Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03523/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5th March 2018	**On 21st March 2018**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

T A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Irvine (instructed by Jacobs & Co, Solicitors)
For the Respondent: Ms J Isherwood (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an application to the Upper Tribunal by the Appellant. The Appellant is a Bangladeshi national who had made a protection claim in the United Kingdom. The First-tier Tribunal Judge was Judge Kimnell who heard the appeal at Hatton Cross on 31 July 2017. He dismissed the appeal in a Decision promulgated on 9th August 2017. That in fact was not the first appeal that this Appellant had had. Initially, he had an appeal heard before Judge Wilson on 23rd September 2016 and on that occasion also the appeal was dismissed. However Upper Tribunal Judge Monson, hearing the case at Field House in December 2016, found that there was a

material error of law by Judge Wilson in his approach to an FIR and remitted the case to the First-tier Tribunal without preserving any findings.

2. So the matter came before Judge Kimnell and he was aware of the difficulties with the previous Determination.

3. The Appellant had claimed that he would be at risk on return because of his links with the BNP in Bangladesh; that he had been arrested; that there was an FIR and charges had been brought against him and his brother. He also claimed that he would be at risk on account of his sur place activities in the UK for the BNP. The Judge found that he could place reliance on a document verification report from the British High Commission in Bangladesh. They had investigated the FIR and found that, although there was one that related to the incident on the date claimed by the Appellant, it did not in fact name the Appellant. There was a subsequent document which had various names on it but again none of those were that of the Appellant.

4. The Appellant also claimed in relation to his activities in the UK. He claimed to be active on behalf of the BNP and I am told that he has given lectures that have been videoed and are on social media and that he has campaigned on behalf of a missing MP from his local area, all of which it is argued, put him at risk.

5. Permission to appeal was granted by an Upper Tribunal Judge who did not find there to be any error in relation to the Appellant being at risk on account of his brother's activities but did think there may be an error in relation to the Judge's consideration of the sur place activities. The Judge also thought there may have been an error in relation to the document verification report, specifically referring to VT (Article 22 Procedures - Directive confidentiality) Sri Lanka [2017] UKUT 00368. I will deal with the latter matter first as Ms Irvine did in front of me.

6. She says that the way the evidence was provided by the British High Commission was unlawful because no consent had been obtained from the Appellant prior to the exercise being undertaken. If I was not to find that to be the case then the weight that should be attached to that document, given that it came from the alleged actor of persecution, should be considerably less than was afforded to it by the Judge. She then referred me to the Decision of Judge Kimnell, at paragraph 8, where he described how the Secretary of State arranged for the British High Commission in Dhaka to examine police records to authenticate the documentation that the Appellant had submitted, namely the scanned copies of the FIR. A visit was made by them on 12th November 2015 but no record could be found of FIR number 14 of 297 on the date of 29th December 2008. However, a later one was discovered relating to the incident on 29th December 2008 which did not contain the Appellant's name. It referred to between 100 and 150 unknown people attacking a presiding officer at a polling station.

7. The Judge then considered that FIR again in paragraph 48. Amongst his findings he said that specific enquiry had been made in relation to the FIR and that it was probably wrong to say there was no link between it and the date of 29th December 2008 because, although it was issued on 30th December, the date and time of the occurrence to which it related was clearly set out as 29th December. However it did not identify the Appellant as an accused.

8. In relation to other documents the Judge noted the Appellant claimed that his name did appear on another document but had been misspelt. The Judge however did not accept that. That document is not the FIR but another document.

9. Ms Irvine referred me to a number of paragraphs in VT. That case relates to Sri Lanka but the principles apply. It talks about the rather obvious point that the Secretary of State, in making enquiries to try and verify an Appellant's claim, must not do anything to increase any risk to an Appellant if returned. She referred me to the section of VT which quotes Article 22, the Council Directive, which states that:-

> "for the purposes of examining individual cases Member States shall not (a) directly disclose information regarding individual applications for asylum or the fact that an application has been made to the alleged actors of persecution of the applicant for asylum, and (b) obtain any information from the alleged actor of persecution in a manner that would result in such actor being directly informed of the fact that an application has been made by the applicant in question and would jeopardise the physical integrity of the applicant and his/her dependants or the liberty and security of his/her family members still living in the country of origin.

