



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: PA/13318/2016

THE IMMIGRATION ACTS

Heard at: Field House
On: 2 November 2017

Decision and Reasons Promulgated
On: 14 November 2017

Before

Deputy Upper Tribunal Judge Mailer

Between

I A
ANONYMITY DIRECTION MAINTAINED

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr A Syed-Ali, counsel, instructed by Shahid Rahman
Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I maintain the anonymity order made. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them 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.
2. The appellant is a national of Bangladesh, born on [] 1986. He appeals with permission against the decision of the First-tier Tribunal Judge, promulgated on 6 July 2017, dismissing his appeal against the respondent's decision to refuse his claim for asylum.
3. The Judge did not accept that the appellant is active in the BNP as claimed or at all. He did not accept that he is the son of a former BNP MP. Nor did he find that the appellant has ever been threatened, either in the UK or Bangladesh, by reason of his political opinions, activity or involvement with the BNP. He would be of no adverse interest to any person or organisation in Bangladesh [37].
4. In granting permission to appeal on 11 September 2017, Upper Tribunal Judge Rintoul stated that it is arguable that the Judge erred in not addressing the evidence from passports and birth certificates that the appellant is related to Mr Khirul Anam, as claimed. There was also merit in the submission that the Judge misunderstood the evidence about the BNP's structure.

The appeal

5. Mr Syed-Ali, who did not represent the appellant before the First-tier Tribunal, relied on the skeleton arguments presented.
6. He referred to paragraphs [24-36] of the decision. The Judge noted that the appellant claimed to be the son of Khairul Anam, and he provided a number of photographs of Mr Anam undertaking official duties both as an MP and a leading member of the BNP. He managed to assemble other evidence of the latter's political life. He was however unable to obtain or provide just one family photograph showing him with his claimed father [24].
7. The Judge noted that the appellant claimed in his oral evidence that he had not been a formal member of BNP in Bangladesh. He "formerly" joined the BNP within a few months of arriving in the UK. He gave a different account in his asylum interview, claiming that he was not a member of the BNP although he had been active in the student unit [25].
8. The appellant produced a number of letters from the UK branch of the BNP which attest to his involvement both now and in the past [27]. None of these officers, however, attended the Tribunal to give evidence or to support the appellant. The appellant's explanations for their absence was 'evasive' and ultimately misleading [27].

9. He had also relied upon letters reportedly written by the BNP and the Bar Association Bangladesh. None of these were “formerly” dated or referenced although dates have been added to two of the signatures to the letter [28].
10. However, the documents he relied upon, even taken at their highest, evidence political activity for the BNP in the UK only during 2011 (save one document which evidences activity in March 2012) [30].
11. One of the reports relied on asserted that the appellant gave a speech. If true, there was no evidence before the Judge as to who attended the rallies or from those who heard him speak. Nor did letters from UKBNP make reference to any of the specific occasions when the appellant spoke. The newspaper articles referred to Imtiaz Anam Tanim, as a student leader [30]. The appellant had claimed that Imtiaz Anam Tanim is his nickname, used by his family, close friends and BNP associates.
12. However none of the BNP in the UK or Bangladesh addressed him as such in any of their letters. Nor does his father make reference to the family nickname in the statement that he purportedly provided. Nor was there any reference to the nickname in the appellant's own witness statement. These omissions did little to bolster his credibility or the weight to be attached to the documents [31].
13. The Judge noted that the appellant had claimed that his father sent him to the UK in 2009 for his safety. He did not claim asylum on arrival. He visited Bangladesh in 2011 and when he returned to the UK he did not claim asylum. His leave was curtailed in 2015. He did not claim asylum then but submitted an application based on family and private life in the UK. After that application was refused, some seven years after first arriving in the UK, he claimed asylum [33].
14. His explanation for the delay in claiming asylum was unsatisfactory [44]. The Judge found him not to be a credible witness.
15. Mr Syed-Ali referred to paragraph [37.1] of the decision where the Judge stated that he did not accept that the appellant is active in the BNP or that he is the son of the former MNP MP. Mr Syed-Ali then referred to paragraph 29 of the reasons for refusal where he submitted that it was not disputed that the appellant was the son of the man whom he claimed to be his father. All that was stated at paragraph 29 of the refusal was that he failed to substantiate his claim that his father was a former MP for the BNP in Bangladesh.
16. Mr Syed-Ali referred to the Judge's statement that there was a lack of photographic evidence. He referred to the supplementary bundle at pages 69-70, which was before the First-tier Tribunal. This contains a statement from Advocate K A dated April 15, 2017. In it he claimed to be the father of the appellant. He stated that his family members are facing difficulties and agony from the present Awami League, the police and other government agencies/forces threatening them to stop the appellant doing anything against the Awami League Government. It was therefore not possible for his son to return to Bangladesh. If he returns he will face various

