



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05774/2017

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice
On 14 October 2019

Decision and Reasons Promulgated
On 21 October 2019

Before

UPPER TRIBUNAL JUDGE HANSON

Between

S M
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Smith instructed by Duncan Lewis & Co Solicitors.

For the Respondent: Ms J Isherwood Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Gibbs ('the Judge') who, in a decision promulgated on 1 August 2019, dismissed the appellant's appeal on protection and human rights grounds.

Discussion

The findings

2. The appellant is a citizen of Bangladesh born on 13 May 1971. He sought a grant of international protection claiming to have a well-founded fear of persecution on return to Bangladesh as a result of an actual and/or imputed political opinion from which he will be unable to avail himself of the protection of his country of origin. The appellant also claimed to face a real risk of ill-treatment sufficient to breach articles 2 and 3 ECHR from Abu Jahed stated to be a well-known leader of the Awami League and/or other state actors due to court actions in which the appellant has been named and his actual or perceived political activities.
3. The Judge noted the appellant's immigration history which showed that after leaving Bangladesh in 1998 the appellant travelled to Dubai where he remained for 5 ½ years. On 10 July 2003 the appellant left Dubai with his employer and entering the UK as a domestic worker with leave valid to 1 January 2004. The appellant overstayed and on 11 December 2009 applied for indefinite leave to remain pursuant to article 8 ECHR which was refused on 17 March 2010 with no right of appeal.
4. On 18 May 2015 the respondent sent the appellant a request for further information, but no such information was received. The appellant was treated as an absconder and on 17 March 2017 was encountered working illegally at India Gate restaurant. The appellant refused to comply with the Emergency Travel Document process and on 18 April 2017 claimed asylum. That was rejected in a decision of 1 June 2017 against which the appellant appealed. The appeal was dismissed although the decision was set aside by the Upper Tribunal as a result of which the matter came before Judge Gibbs.
5. The Judge, having considered the documentary and oral evidence sets out findings of fact from [19] of the decision under challenge.
6. In relation to the medical evidence deduced by the appellant by way of a report from Dr Martin dated 28 January 2018, the Judge concluded at [20] that although it was not disputed that the appellant had scars which Dr Martin stated were consistent with an assault the Judge was not satisfied that the assault occurred because of the appellant's political activities. The Judge noted that the appellant had previously through his legal representatives claimed to have been assaulted and tortured by his employers which was found to be an alternative explanation for the scarring.
7. The Judge was concerned that in the appellant's ASC he failed to mention what he later claimed to key aspects of his claim namely his long-standing membership of the BNP and the criminal charges laid against him. The Judge records at [22] the appellant's attempts to address such inconsistency but finds at [23]:
 23. With regards to his membership of the BNP I do not find that the above statement helps to clarify the issue; if anything it appears to me that the appellant was reaffirming his evidence that he joined the BNP only once he was in the UK.

Further, when asked about this issue in oral evidence the appellant said that he had not been asked if he was a member of the BNP in Bangladesh, only since his arrival in the UK. I am not however persuaded by this explanation because the question at ASC.5.5 clearly says: *“have you ever been involved with, or accused of being involved with any pro-government groups, political organisation, religious organisation, armed or violent organisation, group or party?”*

