



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11983/2018

THE IMMIGRATION ACTS

Heard at Field House
On 20th June 2019

Decision & Reasons Promulgated
On 12th July 2019

Before

UPPER TRIBUNAL JUDGE BLUM
UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

M T I
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Razzaq-Siddiq, Counsel instructed by City Heights Solicitors
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal Davidson (the judge) promulgated on 25th April 2019 dismissing the appellant's appeal against the respondent's decision dated 30th September 2018 refusing his protection and human rights claim.

Background

2. The appellant is a national of Bangladesh, born in 1991. He entered this country in December 2009 as a student. He was granted further leave until August 2014 in the same capacity. Thereafter he made applications for leave to remain, firstly on Article 8 grounds and then outside the Immigration Rules on compassionate grounds. He also made an application for the issuance of an EEA residence card. These applications were all refused.
3. On 15th June 2018 the appellant claimed asylum. We summarise his claim. He was a member of the Bangladeshi National Party (the BNP) and faced persecution in Bangladesh as a consequence of his political activities associated both with the BNP and with its student wing, the Chatra Dal. He joined the student wing in 2006 and, for a short time before he left the country, became General-Secretary of its branch. In December 2008 he and two other students challenged Sanowar Hossain, a senior member of the Awami League (the political party in power in Bangladesh), alleging that Mr Hossain carried out a corrupt election campaign. In March 2009 several armed men came to the appellant's family house, forced their way in and attacked him and his father. The appellant was able to escape and later sought medical treatment in Dhaka for injuries sustained in the attack. In 2010 his parents moved to a different area because of threats.
4. Although he came to the UK as a student the reason the appellant left Bangladesh was because he believed his life was in danger. He claims that when he first arrived in the UK, and for some time afterwards, he was unaware that he could claim asylum. He intended to return to Bangladesh after his studies hoping that the BNP would win elections due to take place in 2014. He did not however claim asylum after the BNP lost the 2014 elections. The appellant reactivated his membership of the BNP in 2017 in advance of the 2018 elections in Bangladesh and currently holds the post of Assistant General-Secretary of the UK branch. He is involved in online blogging and is one of a number of moderators or administrators of the BNP UK Facebook page. He has his own Facebook page and has posted information in the public domain critical of the Awami League and has also expressed his own critical view of the Awami League.
5. The appellant claims to have received a threatening video posted on Facebook from an Australian section of the Awami League. He maintains that his father was suspended as a Government worker in 2017 on fraud charges that were actually politically motivated, and he claims that his parents' home was attacked in 2018. He has attended several demonstrations in the UK and claims that his attendance at these events has been reported on Bangladeshi TV stations. He additionally claims that his name has appeared in newspaper articles as an activist and that he has, as a result, received threats.

6. The respondent found the appellant's account of events in Bangladesh incredible and rejected his claim to face persecution if returned to Bangladesh. The appellant appealed that decision to the First-tier Tribunal.

Decision of the First-tier Tribunal

7. The judge was provided with a lengthy bundle of documents containing a number of newspaper cuttings as well as screenshots of the appellant's Facebook posts, BNP documents and various other online articles dating from 2018. In addition to the newspaper cuttings not specifically identified by the judge there were several letters from individuals in Bangladesh containing assertions as to his past activities as a member of the student wing. The judge heard oral evidence from the appellant and from a Mr Mohammad Bhuiyan, an acquaintance, who was recognised as a refugee in the UK following a successful appeal.
8. In her decision the judge set out the respondent's case, briefly referred to the documents before her, summarised the appellant's immigration history and the basis of his claimed fear, and directed herself as to the applicable legal principles.
9. Although the judge accepted that the appellant had been involved with the Chatra Dal and had been the General-Secretary of a local branch, she did not find the appellant to be a credible witness and rejected his claim to have been attacked in Bangladesh. She gave several reasons in support of her conclusion. These included an inconsistency in the appellant's evidence relating to his escape from the family home during the 2009 attack, and his failure to claim asylum when he first entered the UK. The judge did not find it credible that the appellant intended to return to Bangladesh after his studies if he was genuinely in fear of his life. Nor was it credible that a politically active person who had previously made a number of immigration applications would not have been aware of the possibility of claiming asylum.
10. The judge found that the appellant was not politically active when he first came to the UK but that he did renew his membership of the BNP in 2017. The appellant said he did not provide posts from his Facebook page dating from before 2017 because the translations cost £20 per page, but the judge rejected this account as incredible. The judge found that the appellant was currently politically active and that he genuinely supported the aims and values of the BNP, but that his current activities had been undertaken to bolster his asylum claim.
11. At [35] the judge stated,

"I have to consider whether the documents relied on by the appellant are authentic and whether they indicate that he is at risk on return to Bangladesh. I must consider these according with the case law of **Tanveer Ahmed IAT 2002 UKIAT 439** which provides that it is for the appellant to show that the documents are reliable."

