



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/21418/2018**

THE IMMIGRATION ACTS

**Heard at Field House
On 27 September 2021**

**Decision & Reasons
Promulgated
On 08 November 2021**

Before

**UPPER TRIBUNAL JUDGE BLUNDELL
DEPUTY UPPER TRIBUNAL JUDGE MALIK QC**

Between

**MKM (BANGLADESH)
(ANONYMITY DIRECTION MADE)**

Appellant

and

**SECRETARY OF STATE
FOR THE HOME DEPARTMENT**

Respondent

Representation

For the Appellant: Mr S Khan, Counsel, instructed by Liberty Legal Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. These proceedings arise from the Secretary of State's decision of 9 October 2018 to refuse the Appellant's human rights claim. The

Appellant's appeal from that decision was dismissed by First Tier Tribunal Judge Higgins, insofar as it concerned Article 8, on 9 December 2019. However, by his decision promulgated on 22 December 2020, which is annexed to this decision, Upper Tribunal Judge Blundell held that the First Tier Tribunal had erred in law in failing to consider and determine the Appellant's claim based on Article 3. By that claim, the Appellant contended that he was subject of an arrest warrant in Bangladesh and feared detention on return leading to ill-treatment contrary to Article 3. Upper Tribunal Judge Blundell preserved all other findings made by the First Tier Tribunal and directed the appeal to be retained for the purpose of re-making of the decision as to Article 3. We now re-make the decision on the Appellant's underlying appeal.

Background

2. The detailed factual and procedural background of this appeal, including a summary of the decisions made below, is set out in Upper Tribunal Judge Blundell's decision at [2]-[17]. We do not repeat it in this decision.

Preserved findings

3. Although the First Tier Tribunal Judge did not consider the Appellant's Article 3 claim, he made certain findings as to the alleged risk in Bangladesh as part of his assessment of the Article 8 claim. He was not satisfied, as he said at [33], that the Appellant was politically active before he left Bangladesh or that an arrest warrant was issued against him in 2004 as claimed. He gave four reasons for that finding. First, at [34], he considered the Appellant's credibility to have been damaged by his failure to seek protection after supposedly learning of the arrest warrant in 2004. Second, at [35], he considered the Appellant's credibility to be further damaged by the fact that he had only claimed asylum after being served with a removal notice. Third, at [36], he noted that the Appellant had failed to provide evidence which should have been readily available. Fourth, at [38], he observed that the Appellant's two friends made no mention in their evidence of the Appellant fearing for his life. He added, at [38]-[39], that the Appellant's claim was "disingenuous" and had been "concocted in response to his impending removal as an overstayer". He also found, [40]-[57], that there were no very significant obstacles to the Appellant's integration into Bangladesh and that his removal would be proportionate under Article 8.
4. On his appeal to the Upper Tribunal, the Appellant made no challenge to these findings of fact. Accordingly, Upper Tribunal Judge Blundell preserved these findings and explained the reasons for doing so at [43]-[48]. The First Tier Tribunal Judge made his findings on the balance of probabilities and therefore they were not determinative of the Article 3 claim. In that context, Upper Tribunal

Judge Blundell felt it appropriate to retain the appeal for the purpose of re-making of the decision as to Article 3.

Burden and standard of proof

5. In making this decision, we proceed on the basis that the burden of proof is on the Appellant but the standard of proof is lower than balance of probabilities.
6. The Appellant is required to show a reasonable likelihood or a real risk of persecution or substantial grounds for believing that he would face a real risk of suffering serious harm or treatment contrary to Article 3: see *R v Secretary of State for the Home Department, ex p Sivakumaran* [1987] UKHL 1 [1988] AC 958.
7. We apply this lower standard of proof in relation to all of our findings.

