



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

Appeal Number: PA/01982/2019

Heard at Field House

**Decision & Reasons
Promulgated**

On 27 January 2020

On 4 February 2020

THE IMMIGRATION ACTS

Before

UPPER TRIBUNAL JUDGE HANSON

Between

RU

(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Wilcox instructed by Thompson & Co Solicitors.

For the Respondent: Ms Bassi Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Dunipace promulgated on the 31 October 2019 in which the Judge dismissed the appellants appeal on protection and human right grounds.

Background

2. The appellant is a citizen of Bangladesh who was born on the 7 January 1990.
3. The Judge records that the appellant's nationality and identity are not in dispute [11].

4. The appellant claimed a real risk on return from the Awami League as a result of his political activities with Islami Chhatra Shibir (ICS) which is the student wing of the Jamaat-e-Islami in Bangladesh. The aim of this group is to change the existing system of education on the basis of Islamic values, to inspire students to acquire Islamic knowledge and to prepare them to take part in the struggle for establishing an Islamic way of life. A significant aim of the outfit is to establish an Afghanistan-Taliban type Islamist regime in Bangladesh. Consequently, the outfit is opposed to forces of modernization, secularism and democracy. The Bangladesh Awami League, by contrast, styles itself as the leader of the "pro-liberation" forces in Bangladesh, promoting secular and social democratic sections of the political establishment in the country with movement towards the middle of the political spectrum.
5. The Judge records the appellants claim that he faced problems with the Awami League from 1 August 2009 when he was attacked by 5 or 6 people after a meeting and beaten with sticks, rods and a hammer which left him unconscious and needing hospital treatment for 10 days. The attack was reported to the police, but the appellant claimed they did not accept his complaint.
6. The appellant claims he left for the UK on 27 January 2010 travelling via Dubai, arriving on 28 January 2010. On 2 February 2013, at a meeting at the Dasur Bazaar where his father was the chief guest, his father was attacked by the Awami League who stabbed his father to death.
7. The appellant states his mother and sister remain in Bangladesh. His sister is married and lives in Dhaka.
8. The appellant claims he was introduced to the party by his father who was a publicity secretary of the local unit of Jamaat-e-Islami. The appellant claimed to be motivated by his father's activities and of others within the party. The appellant joined the party in 2006 claimed to have been an active worker of his local branch. He became Secretary of that branch towards the end of 2006. His duties/role was to look after his assigned area by visiting each new member's house or educational institution find out if they were genuine students or not. The appellant claimed his responsibilities also included looking after social and community welfare of the people which included arranging food for the poor during Ramadan. The appellant claimed he and other members too quotes from various verses of the Koran and its translations and explained those to the people and distributable booklets to other students in order to motivate them to have good character.
9. The appellant claims the Awami league were jealous as a result of his party's popularity honesty and sincerity claiming his party believes in peace, human rights and democracy whereas the Awami League party only believe in democracy. The appellant claims the Awami League are a corrupt party.
10. On 1 August 2009 the appellant claimed he first started to face problems. He and others were gathered at an office for a meeting

after which he was walking towards his house when around 5 or 6 Awami League activists attacked him with sticks, rods and a hammer, started punching him, and beat him up. The appellant claims they attacked him with the intention of killing him resulting in injuries to his left-hand finger and right foot. The appellant claims he was left unconscious. People in a local bazaar saw him and took him to a nearby hospital where he was treated for 10 days. After that incident other members of the party tried to complain to the police, but they chose not to accept any of the complaints. Following his release from hospital the appellant claims he could not go back to his home village and so went to another village to hide from the Awami League.

