Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/13629/2016**

THE IMMIGRATION ACTS

Heard at Field House
On 26th April 2018

Decision & Reasons Promulgated
On 11th May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

AQA
(ANONYMITY DIRECTION MADE)
Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Representation:

For the Appellant: Mrs R Akther of Counsel, instructed by M & K Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appealed against a decision of Judge Thomas of the First-tier Tribunal (the FtT) promulgated on 26th January 2018.

2. The Appellant is a male citizen of Bangladesh born in February 1980. He claimed to have arrived in the UK in March 2005. He was encountered and arrested on 14th October 2006 working illegally at a restaurant. He claimed asylum having been arrested. His application for asylum was refused on 22nd November 2006 and he did not appeal against that decision. Thereafter he applied for leave to remain relying upon Article 8 in September 2009 which application was refused in January 2010. He

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submitted further submissions in September 2013 which were rejected on 1st May 2014. Fresh submissions were made in August 2015 which were rejected on 13th October 2015. He then made an application for judicial review, which resulted in the Respondent reconsidering the submissions which the Appellant had made on 18th August 2015. The Respondent issued a refusal decision dated 21st November 2016 which the Appellant then appealed to the FtT. The Appellant claimed that he feared persecution by reason of his political opinion, and feared that he would be persecuted and ill-treated if returned to Bangladesh. The Appellant claimed that he had been a member of the Bangladesh Jatia Party (BJP).

3. The FtT accepted that the Appellant had given a credible account and made factual findings at paragraphs 22-29 which are summarised below;

   (a) The Appellant held the position of general secretary of the BJP Party in his home area of Biswanath from 2001 to 2004.

   (b) The Appellant was the victim of two attacks in Bangladesh which occurred in October and November 2004. These attacks were carried out by local members of the BNP and Awami League.

   (c) Documentary evidence produced by the Appellant, which he received from Bangladesh, was reliable.

   (d) After the Appellant's departure from Bangladesh his family were made the subject of false charges which were found not proven by the judicial magistrate.

   (e) An arrest warrant has been issued for the Appellant in Bangladesh.

   (f) The Appellant has not had any political involvement with the BJP or otherwise since he left Bangladesh in 2005 and has not continued his political activities in the UK.

   (g) The Appellant's credibility was damaged with reference to section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 as he entered the UK illegally using a false passport and did not seek to regularise his immigration status for nineteen months, and only then after he was detained for working illegally. This behaviour weighs against the Appellant's credibility but is not fatal to his appeal.

   (h) The Appellant suffered persecution and serious harm in his home area of Biswanath.

4. Having made the findings summarised above, the FtT went on to consider whether there was an internal relocation option for the Appellant and found that there was. In brief summary the FtT found that the Appellant's fear was confined to Biswanath, and when he left that area he resided in Dhaka for a period of time without any difficulty. An arrest warrant was issued in Sylhet and there was no evidence that it had been distributed nationwide and in any event the allegation against the

Appellant was false. The Appellant had no political record of involvement since 2005 and it was "reasonably likely that the warrant may not be executed on return."

5. The FtT also found that if the warrant was executed there was no evidence to show that the Appellant would be detained or exposed to persecution or serious harm and he had access to legal representation in Bangladesh. If the case against him proceeded the FtT found that it would fail as the case against his family members had failed.

6. The FtT also found that the Appellant was not a senior figure or a political activist and would not be regarded as such on return and his involvement with the BJP in Bangladesh was for a short period between 2001 and 2004. It was not reasonably likely that he would now be considered to pose a threat to the Bangladesh government or the state. It was not reasonably likely that he would still face a threat from the Awami League or the BNP or the Bangladesh government. The FtT therefore found that the Appellant had a reasonable internal relocation option away from Biswanath. The Appellant applied for permission to appeal to the Upper Tribunal, relying upon two grounds. Firstly it was contended that the FtT had made a perverse finding in concluding that the Appellant could safely relocate and had failed to appreciate that the Appellant feared the ruling party in Bangladesh and therefore the authorities, including the police would be present throughout Bangladesh. The FtT had not referred to any objective evidence to support the conclusion that the Appellant would not be targeted because of the passage of time.

