



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

Appeal Number: PA/02558/2019

THE IMMIGRATION ACTS

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

**Decision & Reasons Promulgated
On 27 August 2019**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**MR
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Malhotra, Counsel, instructed by Lawmatic Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal Devittie (the judge), promulgated on 21 May 2019, dismissing the appellant's appeal against the respondent's decision dated 27 February 2019 refusing his protection and Article 8 human rights claim.

Background

2. The appellant is a national of Bangladesh born in October 1988. He entered the UK on 15 September 2009 as a Tier 4 (General) Student. He was granted further leave in the same capacity, but his leave was

subsequently curtailed so as to end on 27 August 2014. The appellant however remained in the UK and claimed asylum on 27 November 2017. Although this asylum claim was subsequently withdrawn due to non-compliance on his part, the respondent considered further submissions lodged by the appellant and refused his asylum claim on 27 February 2019.

3. The appellant's asylum claim is premised on his involvement with the Bangladesh Islami Chatra Shibir (BICS), the student wing of the Bangladesh Jamat-e-Islami (BJI) party, an opposition political party in Bangladesh. I summarise the appellant's protection claim. He was a popular and active member of the BICS who successfully recruited many members and participated in regular meetings at his place of study, the Sylhet MC College. The appellant's activities attracted the adverse attention of the Bangladesh Chhatra League (BCL), the student wing of the Bangladesh Awami League. After the Awami League came to power BCL members started provoking and harassing BICS members at the college. On 14 April 2009, during the breakup by the BCL of a BICS gathering at the college, the appellant kicked Kala Faruque, a BCL member who tried to attack him with a knife. Mr Faruque was a prominent member of the BCL and his being kicked by the appellant was said to be a humiliation. As a result members of the BCL started looking for the appellant and he had to avoid going out of his home, attending his classes and going into the town centre. Fearful for his safety the appellant successfully applied to enter the UK as a student.
4. On 8 December 2009 the BCL used their influence over the police to lodge a case against the appellant and 20 other political colleagues relating to a riotous incident that occurred on that date. The appellant believes this was in order to trace them and exterminate them. He claims that this was a politically motivated allegation and that he was not present in Bangladesh when the incident is said to have occurred. A warrant for the appellant's arrest was issued on 15 February 2011 and police came to the family home in order to arrest the appellant. He fears that if he returned to Bangladesh he would be arrested and his political rivals would take advantage of corrupt law enforcement officials to harm him. The appellant claims that the members of the BCL who targeted him are now prominent leaders in Sylhet city. His younger brother, a member of the student wing of the Bangladesh Nationalist Party, was attacked on 14 April 2011 because of his political associations and the police rejected the brother's attempts to lodge a complaint. A friend of the appellant's brother was killed for what are believed to have been politically motivated reasons. The appellant's fears he would be arrested if returned to Bangladesh and detained and tortured. He claims that he could not relocate in Bangladesh as "the grass-root politicians" of the Awami League "are very well connected throughout Bangladesh." The appellant did not make his asylum application sooner because he was "stigmatised by the immigration complexities" of claiming asylum and had been told

by friends that he might be deported if he claimed asylum. He underwent a religious marriage on 28 December 2017 to RB, a British citizen.

5. The respondent accepted that, if an individual had a high profile in an position party or was an opposition party leader, they may face harassment and prosecution in Bangladesh. If however an individual was simply a member or a supporter of an opposition political party there was said to be no real risk of serious harm. The respondent noted that the appellant failed to provide certified documents and failed to provide the credentials of the translator who translated a First Incident Report (FIR) upon which the appellant relied into English. The respondent expressed concern that many of the documents provided by the appellant were written in English and that there was no explanation or other evidence as to how the appellant obtained those documents. The respondent did not accept that the appellant demonstrated that he was politically active in Bangladesh. Nor was the respondent satisfied that the police would not have investigated the attack on the appellant. The respondent concluded that the applicant was not entitled to international protection and that the refusal of his human rights claim would not breach Article 8.

The decision of the First-tier Tribunal

6. The judge had before him a bundle of documents running to 288 pages. This included, inter alia, a letter from the secretary of the BICS dated 25 November 2018, copies of the FIR sealed on 9 December 2012, an Order Sheet sealed on 9 December 2012 by a Magistrate's court in Sylhet, an Order Sheet issued by the same Magistrate's court and sealed on 15 February 2011, a Charge Sheet sealed on 14 or 15 February 2011, an Arrest Warrant sealed by a Magistrate's court on 15 February 2011 relating to the appellant, an Order sealed by the "Court of Metropolitan Session Judge" on 4 March 2018, and translations of all of the above. The judge heard oral evidence from the appellant and his partner.
7. At [9(1)] the judge said he considered the documentary evidence including the FIR and the arrest warrant. At [9(2)] the judge drew an adverse inference from the appellant's delay in claiming asylum, and at [9(3)] the judge found it incredible that Mr Faruque, who was an ordinary member of the BCL in April 2009, would now seek to harm the appellant because of a "relatively minor altercation." The judge noted the absence of any evidence that Mr Faruque was now secretary of the Awami League, as claimed by the appellant in his oral evidence.
8. At [10] the judge stated,

"I have considered in the round the documentary evidence and the background evidence. I am however not persuaded in light of the unsatisfactory features that this Appellant has established that he was more than an ordinary member of the party he claims

to have been activist for during his student days. It is common ground that he did not hold any position. I do not accept his evidence that he was so popular although not holding a position that he attracted adverse interest and would continue to do so. I do not accept the Appellant's claim that there was an incident in which he had an altercation with one Faruq whom he kicked. I do not accept the Appellant's evidence is true that Faruq and other members of the Awami League have been looking for him in the last 8 years and going to his home."