Resumed hearing

8. At the resumed hearing before us, Mr Khan appeared for the Appellant and Mr Clarke appeared for the Secretary of State. We are grateful to them for their assistance and able submissions.
9. Mr Khan and Mr Clarke both agreed that all relevant documents were included in the Appellant's bundle that had been filed for the purpose of this hearing and the Home Office's bundle. The Appellant was present and gave oral evidence with assistance of a Bengali (Sylheti) interpreter. Having confirmed that he and interpreter were able to converse without difficulty, he adopted his witness statements at pages 2-11 of the Appellant's bundle. He called two other witnesses, namely, Mr Ezazul Hoque Tafadar and Mr Kousar Ullah. They gave evidence in English and adopted their witness statements at pages 12-18 and 19-27 of the Appellant's bundle. They all were cross-examined. We then heard closing submissions from Mr Clarke and Mr Khan respectively. We shall refer to the evidence and submissions, as appropriate, in our findings.

Our findings

10. The Appellant contends that he was an active member of the Awami League prior to his arrival in the United Kingdom in 2004 and was a general secretary for Dhakin Surma district. On his account, he helped to organise a political meeting a few months before he left Bangladesh and a fight during that meeting ended up in an individual, who was a member of the Bangladesh National Party, sustaining life threatening injuries. He says that he was accused of the crime and was subsequently told that an arrest warrant had

been issued against him. He claims that he therefore decided not to return to Bangladesh. He is afraid, he says, of being arrested and imprisoned on return.

11. We have considered all of the evidence in the round, taking account of the conclusions reached by the First-tier Tribunal. We are not satisfied on the lower standard of proof that the Appellant was either a general secretary of the Awami League prior to his arrival in the United Kingdom or is subject of an arrest warrant.
12. In his oral evidence, the Appellant stated that he had been involved with the Awami League for a period of around ten years in Bangladesh and held the position of a general secretary for one year. He accepted that he was aware of the Awami League's presence in the United Kingdom but, when challenged in cross-examination, could offer no logical explanation as to why he has not contacted them to confirm his involvement and designation. He stated that he did not want to involve them with this case. We consider that if the Appellant had actually been a general secretary of the Awami League, which is the ruling party in Bangladesh, he would have contacted them in the United Kingdom, if not in Bangladesh, for some official confirmation. We consider the Appellant's claimed involvement with Awami League to be a complete fabrication.
13. There is still no evidence of any arrest warrant issued against the Appellant. He has the benefit of legal advice and representation in the United Kingdom. Yet, he made no effort at all to obtain a copy of the supposed arrest warrant from Bangladesh. When challenged in cross-examination on this point, he offered no explanation for not instructing a lawyer in Bangladesh for this purpose. He stated that he had asked his friends about it but provided no explanation as to why those friends were not able to obtain a copy of the arrest warrant. He accepted in cross-examination that he himself has not seen the arrest warrant but stated that his parents were informed by the local police about it when they visited their residence. In our judgment, the arrest warrant is fiction. It is concocted by the Appellant to resist his removal from the United Kingdom.
14. The Appellant arrived in the United Kingdom in 2004 and his leave to remain expired in 2005. He, however, continued to reside in the United Kingdom unlawfully and was encountered working at a restaurant in 2007. He gave a false name to the Immigration Officers but his true identify was revealed by the management of the premises. He was detained as an overstayer and served with notice of his liability to removal from the United Kingdom. He was released on temporary admission. He failed to report and, instead, made an application for leave to remain on Article 8 grounds relying on, among other things, involvement with Awami League and the existence of an arrest warrant. The delay in making claim on this

basis and raising the issue only after his detention undermines the credibility of his account.