7. Secondly it was submitted that the FtT had erred by not recognising that past persecution is evidence of future risk. It was contended that the FtT had failed to provide any adequate reasons for concluding that the Appellant could expect any assistance from the authorities in view of his opposition to them and fear of them.

8. Permission to appeal was granted by Designated Judge Woodcraft who found;

> "The grounds of onward appeal argue that in finding relocation feasible the judge has overlooked the fact that the Appellant fears the government and thus nowhere in Bangladesh will be safe. It is arguable that the option of internal relocation was inconsistent with the judge's findings of fact. I note in passing that [24] does not deal with the Respondent's specific concerns about the Appellant's documentation referred to at [14]. All grounds may be argued."

Error of Law

9. At a hearing on 9th January 2018, on behalf of the Appellant reliance was placed upon the grounds contained within the application for permission to appeal. On behalf of the Respondent it was argued that the FtT had not erred in law and had given adequate reasons for concluding that there was a reasonable internal relocation option. On behalf of the Appellant it was argued that the FtT had not adequately considered how the Appellant would be treated if he was returned to Bangladesh and the warrant of arrest executed. On behalf of the Respondent it was pointed out that the Appellant's family had been falsely accused, and had been acquitted of the false charges against them.

10. I found that there was a material error of law in the FtT decision and set that decision aside but preserved the findings which had not been challenged. Those findings are contained at paragraphs 22-29 of the FtT decision. Full details of the application for permission, the grant of permission, the submissions made by both parties, and my conclusions are contained in my error of law decision and directions promulgated on 26th January 2018. I set out below paragraphs 19-23 of that decision which contain my conclusions and reasons for setting the FtT decision aside;

> 19 I reject the contention that the FtT has made a perverse decision, but my view is that the decision discloses an error of law in failing to follow the principles set out in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) in concluding that there is a reasonable internal relocation option available to the Appellant. For ease of reference I set out below the head note to Budhathoki;
>
> It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.
>
> 20 I do not find adequate reasons have been given for the conclusion reached in paragraph 31 that "it is reasonably likely that the warrant may not be executed on return." There is no consideration of the opinion given by the lawyer in Bangladesh that the Appellant would be arrested on that warrant. Therefore no reasons are given for disregarding that evidence.
>
> 21 The Appellant fears the state authorities in Bangladesh, and the FtT does not adequately consider the point made in the Respondent's own guidance note at paragraph 2.3 that in such a case internal relocation will not generally be an option. In view of the findings made by the FtT at paragraphs 22-29, my conclusion is that adequate reasons have not been given for finding that there is a reasonable internal relocation option in Bangladesh. I find that the decision of the FtT must be set aside.
>
> 22 The decision will need to be re-made. It is not appropriate or necessary to remit this appeal to the FtT. There has been no challenge to the findings made by the FtT at paragraphs 22-29 and those findings stand.
>
> 23 There will be a further hearing before the Upper Tribunal restricted to the issue of whether there is a reasonable internal relocation option available to the Appellant.

Re-making the Decision – Upper Tribunal Hearing 26th April 2018

11. At the commencement of the hearing I ascertained that the Tribunal had all the documentation to be relied upon by the parties, and that each party had served the other with any documentation upon which reliance was to be placed. The Tribunal had the Respondent's bundle with Annexes A-F, the Appellant's bundle comprising 160 pages, and the Appellant's supplementary bundle comprising 30 pages, all of which had been before the FtT.

12. The Tribunal also had the Respondent's Country Policy and Information Note on Bangladesh regarding opposition to the government published in January 2018 (the CPIN) and the Respondent's Country Information and Guidance on Prison Conditions in Bangladesh published in March 2015 (the CIG) These documents had been produced on behalf of the Appellant at an earlier hearing on 19th March 2018 which had to be adjourned as the documents had not been served in accordance with directions.

13. The Tribunal also had further documents submitted by the Respondent and these included SH (prison conditions) Bangladesh CG [2008] UKAIT 00076, an ICRC annual report on Bangladesh dated 2016, a joint NGO Report to the UN Human Rights Committee on Bangladesh, and a report on Bangladesh by the World Organisation Against Torture.

