inflated. He had in fact consistently described himself as a 'student leader'. She accepted that he had been threatened and was still involved in the BNP in the UK and if he returned would continue to be involved [96] of the decision. In the light of the background evidence the judge erred in her conclusions that the appellant was not at real risk on return.

4. At the error of law hearing before me Mr Karim pointed out, the significance of the previous attack in 2009, which, even though finding some inconsistencies in his account, was an important factor but given insufficient attention. The First-tier Tribunal Judge did identify that the appellant did not leave Bangladesh for some months after the said attack, and did not relate the difficulties his friends had experienced, but did not adequately address the issue of the 2009 attack. It was important to assess how the appellant would be perceived on return, bearing in mind the necessity to factor in Paragraph 339K, and in view of his individual profile as an activist even if not a leader, bearing in mind the background material. The judge failed to address whether the appellant would be perceived as an activist on return and the risk emanating therefrom. That was found to be a material error of law and in the event the decision was set aside.

Conclusions

5. On finding an error of law I specifically preserved paragraphs 75, 76, 77, 81 and the first two sentences of paragraph 82 and paragraph 96 of the First-tier Tribunal decision. Those are referred to below. The First-tier Tribunal made a series of findings indicating that it found the appellant to be a 'low level member' of the BNP. The appellant was found to be able to give correct answers in relation to the BNP. It was accepted that he did not try to embellish his evidence as to his involvement in the Party [76]. The judge also accepted that the appellant was threatened on two occasions and it was accepted he had been attacked as claimed in 2009 and accepted the FIR. The judge then appeared to become diverted, having accepted that he provided an FIR in relation to the attack in 2009, to considering the injuries rather than the political motivation and thus effective consideration of paragraph 339K of the Rules (previous serious harm as an indicator of real risk).
6. The First-tier Tribunal Judge's findings read as follows:-
- “75. I also accept that the appellant was a low level member of the BNP. The appellant was questioned about his knowledge of the BNP at his asylum interview and was able to give correct answers relating to when the party was founded, the leader, the logo of the party and its motto.*
- 76. I note the appellant has never stated that he was a leader of the party either at a local or national level. I accept that he has not tried to embellish his evidence in this regard.*
- 77. The appellant has stated that after some years of involvement, he was given the role of Publicity Secretary in the sub-district of Upzilla, Jogonathopur and I accept that he undertook this role.*
- 81. Turning now to the key substance of the appellant's claim, the appellant has stated that he was threatened on two occasions and attacked on one occasions whilst still in Bangladesh. I accept the appellant's evidence in this regard.*
- 96. I accept that the appellant, if he returns to Bangladesh, would continue to be involved with the BNP. I note that the appellant was not simply involved with the BNP during his student days, but continued to be involved with them, at a low level, until he left Bangladesh.”*
7. I consider the points taken against him previously. From the appellant's asylum interview it is clear that he maintained he was threatened in 2003 and in 2008 but that he was able to evade an attack. He was clear that he did not claim asylum on entry because he wished to return to Bangladesh and explained that had BNP been returned to government after the election in 2014 he would have returned.
8. The appellant submitted that he could not return to Bangladesh because numerous friends had been killed or were in hiding and the local party office had been broken into. Although the appellant had not mentioned

this previously it was his explanation that he had not been so asked. Although he was criticised in his oral evidence before the First-tier Tribunal Judge for not relating that his friends had been the victims of attacks because of their political beliefs until his oral evidence it is correct that he was asked in his asylum interview about his own individual difficulties and not questioned specifically about other attacks.

