



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

Appeal Number: PA/12939/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 15 March 2019**

**Decision & Reasons
Promulgated
On 04 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**MD KAMRUL ISLAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sharma of Counsel

For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh. He was born on 2 May 1969. He appealed against the respondent's decision dated 28 September 2018 refusing him asylum, humanitarian protection and on human rights grounds.
2. The appellant's appeal was dismissed by Judge Beg (the judge) in a decision promulgated on 9 January 2019. The judge did not find the appellant to be a credible witness. She found he would not be at risk on

return and as regards Article 8, that the respondent's decision was proportionate.

3. The grounds claim that the judge erred because she misdirected herself with regard to various issues:
 - (a) The judge found there were inconsistencies where there were arguably none at [29] and [30] of the decision with regard to a newspaper article and hospital discharge report.
 - (b) At [32] the judge doubted the appellant's account at screening because he said it was only Mr Choudhury who came to his house threatening his parents whereas at the substantive interview he said it was 40 or 50 people who came with others. The grounds claim the screening interview was brief. The appellant was not asked to state everyone's name.
 - (c) As regards [33] and [34], the judge did not consider the medical evidence confirming the appellant's father's hearing problem.
4. Further, the grounds claim the judge erred in casting doubt on the appellant's reasons for leaving Bangladesh in 1998 whereas the appellant had given reasons at [15] and [34] of his statement dated 7 December 2018 which the judge did not consider.
5. As regards [35]-[37] of her decision the judge erred in saying that the documents submitted were self-serving. The grounds claim that the appellant had given details of the documentation. In particular at [29] of his witness statement.
6. At [38] the grounds claim the judge erred because she said no explanation was provided as to why the criminal case documents were served so late. The judge erred because it was explained on page S39 that the documents were only received on 28 November 2018 which was a clear indication as to why they were served late. In any event, the late service was not put to the appellant to explain.
7. At [39]-[40] the judge criticised the appellant because he failed to mention previously that any criminal cases had been lodged against him or that he was the subject of an arrest warrant. The grounds claim it was raised at SCR.1 at A5 of the respondent's decision that the appellant feared the police which was a clear indication of a criminal case or charge against him. The grounds say that unless the appellant was asked specifically at AIR or in cross-examination he was not able to explain that issue.
8. In any event, the judge did not make any clear findings about the documents that the appellant submitted with regard to the criminal case.
9. It is claimed the judge erred at [45] in finding that the appellant could seek state protection. That failed to take into account that state protection would not be available for a BNP politician.

10. In any event, the grounds claim that the judge accepted there was ample evidence in terms of sur place activities here for BNP-UK such that she erred in the adverse findings she made.

11. Judge L Murray granted permission to appeal on 5 February 2019. He said *inter alia* as follows:

*“3. It is arguable that the First-tier Tribunal Judge erred in relation to dates finding there were inconsistencies where there arguably were not in paragraphs 29 and 30 of the decision in relation to a newspaper article and hospital discharge report. In relation to the former the judge concluded that the date of the incident was 20 December 1997 whereas it was 21 December 1997 and in relation to the latter noted that the appellant was admitted to hospital on 28 January 1998 whereas the report states it was 21 December 1997. It is also arguable that the judge erred in concluding the documentation was self-serving [paragraph 35] without giving a reason **(R (on the application of SS) v SSHD (“self-serving” statements) [2017] UKUT 00164 (IAC))**. The other grounds are less arguable but I do not refuse permission.”*

12. There was no Rule 24 response.

Submissions on Error of Law

13. Mr Sharma summarised and clarified the grounds:

Dates. At [29]–[30] the judge made adverse credibility findings regarding the attack in 1997 and the consequent admission and discharge from hospital in January 1998. The appellant said at interview Q69, asked when the attack took place, *“It was 12 December 1997. I think I am slightly confused with the date. It was towards the end of December some time.”* In support of his claim to have been attacked, he produced a translated copy of the Daily Jalalabad dated 22 December 1997 which refers to an attack *“yesterday”* which would have been 21 December 1997, not 20 December 1997 which the judge mentioned.

14. At [30] the judge took issue with the discharge certificate. The judge correctly said it was dated 28 January 1998 but incorrectly said he was admitted on the same date, whereas the discharge certificate said that he was admitted from 21 December 1997 to 28 January 1998. The discharge certificate was consistent with the evidence the judge recited at [20] that the appellant claimed to have been in hospital for five weeks.

15. At [40] the judge drew an adverse credibility finding with regard to the appellant’s supplementary bundle served on the day of the hearing because of the inconsistencies she thought she had identified. *“In light of the inconsistencies in the appellant’s various accounts, I attach very limited weight to the documents. I find that all the objective evidence on*

Bangladesh indicates that documents can be easily and fraudulently obtained.” Mr Sharma submitted that all documents including those in the supplementary bundle were served with the appellant’s claim except his witness statement. The judge at [38] said the appellant had provided no explanation as to why the documents in the supplementary bundle were provided so late but she gave him no opportunity for an explanation.

