



IAC-FH-CK-V1

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

Appeal Number: PA/10167/2019

THE IMMIGRATION ACTS

Heard at Field House
On 5 March 2020

Decision & Reasons Promulgated
On 23 April 2020

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

**UR
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M. Gherman, Counsel, instructed by Novells Legal Practice

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

DECISION AND REASONS

Introduction and background

1. The appellant is a citizen of Bangladesh, born in 1978. On 9 October 2019 the respondent made a decision to refuse his protection and human rights claim. His appeal against that decision came before First-tier Tribunal Judge Bonavero (“the FtJ”) at a hearing on 20 November 2019 which resulted in the appeal being dismissed on all grounds.

2. The appellant's claim, in outline, is as follows. He was politically active for the BNP as were members of his family. He was attacked by members of the Awami League in 2000 requiring his admission to hospital. In 2004 he borrowed money from a man, RU, a prominent supporter of the Awami League, in order to travel to the UK where he intended to work. However, his earnings in the UK were less than he had anticipated and he was therefore unable to repay the debt. As a result, RU threatened the appellant's father and used his political connections to file cases against the appellant.
3. Since his arrival in the UK he has been an active member of the Bangladesh National Party ("BNP") and his political activities have come to the attention of the authorities in Bangladesh.
4. The grounds of appeal in relation to the FtJ's decision are as follows. Ground 1 contends that the FtJ failed to consider documentary evidence in relation to the appellant's political activity in Bangladesh. Ground 2 is that he failed to consider and make findings on medical evidence. Ground 3 argues that the FtJ failed to take into account evidence of the influence and reach of the person that the appellant claims to be at risk from. Ground 4 is that the FtJ failed to take into account "explanatory evidence" in relation to the appellant's claim, and Ground 5 argues that he failed to engage with material legal arguments in relation to the documents emanating from Bangladesh.
5. It is necessary to summarise the FtJ's decision in order to put into context my assessment and conclusions on the arguments advanced on behalf of the appellant.

The FtJ's decision

6. The FtJ summarised the basis of the appellant's claim and set out his immigration history. He said that the appellant arrived in the UK on 29 February 2004 pursuant to the terms of a work permit. His leave expired on 10 February 2005. Since then he had remained in the UK without leave although had sought to regularise his stay through human rights applications. He noted the asylum claim in 2012 which was refused and certified as clearly unfounded. Because the appellant absconded, the decision was never served on him. He noted that further submissions were rejected in 2013 because the appellant did not attend in person to make them.
7. On 10 September 2018 the appellant was encountered by the respondent whilst working in a restaurant. He was detained and then made the claim for asylum which is the subject of the appeal.
8. The FtJ decided that the appellant should be treated as a vulnerable witness. He heard evidence from the appellant and from a friend of the appellant, AM.
9. In relation to the documents that the appellant relied on (a First Information Report-"FIR", charge sheet and arrest warrant), the FtJ considered that there were "several oddities" about them which he went on to describe. He concluded that there were important and unexplained inconsistencies in the appellant's account on that score,

as compared to the evidence of his witness, and he set out his reasons for coming to that view. He referred to the evidence of the Country Policy and Information Note (“CPIN”) on Bangladesh dated January 2018 in relation to the use of fraudulent documents.

10. He also referred to the decision in *Tanveer Ahmed v. Secretary of State for the Home Department*, [2002] UKIAT00439. He concluded that the documentary evidence was not reliable, including in that assessment the letters relied on by the appellant that describe his political activities in Bangladesh.
11. As regards his political activities in the UK, he referred to the photographs of the appellant at various political events, noting that the oldest of them, according to the appellant, was taken 18 months ago, after he had claimed asylum. Although he had claimed to be active in the BNP since 2007 or 2008 the FtJ found that there was no evidence to support that claim. He found that it would have been a simple thing for him to have obtained evidence from the BNP in the UK.
12. He found that in any event the appellant’s activities were at a low level such that he would not be at risk on return.
13. He found that the appellant was not politically active in Bangladesh and that his claim that he faced criminal prosecution there was an invention. Further, even if the appellant had borrowed money in Bangladesh there was no “objective evidence” to show that a local businessman would be in a position to locate a person some 15 years after they had left Bangladesh and the appellant could relocate.

