Upper Tribunal

(Immigration and Asylum Chamber) **Appeal Number: PA/09948/2019 (P)**

THE IMMIGRATION ACTS

Decided under rule 34 (P)	**Decision & Reasons Promulgated**
On 29 July 2020	**On 6 August 2020**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

A S O

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Representation (by way of written submissions)
For the appellant: Londonium Solicitors
For the respondent: Ms S Jones, Senior Home Office Presenting Officer

Background

1. This appeal comes before me following the grant of permission to appeal to the appellant by First-tier Tribunal Judge Shimmin on 5 February 2020 against the determination of First-tier Tribunal Judge C Chapman, promulgated on 23 December 2019 following a hearing at Coventry on 19 December 2019.

2. The appellant is a Bangladeshi national born on 9 October 1987. He entered the UK as a Tier 4 student in October 2010 and overstayed when his leave expired February 2015. In April 2015, he applied for leave to remain outside the immigration rules but this was rejected on 2 July 2015 because the correct fee had not been paid. He failed to embark or submit a paid application and on 19 February 2016 applied for leave to remain on family and private life grounds. This was refused on 21 July 2016 with an out of country right of appeal. On 27 October 2016, the appellant submitted a judicial review application which was refused on 23 February 2017 and further permission was refused on 1 August 2017.

3. On 27 February 2018, the appellant claimed asylum. This was refused on 10 October 2018 and the appellant lodged an appeal with the Tribunal. His appeal was heard on 3 January 2019 by First-tier Tribunal Judge Anthony in his absence and was dismissed. Applications for permission to appeal were refused on 13 February 2019 and 21 March 2019 and he exhausted his appeal rights on 28 March 2019. Still, the appellant failed to embark and on 3 July 2019 made further submissions. These submissions were refused on 20 September 2019 and led to these proceedings.

4. The appellant claims that from 2006 to 2010, when he left Bangladesh, he was an active member of the student wing of the BNP. He claims to have been a joint secretary from the end of 2007 and to have been involved in various activities including organising and attending meetings and demonstrations, and recruiting members to the party. In 2009 he claims to have been one of 50 people who were attacked by the student wing of another main political party, the Bangladesh Awami league and the BCL as well as by the police. Following this incident he claims that the police started looking for him and he left the country and came to the United Kingdom. He maintains that he still supports the BNP and participates in its activities. He claims to be at risk from the Awami League who have been in power since 2009. He claims that there is a warrant outstanding for his arrest.

5. There was no appearance at the hearing of his current appeal by either the appellant or a representative. A fax received on 13 December maintained the appellant was suffering from travel sickness and could not attend. A GP's note dated 12 December 2019 was adduced. It stated that the appellant "*reported to the doctor that he suffered from travel sickness and that the medication he previously used did not appear to be helping him currently. He was provided with a patient self-help leaflet and a new medication was recommended*".

6. The adjournment request was refused on 16 December 2020 on the basis that the doctor had not certified the appellant was unfit or incapable of attending the hearing, understanding the proceedings or playing a full part therein. It was also noted that there was nothing to suggest that the appellant would not be suffering from travel sickness at a future date.

7. The appellant then replied to ask that the appeal be determined on the papers. The representatives confirmed neither they nor the appellant would attend.

8. The appellant's representatives were notified that the Tribunal could not decide the appeal on the papers without the consent of the respondent but would excuse attendance of the appellant and his representative. The matter then proceeded to a hearing in the appellant's absence on 19 December 2019. The respondent refused to give consent to a paper determination and the judge heard submissions from the Presenting Officer.

9. The judge had regard to the documentary evidence from the appellant and the respondent and took the previous judge's determination as his starting point. He noted that the appellant had also failed to attend the hearing before Judge Anthony. He took account of the fresh evidence but found that the documents could not be relied on. He had regard to the appellant's *sur place* activities but found that these amounted to participation in a peripheral role and that there was no evidence that the Bangladeshi authorities monitored protests or social media accounts. He considered the country evidence and found that the appellant was not a high profile BNP activist who would be at risk. Accordingly, he dismissed the appeal.

10. The grounds argue that the judge placed undue weight on the first judge's determination and unreasonably assessed the fresh evidence in the light of those findings. It is argued that Judge Anthony had not been able to hear oral evidence from the appellant. The grounds also argue that Judge Chapman "*tacitly*" accepted that the appellant was a BNP member. It is

argued that his case should have been considered in the light of that finding. The remainder of the grounds cite case law at length.

Covid-19 crisis: preliminary matters

11. The matter was listed for a hearing at Field House on 30 March 2020 but due to the Covid-19 pandemic and need to take precautions against its spread, the hearing was adjourned and directions were sent to the parties on 1 May 2020. They were asked to present any objections to the matter being dealt with on the papers and to make any further submissions on the error of law issue within certain time limits.

12. The Tribunal has received written submissions from both parties. Time is extended for the appellant's submissions and they are admitted. I now consider the matter.

13. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, the Presidential Guidance Note No 1 2020: Arrangements during the Covid-19 pandemic (PGN) and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "*to enable the Upper Tribunal to deal with cases fairly and justly*". To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).

14. I have had careful regard to the submissions made and to all the evidence before me before deciding how to proceed. The respondent has raised no objection to the matter being considered on the papers. The appellant argues that it is of utmost importance that his case is presented orally by Counsel and that he has the opportunity to give oral evidence.

