



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/08306/2017

**THE IMMIGRATION ACTS**

**Heard at Birmingham**

**On 6 November 2018**

**Decision & Reasons**

**Promulgated**

**On 21 November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**MR S M M R  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R Wilcox, counsel instructed by J S Solicitors

For the Respondent: Mr D. Mills, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Bangladesh born on 1 October 1986. He arrived in the United Kingdom on a Tier 4 Student visa on 28 October 2009 and made a subsequent application as a Tier 1 (Entrepreneur) and then as a Tier 4 Student, which is ultimately refused with no right of appeal on 13 March 2014. On 30 April 2015 the Appellant made an application for leave to remain on the basis of Articles 3 and 8 of the ECHR, which was refused and the claim certified. He claimed asylum on 29 December 2015, which application was refused on 14 August 2017. The basis of the Appellant's claim is that he would be at risk on return to Bangladesh due to his

political opinion as a leader of the Jamaat-e-Islami Political Party that he had been general secretary of the party in 2009 whilst attending university. He had previously been attacked by members of the Awami League in October 2006, again on 6 January 2009 and finally on 16 May 2009 before coming to the UK as a student on 28 October 2009. He stated that he and his family had been targeted by the police with false claims being made against him and his family home being repeatedly raided and that his brother had disappeared. He also claimed to have written a number of newspaper articles about government corruption both whilst in Bangladesh and since he came to the United Kingdom. He stated he continued with his political activities in the UK where he is director of global fund raising of the Universal Voice for Justice.

2. The Appellant appealed against the refusal of his asylum claim and his appeal came before Judge of the First-tier Tribunal Boylan-Kemp for hearing on 25 April 2018. In a decision and reasons promulgated on 11 June 2018, his appeal was dismissed. Permission to appeal was sought, in time, on the basis that the judge had erred materially in law: (i) in failing to take account of relevant considerations, in particular, the corroborative effect of witness evidence from Mr Sirajul Shahin who stated that he knew the Appellant in Bangladesh as one of the rising student leaders of the organisation then studying at university and dominating student politics in that campus and Mr Mahabubur Rahaman, who wrote that he knew the Appellant as both had been members of the Dhaka Union of Journalists in Bangladesh and the Appellant was targeted by the ruling authority. The judge at [16] to [17] of the decision and reasons had rejected this evidence at [17] as follows: *"I find that I am in agreement with Mr Tallis (who appeared for the Secretary of State) that these two witnesses did not add much value to the Appellant's account though only able to speak to general matters as told to them by the appellant and because they did not appear to have any particular specific first-hand knowledge of the Appellant's alleged difficulties in Bangladesh."*
3. The second ground of appeal asserted that the judge had erred materially in law in failing to take account of the relevant consideration that the report from Muhammad Nuruzzaman of Capital Law Chamber dated 19<sup>th</sup> April 2018 was an independent report from a lawyer instructed and approached directly by the Appellant's lawyers whilst he was visiting the UK and accordingly the information contained therein could not reasonably be tarnished by inference that the Appellant was involved in its production. Mr Nuruzzaman in his report confirms that an associate from his firm had attended police stations in Bangladesh with a view to confirming the authenticity of the FIRs the Appellant said had been lodged against him and that they had been positively identified as matching genuine FIRs which was not taken into consideration by the judge.
4. Thirdly, it was submitted that the judge had erred in finding that the e-mail from the Appellant's brother as to the continued disappearance of another brother was self-serving at [27] which is contrary to the jurisprudence SS [2017] UKUT 164 (IAC) and AK Afghanistan [2007] EWCA Civ 535.

5. Fourthly, it was submitted that the judge had erred in finding that the newspaper articles provided by the Appellant were unreliable and that he was assisted by his friends in journalism to place these articles in the Bangladesh media, in that the judge failed to consider in light of the Court of Appeal judgment in Danian [1999] EWCA Civ 3000, whether this would, in any event, put him at a risk of persecution.
6. There was no Rule 24 response lodged by the Respondent.

#### *Hearing*

7. At the outset of the hearing I informed Mr Wilcox that I did not have all the relevant documents and it materialised that this was also the case for Mr Mills. Thus copies were taken of both the witness statements of Mr Shahin and Mr Rahaman; the report of the lawyer, Mr Nuruzzaman and the expert report of Dr Ashraf Ul Hoque. I then gave Mr Mills time to read that evidence.
8. Having had the opportunity to consider this evidence, in particular the witness statements that pertain to the first ground of appeal, Mr Mills stated that the decision of the First tier Tribunal Judge could not be defended. He accepted that in light of the evidence contained in those statements, the two witnesses were sufficiently involved in the Appellant's political activity at the relevant time and given that credibility was core to a proper assessment of the claim, this evidence was potentially quite significant in corroborating the Appellant's claim. Consequently, the judge had at [17] of the decision and reasons fallen into error in finding "*they did not appear to have any particular specific first-hand knowledge of the Appellant's alleged difficulties in Bangladesh.*"
9. In light of Mr Mills' concession that there is a material error of law in the decision of the Judge and with the agreement of both parties, I set the decision aside and remit the appeal for a hearing *de novo* before the First tier Tribunal, to be listed before a Judge other than First tier Tribunal Judge Boylan-Kemp.

#### *Directions*

- (1) The appeal should be transferred to Taylor House in London due to the fact that whilst the Appellant lives in Loughborough his witnesses and his legal team are London based.
- (2) The Appellant's solicitors are to prepare a concise and comprehensive new Appellant's bundle, which contains all the material evidence upon which they seek to rely.
- (3) A Bengali interpreter will be required and the hearing should be set down for three hours.

**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 Rebecca Chapman

Date 14 November 2018

Deputy Upper Tribunal Judge Chapman