Submissions

14. I summarise the parties’ submissions, also referring as necessary to the grounds of appeal upon which permission was granted.
15. Ms Gherman relied on the grounds. In terms of specific matters that I asked her to address me on, she submitted that in relation to Ground 1, although the FtJ referred at [24] to the letters in relation to the appellant’s political activities in Bangladesh, the conclusion at [26] that the appellant had not established that he was politically active in Bangladesh fails to take into account the content of the letters as set out at [7] of the grounds.
16. As regards Ground 2 and in relation to the attack on the appellant in Bangladesh in 2000, in the appellant’s bundle there was a medical report from the Sheba Poly Clinic which states that he was treated there for a head trauma and other injuries but the FtJ did not refer to that report at all, or the other documents referred to in the grounds in terms of the appellant’s health (a ‘rule 35’ report dated 20 September 2018 and a report from a consultant psychiatrist dated 12 November 2018).
17. In terms of what is said in Ground 4, in particular at [16] of the grounds and the contention that the appellant did, contrary to the FTJ's view, provide an explanation for why he would be targeted despite his not being a party to the loan deed, the

appellant explained this in his witness statement (as pointed out at [18] of the grounds). He also gave an explanation in oral evidence as described in the grounds. It was accepted, however, that no agreed note of the evidence given to the FtJ had been provided. Having said that, I indicated to the parties that the FtJ's record of proceedings supported this aspect of the grounds as to the appellant's oral evidence.

18. Similarly, in relation to the contention at [20] of the grounds (Ground 5) that the FtJ had failed to take into account the submissions made on behalf of the appellant in terms of specific features of the originals of the documentary evidence from Bangladesh which supported their authenticity, it was accepted by Ms Gherman that there was no agreed note of the submissions made to the FtJ in this context. Nevertheless, having again referred the parties to the FtJ's record of proceedings, the note Ms Gherman provided to the appellant's solicitors after the hearing and the Presenting Officer's minute or note of the hearing very fairly made available by Mr Tufan, I accept that the grounds do reflect the submissions made to the FtJ on the topic.
19. In his submissions, Mr Tufan pointed out that the appellant had been in the UK for a number of years and had absconded. He only claimed asylum when he was encountered by immigration authorities. These were matters that the FtJ referred to at [23].
20. It was further submitted that the BNP is a lawful political party in Bangladesh and it could not be said that a mere supporter and those involved in low-level political activity, would be at risk, as the FtJ had found.
21. Although the FtJ did not specifically refer to the details of the letters that are said to relate to the appellant's political activities in Bangladesh, he did conclude that the documentary evidence could not be relied on, especially the Deed of Agreement in relation to the loan. He had referred at [21] to the background evidence in relation to false documents in Bangladesh and had applied *Tanveer Ahmed*. It was submitted that he was entitled to find that the documents could not be relied on and did not need to go further and consider the shape, layout or other particular features of the documents that the appellant had relied on.
22. As regards the medical documents, the medical report from Bangladesh is from July 2000. The FtJ had found that the documentary evidence was unreliable. The rule 35 report only states that the appellant has scars. Although the psychiatric report says that the appellant has psychiatric issues, that cannot establish that they result from the events that he describes.
23. It was submitted that there was no irrationality in the FtJ's finding in terms of how a local businessman would be able to locate the appellant.
24. In reply, Ms Gherman submitted that the appellant's *sur place* activities are part of the assessment of his political activity overall. The 'section 8' issue (delay in claiming asylum) is only one factor in the overall assessment. The medical report from Bangladesh could inform the credibility assessment in the appellant's favour,

contrary to the submissions on behalf of the respondent. Likewise, in relation to the psychiatric report.

25. In addition, as set out at [14(b)] of the grounds, the background evidence does support the contention that the appellant could be at risk on return, even from a local businessman.