10. Ms Irvine referred to the fact that those provisions have been replicated in the Immigration Rules at paragraph 339(1A).

11. She then referred to a specific section of VT, paragraph 24, where it is stated that a State which receives a protection claim should refrain from sharing any information with the authorities of the country of origin and from informing the authorities in the country of origin that a national has presented a protection claim. It does go on to say that the authorities of the country of asylum may not weigh the risks involved in sharing of confidential information with the country of origin and conclude it will not result in human rights violations. Effectively, the Upper Tribunal found that the Secretary of State must not do anything that might add to risk. It also says at paragraph 25 that the advisory opinion says the authorities must seek, in advance, the written consent of an asylum seeker if they want to check personal data in the country of origin. At paragraph 32 it says that breaches of confidentiality during an enquiry in the country of origin could give rise to additional risk to the applicant or to other people connected to the claim in the country of origin. That is all fairly obvious.

However, the question is does it apply to this particular Appellant and what happened in this case?

12. The point was not taken in front of First-tier Tribunal Judge Kimnell. That could have been because nobody had thought to bring it to the Judge's attention or perhaps the representative was not aware of VT. Alternatively it could have been because the representative at that time felt that it did not assist and indeed, as I find, it does not. What we are talking about in this case is not the sharing of confidential information. It is quite clear from the document in the Home Office bundle at section E that a request was received from the Home Office in the UK to verify the FIR in question, 14 of 297 said to have been lodged at the Appellant's local police station on 12th November. Two officials went along to the police station, introducing themselves as officials from the British High Commission and asked to check on their records the veracity of said FIR. The FIR is produced and it does not name the Appellant. It simply refers to an occurrence taking place on 29th December when 100 to 150 persons attacked a polling officer. Nothing that the officers from the High Commission did could possibly count as sharing personal information. I have been provided with nothing to the contrary and I find that the enquiries made do not contravene the wisdom of VT. That leads me to conclude that there was no error of law in the way in which the Judge approached that documentary evidence.

13. The other ground relied upon by Ms Irvine was the way in which the Judge dealt with the sur place activities. She argued that adequate consideration was not given to what the Appellant has been doing in the United Kingdom. At paragraph 35 the Judge set out the Appellant's claim that those activities would put him at risk in Bangladesh because anybody related to the BNP is apprehended and put in jail. That particular claim was contradicted by the evidence of his own witness, the Vice President of the BNP in the UK, who has visited Bangladesh on a variety of occasions without having any difficulties.

14. The Appellant claims to have been active on social media in the UK and to have been campaigning on behalf of a missing MP and that, it was argued, ought to have been found to be sufficient to put him at risk on return. I was referred to country information which, albeit postdating the hearing, probably is unchanged in that time and relates to the activities of the ruling party, the Awami League against the BNP. However the evidence before the Judge also indicated that membership alone of the BNP would not be sufficient to give rise to a risk of persecution. That was supported by the documents provided by the Appellant himself for the hearing and also by Mr Rabbani, the Vice President. As the Judge noted, his willingness to return regularly to Bangladesh indicated that monitoring of BNP members abroad does not take place, otherwise he would be high on the list of people to be monitored and his activities reported back to Bangladesh. Had he believed that that was happening the Judge did not accept he would have returned as frequently as he had. On that basis the

Judge made a finding that the activities in the UK were not monitored and reported back.

15. The Judge also noted Mr Rabbani's evidence that in fact the Appellant should properly be described as a supporter. The Judge found at paragraph 52 that he was acting in the capacity of an ordinary member and his activities, as he set them out to be, would not become known to the Awami League in Bangladesh such as to place him at risk. He was hardly likely to be regarded as a high profile figure and, on the basis that Mr Rabbani himself, a very high profile figure, was not at risk there was no suggestion or evidence to support the Appellant's claim that he would be.

16. I find that the judgment of Judge Kimnell does not contain a material error of law. The VP point argued by Ms Irvine does not apply in this case given the nature of the enquiries. Those enquiries did not offend against the wisdom of that case and the Judge did properly consider the sur place activities and reached reasoned findings clearly open to him on all of the evidence before him and therefore the Appellant's appeal to the Upper Tribunal is dismissed.

Notice of Decision

The appeal is dismissed.

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 Date 19th March 2018

Upper Tribunal Judge Martin

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 19th March 2018

Upper Tribunal Judge Martin