14. Mrs Akther confirmed that no further oral evidence would be given and I therefore heard submissions from both representatives which are set out in full in my Record of Proceedings and summarised below.

15. Mrs Akther began her submissions by pointing out that credibility findings made by the FtT had been preserved, and that past persecution was a serious indication of a well-founded fear of further persecution.

16. Mrs Akther submitted that if the Appellant returned to Bangladesh and relocated to an area away from his home area of Biswanath which is in Sylhet he would be arrested on the arrest warrant that had been issued, and he would thereafter be detained. Mrs Akther referred to the Respondent's guidance on prison conditions in Bangladesh at 1.3.5 which describes those conditions as harsh and at times life threatening due to overcrowding, lack of medical facilities and lack of proper sanitation contributing to custodial deaths. Reference was also made to 1.4 of that guidance which states that conditions may reach the Article 3 threshold in individual cases, depending on the particular circumstances of the person concerned. Mrs Akther submitted that this applied to the Appellant who would be a political prisoner.

17. While it was accepted that SH Bangladesh is a country guidance case, Mrs Akther submitted that due to the passage of time, I could depart from the guidance given in that case, that prison conditions in Bangladesh, at least for ordinary prisoners, do not violate Article 3 of the 1950 Convention.

18. I was referred to the CPIN on Opposition to the Government in Bangladesh published in January 2018, which indicates at 2.2.10 that in general evidence does not indicate there is a real risk of state or non state persecution or serious harm for ordinary party members or supporters, although depending on their circumstances and profile opposition party leaders and activists may face harassment or arbitrary arrest and detention. At 2.2.12 guidance is given that decision makers must consider whether there are particular factors specific to the person which would place them at real risk.

19. I was referred to section 2.3 of the CPIN which indicates that if a person's fear of persecution is by the state they will not be able to avail themselves of the protection of the authorities. At 2.4 of the same document it is stated that if the person's fear is of persecution at the hands of the state they may not be able to relocate to escape that risk. Mrs Akther pointed out that at paragraph 34 of the joint NGO Report to the UN Human Rights Committee, there is reference to 39 people being tortured to death in custody between May 2013 and December 2016.

20. Mr Kotas pointed out that the FtT had found that the Appellant had been attacked twice in 2004 in his home area. Mr Kotas pointed to the CPIN of January 2018 at 4.1.1 which confirms that Bangladeshi politics is dominated by two parties, the Awami League (the AL) and the Bangladesh Nationalist Party (the BNP), and the Appellant is not a member of either of those parties. The party to which the Appellant had belonged, the BJP, is referred to at 4.7.1 as belonging to an eighteen party alliance. At 4.8.1 it is confirmed that the BJP has three members in the current cabinet in Bangladesh, but is not in a position to challenge either the AL or the BNP. Mr Kotas pointed out that at 8.1.2 of the CPIN there is reference to 54 people being killed and in excess of 3,000 injured in political violence between January and August 2017, but at 8.2.1 it is confirmed that victims did not include BJP members.

21. Mr Kotas submitted that the background evidence indicated, taking into account that the two attacks on the Appellant had occurred in 2004 and were confined to his home area, that there was a realistic internal relocation option which would not be unduly harsh.

22. Turning to the arrest warrant Mr Kotas submitted that the lawyer in Bangladesh who had written a letter dated 22nd June 2017 which is contained at page 21 of the Appellant's bundle, was speculating when stating that because a warrant of arrest had been issued, the Appellant would be arrested by the police if he returned to Bangladesh.

23. In the alternative, Mr Kotas submitted that if the warrant was executed, this did not necessarily mean that the Appellant would be detained. It was open to a magistrate to grant him bail. I was reminded that the judiciary in Bangladesh had found the Appellant's family not guilty of false charges made against them.

24. If the Appellant was remanded into custody having been arrested on the warrant, Mr Kotas submitted that the prison conditions in Bangladesh did not breach Article 3 of the 1950 Convention. The background evidence indicated that prison conditions in Bangladesh at the present time were no worse than the prison conditions examined by the Upper Tribunal in SH Bangladesh and in fact the ICRC document at page 321 indicated that the Bangladeshi authorities had granted the ICRC access to all places of detention in Bangladesh. This was therefore an indication that conditions were improving. At page 322 there was reference to a total of 9,100 detainees in eight prisons having better living conditions after the authorities made improvements to infrastructure with ICRC technical assistance.