8. The Judge was not persuaded by the appellant’s explanations and found his failure to mention any BNP activity in Bangladesh and the charges he claims to have been laid against him in his ASC undermined his credibility [25].
9. The Judge also noted that the appellant’s membership of the BNP in Bangladesh was a matter that his witness Mr Salam was asked about as in his letter of 4 May 2017 he made no reference to knowing the appellant in Bangladesh or being aware of his party membership there. Despite this Mr Salam in examination in chief recounted meeting the appellant in Jalapur in 1995 when he claimed the appellant was the secretary of the BNP unit there. The Judge notes that the Presenting Officer felt ambushed by the new evidence which the Judge allowed in and for questioning to continue, the issue being the weight the Judge was to give to such evidence. The Judge finds such weight was significantly undermined by late disclosure, particularly given the significance of the evidence, and placed weight upon the fact that while Mr Salam’s letter refers to problems that the appellant experienced in Bangladesh he made no reference whatsoever to having any personal experience of the appellant in Bangladesh. The Judge found the omission by the witness of any meeting with the appellant or of being aware of his political activities in Bangladesh in the letter of 4 May 2017 to be significant which undermined the weight that could be attached to the witness’s evidence as a whole [26 – 27].
10. The Judge also notes that a letter from the General Secretary of the BNP– UK made no reference to the appellant’s political activities in Bangladesh.
11. At [29] the Judge expresses concern that a person who claimed to have been politically active with or on behalf the BNP since 1990, when he was 19 years of age, could only express what is described as a basic knowledge of the parties aims. Within this paragraph the Judge writes: *“In his witness statement the appellant apparently acknowledges that his answers were not detailed but seeks to explain this because of his lack of education. I find however that it is reasonable to expect a person who has dedicated the majority of their life to supporting and promoting a party, and who claims to have held the post of general secretary to be able to express the parties aims and policies in more detail I also find that the appellant has successfully passed ESOL exams in the UK which is evidence of education and ability”*.
12. At [30] the Judge finds that given the concerns regarding the appellant’s political activities in Bangladesh it was also not found reasonably likely that he was attacked as claimed; especially in light of the fact the appellant did not mention any attack in his ASC and it was only in his oral evidence that he has sought to attribute the attack to Abu Jahed’s henchmen, omissions which were found to cast further doubt upon his claim.
13. The Judge notes, however, in [31] that the main focus of the appellant’s claim is that because of his political activities in the UK false charges have been laid against him in Bangladesh and consequently he will be at risk on return. The

- appellant claimed in 2011 he was contacted by a friend in Bangladesh, a secretary for the BNP in the appellant's area, who told him about a building that had been erected without permission on government land by Abu Jahed and that consequently the appellant organised a political meeting in the UK to discuss this. When Abu Jahed found out he laid the false charges against the appellant and the appellant's family members have subsequently been attacked.
14. The Judge's findings regarding this core aspect of the appellant's claim are set out between [32 - 41] of the decision under challenge in which the Judge was not persuaded that the appellant was specifically contacted by his friend with the intention of effecting change, firstly because the appellant had not lived in Bangladesh since 1998 and it was not credible he could be expected to have any influence and, further, that he did not hold any particular position in the BNP - UK which could have led his friend to expect useful intervention [32]. The Judge also noted the appellant accepted in oral evidence that the meeting was the only meeting he had organised in the UK but that the appellant had failed to explain why he decided to arrange this particular meeting given his evidence in reply to question 96 of his AIR that: *"I am not very educated, I just attended meetings and demonstrations when I am able to"* [33].
 15. The Judge also notes that in his oral evidence the appellant said that the meeting was part of Mr Salam's up and coming election campaign which was found to be consistent with a further response to question 93 of his asylum interview where the appellant claimed it was a meeting for people from his party and that Mr Salam had attended. The Judge notes at [34] *"Even if I accept that such a meeting took place I am not persuaded that it was organised by the appellant or that it led to him and his family being targeted"*. The Judge also noted that the letter from Mr Salam made no reference at all to the meeting although claimed in his oral evidence that he had been invited to a meeting by the appellant although it was *"difficult"* to remember the appellant's role. The Judge notes the appellant's account was supported by Mr Wasim but that the weight that could be given to this person's evidence, who was an old friend of the appellant whose was not found to be wholly independent especially in light of the fact Mr Wasim had previously sought to assist the appellant by offering him employment at his restaurant *"The Pride of Asia"*, was limited.
 16. In relation to the documentary evidence produced by the appellant which he claims supported his claim of false charges being laid against him the Judge finds as follows:
 35. I also find that the documents that the appellant has submitted which he claims are evidence of the false charges laid against him contain inconsistencies which undermined the weight that I can attach to them. I find that the arrest warrant (p.A22 of the appellant's bundle "AB") is dated 10 August 2011 whereas the offence of which the appellant is accused however is alleged to have taken place on 30 August 2011 (p.24 AB) and the request by Mr S.I Kurshed Alam to file a formal case is also dated 30 August 2011 (p.A25 AB). There is also a charge sheet (p.A28 AB) which includes the dates 30 August 2011 and 28 November 2011 without explanation. When asked about these discrepancies the appellant was unable to explain, saying that the charges are false and he doesn't know about the alleged incident. Although that explanation does not in itself lack credibility, I find that the

