



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08528/2017

THE IMMIGRATION ACTS

Heard at: Field House
On: 12th April 2018

Decision & Reasons Promulgated
On: 9th July 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

SHM
(anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

For the Appellant: Ms Nnamani, Counsel instructed by Howe & Co Solicitors
For the Respondent: Mr Walker, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Bangladesh. He appeals with permission¹ the decision of the First-tier Tribunal (Judge Telford) to dismiss his appeal on human rights and protection grounds.

Anonymity Order

¹ Permission was refused by the First-tier Tribunal (Judge Elizabeth Simpson) on the 1st December 2017 but was granted upon renewed application by Upper Tribunal Judge Finch on the 13th February 2018.

2. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and Matters in Issue

3. The Appellant has lived in the UK since October 2010 when he was given leave to enter as student. Although he thereafter renewed that leave it expired in April 2015 and the Appellant has since then been an overstayer. When he was apprehended by the police on the 22nd March 2017 he attempted to regularise his position by making an application under the Immigration (European Economic Area) Regulations 2016 to be granted a residence permit as the family member of an EEA national exercising treaty rights. That application, and one that followed on the same footing, was refused. It was not until the 9th July 2017, when facing removal action, that the Appellant claimed asylum.
4. The Appellant advanced three reasons as to why he may face a risk of harm in Bangladesh today. First, he was before he left an activist for Jamaat-e-Islami and as a result drew the adverse attention of the Awami League. He maintains that is a political association which will continue to place him at risk. Second, because he had maintained his political opposition to the current government in Bangladesh by operation of online activism, for instance by posting contentious material on ‘Facebook’. Thirdly the Appellant contends that he and his partner, a Romanian national named C, would face a real risk of harm from Islamic extremists who would be opposed to a Muslim man (the Appellant) living in an unmarried relationship with a Christian woman (P).
5. The Respondent refused the claim on all three fronts in a letter dated 23rd August 2017. She did not believe the Appellant’s claims to be true. She found his evidence about Jamaat-e-Islami to be vague, lacking in detail and uncorroborated. Even if true on the Appellant’s own evidence he was nothing more than a bystander at a dozen protests that all occurred a long time ago. There would be no current risk. The fact that the Appellant failed to claim asylum at any earlier juncture would tend to indicate he has no subjective fear. As for the ‘*sur place*’ claims of online activism the Respondent noted that the Appellant had failed to provide any evidence that he had been so active. Nor had he shown that the Bangladeshi authorities or Awami League would be interested in such posts. In respect of the claimed relationship with C, the Respondent noted that she had twice declined to issue a residence card under the Regulations because the

Appellant had failed to provide satisfactory evidence that he was in fact in this relationship, as claimed. The Respondent was particularly concerned that there was a lack of documentary evidence to prove co-habitation. Protection was refused.

6. The Appellant exercised his right of appeal and the matter came before Judge Telford. Having heard the evidence the Tribunal concluded it to be 'contrived' and lacking in any credibility.
7. In respect of the relationship with C the Tribunal rejected the evidence that this matter had come to the attention of Islamic extremists in his home area who had then threatened his mother. There was no background evidence to support the suggestion that anyone would be interested in killing a Muslim man because he was having a relationship with a Christian woman. It did not accept, on the "scanty evidence" that this was a durable relationship, and noted a "lack of enthusiasm" on the part of C. At paragraph 27 the determination reads: "I noted her statement but I also took into account her lack of attendance. There was no credible explanation for this".
8. In respect of the Appellant's past political activities and persecution in Bangladesh, the Tribunal recognised that the Appellant had produced a 'Rule 35 medical report' indicating that his body bore marks that would warrant further investigation. In the absence of any further medical evidence the Tribunal was not prepared to regard that as corroborative evidence of ill treatment.
9. The Appellant now submits that the decision of Judge Telford must be set aside for the following errors of law: lack of anxious scrutiny, failure to give reasons, impermissibly requiring corroboration in a protection case, and a failure to consider material evidence.
10. The appeal was opposed on all grounds by the Respondent.