12. Then at [36] the judge stated:-

“Country information on Bangladesh notes that fraudulent documents are readily available in Bangladesh. In the light of my credibility findings and this country information, I place little weight on the documents before me”.

13. The judge then summarised the background evidence without reference to any specific report or article. She noted that the Awami League was intolerant of active opposition, that there was a culture of corruption in Bangladesh, but that membership or support of opposition groups did not itself give rise to a well-founded fear of persecution in Bangladesh. The existence of a risk depended on an individual’s circumstances including the level of involvement in political opposition, the nature of the person’s claimed political activity or profile, and the extent to which this had come to the adverse attention of the authorities, as well as the person’s previous experiences in Bangladesh.

14. At [38] the judge identified the issue she had to determine as being whether the appellant’s level of involvement in BNP activities and his profile were such that he would come to the adverse attention of the Bangladeshi authorities if removed. The judge found that the appellant was not a leader or agitator, that he was at most a low-level online blogger, and that he generally posted material in a closed group of likeminded people. The judge then found that the appellant’s level of political involvement was unlikely to be sufficient to make him a person of interest on return to Bangladesh. At [39] she stated,

“Even if I accept that the threat made by Australian Awami League have made threats [sic], there was no evidence that these would be acted on in Bangladesh and it is the nature of online forums that threats are frequently made without necessarily representing a physical danger”.

15. The judge dismissed the appeal.

The challenge to the judge’s decision

16. The grounds of appeal contend that the judge’s assessment of the evidence and the appellant’s credibility was flawed. There was said to be no inconsistency in the appellant’s account of his escape from his family home, and that in drawing an adverse inference on this basis the judge acted in a procedurally unfair manner. The grounds further contend that the judge failed to engage with or take into account the appellant’s explanation for not claiming asylum when first entering the UK. The grounds additionally contend that the judge failed to give any reasons for rejecting as incredible the appellant’s explanation for the absence of Facebook posts from 2016.
17. The grounds then contend that the judge erred in her approach to the documentary evidence as she “put the cart before the horses” because she had already reached her adverse credibility findings and then relied on those adverse credibility findings in determining what weight, if any, to attach to the documents. The grounds finally contend that the judge failed to contextualise

the risk identified in the Facebook post from the Australian Awami League when set against the background evidence indicating the targeting of online activists.

18. Permission to appeal to the Upper Tribunal was granted in respect of all the grounds. At the 'error of law' hearing Mr Jarvis made his submissions in reliance on two authorities, **HH (Ethiopia) [2007] EWCA Civ 306** and **NP (Sri Lanka) [2015] EWCA Civ 975**. It was not necessary for us to call upon Mr Razzaq-Siddiq.

Discussion

19. We are not persuaded that the judge erred in law when approaching the inconsistent evidence relating to the appellant's escape from his family home. The inconsistency, as to whether he made his escape through a back door or was rendered unconscious before he left, would have been apparent from the appellant's written and oral evidence. It was open to the appellant's representative to have put this to the appellant in re-examination. Moreover, it was specifically relied on by the Presenting Officer in his submissions to the judge. The allegation of procedural unfairness has no merit.
20. We find there is some merit in the contention that the judge failed to adequately assess the appellant's evidence that he intended to return to Bangladesh after his studies. The appellant hoped that the BNP would win the 2014 elections and that he would be able to return in safety when his studies were completed. Although the judge does refer to this explanation in the section of her decision summarising the appellant's account, she has not engaged with the explanation in the section of her decision setting out her findings and her reasons. We find however that this error is unlikely to have been material given that the appellant failed to make an asylum claim after the Awami League won the 2014 elections.
21. The appellant explained that he did not provide evidence of his Facebook posts prior to 2017 because the translations cost £20 per page. The judge found this explanation to be incredible. The judge has not however given any reasons to support her finding. In the absence of any evidence to the contrary we do not find the asserted cost per page to be inherently implausible. Nor is it inherently incredible that the appellant may have limited funds and would wish to focus on obtaining what he considered to be the most significant evidence. While the judge may have been entitled to reject this explanation, it was incumbent on her to have given brief reasons why she found the explanation incredible. To the extent that the judge has held this against the appellant, we find she had erred in law by failing to give adequate reasons.
22. We additionally have concerns with the approach adopted by the judge to the documentary evidence. It is a trite proposition of law that a judge must not conclusively reject the central features of an appellant's account of events or activities before considering other evidence relevant to that account. This is

