Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/10071/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 April 2018	**On 1 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

RM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Franco, Counsel instructed by Schneider Goldstein
For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

Anonymity:

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh born on [ ] 1976 who entered the UK as a visitor in February 2008. On 29 March 2017 he claimed asylum. The application was refused on 22 September 2017. The appellant appealed and his appeal was heard by

First-tier Tribunal Judge Paul. In a decision promulgated on 27 November 2017, the judge dismissed the appeal. The appellant is now appealing against that decision.

2. The appellant claims to be at risk of persecution in Bangladesh because of his involvement with and support for the Bangladesh National party (BNP). He claims that in 2006 a case was filed against him because of fighting with the Awami League following which he was arrested and detained for two weeks before being granted bail. He claims that he was, and would be, targeted because he was well-known and politically active, and that in February 2010 he was sentenced in his absence to 4 years in prison. He also claims that the police have visited his home in Bangladesh and that his family face problems because of him. In addition, the appellant claims to have been involved in BNP politics whilst in the UK.

3. In support of his claim, the appellant adduced, inter alia, a warrant for his arrest and a First Information Report which he claims to have obtained through his advocate in Bangladesh; a letter from the BNP office in London; and photographs of a meeting in London with the vice chairman of the BNP. He also relied on supportive witness statements (and oral evidence given at the First-tier Tribunal hearing) from his sister and cousin.

4. The appellant's explanation for not applying for asylum between 2008 and 2017 was that he was advised by a solicitor in 2008 that if he made an application he would be arrested. He also claims that he paid a firm of solicitors to make a human rights application and believed he had a pending application, but the firm subsequently disappeared.

5. The respondent did not accept that the appellant was or had been a member of the BNP or that he had been arrested or sentenced in his absence and refused his application.

Decision of the First-tier Tribunal

6. The judge identified the core issue as being whether the appellant's claim to be a BNP activist was credible. The judge did not accept the appellant's account of being a BNP activist and gave several reasons:

   (1) The judge found the appellant's answers in his asylum interview to be formulaic and "no more than anybody could say if they were pretending that they were in fact activists".

   (2) The judge was critical of the appellant's demeanour. At paragraph 19 the judge stated: "I also took into account the appellant's demeanour during the course of the interview, and his background."

   (3) The judge found, at paragraph 19, that the letter of support and photographs of the appellant at BNP events "were not supported by oral testimony and did not indicate that he was a genuine BNP supporter.

(4) The judge weighed against the appellant the delay in making the application and did not accept his claim to have instructed solicitors to make a human rights application or of having been advised to not apply for asylum.

(5) The judge also weighed against the appellant that the appellant's lawyer from Bangladesh had not explained how he procured the documentation about the arrest.

7. The appellant made a human rights claim. The judge addressed this in a single paragraph, where he stated that the appellant had "not demonstrated there were any significant obstacles to his returning to Bangladesh where he has close family and cultural ties".

Grounds of Appeal and Submissions

8. There are multiple grounds of appeal. The key arguments, in sum, are that:

(1) The judge directed himself that the standard of proof was "a relatively low standard" and it impossible to say what standard was actually applied.

(2) The judge referred to the appellant's demeanour "at interview" when he was not present at the asylum interview.

(3) The judge improperly found that evidence in the form of photographs and a letter should be discounted because they were not supported by oral testimony.

(4) The judge should have "considered with greater care' the witness evidence about the solicitor who prepared the human rights application disappearing.

(5) The judge erred by not accepting the appellant's claim that he was advised that if he made an asylum claim he would be detained and at risk of deportation without appreciating that in light of the discrediting of the fast track system this advice was arguably correct.

(6) The judge erred by misapplying the Tanvir Ahmed standard when, at paragraph 22, he characterised it as "applying the ordinary principles of common sense".

(7) The judge erred by failing to deal properly with the appellant's article 8 ECHR claim.

9. At the error of law hearing, Mr Franco argued that the judge erred by applying himself principally to the delay in making the asylum application and that this "infected" his assessment of the claim with the consequence that inadequate consideration was given to evidence supporting the claim such as the documents from Bangladesh confirming the arrest.