15. A full account of the facts are set out in the papers on file and the issue to be decided is a narrow one. There are no matters arising from the papers which would require clarification and

so an oral hearing would not be needed for that purpose. I have had regard to the appellant's submissions and note that he has in the past had two opportunities to attend and present his case or to have a representative present it for him and that on both occasions he failed to attend. I consider that a speedy determination of this matter is in his best interests given the length of time the appellant has been without any status. I am satisfied that I am able to fairly and justly deal with this matter on the papers before me and I now proceed to do so.

Submissions

16. The respondent's submissions were received first by the Tribunal. They are dated 20 May 2020. The appellant replied on 1 June 2020. I have seen no earlier submissions from the appellant.

17. The appellant submits that the judge did not attach due weight to his fresh evidence and put excessive weight upon the determination of the previous judge in the context of his asylum claim. The remainder of the submissions deal with the necessity of having an oral hearing.

18. The respondent prepared a rule 24 reply on 18 February 2020. In that document she opposed the appellant's appeal and respectfully expressed surprise at the grant of permission in this case. She pointed out that the appellant had not attended his hearing, a fact that had been overlooked in the grant of permission. It was said that the only evidence the judge had before him that differed from the previous Tribunal was some evidence of *sur place* activities and letters allegedly from the BNP. It was maintained that the judge dealt with all this evidence in some detail and that there was no merit in the complaint that he simply relied upon the previous decision.

19. In her submissions of 20 May 2020, in compliance with the Tribunal's directions, Ms Jones relies on the rule 24 response and maintains that the appellant's grounds amount to no more than an a disagreement with the Tribunal's conclusion.

Discussion and conclusions

20. I have considered all the evidence, the grounds for permission and the submissions made by both parties.

21. The issue to be determined is whether the judge placed undue weight on the previous determination to the extent that he did not undertake a proper assessment of the fresh evidence.

22. The first appeal was heard by Judge Anthony on 3 January 2019. On the morning of the hearing an application for an adjournment was made by the appellant's representative (from the same firm of solicitors as continue to act for him). It was maintained that the appellant was distressed at the refusal of the previous day's written adjournment request (to obtain evidence of his party involvement) and so had indicated that he was going to a hospital Accident and Emergency department. Although the judge requested evidence from the hospital and gave the representatives time to obtain it, nothing was forthcoming and the appellant's telephone was reported to be "dead". The judge considered that the appellant had been aware for many months that he needed to produce documentary evidence of his claimed political activities, and she concluded that in the absence of any independent medical evidence, an adjournment was inappropriate. The appellant's representatives then withdrew from the proceedings.

23. Judge Anthony proceeded to dismiss the appeal by way of a written determination promulgated on 8 January 2019. She identified numerous discrepancies in his accounts and concluded that he could not be believed and that documentary evidence from Bangladesh could not be relied on. She concluded that the claim was fabricated and lacking in credibility. In the alternative, she concluded that even if the appellant had been a member of a political party as claimed, his involvement was at such a low level that he had not made out his case to the lower standard.

24. The appellant's present claim is based on fresh documentary evidence and what he claims has occurred since the last appeal hearing. The judge had a witness statement from him as well as documents from Bangladesh confirming his membership of the party before he came to the UK and his claim that he is being is sought by the police. The appellant also produced evidence regarding further activities in the UK.

25. I would note that the challenge to Judge Chapman's determination makes no complaint about the appeal proceeding in the appellant's absence.

26. It is argued for the appellant that the judge misapplied the Devaseelan guidelines and placed so much weight on the previous determination that no proper consideration was given to the present claim and fresh evidence. This complaint is wholly unsubstantiated by the determination which shows that in fact the judge did properly follow the relevant principles and undertook a comprehensive assessment of the new documentary evidence.

27. The fresh claim is set out at paragraphs 18-22 and the new documents are identified at 22. The law and correct approach to the claim is set out at paragraphs 37-44 and the judge properly self directs at 45. He correctly commences with the findings of the previous Tribunal (at 46) before assessing the fresh evidence. For the reasons given at paragraphs 47-57, he concluded that the documents were unreliable, that the appellant had failed on both occasions to attend the hearing of his appeal and have his evidence tested, that the new evidence did not provide anything significantly different such as warrant a departure from the previous judge's findings as regards events in Bangladesh. An assessment of his *sur place* activities is undertaken (at 59--67). Wholly adequate reasons are given for why the judge concludes that there is nothing in the appellant's activities which would put him at risk.

28. There is nothing in the complaint that the judge failed to consider the claim on the basis that the appellant's claim of political membership was true. Both Judge Anthony and Judge Chapman considered whether the appellant would be at risk if he were a member of the BNP as claimed but for sustainable reasons both found that he was involved at a very low level and would not be of any interest to the authorities in Bangladesh, particularly at the present time so many years after his departure.

29. No issue is taken with the judge's findings on article 8 grounds and they stand unchallenged.

30. The challenge is without any merit. It is plain from the appellant's immigration history that he is intent on remaining here through whatever means possible and the findings of the Tribunals on two occasions that his claim is a fabrication to achieve that aim were properly made and are sustainable.

Decision

31. The decision of the First-tier Tribunal does not contain any errors of law and it is upheld. The appeal is dismissed.

Anonymity

32. I continue the anonymity order made by the First-tier Tribunal.

Signed

R. Kekić

Upper Tribunal Judge

Date: 29 July 2020