



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03587/2018

THE IMMIGRATION ACTS

Heard at Field House
On 3 August 2018

Decision & Reasons Promulgated
On 7 August 2018

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

MD TANVIR HASAN
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Ahmad of Counsel, instructed by Hunter Stone Law

For the Respondent: Ms Z Kiss, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a Bangladeshi national born on 12 January 1992. He challenges the decision of First-tier Tribunal Judge Devittie to dismiss his appeal on asylum grounds arguing that the judge's findings in respect of his sur place political activities were flawed and that no consideration was given to the Article 8 claim he raised in his grounds of appeal and in Counsel's skeleton argument.

Permission to appeal was granted by First-tier Tribunal Judge Grimmett on 20 June 2018.

2. The appellant entered the UK on 30 October 2010 as a Tier 4 migrant. Further leave was granted in that capacity but curtailed on 20 September 2012 to expire on 19 November 2012. On that date a further application for Tier 4 leave was made but refused on 20 September 2013. The appellant exercised his right of appeal but his appeal was dismissed on 14 February 2014. He did not embark and just over a year later on 24 February 2015 made a private and family life application. That was rejected on 7 May 2015. On 12 November 2015 he made another similar application which was refused and certified on 11 February 2016. In that application he maintained that he was a member of the Bangladesh National Party (BNP). He was accordingly advised of the asylum process. No claim was made and instead on 10 March 2016 he applied to remain as a Tier 5 temporary worker. That application was refused on 14 June 2016. On 26 July 2016 he was notified of his liability to removal. On 7 October 2016 he was served with enforcement papers. He then claimed asylum.
3. The appeal was heard by First-tier Tribunal Judge Devittie at Taylor House on 18 April 2018. The oral evidence focused on the asylum claim and no evidence was given as to any Article 8 claim although it is true that paragraph 276ADE was referred to in Counsel's skeleton argument. The judge was not satisfied that the appellant had been involved in any political activities in Bangladesh and rejected the account of events there. He accepted that the appellant may have been active in the UK but found that this was solely to bolster his claim and that he did not have the profile that would attract the interest of agents of the authorities. the appeal was dismissed on asylum grounds.
4. The appellant puts forward three grounds. He argues that the judge's failure to assess his human rights claim constitutes a material error of law. Secondly, he maintains that he adduced documentary evidence showing that the authorities monitor social media accounts and argues that the judge did not make any findings on his own Facebook postings or the photographs adduced. Third it is argued that the judge failed to give adequate or any reasons for finding that the appellant would not be at risk on return given that he had accepted the appellant's sur place activities.
5. **The Hearing**
6. I heard submissions from the parties at the hearing before me on 3 August 2018. The appellant attended. Ms Ahmad submitted that the judge's failure to assess the Article 8 claim was a material error of law. She submitted that there was no consideration of paragraph 276ADE nor of Article 8 outside the rules. she submitted that the appellant lived with an uncle and aunt although she accepted that was not evidence before the judge but she submitted that there

had been evidence of his cricket activities and that in the time he had been here he had formed a private life and had many friends.

