



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

Appeal Number: PA/09924/2018

**THE IMMIGRATION ACTS**

**Heard at Royal Courts of Justice  
On 10<sup>th</sup> June 2019**

**Decision & Reasons Promulgated  
On 24<sup>th</sup> June 2019**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**AI**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Reza of JKR solicitors

For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as AI. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings**

1. The appellant's claim for international protection and his human rights claim were refused by the respondent for reasons set out in a decision dated 31<sup>st</sup> July

2018. His appeal against that decision was heard by First-tier Tribunal Judge Wood on 28<sup>th</sup> February 2019 and dismissed for reasons set out in a decision promulgated on 1<sup>st</sup> April 2019.

2. The First-tier Tribunal Judge found;
  - The appellant is a Bangladeshi National;
  - He was secretary to his local BNP in Bangladesh until he came to the UK in 2005;
  - He was not a controversial figure within the BNP;
  - He was a BNP member of relative low importance when in Bangladesh and of lesser importance when in the UK;
  - The documents relied upon to support his claim that he had been charged and convicted for political reasons were unreliable;
  - Although accepted that the appellant had diabetes, it was not accepted that he had memory loss as a consequence;
  - The appellant gave confusing and inconsistent answers that were a clear attempt to mislead the Tribunal;
  - The Facebook messages were created primarily with a view to bolstering the appellant's claim;
  - The appellant did not make social media criticism of the Bangladeshi government or attend demonstrations or meetings prior to his detention in the UK in May 2017;
  - The appellant was not and is not prominent within the BNP;
  - The judge placed very little weight on the appellant's accounts of attacks on him in 1997/8 and 2004/5;
  - There is no question of the appellant facing criminal charges;
  - There is no real risk of him suffering serious harm, even if he were imprisoned;
  - The public interest lies overwhelmingly in his removal from the UK.
3. The appellant sought permission to appeal the asylum decision, submitting that it was unlawfully reliant on inconsistencies and the documentary evidence, and that the First-tier Tribunal judge had failed to approach the issue of sur place activities in accordance with well-established jurisprudence.
4. The appellant was refused permission, by First-tier Tribunal judge Gumsley, to appeal the decision in so far as it related to the conviction, documents and other evidence of claimed activity in Bangladesh and ongoing criminal charges. The appellant did not seek to renew his application for permission on those grounds to the Upper Tribunal.
5. The First-tier Tribunal Judge granted permission on the grounds that it was arguable the First-tier Tribunal judge failed to properly assess the effect of the

appellant's sur place activities by focussing on the motivation rather than the consequences on return.

6. Mr Reza confirmed that the only live issue was the question of sur place activities.

#### Error of law

7. Mr Reza submitted that the First-tier Tribunal judge had failed to consider whether, despite the lack of other political activity, arrests and conviction, the Facebook posts made by him were such, given the background country information, as to place him at serious risk. He drew attention to the postings and their translations. This was, he submitted not considered by the First-tier Tribunal Judge who focussed solely on the motivation for the postings. Anti-Government activists were targeted and the offences for which a person could be charged in such cases were in the main not bailable and no warrant is required. He submitted that an ordinary person could bring an action.
8. Ms Jones acknowledged that the judge had not made specific findings on the impact of the Facebook postings but submitted that the appellant could not and cannot show that any Facebook posts would place him at risk. The starting point was, she submitted the lack of credibility on the part of the appellant. He had signed up for Facebook in the UK and the evidence was that Facebook refused to sign up in Bangladesh. The evidence before the First-tier Tribunal did not show that the Bangladeshi authorities were able to or did monitor Facebook, irrespective of the credibility findings. In such circumstances, the First-tier Tribunal judge would, she submitted, have rejected the claim in any event; the error is not such as to merit the setting aside of the First-tier Tribunal decision.
9. There is no doubt that the First-tier Tribunal judge did not address in his determination what the consequences for the appellant may be if he were returned to Bangladesh having made the Facebook posts he made. The judge did not address the evidence that was before him in relation to Facebook and social media issues. Although Ms Jones submitted that the error was not 'material' the materiality or the lack of materiality requires consideration of the country material relied upon by the appellant, a matter which is not superficial.
10. I am satisfied the First-tier Tribunal Judge erred in law such that I set aside the decision to be remade.

#### Remaking the decision

11. At the end of the hearing on 10<sup>th</sup> June I invited observations on the future conduct of the appeal if I were to set aside the decision. Mr Reza said the appellant would want to submit further evidence to the effect that he continues to make Facebook posts in the same vein and referred to a threat that the appellant has received, a copy of which is in the bundle.
12. I expressed the view that there would be no need for further evidence to be submitted, on the basis that I would reach a decision, if I set aside the First-tier

Tribunal decision, on the basis that the appellant had continued to make postings as previously. Neither party objected to my taking this course of action.