inconsistencies in the documents nonetheless undermined the weight that I can attach to them.

17. The Judge noted reliance by the appellant on a report prepared by Dr Hoque who stated that the Bangladeshi court documents are reliable as they conform to official Bangladeshi legal and administrative standards insofar as the size of the official paper, watermarks, language, typeface, structure, official stamps and other bureaucratic and legal conventions included with them are credible and consistent with his personal observations and, as such, are likely to be genuine. The Judge did not find this view conclusive on the basis that the expert had not been asked to consider the inconsistencies in the documents. At [36] the Judge finds that whilst the documents may have been issued by an official source that did not persuade the Judge that the content is reliable.
18. The Judge also had regard to the respondent's CPIN regarding Bangladesh which refers at 13.2.1 to a report from the Immigration Refugee Board of Canada stating "*There is a significant prevalence of fraudulent documents [in Bangladesh] including passports, birth certificates, bank statements, taxation documents, business documents, school documents, if we ask for it it can be produced.*" The Judge noted the author of report recording that there is no difficulty at all for anyone to obtain such documents although quality varies with the price paid.
19. The Judge did not find that the documents provided by the appellant from Bangladesh pertaining to the criminal charges are reliable.
20. At [38] the Judge finds:
 38. There are, I find, other inconsistencies in the appellant's evidence which, taken individually may not be significant, but when considered as part of the totality of the evidence before me cast further doubt on the credibility of his claim. I find that the timing of the appellant's asylum claim, many years after his leave to remain in the UK expired, and only following his arrest, casts doubt upon the credibility of his claim (s.8 Asylum and Immigration (Treatment of Claimants etc) Act 2004). I do not find credible the appellants evidence in his witness statement (paragraph 19) that since 2010 he believed that he had an outstanding application before the Home Office. Further, the immigration history before me is that his leave to remain first expired in 2004, long before any political activity in the UK and the appellant has failed to explain why he overstayed for six years and did not return to Bangladesh.
21. The degree of anxious scrutiny the Judge applied to the evidence is demonstrated by the finding at [39] in which the Judge refers to an application by the appellant to extend his leave to remain in the United Kingdom made on 1 June 2010 in which there is reference to the appellant claiming he was being abused and tortured by his former employer; although the appellant now denied this before the Judge. The Judge also noted further concern arising from the evidence at [40] in which the appellant had stated in reply to a question in his asylum interview that he had lived at an address in the Mile End Road in London for the previous 10 years which was the address of the Pride of Asia restaurant owned by Mr Wasim, yet in his oral evidence the appellant denied living at that address claiming he moved from place to place. Mr Wasim initially said the appellant had lived at the address but then also changed his evidence to say that this had not been a permanent arrangement.

22. The Judge found that no weight could be placed on letters from Bangladesh said to originate from the appellant's brother and cousin in light of the concerns that were expressed by the Judge regarding the evidence [41].
23. The Judge draws together the threads of the findings in relation to the protection claim at [42] in the following terms:
 42. I am not therefore persuaded that it is reasonably likely that the appellant was a member of the BNP in Bangladesh or was attacked because of his political activities. Although I accept that he joined the BNP - UK and has attended meetings and demonstrations I am not persuaded that it is reasonably likely that he organised a political meeting in 2011 which led to false charges being laid against him in Bangladesh. Nor am I persuaded that following his attendance at a protest against the Prime Minister of Bangladesh that further charges were laid. I am also not satisfied that his family have been targeted. I find that the appellant is no more than a low-level member of the BNP - UK, with no political profile in Bangladesh or outstanding charges. Based on these findings of fact Dr Giustozzi's expert report does not assist the appellant because the appellant's risk on return as assessed by him is based on the appellant's account of being credible. I am not therefore persuaded that the appellant will be at risk of serious harm on return to Bangladesh.