Discussion and Findings

11. I consider first the Appellant's alleged fear of persecution for reasons of his association with C. The Appellant claims that he will be at risk from extremists in Bangladesh who have discovered that he is living with a Christian woman whom he has not married.
12. The First-tier Tribunal gave several reasons for finding this aspect of the claim was not made out and in my view they were all good ones.
13. First, there was absolutely no country background material capable of supporting the idea that Islamic extremists in Bangladesh would be interested in the fact that a Bangladeshi man was living with a Christian woman on the other side of the world. The grounds assert that this was not a good reason to reject the

account, but quite frankly, it was. The burden of proof lies on claimants in protection cases. Although the standard by which they must prove their case is a relatively low one, there remains a burden to show that any claimed fear is objectively well-founded. In the absence of any evidence that anyone in Bangladesh would have any interest at all in someone in such a relationship, the Judge was entitled to find that the 'objective risk' element of the claim had not been made out.

14. Second, the Judge was not satisfied, on the "scant" evidence before him that the Appellant was in fact in a durable relationship with C. Her evidence exhibited a "lack of enthusiasm" and there were significant gaps in her knowledge about the Appellant. The weight to be attached to her witness statement was diminished because it was worded in very similar terms to that of the Appellant and appeared to be authored by the same person. Whilst it is true that in the first sentence of paragraph 27 the Tribunal appears to be under the impression that C did not attend the hearing, it is evident from paragraph 13 that it was well aware that she did, and from paragraphs 18, 21-29 that the Tribunal had express regard to her evidence.
15. Third, the chronology suggested an implausible chain of events. The Appellant claimed that his relationship with C was revealed to the outside world by a friend who had posted a photograph of the two of them on his Facebook page. He had tagged the Appellant, using only one of his names, and described C as "his girlfriend". The Appellant claims that within 2 days of that image being posted Islamic extremists in Bangladesh had visited the Appellant's mother at her home and made threats about her son going out with an infidel. The First-tier Tribunal considered it implausible that random strangers in Bangladesh would be able to see that image amongst a great deal of other content, identify the Appellant, identify that someone described as "his girlfriend" was a Christian, decide to take action against him, work out where his mother lived and turn up at her house, in such a short time frame. Even recalling the caution with which decision-makers in this jurisdiction must employ notions of plausibility, I am satisfied that this was a finding open to the First-tier Tribunal.
16. Fourth, no evidence was produced from the Appellant's mother, the only person who had, by the Appellant's account, any direct dealings with the agents of persecution. Ms Nnamani here relies on the well-known principle of asylum law that there can be no requirement upon refugees to produce corroborative evidence. It is however worth recalling why that principle exists. It is of course the case that refugees who have fled for their lives in a situation of great danger cannot be expected to bring with them documentary evidence of their claim. Nor should claimants be expected to produce any evidence from those who would seek to do them harm. In this case, however, the evidence that the Tribunal noted to be absent was any statement from the Appellant's mother, which could easily have been obtained and communicated, and more importantly, a copy of the FIR that it is said she lodged with the Bangladeshi police following the incident. It

was not evident to the Tribunal why that latter document in particular could not be produced. That was a matter relevant to its assessment of whether the Appellant had produced sufficient evidence to discharge the burden of proof.

