Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13578/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13th May 2019	**On 29th May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR MD ASHRAFUL ALAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Sarker (Counsel)
For the Respondent: Ms S Jones (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge D. Ross, promulgated on 20th February 2019, following a hearing at Taylor House on 8th February 2019. In the determination, the judge dismissed the appeal, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Bangladesh, and was born on 20 June 1991. He appealed against the decision of the Respondent for refusing his application for asylum and humanitarian protection under paragraph 339C of HC 395. The decision to refuse is dated 20th November 2015.

The Appellant's Claim

3. The essence of the Appellant's claim is that his family members were in a land dispute with the extended family, involving several uncles, and that these family members were affiliated with the Awami League, whereas the Appellant's own family were members of the Bangladesh National Party, the BNP. The attacks that the Appellant endured, together with his family members, were heightened by the political dimension, which made it difficult for him to seek a state of redress in Bangladesh, causing him to eventually seek sanctuary in the UK. As Judge Ross pointed out the Appellant's case is based on two factors, namely, "the land dispute, which he claims is ongoing with his relations, who have forced his family to move to another part of Bangladesh" (paragraph 14) and the fact that "the Appellant would be at risk if returned to Bangladesh on account of his political views, he being a member of the BNP" (paragraph 16).

The Judge's Findings

4. In a detailed and wide ranging determination, the judge held that the claim with respect to the land dispute was not sustainable because "the Appellant has been very inconsistent in relation to the question of the incidents between him and his family" and that there had been a FIR in 2009, as well as an additional one, and the difficulty here was that, "One FIR shows his father being attacked and one shows his family attacking his relatives. This does suggest friction between them, but not that his family are intimidated" (paragraph 14). Thereafter, the judge observed how the Appellant had moved to another part of Bangladesh for two years before coming to the UK and did not suffer any harm (paragraph 15).

5. In relation to the political aspect of the claim, the judge observed that the Appellant's claim, being dependent upon his membership of the BNP, was one where

> "He claims to have been the cultural secretary in his region. At the hearing I heard from Mr Raza who is the general secretary of the BNP in London. He stated that the Appellant was the cultural secretary in his region. He confirmed that the Appellant attended meetings in London."

6. However, the judge went on to say that,

> "I notice that the witness did not say that the Appellant would be at risk on return. It is notable that the Appellant's family consisting of his mother, father and brother are all BNP supporters, and they have not felt it necessary to flee the country" (paragraph 16).

7. The judge went on to dismiss the appeal.

Grounds of Application

8. The grounds of application state that the judge had erred in law by failing to have regard to the "whole picture". First, when the Appellant was asked in the screening interview at paragraph 4.1, to give all the reasons why he could not return to his home country, he had said, "I fear if I went back to Bangladesh, my uncles will kill me", and he had gone on to say, "I moved to a safer part of Bangladesh for two years after this but I never felt safe due to my political issues".

9. Second, the grounds state that the alleged inconsistency about the family residence that the judge referred to was also unsustainable because the Appellant had stated at paragraph 9.7 of his SEF that, "they always threatened them so they cannot live at home safely", when referring to his family.

10. Third, it was said that the judge had erred in relation to the assessment of the attacks of the Appellant when he had stated at (paragraph 14) that "the FIRs are confusing". This was because if the judge took this view then "the judge may have placed little weight on the FIRs" (see paragraph 17 of the grounds).

11. Fourth, it was said that the judge's decision in relation to the Appellant's ability to internally relocate was flawed because the judge failed to have regard to what the Appellant had said in his SEF (at paragraphs 96 to 97) that, "they always threaten them, so they cannot live at home safely."

12. Fifth, it was said that the judge had also erred in relation to the Appellant's supporting witness, when the judge stated at (paragraph 16) that Mr Raja, the general secretary of the BNP in London, "did not say that the appellant would be on risk on return", given that he had said exactly that in a letter of 14th October 2018 that, "Mr Alam's active presence in the party's activities makes his life more vulnerable in Bangladesh".

13. Sixth, it was said that the judge erred in concluding that the Appellant's BNP supporting family did not leave Bangladesh because in the Appellant's SEF (from paragraphs 99 to 102) the Appellant had said that his family had not moved "because we do not have enough money" (see paragraph 99).

14. Seventh, the grounds allege that there was an error in relation to the evidence from the UK BNP activity as not being indicative of the problems that the Appellant was subject to, because the judge observed at (paragraph 17) that,

> "He has produced evidence of activity in the UK, including attending demonstrations and writing critical comments on the web, but I do not consider that the government would be particularly interested in his activities. It is not the case in Bangladesh that anybody who is a member of the BNP is targeted".

However, the judge failed to give due reasons why such activities would not attract attention of the Bangladesh authorities.

