



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal numbers: PA / 04162 / 2020
& PA / 04174 / 2020
& PA / 04181 / 2020

THE IMMIGRATION ACTS

Heard at: Field House
On 30 November 2021

Decision & Reasons Promulgated
On 22 December 2021

Before

Upper Tribunal Judge Gill

Between

Mrs S H
Mr M H
Miss S H

First Appellant
Second appellant
Third Appellant

(ANONYMITY ORDER MADE)

And

The Secretary of State for the Home Department

Respondent

Anonymity

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify any of the appellants. No report of these proceedings shall directly or indirectly identify any of them. This direction applies to each of the appellants, to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings.

I make this anonymity order because these appeals are protection appeals.

The parties at liberty to apply to discharge this order, with reasons.

Representation:

For the appellants: Mr Z Malik QC, of Counsel.

For the respondent: Mr. T Melvin, Senior Presenting Officer.

Decision

1. The appellants appeal against a decision of Judge of the First-tier Tribunal Karbani who, in a decision promulgated on 29 April 202 following a hearing on 12 April 2021, dismissed their appeals on asylum grounds, humanitarian protection grounds and human rights grounds.
2. There are four grounds which challenge the judge's assessment of their protection claims. For the reasons given at paras 9-14 below, it is unnecessary for me to deal with all of the grounds.

3. The first appellant (born in October 1977) is a national of Pakistan with a 'no visa required' status in Bangladesh as the spouse of Mr H, a national of Bangladesh. The second appellant and the third appellant are their son and daughter respectively, born in May 1999 and November 1997 respectively. The first appellant and Mr H have four other children named as dependants in the first appellant's asylum claim but a Judge of the First-tier Tribunal decided on 15 October 2020 that they do not have any rights of appeal.

Basis of asylum claims

4. The appellants claimed asylum on 21 December 2018. The basis of their asylum claim may be summarised as follows: Mr H is prominent businessman in Bangladesh who was subject of an enforced disappearance by the government of Bangladesh on 11 May 2017. Since then his driver and manager have also gone missing. On 20 January 2019, Mr H was arrested and remanded in custody under the Anti-Terrorism Act 2009. The appellants have been informed they are named on a 'wanted list' as the family of Mr H and fear that they will be targeted by the Bangladeshi government if they return to Bangladesh. Mr H's sister in the United Kingdom (Miss H), who is a British citizen and a practising solicitor in the United Kingdom, has visited Mr H in prison and attempted, unsuccessfully, to obtain his release. Mr H's father lives in Bangladesh. There was no evidence before the judge that Mr H's father had experienced any difficulties from the Bangladeshi authorities on account of his relationship with Mr H.
5. The appellants claimed that they were at risk on return due to actual or imputed political opinion. It was asserted that Mr H was not politically active but as a prominent businessman in Bangladesh, his lack of support for the Bangladeshi government was deemed to be anti-government. At para 33 of her decision, the judge said, applying RT (Zimbabwe) [2012] UKSC 38, that she was satisfied that lack of expression of support could be considered an anti-government sentiment and therefore a Convention reason could be engaged on that basis.

The Judge's decision

6. At para 38, the judge accepted that Mr H was abducted on 11 May 2017. As he reappeared in government custody and was formally arrested in January 2019, she said that she was satisfied that it was reasonably likely that he was abducted by government agents. She observed that reports spanning a period between May 2017 and January 2019 suggested that he had remained missing in the period between 11 May 2017 and January 2019.
7. At para 45, the judge said that she was not satisfied that *"Mr H had a political profile which has resulting [sic] in his being targeted due to his actual or perceived lack of support for the Government."* The judge gave her reasons at paras 39-44. Paras 39-45 read:

"(ii) [Mr H's] political profile

39. Mr Malik QC relied on the CPIN as to the risk to family members of those who are or who are or perceived to be opposition members or political activists. I have to consider whether there is a reasonable likelihood that [Mr H] has a political profile, by the absence of his support for the Government, means that he and his family have become targets for persecution or serious harm.