9. He did state at [AIR 113] with reference to the Awami party 'in the current situation without any case they beat people up and they kill them'. He was not pressed on further questioning. He did not have a legal representative at the substantive interview. I accept the appellant's evidence on this point.
10. I do, however, accept from the findings of the previous judge that the appellant was an activist in the BNP and although there were two letters signed by the same organisation as to his activities in the UK, both letters being dated 23rd August 2016, that does not, on the lower standard of proof, necessarily undermine the proposition that he is active in the BNP in the UK. The fact is that this appellant was attacked for his activities in 2009 and that he provided an FIR confirming the same. That too was accepted by the First-tier Tribunal Judge and indeed the appellant provided a medical report. The real issue is the motivation and as indicated above, and in the context of the evidence overall, I accept that the appellant was indeed attacked on the basis of his membership of the BNP. Memories in respect of the account do not necessarily always synchronise entirely but it was accepted that the appellant left Bangladesh after this incident in April 2009 albeit he waited to apply for a visa in January 2010. I do not consider this to be an extensive time to wait to remove oneself from persecution.
11. When referring to the profile of the appellant it was accepted by the First-tier Tribunal Judge that he was not a leader, but bearing in mind his previous activity, knowledge of the BNP and threats and attack on him, which were accepted, I am not persuaded that he was a completely 'low level' -he was a Publicity Secretary for five to six years [AIR 34]. The appellant was clear at his asylum interview that he was '*not an MP or a President - but I was an activist the duties that were given to me I did them*'. The FIR filed after the attack was accepted by the First-tier Tribunal Judge and there is no reason to conclude that the injuries sustained and recorded in the medical report were not as a result of the attack. The appellant has been credible in other respects. The factor of the previous politically motivated attack is also relevant to his profile.
12. At [64] the First-tier Tribunal Judge recorded that the appellant was cross examined to the effect that he had always maintained he was an 'activist' not a 'leader' and the judge also recorded the human rights violations in Bangladesh over the recent years as set out in the country background material. The First-tier Tribunal accepted that the appellant would continue to be involved in the BNP on his return. Indeed in his asylum interview he confirmed that he joined the BNP on entry to the UK.

13. Albeit that he may not have reported two out of three incidents that he received in Bangladesh, bearing in mind the attitude of the police it may open to him to consider that there was not sufficiency of protection and therefore he did not wish to report such incidents.
14. This appeal before the Upper Tribunal has been subject to two adjournments and on both occasions there was an indication from the Home Office that they wished to verify the documents relating to the criminal cases against the appellant and the translations. The matter was first heard before me on 20th March 2017 adjourned on 2nd June 2017 and again on 28th July 2017 in order that the Secretary of State may verify the documentation and the translations which had been served. In response a further decision letter was filed dated 10th August 2017 and this specifically identified the documentation that was filed by the appellant.

- a. Affidavit from your father dated 078-03-2017 (pages 2 - 3);*
- b. Discharge letter from Jaganath Upazila Health Complex dated 24-04-2009 (pages 5 - 8);*
- c. Daily Shyamal Sylhet newspaper article dated 29-09-2014 relating to the first case, an alleged attack on Bangladeshi police officials (translations, pages 9 - 12);*
- d. District & Session Court, Sylhet Court Order dated 13-02-2017 relating to a second case, a killing of a student (translations pages 30 - 31);*
- e. Police Complaint report dated 27-11-2016, relating to a second case, a killing of a student (translations pages 32 - 34);*
- f. First Information report (FIR) dated 27-11-2016, relating to a second case, a killing of a student (translations pages 35 - 37);*
- g. Charge Sheet dated 25-01-2017, relating to a second case, a killing of a student (translations pages 38 - 42);*
- h. Undated Arrest Warrant, relating to a second case, a killing of a student (translations page 42);*
- i. District & Session Court, Sylhet Judgement dated 08-11-2016, relating the first case, an alleged attack on police officials (translation pages 70 - 79);*
- j. Police Complaint report dated 28-09-2014, relating to the first case, an alleged attack on police officials (translation pages 80 - 82);*
- k. FIR dated 28-09-2014, relating to the first case, an alleged attack on police officials (translation pages 83 - 84);*

- l. Charge Sheet dated 27-01-2015, relating to the first case, an alleged attack on police officials (translation pages 85 - 90)."*

These documents assert that the appellant had participated in a violent attack against police officials on 28th September 2014 and was convicted for this on 8th November 2016, resulting in ten years of prison and a 50,000 taka fine and also that he participated in the murder of a student on 27th November 2016.

