Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/05518/2014
AA/05519/2014
AA/05520/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 January 2018	**On 21 February 2018**

Before

UPPER TRIBUNAL JUDGE JORDAN
DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[A R], his wife and minor daughter, R

Appellants

and

The Secretary Of State For The Home Department

Respondent

Representation:
For the appellants: Mr L. Rahman, the Chambers of M.M. Hossain
For the respondent: Mr I. Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The principal appellant, [AR], ('the appellant') is a citizen of Bangladesh who was born on [ ] 1988. He appeals against the determination of a panel of the First-tier Tribunal (First-tier Tribunal Judges Scott-Baker and Reid) promulgated following a hearing on 26 February 2015 dismissing the appellant's appeal against the decision of

18 July 2014 made by the respondent refusing to grant him asylum and to give directions under paragraph 10A of Schedule 2 to the Immigration Act 1971. His wife and daughter are dependants to his claim.

2. At the hearing before the panel, Mr Hossain, who appeared on behalf of the appellants, conceded that the appellant could not come within the terms of the Refugee Convention. Accordingly, the panel determined the appeal on the basis that the issue was whether the appellant or members of his family were at risk of serious harm on return to Bangladesh or whether he or they were at risk of a violation of their protected rights under Article 8 of the ECHR.

3. In granting permission to appeal, Upper Tribunal Judge Rintoul expressly stated that it was arguable the panel erred in its assessment of letters provided by Bangladeshi lawyers which purported to support the appellant's claim. However, he permitted all grounds to be argued, without otherwise giving his view as to their merit.

4. The appellant entered the United Kingdom on 23 July 2009 as a Tier 4 (General) Student with permission to remain until 31 October 2011. He travelled to Bangladesh in December 2010, having in the previous month married his wife [S] by proxy on [ ] 2010. He re-entered the United Kingdom on 24 February 2011 and his wife arrived in the United Kingdom on 8 May 2011. Their daughter, R, was born on [ ] 2012 in the United Kingdom. She is now five years old.

5. The basis of his claim was that his wife was and remains a Buddhist whilst he is a Muslim. They married without the consent of their families. In particular, his wife's family has pursued a prolonged and vindictive campaign against him. In doing so, the appellant claims they have sought to invoke the law against him by pursuing a criminal prosecution on a charge of kidnapping and abduction.

6. It goes without saying that these allegations are completely false and that there is no credible evidence to that effect, save for the unsupported claims of those who wish the couple harm. They will be able to establish that his wife left her family home; that they bear the appellant ill-will but that is no evidence of abduction. Furthermore, the allegation of kidnapping and abduction is belied by the fact that they married on [ ] 2010, have lived a happy and loving family life together in the United Kingdom for many years past in what is often described as a genuine and subsisting relationship and have a child as the most obvious and visible sign of their commitment to each other. It is inconceivable that his wife would not support him in any prosecution and any prosecution is bound to fail unless there is evidence from his wife as a complainant. Hence, we would regard the animosity that he claims is directed towards the couple by both his and his wife's families as being incapable of delivering the harm which is the centrepiece of the claim.

7. It only requires a limited consideration of the claim to see how threadbare it is. It relies upon the claim that he will be prosecuted, convicted and sentenced (so it is

said) to as much as life imprisonment. He claims this unfortunate result is established as a reasonable likelihood when there is no truth in the allegation whatever and that the Bangladeshi justice system is incapable of determining truth and falsehood. Inevitably, it relies upon a finding that the police, the prosecuting authorities, the judges both at first instance and on appeal are either complicit in what will be a travesty of justice or will be persuaded by whatever false evidence his wife's family are able to produce, notwithstanding her claim that the allegations are nonsense and the embittered fabrication of her family. The claim pays scant regard to the fact that the appellant has access to lawyers (indeed, his claim includes letters purporting to come from several lawyers) who have a right of audience and are able to pinpoint the obvious flaws in the allegations made against him. We do not consider it remotely possible that the safeguards that exist would not afford the appellant adequate protection against the malign influence of his wife's family.

