



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/08367/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 13th June 2019**

**Decision & Reasons Promulgated
On 25th June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**MAU
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Biggs of Counsel, instructed by Eric H Smith
Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

This is the appellant's appeal against the decision of Judge Twydell made following a hearing at Taylor House on 26th October 2018.

The appellant is a citizen of Bangladesh. He has a complex immigration history but suffice it to say that he applied for asylum on 5th December 2014 on the grounds that he would be at risk on return to Bangladesh because of his political activity.

The judge dismissed his appeal, finding that he was not a credible witness and whilst she accepted that he had had some involvement both in Bangladesh and in the UK with the BNP Party, she concluded that he would not be at risk on return.

The appellant challenged her decision on the grounds that the judge had applied the wrong standard of proof, namely the balance of probabilities, finding that it was unlikely that the appellant would be at risk on return, had erred in law in her approach to the documentary evidence, had reached irrational conclusions in respect of whether he could access state protection from persecutory harm at the hands of non-state actors and had failed to make any findings in relation to the evidence of three witnesses who had given evidence in support of the appellant.

Mr Walker accepted that the judge had erred and that the decision would have to be remade.

Whilst the judge cited the correct burden and standard of proof at the commencement of her determination, she did subsequently repeatedly refer to the question of whether it was likely or unlikely that he would be at risk on return.

Whilst this would not necessarily have been fatal, the real problem is that three witnesses gave evidence on the appellant's behalf in relation to a family member who was said to have suffered in Bangladesh as a consequence of the appellants political opinions, and about his activities there. Their evidence was not considered by the judge at all.

Accordingly, she erred in failing to make findings on relevant matters.

It is also the case that, in concluding that the appellant could relocate in Bangladesh and obtain state protection if it were needed, she did not engage with the submission that it was not likely that a known activist, which all parties accept that the appellant is, would realistically be able to obtain protection from the government which he opposes. It was incumbent upon the judge to consider whether he would be likely to repeat the views which he has expressed in the UK on a return to Bangladesh.

This is clearly a very detailed and thoughtful determination and the judge has taken a great deal of time and trouble to consider the evidence, which is extensive. Nevertheless, for the reasons cited above and unopposed by the Secretary of State, the appeal will have to be reheard at Taylor House by a judge other than Judge Twydell.

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.

Deborah Taylor

Signed

Date 22 June 2019

Deputy Upper Tribunal Judge Taylor