15. It should be noted that on these dates the appellant was in fact in the United Kingdom but the cases were said to be 'trumped up'. The father's affidavit explained the documentation that *'because of political hostility the ruling party has implicated my son in many cases and for that reason the law enforcement agents are searching in our house to arrest my son'*. This affidavit did not seek to elaborate on the political activities of the appellant and was conservative in its assertions and thus demands some weight to be attached to it.
16. The Secretary of State had specifically asked and been given ample opportunity to verify this court documentation and did not do so. This is not a question of the Secretary of State being expected to verify documentation but having requested and being given the opportunity to do so. The Secretary of State argued that **Tanveer Ahmed(Documents unreliable and forged)/Pakistan [2002] UKIAT 00439** should apply but, despite the credibility issues taken against the appellant before the First-tier Tribunal, the judge accepted that he was a low level member of the BNP, had a good knowledge of the BNP and gave correct answers thereto. Indeed, he had not tried to embellish his evidence in this regard. It was also found by the First-tier Tribunal that the appellant was given the role of Publicity Secretary in the sub-district of Upzilla and that he was 'not simply involved with [the BNP] during his student days'. It was specifically accepted that the appellant was a party member in Bangladesh from 1997 until he left in 2010 although it was not accepted that he was a leader. As such I place some weight on the documentation presented and listed above and which included FIR and charge sheets accusing the appellant of assault and offences with weapons.
17. I considered the claim against the background country material. The appellant had provided an FIR in relation to an attack in 2009 which, I accept, was the result of politically motivated attacks and thus consideration of paragraph 339K of the Rules, that is previous harm, is indeed an indicator of real risk of future harm.
18. The First-tier Tribunal noted at paragraph 94
- 'the objective information from organisations such as Amnesty International , Human Rights Watch and Odhikar indicates that there have been numerous human rights violations in Bangladesh in recent years. This includes violence not just around election time but also in clashes between rival political party supporters.*

However nobody has been brought to justice for any unlawful killings'

Odhikar's Annual Report indicates numerous categories of victims of torture including religious minorities, individuals who are vocal about human rights issues included journalists and lawyers and opposition political party activists/.

19. The First-tier Tribunal Judge accepted that the appellant would continue to be involved with the BNP if he returned to Bangladesh and albeit that he was involved in a low level I still consider that he would be an activist.
20. I am not persuaded on the balance of proof that this is a "weak asylum claim" when considering the standard of proof, the particular evidence and the background material. The appellant has provided documentation which has not been challenged by the Secretary of State other than to state that it was undermined by **Tanveer Ahmed**, which I do not find persuasive.
21. Mr Karim provided me with the Country Information and Guidance on Bangladesh: Opposition to the Government, dated February 2015, and also referred me to the background country information in the objective evidence. This clearly identifies that activists of the BNP are targeted.

"1.3.5 Ongoing high levels of politically motivated violence are perpetrated by the security forces and both opposition and government activists and student wings. In the run up to the January 2014 parliamentary elections, there were reports of over 500 deaths and more than 24,000 people injured, while arbitrary arrests, enforced disappearances, intimidation, the unlawful destruction of private property and economic disruption, were widespread. In January 2015, in the run up to, and on the anniversary of the 2014 elections, protests were banned. As of the end of January 2015, it was reported that 7,000 BNP activists had been arrested, and at least 27 people had been killed in clashes between the supporters of the ruling party, the Awami League and opposition supporters. Houses and shops of those identified as opposition supporters in northern Bangladesh have been demolished and hundreds of people, including women and children, have been internally displaced as a result of the crackdown. Internal conflicts within political parties also occurred, resulting in deaths and injuries (see 'Political situation since 2014 parliamentary elections' and 'Treatment of government critics and Political violence' in the country information section).

1.3.7 Prosecution and punishment for criminal acts such as perpetrating violence can however amount to persecution if it involves victimisation by the authorities, for example because of the persons political opinion, and the consequences are

sufficiently severe (see relevant section(s) of the Asylum Instruction on Assessing credibility and refugee status)."

22. It is evident that the core charges seem to involve prosecution and punishment for criminal acts when the appellant was not in Bangladesh. Indeed, at paragraph 2.4.1 it states:

"2.4.1 Harassment of the opposition was widespread in 2013, ranging from charges filed against senior BNP members to limitations placed on political activities, particularly rallies and processions. In March 2013, following a BNP rally that turned violent, nearly 200 opposition activists were arrested, including BNP acting secretary general Mirza Fakhrul Islam Alamgir. Of those detained, 154 faced charges, including several top leaders.

