



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

Appeal Number: PA/13348/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 24 April 2019**

Decision & Reasons Promulgated
On 19 June 2019

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**MOSTAFIZUR [R]
(NO ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Soloman of Counsel

For the Respondent: Ms Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh born in 1982. He appealed against a decision of the respondent made on 18 October 2017 to refuse his claim for asylum.
2. The basis of his claim is that in 1999 he was elected as president of the student wing (JCD) of the Bangladesh Nationalist Party (BNP). His role involved him organising meetings, rallies, protests and demonstrations. His problems began in late 2006 when he was seriously assaulted by

members of the ruling Awami League (AL). They tried to do so again in early 2007 but he escaped. Subsequently he received phone threats. He came to the UK in 2008 on a student visa and has been active in BNP events here. This is known to the authorities in Bangladesh.

3. The respondent did not believe his claim to have been assaulted, his account being found to be vague and lacking in detail. As for his activities in the UK, evidence submitted supported his claim to have been involved with the BNP here but there was a lack of evidence of his claim to have an official role in the party. The respondent accepted on the evidence submitted that he was a low level member of the BNP.
4. The respondent also took against the appellant that he did not claim asylum until 2017, six years after his leave expired.
5. He appealed.

First-tier Hearing

6. Following a hearing at Hatton Cross on 11 October 2018, Judge of the First-Tier Tribunal Craft dismissed the appeal.
7. In summary, he noted that the appellant accepted that he did not have the high profile role in the JCD in Bangladesh which he previously said he had when he made his claim. His description of the attack in late 2006 was implausible and unsupported by medical evidence. The fact that he was able to continue with his studies, complete his exams, apply for a student visa and leave on a scheduled flight did not suggest adverse interest. Also, his reasons for leaving Bangladesh were contradictory, variously, to pursue his studies with the intention of returning or for his safety. Further, his long delay in claiming asylum did not assist him. It was not believed he did not know of the protection available to him. Moreover, although third party correspondence referred to his family being targeted before and after he left there was no such evidence from his family with whom he is in regular contact.
8. Finally, there was a lack of evidence of his sur place activities.
9. He sought permission to appeal which was granted on 18 February 2019.

Error of Law Hearing

10. At the error of law hearing before me, Mr Solomon condensed the grounds into the following points. First, the judge failed to engage with material evidence in support of his claim to have been politically active in Bangladesh and the UK. Second, certain evidence which was dealt with, was not dealt with adequately including a deposition from a notary dated 2018 which the judge had discounted because of a lack of information as to how it was obtained. Such did not necessarily mean that the contents could not be relied on. The reasoning was insufficient. There was other evidence confirming his attendance at demonstrations and other political

events and other important documents including from supporting witnesses which had not been considered.

11. Ms Willocks-Briscoe's response was that it had been conceded before the judge that the appellant had been involved with the BNP in Bangladesh but not at a high level. The judge gave careful thought to the evidence and had engaged with it holistically. He was not to be expected to have to comment on every item. All in all, his findings and conclusion were adequately reasoned.

Consideration

12. The judge stated that the appellant's credibility was central to determining the appeal. He then went on to note at some length the Home Office CPIN: Bangladesh: Opposition to the Government (January 2018) which includes a comment that opposition party leaders and activists may face harassment or arbitrary arrest and detention. He then went on to give his reasons for finding that although he had low level involvement for the BNP in Bangladesh he did not come to the attention of the authorities there.
13. It is clear that the judge gave careful thought to his analysis and a number of his reasons for finding against the appellant's credibility were open to him on the evidence and have not been challenged. However, I consider that the analysis does show sufficient material errors such as to make his decision unsafe.
14. First, while a judge cannot be expected to comment on every item put before him I agree with Mr Solomon that the judge failed to engage with material evidence. At [16] he criticised the appellant for not being able to particularise except in very general terms his roles in the student wing of the BNP in Bangladesh. Yet he noted that in oral evidence the appellant referred to the organisation of demonstrations, protest meetings and leafleting. He gave further details at interview. The judge has not adequately explained why, the facets of the role having been set out, he considered the evidence was unparticularised.
15. It is clear that the judge placed considerable adverse weight on what he considered to be unparticularised evidence as to the appellant's activities not only on the basis of his own evidence but also on that of the witnesses Mr Uddin and Mr Ahamed, who at the hearing spoke to his activities in the UK from 2012. Again, the judge (at [52]) described that evidence as "*non particularised.*" Yet at [26] and [27] detail was given by them as to the appellant's position and activities in the UK including that he is an Assistant General Secretary of the youth wing of the BNP. I consider that the judge, in reaching his conclusion (at [52]) that there was no evidence to support the appellant's claim to have been involved in political activities here since his arrival, failed to give adequate reasons for disbelieving the evidence of these two witnesses. A consequence is that he has failed to consider whether his claimed sur place activities could put him at risk on return.

16. Further he failed to have regard to letters in the appellant's bundle bearing to be from Mirza Abbas, member of the BNP Standing Committee and ex minister; the Bangladesh JCD; the Head Office of the BNP and, (in the Respondent's bundle), from the President and the General Secretary of the UK BNP which support the appellant's claims as to his political career and fear of persecution.
17. A further difficulty is the judge's consideration of the deposition indicating the filing of a case against him made in 2018. The judge dealt with this at [49]. He found unsatisfactory the lack of information from the appellant as to how and when his father had found out about the charge made against him. Also, who delivered the document to the appellant and apparently arranged for its attestation and translation. The judge noted that the appellant claimed to be in daily contact by phone with his parents. The judge concluded: "*When looked at, with all the other evidence to the Tribunal, in the round, and taking into account the Tribunal's findings as to the appellant's overall credibility, the Tribunal can attach little weight to this document ...*"
18. I find two difficulties with this analysis. First, his dismissal of the reliability of the document because of inadequate explanation as to how it was got by the appellant is not sufficient. He should have examined the contents. Second, while he stated he looked at that document "*in the round*" his going on immediately to state that "*taking into account the ... findings as to the appellant's overall credibility*" he can give it little weight, suggests he has fallen into the trap identified by the Court of Appeal in **Ex Parte Virjon B [2002] EWHC 1469**, a case in which the Adjudicator had assessed a medical report on the basis of his credibility findings rather than reaching his findings on the basis of all the evidence including the medical report.
19. Bearing in mind the need for anxious scrutiny, as indicated, I consider that these errors taint the decision such that his findings cannot stand and the case must be reheard.

Decision

20. The decision of the First-Tier Tribunal shows material error of law. It is set aside. The nature of the case is such that it is appropriate under section 12(2) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2 to remit to the First-tier Tribunal for a fresh hearing on all issues. No findings stand. The member(s) of the First-tier Tribunal chosen to consider the case are not to include Judge Craft.

No anonymity order made.

Signed

Date 18 June 2019