7. On the second ground, Ms Ahmad submitted that the judge had failed to engage with the evidence that the Bangladeshi authorities monitored social media activity for anti-government posts. She submitted that the appellant had adduced Facebook posts which should have been considered. She argued that the appellant's sur place activities had been accepted by the judge and even if they were entered into simply to bolster his claim there was still an obligation upon him to have assessed whether the appellant would be at risk because of them. Inadequate reasons had been given, the decision should, therefore, be set aside and the appeal should be remitted to the First-tier Tribunal for re-hearing.
8. Ms Kiss responded. She maintained that the Article 8 claim was put in very general terms and had to be considered in the context of his poor immigration background and the precarious nature of his status. In those circumstances, it was very difficult to establish a private life capable of success under Article 8. The appellant could continue his cricketing activities in Bangladesh or seek entry clearance to return to work as a coach if he could meet the requirements of the rules. He could be expected to return and could live apart from his parents if they were no longer in contact. His relatives here could support him whilst he re-established himself.
9. It was accepted that consideration of his sur place activities was succinct but that had to be considered in the context of all the other findings on political activity which had not been challenged. The Facebook page in the bundle was not in the name the appellant had given the Tribunal. In any event, the judge's attention was not drawn to it and, in the circumstances, it was not surprising he made no observations about it.
10. Ms Ahmad replied. She referred me to photographs which showed the appellant with the BNP president and people wearing t-shirts supporting the party. She submitted that it was likely that the appellant would have been identified from these photographs and from the meetings attended. He had been here eight years and there were very significant obstacles to his re-integration as he had fallen out with his father and had no family to return to. He would be unable to relocate because he feared the government. He played cricket here and had studied here. Consideration of these factors would have made a material difference to the appeal.
11. That completed submissions. At the conclusion of the hearing I reserved my decision which I now give.

12. Discussion and Conclusions

13. I have considered the submissions and determination of the First-tier Tribunal Judge with care. I have also taken account of the evidence before the Tribunal. Two criticisms have been made of the determination. The first concerns the human rights claim and the second pertains to the asylum claim in relation to the appellant's sur place activities. Although Judge Grimmett only engaged with the first point in granting permission, she did not preclude arguments on the other and so I permitted Ms Ahmad to address me on both matters. I now deal with each in turn.
14. Whilst it is indeed correct that the appellant did cite human rights articles in his notice of appeal and that Counsel did refer to paragraph 276ADE in her skeleton argument, no details were provided as to the nature of his claim. The grounds of appeal simply state that removal would be contrary to his rights under Articles 2, 3 and 8. In so far as the skeleton argument deals with any private/family life claim, paragraph 276ADE is reproduced and a single sentence maintains there would be significant obstacles to his reintegration. No details are given. Various caselaw is then quoted. It is maintained that the appellant has been here since 2010 and thus invariably would have built up some form of private life. Again, no details are given.
15. The appellant's oral evidence only covered his political activities in Bangladesh and in the UK. The evidence of his witness was that the appellant was of good character and had confided in him about his problems.
16. Contrary to Ms Ahmad's submission that the appellant had a close relationship with an uncle, aunt and cousin with whom he lives in the UK, his evidence to the respondent was that he had no relatives here (C24) and there has been no reference to any relatives in the UK in his witness statement or indeed in his oral evidence at either of his hearings. Further, I note that at his recent interview he was asked for reasons other than his activities in Bangladesh as to why he might wish to remain here and he made no reference to any family life with relatives. Indeed, he made no reference to any fear on account of his sur place activities (C25) and I shall come to this point later. There can be no error, therefore, in any failure on the part of the judge to refer to any private life with relatives.
17. I accept that the appellant did make some reference to a private life based on cricketing activities and friends in his interview and witness statement although not in oral evidence. At his interview he referred briefly to a contract to play county cricket and the fact that he acts as a coach to children. In his witness statement he mentioned "good friendships across the community", playing for

cricket clubs and having done some coaching for children and young adults (AB:37, paragraphs 46- 47). The information and details provided are minimal. I note there is documentary evidence relating to his cricketing in his appeals bundle.