2.4.5 Odhikar reported 'According to information gathered by Odhikar, in 2013, 506 persons were killed and 24,176 injured in political violence. 263 incidents of internal violence in the Awami League and 140 in the BNP were also recorded during this period. In addition to this, 28 persons were killed and 2980 were injured in internal conflicts of the Awami League while six were killed and 1592 were injured in BNP's internal conflicts.' Between January and October 2014, Ain o Salish Kendra (ASK) recorded 558 incidents of political violence in Bangladesh, resulting in 7,204 injuries and 137 deaths. According to information gathered by Odhikar, 'from January to June 2014, 132 persons were killed and 5,224 injured in political violence. 163 incidents of internal violence in the Awami League and 13 in the BNP were recorded during this period. In addition to this, 18 persons were killed and 1,621 were injured in internal conflicts of the Awami League while two persons were killed and 129 persons were injured in BNP internal conflicts.'"

23. In addition I note that at paragraph 2.5.7 an April 2014 report from Human Rights Watch noted that:

*"Many of the victims in the cases documented in this report were leaders **and activists** belonging to BNP, Jamaat, or their student wings. They were all male, ranging in age from 15 to 62. In some cases the authorities appeared to target the victims because of suspected involvement in specific crimes. In other cases, however, security forces appeared to seek out influential opposition district and sub-district level leaders who might have been able to mobilise people to protest against the government and the holding of the elections. Human Rights Watch described a pattern of supposed 'crossfire' killings of opposition members in Bangladesh."*

24. The background information supplied, for example, from the Dhaka Tribune identifies that:

“The government is immensely repressing BNP leaders and activists as there is no rule of law and accountability in the country. The current regime, which usurped state power by force, has continued killing and oppression by its party cadres and law enforcers to eliminate the opposition and perpetuate its power.”

This identifies that the government and security forces are involved in the repression and furthermore that not just leaders but also activists are the targets. As set out in the article “Political Conflict, Extremism and Criminal Justice in Bangladesh”, dated 11th April 2016, the Executive Summary stated:

“As the Awami League (AL) government’s political rivalry with the Bangladesh National Party (BNP) reaches new heights, so has its repression. At the same time, a deeply politicised, dysfunctional criminal justice system is undermining rather than buttressing the rule of law.”

This article identified that:

“Police tasked with targeting the Government’s rivals and an overstretched justice system compelled to prosecute opposition leaders and activists now also face a renewed threat from violent extremists. ... The government’s reaction to rising extremism, including arrest and prosecution of several suspects without due process and transparency, is fuelling alienation that these groups can further exploit.”

25. There is further reference to the fact that effort to ‘reform the dysfunctional criminal justice system’ including by investing in training, equipping and otherwise modernising the police, prosecution and judiciary, would be insufficient unless it was also taken out of politics and that years of partisan recruitment, promotions and postings had polarised these institutions to the point that officials no longer concealed their allegiance.
26. The CIG confirmed that internal political fighting in the Awami League and BNP including in its student and youth wings and such violence often resulted in death or injury.
27. As such I accept that the appellant had on the lower standard of proof shown that he would be at real risk on return to Bangladesh and I allow the appeal on asylum and Article 3 grounds.
28. For the reasons I set out above in relation to asylum and below in relation to Article 3 of the Human rights Convention, I find the Appellant a valid claim to such protection. There is no substantive difference in this case between the Appellant’s claim under the Refugee Convention, the Human Rights Convention and under paragraph 339C of the Immigration Rules (which deals with claims for Humanitarian Protection) but as I find the Appellant has a valid claim for protection as a refugee it I do not consider any claim for Humanitarian protection.

29. The appellant cannot succeed under the Immigration Rules Appendix FM but further to Paragraph 276 ADE, although he has not lived in the UK for 20 years, there would be significant obstacles in him returning to Bangladesh.
30. Further to **Huang v Secretary of State for the Home Department [2007] UKHL 11**, taking full account of relevant considerations, I did consider that any private life of the claimant would be prejudiced by removal in a manner sufficiently serious to amount to a breach of the fundamental right protected by Article 8.

DECISION

I allow the appeal on Asylum grounds
I dismiss the appeal on humanitarian protection grounds
I allow the appeal on human rights grounds (Articles 2, 3 and 8).
I allow the appeal under the immigration rules.

Notice of Decision

I remake the decision, preserving the sections of the First-tier Tribunal decision as indicted and I allow the appeal.

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 his 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 Helen Rimington

Signed 16th October 2017

Upper Tribunal Judge Rimington

TO THE RESPONDENT FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed Helen Rimington

Signed 16th October 2017

Upper Tribunal Judge Rimington