types of torture/harassments and assaults. He may even be kidnapped or killed on return.

17. At page 71 of that bundle the appellant produced an identity card of Advocate K A in which he is stated to be a member of the Bangladesh National Parliament. The serial number, photograph and attestation dated 18 December 2016 has been provided by a notary public, an advocate of the Supreme Court of Bangladesh. The original of that identity document is provided at page 74. It contains a photograph of Advocate K A
18. At page 76 Advocate K A's passport and photograph are provided. This is a passport issued by the Bangladesh authorities on 11 December 2014. There is also a visa document in Advocate K A's name with his passport number and photograph attached, confirming his date of birth as 21 July 1948.
19. Finally, at page 93 Mr Syed-Ali referred to a birth certificate which was registered on 20 December 2016 of Advocate K A whose date of birth is again given as 21 July 1948. His father's and mother's names are set out.
20. Notwithstanding the alleged lack of "family photographs," it was submitted that the Judge made no reference to any documentary evidence.
21. The respondent in the circumstances should in any event have made an appropriate enquiry if the documents were in issue. He submitted that as a matter of fact the findings are incorrect and as a matter of law this amounts in the circumstances to a failure to assess the claimed identity of the appellant's father, which is the core basis of his claim.
22. Mr Syed-Ali referred to question 100 of the appellant's interview. The appellant was being questioned about his father's political career which the appellant set out in reply to question 97. He stated that his duties involved being an MP. By profession he is a lawyer. He is now an advisor of the District BNP. He submitted that the respondent's assertion in the reasons for refusal that the appellant had not explained his father's activities when interviewed "permeated into the First-tier Tribunal's decision as well".
23. He referred to the finding that the the authors of the letters from the UK branch of the BNP who supported his claim, did not attend the hearing. The appellant's explanations for their absence were evasive and ultimately misleading. That is because the appellant confirmed that he had not actually asked any of them to attend, claiming that he expected them to attend without being asked [27]. That affected his credibility and the weight to be afforded to the letters. That also applied to his failure to ask Mr Riblu to provide evidence concerning a raft of documents allegedly made by him, a BNP colleague. It transpired that the appellant was "referenced in the documents". He claimed to have been provided with the documents in May 2016. He could not explain why a witness statement had not been obtained from Mr Riblu setting out the problems of the documents and how they came into the appellant's possession. He has had legal assistance. This raises

further concerns about the appellant's credibility and the weight to be given to them.