25. I was therefore asked to find that the Appellant did have a reasonable option of internal relocation in Bangladesh, and that even if he was detained on the arrest warrant, prison conditions would not breach Article 3 of the 1950 Convention.

26. In response Mrs Akther submitted that SH is an unsafe decision and did not consider the torture of political prisoners. I was asked to find that the Appellant did not have a reasonable option of internal relocation, and he would be detained on the arrest warrant and held in custody and there was a risk that he would be tortured.

27. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

28. The burden of proving that he is entitled to international protection is on the Appellant. The standard of proof can be described as a reasonable degree of likelihood which is a lower standard than the normal civil standard of a balance of probabilities.

29. I have to consider whether the Appellant would be at risk on return, taking into account the preserved findings made by the FtT, which are summarised earlier in this decision. The issue that I have to decide is whether the Appellant could return to Bangladesh and relocate within Bangladesh, to an area other than his home area in Sylhet.

30. The Appellant has previously been attacked in October and November 2004 in his home area, by local members of the BNP and AL. The AL now form the government in Bangladesh and have done so since January 2009. The AL were therefore not in power when the Appellant was attacked and when he left Bangladesh in 2005.

31. Because the Appellant has previously been the subject of two attacks I have considered paragraph 339K of the Immigration Rules which is set out below;

> The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

32. I take into account that approximately fourteen years has passed since the Appellant was attacked and that it was found by the FtT that he has not had any political involvement with the BJP since he left Bangladesh in 2005, and he has undertaken no political activities in the UK.

33. The background evidence contained in the CPIN of January 2018, which was not challenged by the Appellant, confirms at 2.2.10 that the number of people affected by political violence remains low in proportion to the size of the major parties. In general, evidence does not indicate there is a real risk of state or non state persecution or serious harm for ordinary party members or supporters. Depending on their circumstances and profile, opposition party leaders and activists may face harassment or arbitrary arrest and detention.

34. The Appellant is not an opposition party leader or activist.

35. The main point made by the Appellant is that he is subject to an arrest warrant and would therefore be detained having been arrested on that warrant, and subject to prison conditions that would breach Article 3 of the 1950 Convention. The Appellant must prove that prison conditions would breach Article 3, and the standard of proof is again a reasonable degree of likelihood. Article 3 prohibits torture, inhuman or degrading treatment or punishment.

36. The FtT found that an arrest warrant had been issued and a copy of that warrant has been provided and is dated 10th February 2009. The Appellant's case is that the warrant was issued because a false allegation had been made against him. Details of that allegation have been provided and are contained in the Appellant's bundle. The case against the Appellant relates to an incident said to have occurred on 5th June 2008 near Sylhet town. The Appellant and three others are accused of attacking people at a gathering of supporters of various political parties. The accusation is made by a supporter of the BNP. At that time the BNP would have been the party in power.

37. The allegation is manifestly false because the Appellant was in the UK on 5th June 2008, and had been since 2005. It is his case that he has not returned to Bangladesh since his arrival in the UK.

38. If there was no arrest warrant in force I would have no difficulty whatsoever in finding that the Appellant has a reasonable internal relocation option in Bangladesh, which would not be unjustly harsh. He has not been active in politics since he left Bangladesh.

39. There is however an arrest warrant in force and I must consider whether that puts the Appellant at risk. The CPIN of January 2018 at 2.3 states that where a person's fear is of persecution and/or serious harm by the state, they will not be able to avail themselves of the protection of the authorities. At 2.3.4 it is stated that in general if the threat comes from a non state actor the Bangladeshi authorities are able to provide effective protection but their willingness to provide protection may depend on the profile of the person seeking it.

