



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

Appeal Number: PA/00692/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 20 May 2019**

**Decision & Reasons Promulgated
On 05 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**A S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**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.

Representation:

For the Appellant: Ms N Bustani, Counsel, instructed by Chancery Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge N M K Lawrence (“the judge”), promulgated on 14 March 2019, by which he dismissed the Appellant’s appeal against the Respondent’s decision of 11 January 2019, which in turn had refused his protection and human rights claims.
2. The core of the Appellant’s protection claim was as follows. He asserted that he had been and continued to be an active member of the Bangladeshi National Party (BNP) and that this had led to him coming to the adverse attention of the Bangladeshi authorities. He said that his stepfather was a prominent member of the Awami League and that this too caused him problems. As a result of his activities the Appellant asserted that legal proceedings had been issued against him in Bangladesh leading to an arrest warrant. He claimed that he would be at risk on return to his home country.

The judge’s decision

3. The judge sets out his findings on the evidence in some detail between paragraphs 9 and 34 of his decision. A number of adverse credibility findings are made but I summarise those which are the subject of challenge by the Appellant only at this stage.
4. The judge found that documentary evidence from the BNP was unreliable because of the absence of what was described as “contemporaneous” information relating to the Appellant’s past activities in Bangladesh. The judge found that the Appellant had embellished his level of involvement in politics over the course of his claim. He was not satisfied that footage of the Appellant at a demonstration seen on a DVD at the hearing had in fact been broadcast on an internet news service, as claimed. Documents including a First Information Report and an arrest warrant were deemed to be unreliable even in light of a letter from a lawyer in Bangladesh. The judge found that the timing of the Appellant’s protection claim was adverse to his overall credibility.
5. In light of the findings as a whole, the judge concluded that the Appellant was not of a sufficiently high political profile to warrant the adverse attention of the Bangladesh authorities. In respect of this profile the judge referred to “leaders” of the BNP as being at risk.

The grounds of appeal and grant of permission

6. The grounds of appeal make the following specific points. It is said that the judge erred in his consideration of the evidence from the BNP; that he failed to properly consider the evidence from the Bangladeshi lawyer; that he did not raise concerns about the contents of the BNP letters at the hearing; that the evidence of a particular witness, Mr Rahman, was not considered; that the judge erred in concluding that the DVD footage had

not in fact been broadcast; and, even on the Appellant's case at its lowest, as it were, the judge erred in concluding that the Appellant was not of a sufficiently high profile to get risk on return.

7. Permission to appeal was granted by First-tier Tribunal Judge Grimmett on 13 April 2019.

The hearing

8. At the hearing before me Ms Bustani helpfully provided me with page references to the Appellant's bundle as regards the court documents and the lawyer's letter. She relied on the grounds of appeal. She submitted that the errors set out in the grounds were made out. She submitted that the witness' evidence had not been properly considered, that the video footage had in fact been broadcast, and that the BNP evidence was reliable.
9. She sought to amend the grounds of appeal during the course of her submissions in order to rely on an argument that the judge had failed to consider a letter written by the Appellant. I refused this application on the basis that if it was as material as suggested it could and should have been included in the original grounds and that no application had been made between the grant of permission and the midst of the hearing before me.
10. Finally, Ms Bustani submitted that the judge had applied too high a threshold as to the existence of risk on return. The country information did not show that only "leaders" of the BNP were at risk. She referred me to paragraphs 6.1.1 and 6.1.2 of the Respondent's Country Policy and Information Notes on political opponents in Bangladesh, dated January 2018.
11. Mr Tufan submitted that the judge had considered all of the relevant evidence and had made sustainable findings. He was entitled to conclude that the Appellant's profile, based on those findings, was insufficient to show risk.

Decision on error of law

12. Although certain points taken on behalf of the Appellant are not entirely without merit, and that there are certain shortcomings in the judge's decision, overall I conclude that there are no material errors of law in this case.
13. The first thing I would say is that I have endeavoured to read the judge's decision holistically and in a sensible manner. In so doing I take account of the fact that a number of adverse credibility points have not in fact been challenged by the Appellant (see for example paragraphs 13-19 and 28-29).