24. Mr Syed-Ali submitted that the Judge's finding that the appellant has never been threatened either in the UK or Bangladesh by reason of political opinions, activity or involvement with the BNP has not been assessed in the context of various questions asked at his interview, which the Judge failed to refer to.
25. At question 62 he was asked whether he is a member now of the BNP. He said that he is not a member but is involved with all the activities of the BNP. He then set out his involvement with the BNP, stating that he attends all the meetings and demonstrations with the BNP in the UK. He has produced slogans against Sheikh Hassina when she came to the UK. He protested against this. They threw raw eggs at her car. A team called DGFI came with her from Bangladesh and they took his photograph. This happened on 14 September 2016 but had been repeated in the past. He said he went along to that demonstration with his political leaders and colleagues. He referred to the UK BNP president and secretary as well as others. He identified the names of the President as well as the Secretary – q73.
26. He had also stated when interviewed that he is a member of the Student Unit of the BNP (JCD). He was the joint secretary -Q61.
27. This evidence was not disputed. It showed that he was an active member of the Student Wing, albeit not a member of the BNP, even though he was involved in BNP activities in the UK.
28. When he asserted in interview that DGFI came with her from Bangladesh and took his photograph there was no further question asked about that. Nor did the Judge make any reference to DGFI.
29. Mr Syed-Ali submitted at paragraph 5 of his skeleton that the appellant has adequately explained his reasons for the delay in claiming asylum, at paragraph 22 of his statement dated January 2017. Like others, he deferred the making of the claim notwithstanding the validity of his fears. This is common.
30. Accordingly the Judge should have weighed the reasons for any delay 'properly'. The appellant did not claim asylum as a deliberate choice because he was planning to go back to Bangladesh.
31. On behalf of the respondent Mr Avery submitted that the Judge made adequate findings of fact and has given adequate reasons as set out at paragraphs 14 to 34. He was entitled to find that he was not credible based on the oral and documentary evidence before him.
32. Mr Avery also submitted that the submissions went beyond the grounds granting permission, which were limited. However, the earlier grounds dated 20 July 2017 did raise issues which were part of Mr Syed-Ali's submissions. When permission was sought from the Upper Tribunal, the appellant relied not only on the later

grounds but also on the grounds submitted to the First-tier Tribunal for permission to appeal and the original grounds of appeal.

33. In the grounds seeking permission dated 20 July 2017 there was express reference to the failure by the Judge to consider the appellant's birth certificate and copies of the passports which were issued and which were available. The last names of both the appellant and his father were identical.
34. He submitted that the Judge's findings relating to the appellant's credibility were dealt with in some detail, including finding that the appellant had given vague answers and kept on changing his evidence.
35. He submitted that this was a balanced determination. At [22] he expressly referred to factors supportive of the appellant's overall credibility including his consistency regarding his assertions that he is the son of a former BNP politician and has been involved with the party both there and in Bangladesh.
36. He accepted that the Judge did not deal with the identity and relationship with his father.
37. He referred in that respect to the birth certificate in the supplementary bundle at pages 92-93. The birth certificate was registered in December 2016. It is not something which "will be persuasive to a Judge." Why would it only have been registered in 2016? There has accordingly not been any material error.
38. In reply Mr Syed-Ali submitted the registration of birth certificate only became compulsory in 2008. From that date you also had to have an ID card.
39. He also submitted that in any event, the document is of significance and it should have been investigated. This did not excuse the Judge from properly assessing the evidence.

Assessment

40. The Judge did not accept that the appellant was active in the BNP at all. Nor did he accept that he is the son of a former BNP MP. However, as already noted, the appellant had made these assertions during his substantive interview. He gave detailed answers relating to his father, including the latter's active participation as a member of the BNP.
41. Moreover, the appellant also gave evidence relating to his activities and involvement with the BNP in the UK. He expressly referred to an occasion where his photograph was taken during a fairly heated demonstration in the UK where he claimed that his photograph had been taken. He also claimed to have been a member of the DGFI. The Judge made no reference to that organisation either.
42. Although the Judge was required to consider as a factor the failure of the appellant to make a claim for asylum much earlier, he should have considered the appellant's explanation and evaluated it as part of the evidence as a whole.

43. That included documentary evidence that he produced relating to his father. The latter had provided a detailed statement relating to his son. There was also documentary evidence which was not challenged, in which his father's passport as well as birth certificate and identity documents as an MP were all produced.
44. When considering the risk of return to Bangladesh, the fact that he was the son of a former BNP MP as well as his participation in demonstrations in the UK informed the decision as to whether he would be of adverse interest to any person or organisation in Bangladesh.
45. I accordingly find that the decision of the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision.
46. There will have to be a re-hearing requiring substantial fact finding, particularly with regard to the documentary evidence produced.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. I set the decision aside. The appeal is remitted to the First-tier Tribunal (Taylor House) for a fresh decision to be made before another Judge.

Anonymity direction continued.

Signed

Date 10 November 2017

Deputy Upper Tribunal Judge C R Mailer