11. The appellant claims that soon after going into hiding he left the United Kingdom on 27 January 2010. His father paid for his ticket to come to the UK.
12. The appellant claims that his father and 10 other people were injured on 2 February 2013 and that although his father was taken to hospital he was bleeding profusely and was pronounced dead upon arrival.
13. The appellant also claims his brother was kidnapped by members of the Awami League in 2016. The appellant claims his mother was forced to sign over the deeds to her property in the name of the Awami League members to arrange for the money to be paid for the ransoms they demanded. The appellant claims that as a result his brother was released from captivity. His mother was handed back a relatively small proportion of the value of the house that had been signed over.
14. The appellant claims that since arrival in the United Kingdom he continues to promote the party aims and objectives even though there is no party office in the UK and speaks to members in Bangladesh about the party and asks them if he can be of any help as he feels safe in the UK.
15. The Judge, having considered the written evidence and having had the benefit of seeing the appellant give his oral evidence and be cross-examined, sets out findings of fact from [38] of the decision under challenge. Those findings can be summarised in the following terms:
 - i. Credibility is a crucial issue in the appeal [41].
 - ii. The appellant remained in the United Kingdom for 8 years before an application for asylum was lodged which was a matter that has some bearing on the question of whether there remains a well-founded fear of persecution; given that a reasonable inference might be that such risk might diminish over time [42].
 - iii. The first mention by the appellant of the matters which found his present application for asylum and humanitarian protection was only made after he had been in the United Kingdom for 8 years and have been served with a RED.0001 by Immigration Officers. The appellant's explanation for the delay was not found credible [44]. Alternative, if the Judge had accepted the appellant's

- explanation for the delay, it was not found credible to persist with the position that the appellant was completely unaware of the concept of asylum whilst in the UK for this length of time [44].
- iv. In relation to the substantive merits of the application, the Judge found the appellant's account of the structure and organisation of the party he claims to have joined in 2006 to be somewhat vague and inconclusive [45].
 - v. The Judge took account of the copy letters lodged in support the claim but noted they were simply copies, with no reason being provided for why the original documents could not have been lodged. The Judge was not satisfied on the evidence that it had been established the appellant was a member of the ICS at the relevant time [45].
 - vi. In relation to the claimed assault in 2009, the Judge noted there was no corroborating evidence to support such a claim and given observations regarding credibility the Judge felt unable to find this aspect of the case had been established [46].
 - vii. In the alternative, if it was accepted there had been such an attack, the Judge noted this occurred almost 10 years ago and that in light of there being no evidence of the appellant having participated in any political protests or demonstrations whilst in the UK, which might have demonstrated his commitment with this political cause, and the fact his account in relation to his political activity in the United Kingdom was "nebulous to say the least", the Judge did not find the appellant had established a credible real risk on return [46].
 - viii. The Judge did not find the appellant had established there was a reasonable degree of likelihood that he will be persecuted upon return to Bangladesh and did not find that he is entitled to be recognised as a refugee [47].
 - ix. The Judge finds the appellant had not established he faced a real risk sufficient to breach article 3 ECHR [48].
 - x. In relation to the human rights aspects, the Judge was not satisfied the appellant had establish the existence of very significant obstacles to his reintegration into society in Bangladesh or any basis for succeeding pursuant to paragraph 276ADE of the Immigration Rules [50].
 - xi. The Judge did not find that exceptional circumstances had been made out sufficient to render the refusal a breach of article 8 ECHR [51].
 - xii. The Judge did not find the appellant established an entitlement to leave outside the Immigration Rules on under any provision of ECHR [52].
 - xiii. The Judge found the appellant had not established an entitlement to a grant of Humanitarian Protection [54].

16. The appellant sought permission to appeal which was granted by another judge of the First-Tier Tribunal, the operative part of which is in the following terms:
 2. Although it is open for the Judge to consider what weight he felt it appropriate to place and all the evidence before him including the delay by the Appellant claiming protection it is arguable that the Judge has erred in law in particular by (a) giving inadequate reasons for the findings on the substantive merits of the appeal including the Appellant's account of the structure and organisation of the party which the Judge finds to be somewhat vague and inconclusive without explaining in what respects; (b) by failing to give adequate or no findings in relation to the country expert report which was provided; (c) by failing to take into account recent events indicating a continued adverse interest in the Appellant and his family members; (d) by noting that there was no corroborative evidence in relation to the Appellant's account to the effect that he was assaulted by the Awami League in 2009 when there is no such requirement for corroboration and (d) by failing to treat the Appellant as a vulnerable witness in terms of the appellant's current mental health symptoms.