Assessment and Conclusions

26. I am satisfied that the grounds and submissions on behalf of the appellant do establish that the FtJ erred in law in his assessment of the appellant's claim. The following are my reasons.
27. In concluding that the appellant was not politically active in Bangladesh (Ground 1) it is not apparent that the FtJ gave adequate consideration to the letters said to come from Bangladesh which supported the appellant's account. There are letters said to be from different individuals in the BNP in Bangladesh dated 23 April 2012, 11 October 2018 and 6 November 2019 referring to the appellant's political activities in the BNP in Bangladesh and referring to an attack on the appellant in 2000. Whilst the FtJ referred to the letters at [24], that is only in terms of the global conclusion that none of the documents are reliable, but there is no reference to the detail of them at all. It is not apparent from the FtJ's decision therefore, that he considered the information in them.
28. The medical evidence (Ground 2) consisted of a medical report dated July 2000 from the Sheba Poly Clinic in Bangladesh which states that the appellant was treated there for injuries sustained in an attack on him at that time. It is referred to in the appellant's skeleton argument that was before the FtJ, yet there is no reference to that report in the FtJ's decision.
29. The 'rule 35' report stating that the appellant has scarring consistent with an account of torture is similarly referred to in the appellant's skeleton argument but is not referred to in the FtJ's decision. The same applies in relation to the psychiatric report from Dr Hussain dated 12 November 2018. The report concludes, after having set out the appellant's history as narrated to him by the appellant, that he suffers from Mixed Anxiety and Depressive Disorder, with the diagnostic criteria having been set out.
30. One can see that reasons could be given for concluding that none of those reports, either individually or cumulatively, attract much weight in the assessment of the appellant's credibility. However, if that was the FtJ's view it was incumbent on him to say so and to give reasons, even brief reasons. That was not done.
31. In terms of Ground 3, the appellant relied on country background evidence from the CPIN in relation to the influence of the ruling Awami League, the harassment and intimidation of political opponents, political violence, the extent of the availability of state protection and the inadequacies of the justice system. That evidence, to some extent at least, is capable of supporting the appellant's account. However, the only

country background evidence referred to by the FtJ was that in relation to the availability and prevalence of fraudulently obtained documents. Again, it was incumbent on the FtJ to engage with the background evidence relied upon by the appellant, at least to some extent, and even if briefly.

32. As to Ground 5, it is the case that specific submissions were made to the FtJ in relation to the detail of the documents, for example that there were original embossed stamps, original signatures and consistency in case numbers in terms of the FIR. There is no indication from the FtJ's decision as to what he made of those submissions. Again, it may be that reasons could be given for finding that the argument for the appellant in that regard carries little weight, but in my view there ought to have been at least some engagement with that argument and an explanation by the FtJ, even if briefly, as to why he rejected the argument.
33. It is plainly not necessary for a judge to refer to every document or every argument. In addition, as I have indicated, there could be reasons as to why the evidence and arguments in the specific respects to which I have referred and as set out in the grounds could be rejected. Furthermore, the FtJ did give reasons for doubting the appellant's account of how he obtained the documents from Bangladesh in terms of inconsistencies in the accounts of the appellant and his witness. There is also the obvious potentially adverse credibility issue in terms of the lateness of the appellant's claim for asylum.
34. However, I am satisfied that the FtJ erred in law in terms of a failure to engage with the evidence and arguments to which I have referred above, such that his adverse credibility assessment is vitiated by error of law. Given that that error of law is fundamental to the assessment of the appellant's claim, the decision of the FtJ must be set aside. It has not been necessary for me to decide the merits of Ground 4.
35. In the circumstances, it is not appropriate for the decision to be re-made in the Upper Tribunal. It is necessary for the appeal to be remitted to the First-tier Tribunal for a fresh hearing before a judge other than First-tier Tribunal Judge Bonavero, with no findings of fact preserved. In coming to that conclusion, I have had regard to the Senior President's Practice Statement at paragraph 7.2 in the light of the extent of the fact-finding exercise that needs to be undertaken in terms of the appellant's credibility.
36. *Decision*

The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the appeal is remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Judge Bonavero, with no findings of fact preserved.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Upper Tribunal Judge Kopieczek

Date: 26/3/2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email