clear from Mibanga [2005] EWCA Civ 367, which concerned expert medical evidence, but also the decision in MT (Credibility assessment flawed – Virjon B applied) Syria [2004] UKIAT 00307, which was concerned with a failure by a judge to holistically consider documentary evidence when assessing an account of persecution. We note that in HH (Ethiopia) the Court of Appeal indicated that Mibanga was not to be regarded as laying down any rule of law as to the order in which judicial fact-finders were to approach the evidential materials before them, and that a judge has to start his or her assessment somewhere. We also bear in mind that it is not necessary for a judge to make discrete findings in relation to each document in circumstances where the judge had already found an appellant's account to be so inherently unbelievable that the documents provided in support could not lend it any credibility (NP (Sri Lanka)). The judge found some of the appellant's assertions to be credible, such as his political involvement with the Chatra Dal in Bangladesh, and that he was politically active in the UK, albeit in order to support his asylum claim. We have already expressed our concerns with some aspects of the judge's adverse credibility findings. Although the judge rejected the appellant's account of being attacked in Bangladesh, she did not find it was inherently unbelievable.

23. Reading [36] of the decision one is left with the impression that the judge had already conclusively determined the appellant's account of events in Bangladesh as incredible before approaching the large volume of documentary evidence. Whilst she did refer to the availability of false documents in Bangladesh, she dismissed the documentary evidence principally because of her previous adverse credibility findings, even though some of that documentary evidence was relevant to the appellant's account. This was, in effect, putting the cart before the horse. We appreciate that some of the documentary evidence upon which the appellant relied was self-serving and may have attracted little weight. There were however other documents that did provide some support for the appellant's account of ill-treatment in 2009. There was, for example, a letter issued by the President of the Youth Wing dated 6th August 2018 describing his visits to the family home and his visit to the hospital where the appellant claimed he was admitted. There was a newspaper cutting from 8th March 2009 describing the attack and there was a medical certificate dated 11th March 2009 describing laceration injuries. There were also several documents relating to the current prominence of the appellant's political activities which were potentially relevant when assessing any risk he may face based on his sur place activities. Although the judge found that the sur place activities were low level and insufficient to draw the appellant to the adverse attention of the Awami League or Bangladesh authorities, the background documents arguably painted a different picture. There were specific references to the appellant in both news/propaganda websites (e.g. from an online news portal named Sabujpatardesh.com) and in newspaper cuttings (e.g. from the Weekly Bangla Post dated 12 to 18 October 2018 and 11 to 17 January 2019, a newspaper cutting from the Weekly Surma dated 1 to 7 March 2019).

24. We acknowledge that the judge gave several reasons for her adverse credibility findings and that she was entitled to take into account country information indicating that fraudulent documents were readily available. But some of the documents relied on by the appellant appeared, at least prima facie, to be capable of bearing weight, and neither the respondent nor the judge identified any specific elements of any of the documents as detracting from their reliability. Given the array and nature of the documents upon which the appellant relied, and having found that the appellant was politically active since 2017, we find that the judge erred in law by failing to adequately consider those documents for the reasons she gave.
25. While the judge may have been entitled to conclude that the appellant's account of being targeted in Bangladesh was incredible and that he did not face a real risk of ill-treatment as a result of his sur place activities even if she had properly approached the documentary evidence, we cannot say that she would inevitably have reached these conclusions. We consequently find that the errors of law require the decision to be set aside.
26. In light of our concerns with the sustainability of the judge's credibility findings and her failure to adequately consider the background evidence relating to both the appellant's credibility and any risk on return, we are satisfied there has been no proper consideration of the application by the First-tier Tribunal and that, pursuant to 7.2 (b) of the Presidential Practice Statement, it is appropriate to remit the matter back to the First-tier Tribunal to be considered afresh before a judge other than Judge of the First-tier Tribunal Davidson.

Notice of Decision

The First-tier Tribunal decision contains errors on a point of law and must be set aside.

The case is remitted to the First-tier Tribunal, to be determined by a judge other than judge of the First-tier Tribunal Davidson.

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.



Signed

Date 4 July 2019

Upper Tribunal Judge Blum