18. I accept that it was an error for the judge not to have considered this evidence and not to have made findings on the private life claim raised by the appellant. Plainly, he should have done so even if it was not a matter specifically argued at the hearing and even if no oral evidence was given on the matter. It was raised as a ground, it was relied on in the skeleton argument and there was some documentary evidence relating to it before the Tribunal. The finding that the judge made an error in overlooking this aspect of the appellant's claim is, however, not the end of the matter. I must decide if it is an error that is material to the outcome of the appeal. For the following reasons I find that it is not.
19. The appellant has made two previous Article 8 claims. The first was raised as part of his student appeal in 2014 and the second was made as an application after he failed in his appeal against that decision but was refused and certified. From the evidence I have seen, he relied on his cricketing activities in his previous claims. Other than the passage of time and therefore more cricketing activity, the nature of the claim has not changed.
20. The determination of Judge Phillips of 14 February 2014 addressed the appellant's Article 8 claim. The appellant did not at that time mention any relatives either and his private life claim was based on his cricketing and friends (F72-3). The judge noted that the appellant had failed to complete any studies here and that no friends provided supporting statements (F74). The judge took full account of the appellant's cricketing activities but found that in circumstances where he had come here for a temporary purpose, the claim could not succeed even if it were accepted that he was not in touch with his parents in Bangladesh.
21. There are still no statements from friends. The appellant's witness' oral evidence did not advance the case to any extent. His cricketing activities still cannot overcome the hurdle of the strong public interest in the removal of someone who does not meet the requirements of the Immigration Rules. Of relevance here is the fact that an application for a work permit to play/coach cricket was also refused.
22. The appellant came here for a temporary period. Yes, he has been here eight years but only a quarter of that time was with leave. Ms Ahmad submitted that he had studied here but no evidence of his studies has been provided and the evidence is that he never achieved any qualifications. His status has been precarious since the start and certainly once he was aware of the curtailment of

his leave and the dismissal of his appeal he would have known he had no basis to remain. Any private life established here can be given little if any weight. Given the fact that the majority of his life has been spent in Bangladesh, that he is still plainly in touch with some family members (he claims to have obtained news from his brother-in-law) and that he is still familiar with the culture and language of Bangladesh, there can be no very significant obstacles to his re-integration.

23. In circumstances, therefore, where a similar claim has already been addressed by a Tribunal, where a second human rights application was certified as unfounded and where there is no evidence to show any significant change to the claim which itself is briefly made, I am unable to find that consideration of the appellant's cricketing activities would have made any difference to the outcome of the appeal. It follows that the judge's failure to consider paragraph 276ADE and Article 8 is not material.
24. It is not suggested there is any free-standing Article 2 or 3 claim.
25. There remains the issue of the appellant's sur place activities. These fall to be assessed within the context of a fabricated asylum claim relating to events in Bangladesh. As pointed out by Ms Kiss, no challenge has been made to that conclusion. The appellant's evidence as to his activities here is unsatisfactory. When asked at interview if he was still a member of the BNP, he said he was not sure (C32). When asked about their aims, he said he did not know as he was not in the country (C32). When asked whether he had been involved with the BNP since leaving Bangladesh he replied: *"Not really but occasionally I attend the activity but not on a regular basis"* (C34) which is in direct contradiction to the BNP UK letter which describes the appellant as a committed and active participant in events since 2010.
26. The judge found that the appellant may have been active in UK events but that if so this was solely to bolster his claim. That was a finding entirely open to him given the substantially delayed asylum claim and the wholly unreliable and conflicting evidence given to the Tribunal about the appellant's alleged activities and experiences in Bangladesh. Nevertheless, it is the case that the appellant could still be at risk even if his activities were self-serving. The difficulty for the appellant is that he has failed to show how he would be identified or why or how the photographs and Facebook print out he relies on would come to the attention of the authorities and place him at risk. The photographs to which I was referred tell me nothing about the events they are supposed to depict, when or where they were taken or whether they were published in the public domain. The Facebook page is largely untranslated and, in any event, does not give the appellant's name. there is nothing in the evidence

which would show, to the lower standard, that the appellant is someone who would be identified and would be at risk on return to Bangladesh.

27. For these reasons, I decline to set aside the judge's decision.

28. **Decision**

29. The First-tier Tribunal did not make any material error of law which necessitates the setting aside of the decision. The decision to dismiss the appeal stands.

30. **Anonymity**

31. I was not asked to make an anonymity order and, in any event, see no reason to do so.

Signed

A handwritten signature in black ink, appearing to read 'R. Keir' with a small dot at the end.

Upper Tribunal Judge

Date: 3 August 2018