10. Mr Franco also argued that the judge's reference to Tanveer Ahmed being a "common sense" standard showed a mis-understanding of the law. He also maintained that the judge's comment at paragraph 22 that "The documents have not

been subject to an independent verification in the UK" indicated a degree of misunderstanding by the judge given that any meaningful verification would necessarily have to take place in Bangladesh, not in the UK.

11. Mr Franco was also critical of the judge's failure (as he saw it) to address the letter from the BNP in the UK. He also maintained that the judge had relied on speculation when, at paragraph 21, he stated that members of the appellant's community would have been aware of the asylum process.

12. Ms Willocks-Briscoe's response was that the judge had applied the law correctly and had given adequate reasons. She argued that the judge was entitled to give weight to the delay in making the application and his approach to documentary evidence was consistent with Tanveer Ahmed.

Analysis

13. I reject the appellant's submission that the judge applied the wrong standard of proof. At paragraph 19 the judge referred to there being a "relatively low standard." On any legitimate view, this is a reference to the lower standard of proof applicable in asylum claims. There is nothing in the substance of the decision to indicate that the judge did not follow his own direction to apply the lower standard.

14. I also reject the claim that the judge misapplied or misunderstood Tanveer Ahmed. Although it is unclear why the judge has referred to there being a "common sense" test, the point the judge appears to be making at paragraph 22 is that he needed to consider the reliability of the documents the appellant sought to rely on. Whether or not this is "common sense" it is adequately clear from the decision that the judge has adopted the approach required by Tanveer Ahmed.

15. The appellant's case is not advanced by the submission that the judge at paragraph 19 referred to the appellant's demeanour at the asylum interview despite not being present. It is readily apparent, when reading paragraph 19 as a whole that the judge was referring to the hearing (and reference to the interview was a mis-statement). It may be that the judge ought not to have drawn a negative inference from his perception of the appellant's demeanour without, at the very least, giving a clear explanation (which the judge has not done). However, this is not an argument that was made in the grounds or by Mr Franco.

16. Similarly, there is no merit to the argument that the judge ought to have considered with greater care the evidence of witnesses about the appellant's claimed human rights application in 2008 through solicitors who disappeared. There was no evidence before the judge to corroborate that the solicitors existed; that instructions were given to solicitors; that solicitors were paid; or that an application was made. In these circumstances, it was clearly open to the judge to not accept the appellant's account concerning the instruction of solicitors to make a human rights application.

17. The judge was also entitled to reject the appellant's claim that he was following advice when he decided not to make an asylum application and to find that the appellant's community would be aware of the asylum procedure. The appellant's

case was that he was involved with the BNP in the UK. Indeed, to support his claim he submitted a letter from a leading BNP member in the UK. In these circumstances, it is not speculation, as argued by Mr Franco, to make the observation that the appellant would have come into contact with people familiar with asylum applications.

18. The appellant's argument that he was correct to not apply for asylum because the fast track system has been "discredited" is misconceived. The relevant consideration is what the appellant is likely to have been told when he first came to the UK regarding the making of an asylum application, not what the Court of Appeal decided many years later about an aspect of the Immigration System that may or may not have been relevant to the appellant had he made a timely application.

19. Mr Franco contended that the judge's focus on the delay in making an application clouded his assessment of other factors and there has been a failure to give proper reasons for rejecting the appellant's credibility. However, I reject this argument for two reasons. Firstly, at paragraph 20, the judge correctly summarised the significance of delay, stating that it was a material but not determinative consideration. Secondly, although the judge undoubtedly gave substantial weight to the delay, he gave other reasons, unrelated to the delay, to explain why the appellant's credibility was rejected, such as the (non)reliability of the documentary evidence and the "formulaic" responses in the asylum interview.

20. I remind myself of Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC), where the headnote states:

> *(1) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.*
>
> *(2) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.*

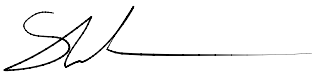
21. This is a case where the judge has directed himself correctly to the law, considered the material issues and evidence that were before him, and carried out an adequate fact finding process. The judge's reasons, although brief, are understandable and adequate; and it is readily apparent, when reading the decision as a whole, why the appellant was unsuccessful. For the reasons give above, I am satisfied that the judge has not made a material error of law.

Decision

22. The appeal is dismissed.

23. The decision of the First-tier Tribunal does not contain a material error of law and stands.

Signed



Deputy Upper Tribunal Judge Sheridan Dated: 29 April 2018