15. Eighth, the judge erred in relation to not considering the circumstances of the Appellant's exit from Bangladesh. The judge found that the Appellant left Bangladesh using his own passport (paragraph 17), but the Appellant was allowed to exit because he did not notify the authorities and they did not know about his leaving.

16. Ninth, there was an error in relation to the criticism of the Appellant's delay in claiming asylum, when it was said (at paragraph 18) that the Appellant had delayed for six years in claiming asylum, and had made a student application, because he "did not know the system" (see paragraph 37 of the grounds).

17. Finally, it is said that there was an error in attaching adverse credibility to representations made in the Appellant's visa application (at paragraph 18) because the Appellant had lied about being charged with any offences in another country when he applied originally for his visa, as this overlooks the fact that the Appellant was worried that he would not be able to enter the UK.

18. Permission to appeal was granted by the Tribunal on 3rd April 2019 on the basis that the judge attached excessive weight to the screening interview, that the judge's conclusion in relation to internal relocation had been affected; that the evidence of the general secretary, Mr Raja, had been given insufficient weight, and that there had been an insufficient analysis of the relationship between the activities of the Appellant in the UK and the core of the Appellant's claim.

Submissions

19. At the hearing before me on 13th May 2019, Mr Sarker of Counsel, appearing on behalf of the Appellant, also had a well compiled "written submissions" document for the Tribunal. In his submissions, he diligently followed through these written submissions for the assistance of the Tribunal. He began by pointing out that the Appellant's claim was "interconnected to the central claim", when reference was made to the land dispute, because this was connected with the political aspect of the claim.

20. The Appellant had mentioned that he feared his uncles would kill him (see SCR4.1) and he had mentioned the political problems with his uncle (see question 33 of the SEF at B6 of the Respondent's bundle); and that he had expanded on the land dispute (see questions 38 to 59), and he had mentioned having fear of being killed (question 33). Mr Sarker submitted that he would be the first to admit that the Appellant had indeed been inconsistent in his evidence, but this was because he was confused, when relating the timings of the attacks on him. However, the fact remained that he had been attacked two times. The first attack took place in 2008, the second took place in 2009.

21. The judge had been confused at paragraph 14 when stating that "the Appellant has been very inconsistent in relation to the question of the incidents between him and his family", because he had failed to

distinguish between the fact that there was a FIR only in relation to the attack on 12th August 2009. There was no FIR for the 2008 attack. However, in 2009 there were two attacks. Both these attacks were mentioned in the 2009 FIRS. The first of these attacks was "the second attack" that took place in the Appellant's house in his village. The first attack, was the one that took place on the road in 2008, and in relation to this there was no FIR. When the judge states that, "one FIR shows his father being attacked and one shows his family attacking his relatives. This does suggest friction between them, but not that the family are intimidated", this overlooks the fact that the Appellant's family lodged an FIR against the Awami League relatives, and had been subject then to abuse, threats, and harassment to have them killed, from those relatives. The judge had not appreciated this.

22. Second, Mr Sarker went on to say that the judge had erred in relation to his assessment of the availability of internal relocation for the Appellant. The Appellant had attempted to relocate for two years, but the risk of violence flaring up was very much on his mind. Moreover, his family were still threatened, and this is clear from what appears at B8 to B9 of the Respondent's bundle, and the SEF interview. Furthermore, the judge had found (at paragraph 16) that the Appellant's family did not leave the area, and this too was an error because the SEF made it clear (see questions 99 to 102) that the Appellant made it clear that they did not have enough money to leave, and so continued to face threats.

23. Third, Mr Sarker submitted that the judge had overlooked the letter from Mr Raja, of 14th October 2018, which had made it quite clear that the Appellant would face risk on return, preferring instead to simply refer to the oral evidence of Mr Raja.

24. Finally, the judge had erred in relation to the risk on return for the Appellant given his political profile, because the Appellant had been heavily involved in a lot of UK BNP activities, attending various UK BNP events, protests, and demonstrations. He had published in Bengali newspapers. He attended alongside the chairman of the BNP himself. There was much evidence of the Appellant's bundle of all these activities. The Appellant mentioned in his witness statement (at paragraph 9) that the new legislation in Bangladesh, of the Digital Security Act 2018, would bring him under risk, and this placed a sentence of fourteen years' imprisonment on all those indicted for publishing primitive content on the internet. The Appellant had produced evidence, covering a period of time, of his critical comments against the Awami League (see the Appellant's bundle from pages 52 to 103). He had been promoted from being a general member of the UK BNP to an executive member. He was an activist. He would face persecution. I should allow this appeal and remit the matter back to the First-tier Tribunal.