Error of law

17. Mr Wilcox on behalf of the appellant opened his submissions by challenging the structure of the decision claiming that the section 8 of the Treatment of Claimants Act 2004 issues had been dealt with at [42 - 44] in which it was found the delay in making the claim affected the appellant's credibility and which then treated such a finding as determinative.
18. Section 8 was recently considered by the Court of Appeal in In KA (Afghanistan) v SSHD [2019] EWCA Civ 914 in which it was found there is nothing in principle wrong with taking account when assessing credibility, the failure to make an earlier claim for asylum but there needs, in reality, to have been a reasonable opportunity to do so. It cannot be inferred from mere presence in a nominally safe country. The appellant in the current appeal, at the date he entered the United Kingdom, was not an unaccompanied minor and it was not established the appellant did not have a reasonable opportunity to claim asylum, as found by the Judge. It is hard to believe that a person living in the United Kingdom for 8 years would not have been aware of the considerable press coverage of refugee issues through the national press, both printed, visual (TV), and audio (Radio). This is a finding within the range of those reasonably open to the Judge on the evidence. I find no legal error has been established in the Judge's finding that the appellant remained in the United Kingdom for a substantial period of time in which he failed to make a claim for international protection until threatened with removal following his arrest by the Immigration Authorities. I do not find it made out the Judge was not entitled to find the appellant's failure to claim asylum at the earliest opportunity warranted less weight being attached to his claims.

19. The assertion by Mr Wilcox that having found the appellant's credibility damaged for this reason the Judge found this aspect determinative has no arguable merit. The Judge clearly states, having set out findings pursuant to section 8, that he was thereafter going to consider the position of the appellant in relation to the substantive merits of the application from [45]. The Judge clearly did so. As Miss Bassi submitted it is not legal error for the Judge to have considered section 8 first and no authority was provided to support the claim issues had to be taken in any particular order. The important point is that the Judge was required to consider all the available evidence with the required degree of anxious scrutiny and only having done so to set out findings upon the relevant points leading to whatever the conclusion may be.
20. Mr Wilcox also submitted insufficient reasons had been given in relation to a core aspect of the Judge's finding at [45] in which he found the appellant's account of the structure and organisation of the party 'vague and inconclusive'. The finding of the Judge in that paragraph was that the appellant had not established that he was a member of the ICS at the relevant time as he claimed. That is the finding. The reasons for that finding include the Judges opinion, having had the benefit of seeing and hearing oral evidence, that the appellant's evidence was vague and inconclusive. The Judge was arguably not required to do more. Judges are required to assess the evidence which is what this Judge did. The argument the Judge should have written more setting out why he found that evidence vague and inconclusive does not establish arguable legal error. It is not made out that conclusion is outside the range of findings reasonably open to the Judge. The grounds do not, arguably, establish that the Judges opinion is irrational or contrary to the evidence given.
21. Mr Wilcox also asserts the Judge erred in failing to treat the appellant as a vulnerable witness.
22. In the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance, it is said that, although some individuals are by definition vulnerable, others are less easily identifiable. Factors to be taken into account include mental health problems social or learning difficulties, religious beliefs and practices, sexual orientation, ethnic social and cultural background domestic and employment circumstances physical disability or impairment that may affect the giving of evidence. The Guidance sets out factors to be taken into account at the case management review hearings and during the hearing itself.
23. In SB (vulnerable adult: credibility) Ghana [2019] UKUT 398 it was found the fact that a judicial fact-finder decides to treat an appellant or witness as a vulnerable adult does not mean that any adverse credibility finding in respect of that person is thereby to be regarded as inherently problematic and thus open to challenge on appeal; By applying the Joint Presidential Guidance Note No 2 of 2010, two aims are achieved. First, the judicial factfinder will ensure the best practicable conditions for the person concerned to give their evidence.

Secondly, the vulnerability will also be taken into account when assessing the credibility of that evidence; The Guidance makes it plain that it is for the judicial factfinder to determine the relationship between the vulnerability and the evidence that is adduced.

24. The Guidance states:

“3. The consequences of such vulnerability differ according to the degree to which an individual is affected. It is a matter for you to determine the extent of an identified vulnerability, the effect on the quality of the evidence and the weight to be placed on such vulnerability in assessing the evidence before you, taking into account the evidence as a whole”.