Error of Law

24. The appellant asserts the Judge erred in law when rejecting his claim to be a member of the BNP on the basis that his knowledge of the party was vague within the BNP. The appellant claims there were numerous statements and other evidence which suggested the appellant was in fact a member of the BNP and continues to have problems as a result of his activities in the United Kingdom.
25. Such evidence was clearly taken into account by the Judge and the appellant fails to make out that any of the material provided was not considered and balanced by the Judge when assessing, to the lower standard, whether the appellant's claim is credible. The grounds assert that Dr Giustozzi comments that the BNP organisation is known to be more loosely organised at local level and qualified activists at local level being in short supply make it plausible that the appellant would have limited knowledge of party policies. The Judge was aware having considered the interview that the appellant was able to answer questions about when the BNP was formed, its broad aims and other matters referred to at [14] of the appellants skeleton argument prepared for the hearing on 5 July 2019. Whilst that may be so, the Judge was not satisfied that even accepting a person's degree of knowledge may be variable that the appellant had demonstrated that he possessed a degree of knowledge a person holding the status he claimed within the party in Bangladesh would be reasonable be expected to have. This is a finding within the range of those reasonably open to the Judge on the evidence.
26. It is also important to note the Judge did not reject the appellant's claim solely as a result of his inability to demonstrate the degree of knowledge the Judge found it was reasonable he would have had, had he held the post he claimed to have held in Bangladesh. The Judge clearly considered the evidence holistically and it

- was only having done so that the Judge came to the conclusions referred to above.
27. In relation to the sur place activities in the UK; the Judge was entitled to consider the appellant's claim to have organised a meeting in the United Kingdom which led to problems with Abu Jahed which indicated a status within the party contradicted by the appellant's own claims and other aspects of the evidence as noted above. The Judge's conclusions regarding the appellant's role within the BNP in the UK, his attendance at the one meeting but not being satisfied that the appellant either organised that meeting or that the purpose of the meeting was as claimed has not been shown to be a finding outside the range of those available to the Judge on the evidence. Such finding is supported by the other adverse credibility findings made. As the appellant's claim to have organised such a meeting was not shown to be credible it was reasonable for the Judge to reject the claim made by the appellant asserting he faced risk on return as a result of charges being laid against him associated with that event.
 28. Similarly, it is not irrational for the Judge to have concluded that an alternative explanation for the scarring on the appellant's body had been provided by reference to the appellant's earlier claim of having been tortured and ill-treated by his employer in Dubai. Although the appellant denied having made such a claim before the Judge evidence of the same is in the papers considered by the Judge. The appellant's ability to change his evidence before the Tribunal to enable him to maximise his prospects of success is clearly evident from the evidence made available which casts further doubt upon his credibility.
 29. The Judge clearly considered the expert report of Dr Hoque. The Judge was entitled to find that even if the documents conformed in their presentation and structure to court documents issued in Bangladesh this did not make them genuine. The charges the appellant claimed he faces are defamation with other outstanding charges associated with rioting, murder, and causing grievous hurt, which may lead to life imprisonment. The appellant asserts that he is not claimed that these documents are genuine, and claims to have throughout stated they are not, but the fact they exist will give rise to a real risk on return to Bangladesh of being arrested and imprisoned.
 30. The Judge was fully aware of the appellant's claim. Whilst the appellant claims in his submissions that he accepts the charges are false as he always stated there were not genuine the conclusions in the report of Dr Hoque clearly indicate that he was asked to consider whether the documents were in fact genuine, i.e. charges and related documents issued by a court in Bangladesh. The appellant had claimed this was so even if containing false information/allegations. It is not made out an expert would produce a report stating that in his opinion the documents were genuine if he was not asked that specific question. The appellant's claim that the documents are genuine has been shown to be disingenuous. That is a finding open to the Judge on the evidence.
 31. The Judge goes further than merely indicating that the documents contain discrepancies. Whilst Dr Giustozzi in his report claims it is plausible that Abu Jahed could have abused his position and acted illegally building on public land and that where the appellant has encouraged action to be taken against him Abu