25. For her part, Ms Jones submitted that the Appellant could not succeed. This was a mere disagreement with the decision of the judge. By his own admission, it was accepted by Mr Sarker, that the Appellant had been

inconsistent. If this was the case then any finding by the judge in relation to the confusion caused by the FIRs was bound to be understandable.

26. Second, having decided that the first part of the Appellant's claim, namely, the land dispute, was one which, "I am not inclined to place much weight on ..." (paragraph 14), the judge did go on to deal very specifically with the political aspect of the Appellant's claim (paragraphs 16 to 19), and had given ample reasons for why the Appellant's case could not succeed in this regard.

27. Third, it could not be overlooked that the Appellant had made a student application, knowing that he had an FIR in 2009 in the background, and then still failed to apply for asylum for six years after arrival in this country. Finally, the Appellant had left on his own passport and delayed considerably in applying for asylum, and only did so after he had been encountered.

No Error of Law

28. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law, such that I should set aside the decision and remake the decision (see Section 12(1) of TCEA 2007). My reasons are as follows.

29. First, in relation to the political claim that the Appellant risks being persecuted on account of his political views, there is nothing that the judge has left unconsidered, in rejecting this aspect of the claim:

    (a) First, the judge notes that the Appellant claims to have been the cultural secretary of his region. He notes that there was evidence from Mr Raja, who is the general secretary of the BNP in London. He notes how there is evidence that the Appellant attended meetings in London. The president of the London branch had been arrested in Bangladesh whilst he was on a family visit, and this too is taken into account. However, the judge is not wrong in saying that in looking at the oral evidence of Mr Raja, he "did not say that the Appellant would be at risk on return". Mr Sarker submits that this overlooks the fact that there was a letter of 14th October 2018 in the Respondent's bundle where Mr Raja does say that there is a risk of ill-treatment. Even if this is so, one has to read the next sentence of the judge's determination where he observes that, "it is notable that the Appellant's family consisting of his mother, father and brother are all BNP supporters, and have not felt it necessary to flee the country" (paragraph 16). This conclusion the judge was entitled to come to. It is a conclusion arrived at after looking at the entirety of the evidence before the Tribunal, and it provides an insight into why the judge was not satisfied that the Appellant would be at risk of ill-treatment.

    (b) Second, the judge observes that there is an allegation that the political landscape is marred by violence and human rights abuse and that torture is prevalent, but his conclusion in this respect is that the Country Information Report makes it clear (at paragraph 2.2.10) that "he is somebody who is an ordinary party member and supporter who

is not at risk. I do not consider that being a cultural secretary would be somebody who the government would regard as a risk" (paragraph 17). This shows that the judge did in fact take into account the fact that the Appellant was a "cultural secretary". This aspect of the claim was not overlooked. Having taken it into account, the judge rejected it as suggestive of a heightened risk to the Appellant. The judge was entitled to so do.

(c) Third, with regard to membership of the BNP, the judge was equally entitled to conclude that "the BNP is a legal party. The Appellant left Bangladesh using his own passport, which again suggests that the authorities are not interested in him" (paragraph 17).

(d) Finally, and most importantly, the judge's conclusion that "the Appellant arrived in the UK in 2012, and did not claim asylum until after he had been detained in 2018 undermines his credibility" (paragraph 18), is highly relevant.

30. Second, in relation to the non-political aspect of the claim, namely, "the land dispute" and the ongoing problems with his relations, the judge was entirely correct to say that the Appellant did not mention this in the screening interview, and that if the Appellant had been genuinely frightened of his uncles and cousins setting out to kill him, that he would have done so. But in any event, the judge reasons that the Appellant's father "who is the main protagonist", is a person who continues to remain in Bangladesh. This is to say nothing of the fact that the Appellant had been very inconsistent in relation to the incidents between him and the family. He could not even decide how many times he had been attacked. The judge also observes that the Appellant's involvement in a public order offence involving a large number of defendants nine years ago would not place him at risk of persecution on return. In the end, the judge properly accepts that there was "friction between them", but his family were not intimidated by the relatives (paragraph 14). The decision cannot be criticised.

31. Third, the Appellant did internally relocate for two years before coming to the UK and the judge was correct in saying that at that time "he did not suffer any harm". It was one thing for the Appellant not to have suffered any harm, and to have been entirely safe in relocating, and quite another to say that he still believed that he was at risk. The latter does not confirm the former. Indeed, the judge makes it clear that "there is no reason to believe that they [his relatives] would have been able to track him down" (paragraph 15).

32. All in all, the grounds of appeal amounted to no more than a disagreement with the well compiled determination of Judge Ross. There is no error of law.

Notice of Decision

33. The decision of the First-tier Tribunal did not involve the making of an error of law. The decision shall stand.

34. No anonymity direction is made.

35. The appeal is dismissed.

Signed Date

Deputy Upper Tribunal Judge Juss 24th May 2019