17. None of the points raised in the grounds go anywhere near to undermining those findings, which were clear, and I find, open to the Tribunal on the evidence before it.
18. Next, I consider the risk said to arise to the Appellant as a result of his activities for Jamaat-e-Islami before he left Bangladesh in 2010. The complaint in the grounds is that the Tribunal has “failed to provide adequately expressed reasons for rejecting the supporting material” in relation to this limb of the claim.
19. I find, with reference to paragraph 43 of the determination, that this is simply not true. The Tribunal there gives four perfectly clear and rational reasons for giving the supporting material little, if any weight. One: it has only been produced now, several years after the claimed events. Two: it appears to have been produced at the behest of the Appellant. Three: no originals are produced. Four: the material was not, in any event, capable of corroborating the Appellant’s claims to have been involved in Jamaat-e-Islami prior to his departure from Bangladesh in 2010. I can find no arguable error of law in any of those reasons.
20. The ground further allege that the determination reveals a lack of ‘anxious scrutiny’. In addition to the reference to the absence of the Appellant’s partner the determination makes reference to the BNP when that organisation did not feature in the evidence, and to the Appellant’s failure to demonstrate that he was a “high ranking politician” when that was not part of his case. It is difficult to know why the Tribunal considered it necessary to mention the BNP, given that the Appellant pledges allegiance to the Jamaat-e-Islami and fears the Awami League. It may be that it is because the BNP feature in his Facebook posts and the country background material as an organisation facing difficulty with the government of Bangladesh. I am not satisfied that the fleeting reference, in a detailed determination of some 77 paragraphs, betrayed a lack of anxious scrutiny. I am not satisfied that the Tribunal failed to deal with the evidence that was relevant to the claim. In respect of the point about whether the Appellant was a politician, Ms Nnamani submitted that perhaps the Tribunal was thinking of another case: that is possible, but in view of the reasoning overall I think unlikely. More likely it was reflecting the claims made in the supporting documentation, for instance the letter from ‘Justice for Bangladesh United Kingdom’ which described the Appellant as a “well known and popular leader in Bangladesh”.
21. The third limb of the Appellant’s case is that he is at risk of serious harm in Bangladesh today because of his activities in the United Kingdom. This ‘*sur place*’ claim is based on his online activity, which he asserts has brought him to the adverse attention of the Awami League, the party in power in Bangladesh. Of

this part of the claim the grounds assert that the First-tier Tribunal failed to adequately substantiate its finding that the Appellant had “no basis for a sur place claim”. It is submitted that in so finding the Tribunal erred in failing to address the evidence of the Appellant’s “blogging activity”. The grounds take issue with the Tribunal’s description of the Appellant’s posts as “repetitive diatribes on the ills of Bangladesh. They do not appear to be informed pieces of the kind of journalism which might one might expect the AL or its members to monitor”. It is submitted that the Tribunal has misunderstood the evidence: the Appellant does not claim to be a journalist.

22. Again, I am bound to say that the grounds do not reflect the actual content of the determination. The conclusions are not so starkly expressed. What the Tribunal found is that the Appellant’s online activity is not of such a manner or level as to bring him to the attention of the authorities or their allies. He is not a journalist, true. The point the Tribunal there makes is that there are no evidential grounds for believing that the government of Bangladesh has the means, willingness or inclination to take punitive action against individuals who accuse them of corruption or hypocrisy on their Facebook pages. The material produced before the First-tier Tribunal as evidence of the Appellant’s ‘high profile’ blogging activity *could* fairly be described as repetitive; it could also be described as a diatribe. What it was not, was journalism of the sort that might attract the opprobrium of opponents in Bangladesh. The key point to be made about the First-tier Tribunal decision is that there was no credible evidence before it that the posts had been read by anyone other than the Appellant’s ‘friends’. I was referred to the extensive country background material in the bundle concerning bloggers but none of that could possibly be read as assisting the Appellant in overcoming the concerns held by the First-tier Tribunal. The evidence shows that at least 9 journalists, publishers or bloggers have been murdered since 2013, all for expressing secular or anti-extremist views. I note that the Appellant’s posts are not of this ilk. Decision makers are asked to assess risk having had regard to the blogger’s profile; that was a matter expressly considered in the determination.

23. I am satisfied that none of the grounds are made out.

Decisions

24. The decision of the First-tier Tribunal does not contain an error of law such that the decision should be set aside.

25. There is an order for anonymity.

Upper Tribunal Judge Bruce
5th July 2018