Jahed he will be motivated to bring false charges through the courts as a way of silencing him in the future, the action the appellant claimed gave rise to such a reaction has been found not to be credible. The appellant has been in the United Kingdom for a considerable number of years with no credible evidence that he is a person of any influence within the BNP such as to create a profile that will place him at risk on return. The Judge finds that although it is claimed the documents had been issued by a court and therefore created a risk of arrest on return no such proceedings had been issued. The lack of credibility in the appellant's claim is material to his claim that such documents had been issued by the courts. The document in the format of proceedings issued by the courts in Bangladesh does not necessarily mean it is a document that has actually been issued that will give rise to a real risk on return. The Judge's finding that no such risk arises is within the range of those reasonably available to the Judge on the evidence.

32. The Judge's language is also very specific on this point. The Judge comments that the documents may have been issued by an official source but makes no specific finding that they have been issued by an official source. There was no evidence before the Judge of sufficient clarity to warrant a finding that these documents had been issued by a court of law such as to create a real risk for the appellant on return. The core of the appellant's claim was that such an event had occurred, but that core was not found to be credible by the Judge. That is the Judge's primary finding. Considering, as an option, that the documents may have been issued from an official source does not undermine the core finding. This is not an appeal in which only one finding was available to the Judge and it is not been made out the Judge's conclusion of no real risk being faced by the appellant on return is outside the range of reasonable findings available when considering the evidence as a whole. The Judge's findings are sufficiently clear to illuminate the reasons for why the decision was made. In particular, it was not made out why Abu Jahed would have issued proceedings against the appellant when it was not established through credible evidence that he had done anything to warrant such adverse interest. The Judge's finding is that he is no more than a low-level member of the BNP - UK.
33. The appellant also asserts the Judge has failed to take into account all the evidence at [41] in which the Judge finds she cannot place any weight on the letters or the medical evidence that accompanied that correspondence. This assertion has no merit as the Judge clearly considered that evidence as part of the overall assessment of the appellant's case and considered the weight that could be attributed to the same in light of the findings made. This is not a case of the Judge ignoring evidence but of the Judge assessing the correct degree of weight that could be attached to that evidence. The weight of the evidence was against the appellant, as noted above, warranting little or no weight being attached to evidence supporting a contention that was not found to be credible. The Judge has not been shown to have fettered discretion or not given the evidence the required degree of anxious scrutiny.
34. In relation to the evidence of Mr Salam, the Judge clearly considered that evidence in an appropriate manner. Having considered all the evidence the

Judge makes a finding that the central core of the appellant’s case is not credible. The Judge considered as part of the assessment of the main issues the evidence of Mr Salam. The fact the Judge does not mention a particular aspect of the evidence does not mean it was not considered. The Judge did not consider the evidence of the appellant or Mr Salam determinative in light of the number of other issues that arose as recorded in the determination.

- 35. Whilst the appellant disagrees with the Judge’s conclusions and clearly wishes to remain in the United Kingdom this is not an appeal where the only findings open to the Judge was one in the appellant’s favour, as he is claims. It is not made out the findings or overall conclusions in relation to the protection and human rights claims are not within the range of those reasonably available to the Judge on the evidence. The Judge not only makes findings but also sets out reasons for why those findings have been made. Whilst the grounds disagree they do not establish the Judge’s conclusions are irrational or contrary to the evidence when considered as a whole. The appellant does not establish it is appropriate for the Upper Tribunal to interfere any further in this decision. The determination shall stand.

Decision

- 36. **There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity.

- 37. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 17 October 2019