9. And at [11] the judge stated,

"I find that even taking the Appellant's evidence at its very highest and accepting that Faruq would cause him harm in his home area, that it is entirely reasonable to expect this Appellant to relocate to an area of safety. Bangladesh is a country with a large population. The Appellant is in good health and has a good standard of education. He would easily be able to relocate and I do not accept his evidence that Faruq, an ordinary member of the Awami League 10 years ago, would have the means to find him and cause him harm wherever he was to go for safety in Bangladesh."

10. The judge dismissed the protection claim. The judge went on to consider the appellant's Article 8 claim but concluded that the respondent's refusal of the human rights claim would not constitute a disproportionate interference with Article 8.

The challenge to the First-tier Tribunal's decision and the 'error of law' hearing

11. The grounds, which are poorly drafted, contend (a) that the judge failed to adequately consider the Country Policy and Information Note (CPIN) indicating that opposition activists have been targeted and that it was not necessary for the appellant to have a high profile in order to face political persecution, (b) the judge failed to adequately consider the arrest warrant and other documents suggesting the appellant would come to the adverse attention of the Bangladesh authorities and the Awami League, and (c) the judge erred in failing to assess whether the appellant would be required to limit his political activities for fear of ill-treatment, thus breaching the principles established in **HJ (Iran) v Secretary of State for the Home Department** [2007] EWCA Civ 1024.
12. Although the First-tier Tribunal judge granting permission to appeal found no arguable errors of law in relation to some of the grounds, there was said to be an arguable error of law in the judge's failure to explain why no weight was given to the arrest warrant and the failure to make any express finding in respect of the arrest warrant. Permission was nevertheless granted on all grounds.
13. Ms Malhotra focused her submissions on the judge's failure to engage with the FIR and the arrest warrant. The judge failed to make any

finding in respect of these material documents. This was relevant both to the judge's finding that the appellant was not an activist or so popular that he would have attracted the adverse attention of the BCL and the Awami League. It was possible for someone to be ordinary member of a political party but also be an activist.

14. Mr Clarke submitted that the judge had taken account of the FIR and the arrest warrant but that he had implicitly attached little weight to those documents in light of his other adverse credibility findings. both representatives drew my attention to the January 2018 CIPN.
15. I indicated that I would reserve my decision.

Discussion

16. The judge's factual findings are not entirely clear. He appears to have accepted that the appellant was a member of the BICS, although only an ordinary member (see [10]). The judge rejected the appellant's claim that he was an activist on behalf of the party, and he rejected the appellant's claim that he was sufficiently popular so as to attract the adverse interest of the BCL. The judge also rejected the appellant's claim that he kicked Mr Faruque during an altercation and that this gentleman and other members of the BCL would be looking for him 8 years later. The judge was entitled to rely on the appellant's delay in claiming asylum, his seemingly inconsistent evidence relating to Mr Faruque's current position in the Awami League, and the implausibility that Mr Faruque would take such umbrage against the appellant merely from being kicked by him.
17. There were however several documents, including the FIR, the arrest warrant, the charge sheets and the court order (identified in paragraph 6 of this decision) that were capable of supporting the appellant's claim to have been targeted by the BCL/Awami League. The translation of the documents is extremely poor (a point that may ultimately affect their reliability), but they do suggest that the appellant was identified as a participant in a civil disorder incident that occurred on 8 December 2009. The appellant of course had left Bangladesh in September 2009, a point he acknowledges in his statement. He maintains however that the allegations levelled against him were politically motivated because of his activism. Whilst the respondent found the FIR to be unreliable, the judge was obliged reach his own view on the reliability of this document and the other purportedly officially issued documents. If the documents were considered reliable the appellant would be the subject of a serious allegation and the subject of an arrest warrant. This in turn would support the appellant's claim to have been enough of an activist to attract the adverse attention of the BCL/Awami League, and was therefore a factor to be weighed in favour of the credibility of the appellant's account. The documents were clearly material to the issues before the judge. Whilst the judge made brief reference to the documentary evidence he failed to specifically engage with any of the

purportedly official documents and made no finding of fact in relation to their reliability. Whilst the judge may ultimately have been entitled to attach only limited weight to the documents he had, at the very least, to give albeit brief reasons for so doing. The failure by the judge to make any specific factual finding in respect of the reliability of the police and court issued documents or to assess their reliability renders his assessment of the appellant's credibility unsafe.

18. Moreover, if the arrest warrant was found to be a genuine document this would affect the assessment of risk on return and the issue of internal relocation. If an arrest warrant was outstanding against the appellant, then he may be detained on return to Bangladesh. If he were to be detained in prison following an arrest there may be a risk of serious ill treatment (the respondents Fact-Finding Mission to Bangladesh, published in September 2017 and contained in the appellant's bundle of documents, referred, at 2.5.2, to torture being endemic in Bangladeshi prisons). If the appellant is wanted by the state authorities then this may prevent him from internally relocating within Bangladesh. No assessment was made of this possibility by the judge.
19. I am satisfied, for the reasons given above, that the decision of the First-tier Tribunal is infected by errors of law requiring the decision to be set aside. As the errors of law affect both the judge's assessment of credibility and his assessment of risk on return, I am satisfied that the case should be remitted to the First-tier Tribunal for a fresh hearing, before a judge other than judge of the First-tier Tribunal Devittie.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside.

The case is remitted to the First-tier Tribunal for a fresh hearing before a judge other than judge of the First-tier Tribunal Devittie.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal 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.

D.BLUM

21 August 2019

Signed
Upper Tribunal Judge Blum

Date