25. The Judge was clearly aware of the medical evidence which was specifically referred to in submissions, as recorded by the Judge at [34], in which the Judge noted the appellant’s advocate submission that such evidence tended to support the appellant’s account given that his presenting symptoms were consistent with a diagnosis of anxiety and post-traumatic stress disorder. The Judge specifically refers to the report from a Consultant Psychiatrist who makes reference to the appellant suffering from an Adjustment Disorder as a result of the lack of certainty in his immigration status and the threat of deportation, with the doctor being unable to confirm the level of fear of persecution in Bangladesh.

26. The Case Management Review in the First-Tier Tribunal was undertaken as a paper exercised following completion by the appellant’s representatives of a reply form dated 23 April 2019. Question 9 of that form asks:

“Do you, your representative, or any of your witnesses have any disabilities or vulnerabilities which might affect you or their ability to access the hearing centre or to take part in the hearing of the appeal/give evidence? (A person may be considered vulnerable for many different reasons including childhood, advanced age, physical disability, ill-health, cognitive impairment, learning disability, mental health problems, communication difficulties, difficulty in accessing and/or understanding complex information, experience of domestic violence, sexual abuse, trafficking or torture, being in detention.)”

27. The reply given to the above question was “No”. It is not established any submissions were made to the Judge regarding the appellant’s vulnerability, in particular it is not made out that any submissions were made detailing any adjustments that would need to be made to assist the appellant in dealing with the appeal process. It is not made out that any interventions were made by the appellant’s representative at the hearing in relation to the manner in which the proceedings were conducted, to ask for any reasonable adjustment at that point. It was not made out at any stage that the appellant’s mental health conditions adversely impacted upon his ability to give evidence, the manner in which such evidence was given, or the manner in which the Judge conducted the proceedings. In relation to consideration of the evidence, the grounds assert the Judge should have treated the appellant as a vulnerable witness but fails to establish how the issues identified by the Judge could rationally be

ascribed to his condition as found by the Consultant Psychiatrist. Even if the Judge's finding that certain aspects of the appellant's evidence were found to be vague and inconclusive, which can be a consequence of a person's mental health or other vulnerability, the evidence as a whole does not support a contention that this is the case in this appeal. The appellant does not set out in the grounds of challenge any basis for establishing that the answers given by the appellant were not vague and inconclusive. I find the problems identified by the Judge with the appellant's account cannot rationally be ascribed to his condition.

28. Mr Wilcox also submitted the Judge committed a procedural irregularity sufficient to amount to an error of law based upon an alleged structural error in the determination where at [36] the Judge finds there was no corroborating evidence regarding the appellant's attack in 2009. This is not a finding by the Judge that unless corroborative evidence is provided the account will not be believed, as that would clearly amount to an error of law as there is no requirement for corroboration before an appellant is able to succeed in a protection claim. What this is, is a factual statement by the Judge that there is no corroborating evidence. It has not been shown that statement is incorrect.
29. The Judge gives adequate reasons for why the appellant had not established he was a member of the ICS which he claims was the reason he was attacked by members of the Awami League.
30. It is also asserted the Judge committed an error by allowing an artificial separation in relation to the elements of the case; in finding the appellant lacked credibility and then using the same to undermine the merits of the appeal. The claim has no merit. It is clear the Judge considered the evidence with the required degree of anxious scrutiny from all sources making findings in relation to the weight to be given to such evidence as the Judge was required to do.
31. The Judge's treatment of the documentary evidence is also challenged. It is not made out the Judge did not consider all the evidence provided.
32. The Judge applied the weight considered appropriate to the documents relied upon by the appellant in accordance with the decision of Tanvir Ahmed as confirmed at [29]. The Judge is criticised for not considering the report of a country expert Mr Saqeb Mahbub dated 24 July 2019 but I do not find this specific allegation made out.
33. Mr Mahbub has produced a Document Authentication Report in relation to the specific documents he was asked to consider. His opinion can be summarised in the following terms:
 - i. Death certificate of RU's father issued by the hospital on 2 February 2013. The expert was not able to verify the actual existence of the document in the records of the relevant hospital department as only relatives of the deceased will be able to access the records of the death certificate. An informal review by a named individual of the