15. The Appellant stated in his oral evidence that he met Mr Tafadar and Mr Ullah in 2004 and has been seeing them regularly since 2007. In their most recent witness statements, Mr Tafadar and Mr Ullah stated that they were aware of the Appellant's political activities and risk to his life in Bangladesh. In cross-examination, Mr Tafadar told us that the Appellant had informed him about it in 2004. Mr Ullah stated that he had been so informed in 2006. Yet, they made no reference to it either in their original witness statements or in the oral evidence before the First Tier Tribunal Judge. The First Tier Tribunal Judge found it to be rather remarkable and, at [38], observed that he would have expected the Appellant to have mentioned the alleged risk and surrounding circumstances to them in view of their close relationship. Mr Tafadar and Mr Ullah made reference to the Appellant's political activities and the risk for the first time in their witness statements filed for the purpose of this resumed hearing. When Mr Ullah was challenged in cross-examination as to why he had not mentioned it earlier, he offered no explanation. Mr Tafadar, however, stated that the Appellant's solicitors did not ask him anything about it and simply wanted to know how he knew the Appellant. This explanation, in our judgment, is not credible. In his original witness statement, Mr Tafadar did not confine himself to expressing how he knew the Appellant. He provided evidence as to the life that the Appellant has established in the United Kingdom and how he has disassociated himself from Bangladesh. He explained the difficulties that the Appellant, in his view, was likely to face in Bangladesh and also referred to his own visit to that country. In this context, his failure to mention anything about the Appellant's involvement in politics or the arrest warrant either in his original witness statement or in the oral evidence below is a glaring omission. We find this aspect of the evidence given by Mr Tafadar and Mr Ullah to be a disingenuous, but implausible, attempt to meet the point made by the First Tier Tribunal.
16. The First Tier Tribunal Judge, at [47], accepted that the telephone contact between the Appellant and his parents ended in 2017. He also accepted that even if they are alive, it is unlikely that the Appellant could expect any support from them on return to Bangladesh. Mr Clarke has not invited us to consider departing from this finding. We accordingly make our assessment on this premise but find that it does not provide any assistance to the Appellant in relation to his Article 3 claim.
17. In his closing submissions, Mr Khan invited us to find that the Appellant, on return to Bangladesh, would be identified and stopped at the airport because of the arrest warrant. Our finding is that no such arrest warrant exists and that answers Mr Khan's invitation. There is, however, another difficulty with Mr Khan's submission. He

referred us to no objective evidence suggesting that there is such a system in place in Bangladesh that a person returning from abroad, against whom an arrest warrant has been issued, faces a risk of identification and detention at the airport.

18. In the circumstances, we conclude that the Appellant faces no reasonable likelihood or real risk of persecution on return to Bangladesh. He has not shown substantial grounds for believing that he would face a real risk of suffering serious harm or ill-treatment contrary to Article 3.
19. In his earlier decision, Upper Tribunal Judge Blundell, at [25]-[35], held that it is not open to the Appellant to argue as grounds of this appeal that his removal would be contrary to the Refugee Convention or the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection. If those grounds of appeal were available to the Appellant, we would have rejected them too for the reasons set out above.
20. The First Tier Tribunal Judge, at [40]-[57], made detailed and clear findings as to Paragraph 276ADE(1)(vi) of the Immigration Rules and Article 8. As we note above, the Appellant made no challenge to those findings and they were preserved by Upper Tribunal Judge Blundell. Mr Khan has not invited us to re-open those findings. There has been no material change in the circumstances and there is no proper basis for us to depart from those findings. We accordingly conclude that there are no very significant obstacles to the Appellant's integration into Bangladesh and that his removal from the United Kingdom would be a proportionate interference with his Article 8 rights.

Conclusion

21. For all these reasons, we find that the Appellant's removal from the United Kingdom would be compatible with Articles 3 and 8.

Notice of decision

22. The decision of the First Tier Tribunal having been set aside in part, we remake the decision on the appeal by dismissing it on all grounds.

Anonymity order

23. An anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 has already been made in this appeal. Accordingly, 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.

Fee award

24. The First Tier Tribunal Judge made no fee award. We too make no fee award in the light of our decision to dismiss this appeal on all grounds.

Zane Malik QC
**Deputy Judge of Upper Tribunal
(Immigration and Asylum Chamber)**
Date: 21 October 2021