16. As regards [35]-[37] of the decision, the judge found it “*highly questionable*” why the appellant would publicise his name especially as he was in the United Kingdom at that time. Mr Sharma said that there was an explanation. He drew my attention to [22] and [39] of the appellant’s statement of 7 December 2018 which responded to [55] of the Reasons for Refusal Letter. He said at [39] that the decision-maker had failed to understand what he was trying to explain at Q141. The point put by Mr Sharma was that there was an explanation before the judge which she did not consider.

Sur Place. The judge took into account the photographs of the appellant’s attendance at meetings and demonstrations in the UK at [43] of her decision. She found that he was an ordinary member who had no official role and had no profile either here or in Bangladesh. She found that taking the appellant’s case at its highest he was an ordinary member of the BNP in Bangladesh before he came to the United Kingdom. Mr Sharma submitted that if what the appellant said at [41]-[43] at supplemental bundle P20 was correct, bearing in mind the inconsistencies he had identified in the judge’s decision regarding the documentation, the appellant had a much higher profile. Further, there was evidence at CO6 of the appellant’s bundle that if the appellant was credible, he would be unable to avail himself of state protection. See 1.3.10-1.3.11.

17. Mr Tufan accepted the judge had made errors at [29]-[30] but said they did not affect the judge’s decision overall. Put simply, the claimed incident happened in 1997 and the appellant had been back many times since. The judge’s use of the phrase “*self-serving*” was unfortunate but she was entitled to reach her decision that little weight could be placed upon the documentation and in any event, there was no evidence it had been distributed.

Conclusion on Error of Law

18. There is no question that the judge erred in what she said. I must consider whether such errors as I have identified, were material.
19. The core of the appellant’s account and the foundation upon which his asylum claim is based is that he was an active member of the BNP in Bangladesh. He said he was attacked by members of the Awami League in December 1997. The appellant claimed to be a vice president as well as being publicity secretary and joint secretary. At Q4, he said he would give talks as a vice president. At Q65, he was asked whether he encountered problems and at Q65 he responded,

“Twice I was attacked in 1997. I was attacked at my office. I was attacked with a DA (machete like cutting weapon). I was struck with it to my head, my ear and my arm. I was also stabbed at my palm, my leg and my back.”

20. At Q66, the appellant was asked why he was attacked on those two occasions. The judge set out the evidence at [28] of her decision. The appellant had said at Q66 that he was attacked once, not twice and verbally abused in the local bizarre. At Q67, he said that the following day he was attacked in his office by Shirajul Choudhury, Azad Ali and Misba. He said there were also another 40 people present. The judge found the various accounts inconsistent and said that they cast doubt upon the credibility of the appellant’s claim. There was no challenge to the judge’s findings at [28] nor was there any challenge to what the judge had to say at [39] mentioning an incident supposed to have taken place on 10 January 2018 at a time when the appellant was in the United Kingdom. Mr Sharma’s explanation which had not been put to the judge was that the event had truly occurred but that there was an error with regard to the date.
21. Mr Sharma would have me accept that the judge’s errors infected her decision overall. The judge took against the appellant because the supplementary bundle was provided late such that the judge took a dim view of the evidence from the outset.
22. I find that whilst there were errors in the judge’s decision, they were not material. The judge found the very core of the appellant’s account and the foundation of his claim to be incredible at [28]. It is true at [29] that the judge made a mistake with regard to the date the attack took place but that was not the only issue that troubled her. The report she was asked to rely upon said that four BNP officials were assaulted, whereas the appellant’s account at Q67 was that when he was attacked by Choudhury, Ali and Misba they had another 40 people with him and five to six people were injured with the appellant. There was no mention of four BNP officials being assaulted. The inconsistency was put to the appellant at the hearing. The explanation was that the events took place a long time ago and the appellant had not been inconsistent in saying that the events happened over a period of two days but the judge at [28] had found the appellant’s various accounts inconsistent and cast doubt upon the credibility of his claim.
23. Put simply, the errors on the part of the judge were not material because she did not find the foundation of the claim to be true. The judge carried out a careful and comprehensive assessment of the evidence before her. She was entitled to reach her findings and decision, based upon the documentary evidence she considered and the oral evidence at the hearing.
24. Whilst the judge made errors, they were not material to her adverse credibility findings.

25. The judge was obliged to take S.8 into account. Mr Sharma submitted that chronologically, the judge's findings with regard to S.8 came as a result of her decision and had therefore been infected by it. I find no infection. I find the judge was entitled to bear in mind in her S.8 assessment that the appellant arrived here originally in 2003 as a domestic worker and visited Bangladesh four times between 2010 and 2013 returning here in 2013. He was arrested in February 2018 when he finally made an asylum claim. The judge was entitled to find his immigration history damaged his credibility in terms of S.8.

Notice of Decision

26. The judge's decision contains no material error of law and shall stand.

No anonymity direction is made.

Signed

Date 2 April 2019

Deputy Upper Tribunal Judge Peart