8. Furthermore, although it is said that his wife's family are 'influential', such influence as they may wield has to be assessed against the lack of any obvious motivation likely to be felt by police, prosecutors and judges to harm the appellant and his family. Why should a prosecutor adopt a perverse antipathy against the appellant and his family without any personal animus? To be 'influential' (about which we shall say more later) is one thing but to be the malign force controlling the strings of innumerable individuals in places of authority is, in our judgment, quite another.

9. The basis of the appellant's claim is both implausible and incredible. It is against this background that we come to assess the critique that is made of the panel's determination concerning the weight that should be attached to the lawyers' letters. As will shortly become apparent, none of the letters speak of these fundamental flaws in the prospect of a successful prosecution. Whilst it may be said that the lawyers were not asked to give an opinion on that matter, we would expect any lawyer worth his salt to have at least some regard to the prospects of a successful prosecution, rather than confining himself to an entirely speculative outcome, were this to occur. Many lawyers might properly give their opinion that we would be sentenced to a lengthy term of imprisonment if we were to rob the Bank of England but we reckon few would do so without saying that the chances of our doing so were non-existent. This is not simply a matter of speculation but a commentary grounded upon experience.

10. We approach this appeal by accepting the premise upon which it stands that his wife is a Buddhist and continues to practice as one, that he is a Muslim and that their union is disapproved of by their parents. We are not persuaded that his wife's assertion in their marriage certificate that she was a Muslim is probative because there was evidence that their marriage could not have taken place in the absence of such a declaration.

11. It is unnecessary to us to recite the background material upon which the panel relied. Suffice it to say that no challenge is made to the general proposition that Bangladeshi

law recognises mixed marriages and that extreme Muslim groups may sometimes attempt to prevent them but rarely succeed. Discrimination is more likely to be felt in rural areas and amongst those who are less well-off or are poorly educated. As the panel recorded in paragraphs 69 to 76, there is a level of societal discrimination but the relatively well-off and better educated would not face harassment from the general population.

12. The panel also pointed out the prevalence of false documentation that is available. This point should obviously be approached with some caution. This does not mean that all documentary evidence must be rejected for this reason alone. All that such a factor can establish is that a decision maker is entitled to examine documentary evidence with care and is permitted a critical examination of it within the framework of an assessment of the evidence as a whole.

13. It was part of the appellant's case that his family was so politically powerful that they were able to arrange almost unimaginable feats of surveillance upon him and his wife. Thus, for example, using their mobile telephones, 'they' (by which he meant his wife's family and their associates in collusion with the authorities) were able to track them down using the mobile telephone network to do so. This would suggest that their power or influence extended beyond the legal system and extended into the network providers in Bangladesh. We know that it is possible to track an individual's mobile telephone and that, within the United Kingdom, there have been high-profile cases where missing persons have been traced using the signal from their mobile telephone to locate where it was being used. The appellant's case goes further. In paragraph 37 of the determination, the panel recorded that his wife adopted an anti-surveillance routine by changing Sim cards so as to enable her to use her mobile without being traced. Nevertheless, 'they' countered this by extending the web of surveillance to tracing not his wife's mobile but her friends' mobiles by which they were able to trace her *indirectly* (as she explained).

14. We frankly confess that we would regard this claim as nothing short of fantastic. Nevertheless it was by this method, so it is claimed, that 'they' were able to trace her as his wife moved through various cities including being present at a bail hearing that took place in Dhaka in January 2011. No explanation was given as to how 'they' were able to obtain the appellant's telephone number, given her evidence that she had taken action to avoid being traced by changing her Sim card. We recall that this level of surveillance is not directed by the security services in order to foil a major terrorist incident but was engaged to trace a young couple who had eloped in opposition to their parents.