- death certificates states it is in the format of those issued by the hospital but an anomaly came to the experts attention in that the Registrar who purportedly signed the death certificate at the hospital did so on 2nd February 2018 whereas the date of issuance of the death certificate is dated 2 February 2013, although stating it is possible the Registrar had signed the certificate at a later date when the application was made for a copy.
- ii. Death certificate of RU's father issued by the Registered Office of births and deaths, No 8 Tilpara Union dated 22 April 2014: The Registered Office only keeps a register of births and deaths for 5 years and no longer had the records to verify the death certificate which could not be verified against the official records. The expert notes, however, that the person issuing the death certificate purporting to be the Chairman of the relevant area held the post at the relevant time and that the signature and seal resembled the official seal and is compliant with the official prescribed format for issuing death certificates.
 - iii. Post-mortem report of RU's father dated 2 February 2013: the expert was unable to verify the actual existence of the document in the hospital records at the relevant department although confirmed the format and appearance of the report resembles that of a post-mortem report genuinely issued by the hospital.
 - iv. Copy letter from Bangladesh Islami Chhatrashibir dated 1 November 2018: The expert, having reviewed the letter and having taken steps to verify the authenticity of the certificate by enquiring with the central office of the party in Bangladesh, discovered that he purported signatory of the letter was not holding the purported post at the relevant time of issuance of the certificate and that without a phone number or address on the certificate no further enquiries could be made.
 - v. Copy letter from Bangladesh Islami Chhatrashibir dated 30 September 2018: the expert when taking steps to verify the authenticity of the certificate to enquiries at the central office of the party found the party had a branch at the stated place and that the named person held the post of President at the relevant time, but that without the telephone number or address on the certificate no further enquiries could be made.
 - vi. Copy of letter from Bangladesh Jamaat-e-Islami dated 30 October 2018: the expert upon undertaking enquiries with the central office found the name of the person holding position as President was as named although the certificate did not contain a name meaning the expert could not draw inference that the person who held the position at the relevant time had signed the certificate.

- Without the telephone number or address on the certificate no further enquiries could be made.
- vii. A copy of the Bangladeshi newspaper, the Daily Shyamal Sylhet dated 3 February 2013: the expert confirms this is a bone fide publication but that in the absence of an online or physical archive could not find an original copy of the printed newspaper for 3 February 2013. In comparing a copy of an issue published online in July 2019 with that of 2013 the expert finds the appearance of the earlier document to be consistent with the size, font size, structure of articles, and price of the publication leading to it being concluded that the article is genuine.
34. In relation to the latter element, the expert does not comment upon whether there had been any changes in the presentation of the newspaper between 2013 and 2019. It is also not clear on what basis the expert, even if it is found that the format of the purported copy of the 2013 publication is the same as that appearing in 2019, can therefore conclude that the content of the 2013 document produced is genuine.
35. These concerns arise as a result of considerable concern recorded in the country information of the ease with which an individual is able to obtain forged documents in Bangladesh. The Judge's comment regarding the fact the documents are only copies and not originals means it was not possible for the Judge to be able to ascertain whether what was being produced, whilst having the format and appearance of an original document, was completely false or by the production of what were originally genuine documents which have had altered or other aspects inserted which are false.
36. A further concern that arises from the alleged post-mortem report of RU's father is reference to their being enclosed with the report a high vaginal swab report dated 3 February 2013 which is of concern as the post-mortem report is stated to be dated 2 February 2013, prior to this, and because the person in relation to whom the report allegedly relates is described as male.
37. I do not find the appellant has established the Judges conclusion that the appellant had failed to discharge the burden of proof upon him, even to the lower standard, to establish his claim for international protection is credible or that he was entitled to succeed on any other basis, is infected by arguable legal error material to the decision to dismiss the appeal.
38. The Judge had ample reasons for doubting the credibility of the appellant and I do not accept Mr Wilcox' submission that although the determination appears detailed the Judge became lazy and did not do enough. A reader of this decision clearly understand why the Judge found as he did

Decision

39. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

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

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

Signed.....
Upper Tribunal Judge Hanson

Dated the 31 January 2020