40. At 2.4.1 of the CPIN it is stated that if the person's fear is of persecution or serious harm at the hands of the state, they may not be able to relocate to escape that risk. If a person's fear is of persecution or serious harm from non state actors, such as supporters of rival political parties, middle ranking and junior party officials in most cases would not be recognised outside their home district and relocation to another area of Bangladesh is likely to be reasonable, depending on the facts of the case and the individual circumstances and profile of the person.

41. The Appellant states that he has a fear of the authorities in Bangladesh, but in my view this is not well-founded notwithstanding the existence of an arrest warrant. It is relevant to note that the complaint that led to the arrest warrant being issued, was made by a BNP party member, and that party are no longer in power and in fact are in opposition to the authorities in Bangladesh.

42. I have to consider whether the warrant would be executed. I take into account the evidence from the lawyer in Bangladesh contained in his letter dated 22nd June 2017 in which he confirms that the warrant of arrest was issued, and if the Appellant comes to Bangladesh he will be arrested on that warrant. The Appellant must prove this to a reasonable degree of likelihood which is a low standard. I find, to that standard, that there is a risk that the Appellant would be arrested on that warrant. I have not been provided with evidence to indicate otherwise.

43. The warrant indicates that the Appellant must then be placed before a magistrate who may release him on bail but is not bound to do so.

44. Again, I remind myself, that it is for the Appellant to prove that he would be at risk. My finding is that there is no real risk that the Appellant would in fact be detained having been arrested on that warrant. The complaint was not made by a supporter of the AL who are the ruling party, but by a member of the opposition party. It is obviously a false complaint, as the Appellant would have no difficulty in proving that he was in the UK in June 2008. If the case against the Appellant proceeded, he has access to legal representation in Bangladesh and he has confirmed, as has the lawyer who wrote the letter dated 22nd June 2017, that a warrant of arrest was issued against his family, and his family were found not guilty by the judicial magistrate. I therefore conclude that if the Appellant was arrested on the warrant but not detained, then he would not be at risk of persecution or ill-treatment.

45. I move on to consider an alternative scenario, and whether the Appellant would be at risk of ill-treatment if having been arrested on the warrant he was refused bail. He would then be held on remand in prison. The CIG on prison conditions in Bangladesh describes conditions as harsh and at times life threatening due to overcrowding, inadequate facilities and lack of proper sanitation. Conditions may reach the Article 3 threshold depending on the particular circumstances of the person concerned.

46. I do not find that I can depart from the guidance in SH Bangladesh. I can depart from a country guidance decision if there are strong grounds to do so supported by cogent evidence. I do not find that is the case here. SH confirms that prison conditions in Bangladesh, at least for ordinary prisoners, do not violate Article 3 of the 1950 Convention. It does however confirm that the individual facts of each case should be considered.

47. Background evidence to which I was referred, does not indicate that prison conditions in Bangladesh now are worse than they were when they were comprehensively considered by the Upper Tribunal in SH Bangladesh. The evidence in fact indicates that there has been an improvement although conditions are still harsh.

48. I do not find that the Appellant has a profile which would mean that if held on remand, he would not be treated as an ordinary prisoner. Taking the Appellant's case at its highest, he would have a very low profile in opposition to the government, taking into account his lack of any political activity since 2005.

49. I therefore conclude that although the Appellant was attacked in 2004, those attacks were localised, and the background evidence indicates that he has a reasonable option of internal relocation. My primary finding is that he would not be detained having been arrested on the warrant, but even if he was, prison conditions in Bangladesh do not breach Article 3, and there is a functioning judicial system to which the Appellant would have access, in the same way as his family had access to representation. The allegation against the Appellant that led to the arrest warrant being issued, is patently false, and I do not find, to the lower standard of proof, that the Appellant would be at risk of being convicted.

50. The Appellant does have a reasonable option of internal relocation, and my conclusion is that he would not be at risk if he returned to Bangladesh and exercised that option.

Notice of Decision

The decision of the FtT involved the making of an error on a point of law and was set aside. I substitute a fresh decision as follows.

The appeal is dismissed on all grounds.

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 his 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. This direction is made because the Appellant has made a claim for international protection.

Signed Date 2nd May 2018

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed. There is no fee award.

Signed Date 2nd May 2018

Deputy Upper Tribunal Judge M A Hall