15. Nevertheless, in spite of the influence that it is claimed her family were able to exert over the authorities in Bangladesh, when her family attended the court in Dhaka and met up with the appellant's wife, they were unable to re-take her, either themselves or with the assistance of the police. Instead, the couple managed to escape by getting on a bus [39]. If the authorities really believed she had been kidnapped, this would

have been an attempt to 'rescue' her from the appellant, her kidnapper. This hypothesis sits uneasily with her claim that 'they escaped by getting on a bus'.

16. These elements of the claim were considered by the panel who (understandably, we think, but certainly lawfully) rejected them as incredible. They rejected the claim that the Bangladeshi authorities had sought to track the appellant or his wife through the mobile telephone network [80]. They rejected the claim that the wife's family exercised the power that was attributed to them and yet were ineffectual in securing her return to them when they met outside the court in Dhaka [82].

17. It is against this background that the panel came to assess the three letters from lawyers submitted in support of the claim that the appellant was at risk from being falsely prosecuted.

18. In addition there is an arrest warrant dated 29 March 2011 which purports to establish the appellant is to be arrested as he:

> "... stands charged with the offence of kidnapping Women."

19. There is also a record of a hearing in the Supreme Court in Bangladesh in relation to the pending case before the Magistrate in Chittagong dated 4 January 2011. In this, the Supreme Court ordered the appellant be allowed his freedom on anticipatory bail for 4 months. This hearing, of course, predates the arrest warrant. It appears to suggest the appellant being granted bail before his arrest whilst at the same time recording that proceedings were already in train before the Magistrate in Chittagong.

20. The first letter dated 26 September 2012, which post-dates the arrest warrant but does not refer to it, speaks of the criminal case against him before the Magistrate in Chittagong. It records that he was granted *anticipated bail* from the High Court on 4 January 2011. Mr Karim said that he advised the appellant that there was no chance of obtaining bail:

> "Due to its very strict nature of operation by which granting bail is impossible until the trial is finished but the trial would not take place in less than 3 years time. Therefore given the above facts together with the fact that Mr Robin has already left the country would definitely put him into prison for indefinite period."

21. Pausing there, the letter raised a number of difficulties. The High Court, so it is said, granted him 'anticipatory bail'. Mr Karim refers to this as 'anticipated bail', an obvious lapse in language. However, the concept of the High Court granting anticipated or anticipatory bail for an offence for which the granting of bail is 'impossible' strikes us as being somewhat anomalous, or at the very least as calling for an explanation. The High Court order speaks on 4 January 2011 of the case 'now pending' before the Magistrate. It is the same offence for which bail is impossible. Nevertheless, the appellant was granted bail for 4 months (until 4 May 2011?). He is then subject to an arrest warrant on 29 March 2011 for an offence for which bail is

impossible. The panel could not be expected to know the refinements of the bail system in Bangladesh but it is to be expected that they should be adequately advised about it. If they are not, it is neither unlawful nor irrational for the panel to express the view that they are not satisfied the material is adequate to establish the risk relied upon by the appellant.

22. The letter goes on to record that Mr Karim understands that photographs have been circulated throughout the police station in the country for his arrest '... so he cannot hide in any part of the country'. Quite apart from Mr Karim failing to explain how he has come by this information, it strikes us as being surprising that each of the many police stations in Bangladesh is routinely provided with photographs of an individual in relation to whom there is an arrest warrant. Once again, this calls for an explanation or at least provides food for thought. Is this done electronically in relation to all those subject to criminal proceedings? If not, who produces the photographs for circulation? Is it done only for some offences? If so, what are the criteria?