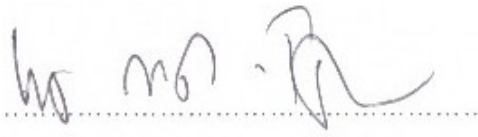
14. Second, it is clear that the judge has expended a good deal of effort and care in producing his decision, having set out and considered a fairly wide variety of sources of evidence that were placed before him.
15. Third, I do not purport to go through each and every specific line of this decision with a fine-tooth comb and to analyse it in unnecessary and unrealistic detail in order to discover claimed errors of law.
16. Proceeding with the above in mind, I now turn to the specific areas of the challenge. On my first reading of paragraph 20 and the judge's consideration of the BNP letters and emails, I had some concerns as to whether he was requiring too much of the Appellant and/or was taking points against the evidence that had not properly been raised at the hearing itself. However, on reflection a better reading of this passage is that the judge was simply taking this evidence in light of matters as a whole and reflecting the uncontroversial proposition that it was for the Appellant to prove the reliability of the documentary evidence relied on.
17. Having looked at all of the BNP letters for myself, the judge was correct to say that no detail was provided and no reference as to how the authors of the letters knew that the Appellant had been involved as claimed. There was no hint as to how the knowledge expressed in the letters was obtained: whether, for example, it was from the direct knowledge of the author or by reference to contemporaneous records kept by the party in Bangladesh. In my view the judge's approach to this evidence was open to him, notwithstanding the lower standard of proof and the absence of a requirement for corroborative evidence (it is of course the case that if corroborative evidence is produced a judge is bound to consider it).
18. I conclude that the judge was fully entitled to find that the Appellant had materially sought to embellish his claim over the course of time, purporting to elevate his role from being what had been described as "just a member of the BNP" at one point to having subsequently claimed to have had a leading role.
19. The detailed assessment of the evidence carried out at paragraphs 17-19 and 21-23 is properly reasoned and was open to the judge.
20. On the issue of the DVD evidence, I accept that this was shown at the hearing itself. I have not been referred to any evidence either before the judge, or indeed at all, to show that the footage was in fact broadcast as claimed. It might have been that the footage contained the logo of a particular news service that would not in of itself prove that broadcasting had taken place. This particular adverse finding was also open to the judge.
21. In respect of the evidence from Mr Rahman, it seems to me that the judge has considered this with appropriate care. It is specifically referred to in paragraphs 25, 28 and 29 of the decision. The judge placed this evidence in the context of his findings as a whole, in my view he was entitled to conclude that this particular evidence did not show any great assistance to the Appellant's claim as a whole.

22. In respect of the lawyer's letter I accept that more could have been said by the judge. However, that does not of course go to disclose a material error.
23. The specific reasons set out in paragraph 31 for the rejection of this evidence is that nothing about any legal proceedings against the Appellant was mentioned in any of the BNP letters. To that extent, the judge was right: nothing whatsoever is contained in the letters and I note that one of these purports to emanate from the BNP in Bangladesh. The judge was entitled to raise a serious concern about the fact that no representatives of the party had mentioned any legal proceedings against the Appellant in that country. Beyond that, and having read the lawyer's letter for myself, its contents are not only brief but on what I consider to be a sensible reading, do not even purport to suggest that the lawyer or anyone on his behalf actually went to a relevant court or police station to have the documents (or at least a case file for the Appellant) verified. It seems to me that on any view of the lawyer's letter, it offered very little, if any, material assistance to the Appellant's claim.
24. The final point relates to the threshold set by the judge in respect of risk on return. It is correct that he refers in paragraphs 30 and 34 to BNP "leaders" being at risk in Bangladesh. Having looked at the country information that was before the judge and cited in a skeleton argument for that hearing, it seems to me as though there is a risk that the judge was setting the bar too high. The country information does not state in terms that only "leaders" of the BNP are subject to arbitrary arrest and/or ill-treatment.
25. Having said that, the country information (including that at 6.1.1 and 6.1.2 of the Respondent's CPIN) clearly does *not* indicate that any and all "ordinary" or "low level" members of the BNP would be at risk on return to Bangladesh. On the evidence that was before the judge I would conclude that would simply be setting the bar far too low. Furthermore, from what I can see, the Appellant's case was not put on the footing that he would either be perceived by the Bangladeshi authorities or actually known as a person of sufficient interest to warrant persecution and/or Article 3 ill-treatment *solely* as a supporter or ordinary member of the BNP.
26. Therefore, whilst the judge may have erred in respect of the setting of the risk threshold, in my view this could not have had a material bearing on the outcome of the appeal. I say this in light of the multiplicity of sustainable adverse findings made by the judge in respect of all core elements of the Appellant's account, as it was put forward to him.

Notice of Decision

The decision of the First-tier Tribunal does not contain material errors of law and it shall stand.

The Appellant's appeal to the Upper Tribunal is dismissed.

A handwritten signature in black ink, appearing to read 'by Mr. Norton-Taylor', is written over a horizontal dotted line.

Signed

Dated: 31 May 2019

Deputy Upper Tribunal Judge Norton-Taylor