13. I therefore remake the decision taking account of the findings made by the First-tier Tribunal as outlined in [2] above and on the basis that the appellant has continued to make postings as previously, and the claimed receipt of a 'threat letter'.
14. I have had regard to the two bundles of documents filed by the appellant with the First-tier Tribunal (the supplementary bundle being sent to me following the hearing on 10<sup>th</sup> June, it not having been in my file although it was before the First-tier Tribunal) and the case of *MA (AP) [2019] CSIH 13* and to the submissions made by the representatives.
15. The *CPIN Bangladesh Opposition to the Government Version 2.0 January 2018* refers to inter-party violence being continuous but most prevalent during the months leading up to national or local elections. The number of people affected by political violence remains low in proportion to the size of the major parties and the evidence does not indicate a real risk of state or non-state persecution or serious harm for ordinary party members or supporters. Party leaders and activists may face harassment or arbitrary arrest and detention. Political affiliation at times is a motive for arrest and prosecution on criminal charges. If the fear or persecution or serious harm is from non-state agents, the threat may be localised, and relocation is likely to be reasonable. The authorities are able to provide protection, but their willingness may depend on the political profile of the person seeking it. The effectiveness of the police and criminal justice system is undermined by poor infrastructure and endemic corruption. There are reports of thousands of arrests after the 2014 elections (although in general they were not charged or imprisoned; some were released after paying a bribe) with key BNP leaders and activists either in prison, facing criminal charges or forced into exile.
16. A report submitted to the UN Human Rights Council by ODHIKAR dated 13 February 2019 drew attention to what it described as systematic violations to freedom of speech and expression; that restrictions and pressure on mainstream and social media hinders accurate and impartial reporting and proper journalism. The report refers to 'at least 63 people including online and cultural activists, lawyers and journalists' being arrested since the Digital Security Act came into force on 8 October 2018 'mostly for criticising the Prime Minister, her father and the Government on social media and even in TV talk shows.' The report refers to the government blocking 58 news portals and websites on 10 December 2018 which were re-opened several hours later after protests. The bundle does not include a document showing the response of the UN Human Rights Council to this report.
17. A further report by ODHIKAR refers to disappearances which it states are not fully reported as a result of government enforced restrictions and self-censorship in the media. It gives examples of two well-known individuals who were abducted and then resurfaced. The report refers to 90 individuals who were picked up by the security forces, a third of whose whereabouts remain unknown.

18. A Human Rights Watch report dated 8 May 2018 refers to scores of individuals being arrested for political and social commentary critical of the current Government. Those targeted are described as journalists and editors for writing critical articles and 'numerous individuals for allegedly offending religious sentiment or for defamation...a significant number of those arrested are linked to Bangladesh opposition parties'. The examples given in the report include one person who 'shared' a Facebook post; others were individuals who were involved with opposition parties. The report sets out the background to and breadth of potential offences under the legislation and the scope for it to be used to hinder and limit freedom of expression and speech. The report identifies the use of the legislation for political reasons, to silence opposition to the government.
19. Other documents, including a Freedom on the Net report 2018, HRW report 22 December 2018 and 17<sup>th</sup> January 2019, that are in the supplementary bundle catalogue numerous arrests of activists and leaders in political activity.
20. The first ODHIKAR report is rather contradictory: it refers to the banning of Facebook, YouTube and other mobile applications as being 'innocuous' because government cyber security 'was not up to the mark' but also refers to the government having "purchased several sophisticated surveillance tools to monitor social media and gag dissenting voices". The second ODHIKAR report on disappearances does not identify the status or role of those who are said to have disappeared and remain missing.
21. The HRW report has virtually no detail on the nature of the offences committed by individuals which led to arrest. The person who 'shared a post' was detained for three months then released; the author of the post went into hiding. The report is drawn from interviews of activists.
22. *MA (AP)* refers to the well-established principles to be found within *YB (Eritrea)* [2008] EWCA Civ 360 in the consideration of sur place activities. The factual matrix of a claim includes the motivation behind the activities but to be considered in the context of an applicant's political activity in general and the country information available.
23. AI relies upon the threat he claims to have received as a consequence of his postings. There may have been a threat received from someone in Bangladesh although I do not rule out the possibility that this has been manufactured given his pre-disposition to rely on documents that were unreliable and the lack of credibility in his claim overall. The threat, if it does exist, is online to his Facebook account and there is no significant evidence that the whereabouts of the appellant would be traceable when he arrives back in Bangladesh unless he posts his whereabouts or in some other way publicises that he is back there.
24. The postings by the appellant are opportunistic and are not as a result of his political convictions. Although he has continued to post, there is no credible evidence that he will continue to post these opportunistic posts once in Bangladesh and no credible evidence that he is posting now because of his political convictions. He does not otherwise make a credible claim that he is politically active. He can stop posting. He can close his Facebook account. He

has no BNP activity and the postings themselves do not make him an activist. Although for some individuals, their postings may bring that person to the adverse attention of the authorities, the evidence this appellant relies upon does not suggest that Facebook accounts of individuals in the diaspora are routinely monitored or that on arrival in Bangladesh he will be asked for a Facebook account or other social media password; the evidence suggests that the social media accounts that are monitored are those within Bangladesh and, generally, those who have a link to opposition political activism or political activism that could be perceived as being in opposition to the Government or its ministers. The appellant does not fall within that category of individuals. My attention was not drawn to background evidence which indicated that even those who were plainly making opportunistic claims in order to remain abroad were at risk if returned. If he chose to disclose his whereabouts or his whereabouts became known, there is no credible evidence that his postings whilst in the UK would become known or cause him to be at risk. If he chose to disclose postings which are opportunistic and not reflective of his political views and which do not reflect real political activity, that is a matter for him.

25. It follows that the appellant is not a risk of being persecuted on return to Bangladesh.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

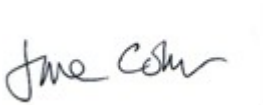
I re-make the decision in the appeal by dismissing it.

Anonymity

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

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

Date 18<sup>th</sup> June 2019



Upper Tribunal Judge Coker