23. Finally, the letter goes on to state that the punishment that the appellant faces is up to 10 years: 'In any event, most accused are convicted in the Court in this kind of cases'. We are bound to ask: Is this his professional view as to an individual who is innocent? What if there is no evidence against the individual? What if his wife gives the lie to these fabricated allegations? If this is his professional opinion as to the outcome, we would expect his opinion to be based upon the evidence in an individual case, rather than a gloom-laden generalisation. We are bound to wonder why he takes on a case if his efforts are bound to be in vain. Would he not do better to advise his client to flee the country? Accordingly, we consider it was open to the panel to question the weight to be attached to this letter. This is not to dismiss it out of hand but to consider it with anxious scrutiny.

24. The second letter is from Mr Debonath dated 24 November 2014. It records the appellant as being treated as an absconder. This suggests the arrest warrant has been served upon him and he has failed to appear. Without his being served, it is problematic to think of his being an absconder. He left the United Kingdom in December 2010 and departed from Bangladesh lawfully, re-entering the United Kingdom on 24 February 2011. The arrest warrant is dated 29 March 2011 and he has never been personally served with it. Once again, the anomaly has to be explained if he is to be treated under Bangladeshi law as an absconder.

25. The letter repeats that he will not be granted bail; that the offence does not permit bail and the case will take between 2 and 3 years to resolve. So much is consistent (or roughly so) with the letter of Mr Karim.

26. The third letter is from Mr Adil. He states that, if proved, he is liable to imprisonment for life or rigorous imprisonment for a term not exceeding 14 years. This is in contrast to the letter of Mr Karim who stated that he would face up to 10 years' imprisonment. The two are inconsistent.

27. The panel considered the letters in paragraph 83. They did not accept that the arrest warrant was a genuine document with its accompanying letter from Mr Debonath. The panel said in relation to Mr Debonath's letter which

> "... stated that the relevant law did not allow bail until the case was finally determined which ran counter to the appellant's claim that he had been granted anticipatory bail in January 2011."

28. Mr Rahman sought to explain that there was no contradiction here. He said anticipatory bail was bail granted before the legal process was fully in place. Once the case was 'up and running' (as it were) then bail was out of the question. There is no warrant for this distinction in the background material or the evidence submitted by the appellant. It would be curious that a person might be arrested for a serious offence and then granted bail in anticipation of his being charged at which point there would be no question of bail. Furthermore, the anticipatory bail that was granted was described as being granted in the course of pending proceedings, that is, proceedings that are 'up and running'. This sits oddly with bail being anticipatory.

29. The panel went on in paragraph 83:

> "Mr Debonath stated he was acting for the appellant in the matter before the Chittagong magistrates but his evidence was different to that of Mr Karim who also acting for the appellant in connection with the criminal matter before the Chittagong magistrates but his evidence was different who had not referred to the arrest warrant in his letter of 2012 – the evidence from the two lawyers is internally inconsistent."

30. It is obvious that it is not internally inconsistent for a lawyer to say he is acting for the appellant in 2012 and for another to say he is acting in 2014, since an individual may change his lawyer. However, Mr Adil's letter and Mr Karim's letter give inconsistent maximum sentences for, apparently, the same offence.

31. For these reasons, whatever the criticism made of the panel's treatment of the letters, what is perfectly clear is that the panel was not prepared to attach significant weight to them in the assessment of risk on return. We are satisfied that this conclusion was properly open to the panel and, from our own examination of the material, we are as bewildered as the panel obviously was with the documentation provided. The assessment required an holistic approach which was bound to take into account the appellant's claim that he was the victim of an entirely unjustified allegation made against him but which, nevertheless, (so he claims) would result in a miscarriage of justice of such magnitude as to result in his being sentenced to life imprisonment (or alternatively 10 years' imprisonment) and there was nothing that anyone could do to prevent it. At the very least he would be imprisoned for 2 or 3 years without the prospect of bail. Such an inherently unlikely claim is bound to have been viewed by the panel with a proper degree of scepticism.

32. This is the crux of the appeal advanced by the appellant before us and, for the reasons we have provided, we reject it.

DECISION

33. The panel made no error on a point of law and the original determination of the appeal shall stand.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL

16 January 2018