40. [Miss H] said that her brother was abducted because he is a prominent businessman that can have a lot of influence. His views are the Government of Bangladesh is anti-

democratic and is one party state, and he does not agree with them. The Government is not happy that he is not actively supporting them, and as he is well known, this is their way of bringing him down. I do not consider this to be a credible assertion for the following reasons:

41. Firstly, it was only suggested at the hearing that [Mr H's] is being targeted because of his lack of support for the Government. This narrative was adopted at the hearing and was consistently maintained throughout the hearing by all the witnesses, but not mentioned in any of the asylum interviews or witness statements. I attach less weight to this evidence because of its late introduction.
42. Secondly, there is no evidence that [Mr H] lack of support for the Government has presented a problem before May 2017. The claim is that he was suddenly abducted on his return during a routine business trip to Bangladesh. Whilst the claims were consistent in identifying [Mr H] as a prominent businessman from the outset of the claim, there is no suggestion that he has acquired his wealth or prominence recently, and which begs the question, why he is being targeted now. The evidence does not produce any explanation. I accept the media coverage shows he may be well known, but there is no evidence that [Mr H] has ever been involved in politics, or made his critical views of the Government publicly known. There is no evidence from any of the witnesses that this abduction was the result of any known ongoing campaign or attempt to recruit his support from the Government. There is a notable lack of information that he was targeted in any way for his support prior to this incident.
43. Thirdly, and perhaps most significantly, there is now evidence that [Mr H] has been arrested and imprisoned, without charge, under the Anti-terrorism Act 2009. This was reported widely in the press in January 2019 and was linked to his ownership and sale of [XYZ]. He was said to have connections to a banned organisation called 'Jama-at ul Muslimin'. The appellants rely on his lack of being charged to demonstrate that these are malicious claims.
44. [Miss H] described that she had returned to Bangladesh to help her brother get out. I asked her to clarify what efforts she had made. She said that she had tried to get him bail but he has not been charged yet and they will not grant bail, and there have been delays due to COVID-19. I find that given her personal qualifications, this evidence was quite vague. [Mr H] has now been in prison for 2 years, yet there is no evidence from the court or a lawyer in Bangladesh as to the progress of any case against him. The onus is on the appellants to provide evidence to support their claim. I find the absence of detail on this aspect of the claim undermines their case that the charges are completely without merit.
45. Therefore, taking all this evidence together in the round and to the lower standard of proof, I am not satisfied that [Mr H] has a political profile which has resulting *[sic]* in his being targeted due to his actual or perceived lack of support for the Government."

8. The judge then proceeded to consider the risk of the appellants' being persecuted in Bangladesh, at para 46 onwards. Since some aspects of her reasoning in these paragraphs are relevant to my decision whether she materially erred in law, I now quote paras 46-49 of the judge's decision (it not being necessary, in my view, to quote paras 50-55):

"(iii) Risk to the appellants on return.

46. It is for me determine whether any risk or persecution or serious harm arises to the appellants from the circumstances of [Mr H] as a prominent businessman in custody. There is no supporting evidence that he faces charges which extends to his family members upon which they will be investigated or targeted. There is no evidence that enquiries have been made as to the appellants whereabouts with either [Miss H], [Mr H's] legal representatives or his father, since the abduction almost four years ago.
47. I accept that [Mr H's] father is old and perhaps even infirm, but given the serious nature of charges again *[sic]* [Mr H] and their joint business activities, it is notable that he has not been questioned by the authorities at all. There is no suggestion that [Mr H's] business or assets have been seized or affected in anyway despite being suspected *[sic]* financing of

terrorism under the 2009 Act. To the contrary, it appears that his businesses have continued trading as before. Therefore, I am not satisfied the appellants will be targeted in order to extract information from [Mr H].

48. It was submitted that [Miss H] was 'targeted' at the airport on her return as the sister of [Mr H]. She travelled to Bangladesh on 20 January 2019 and was questioned by the Special Branch at the airport in Dhaka. She described feeling threatened by being told she was lucky her father was still alive; and that it is better for her to remain in the UK. She took these comments as threats: Since that incident, she has travelled to Bangladesh again on numerous occasions. She said she has returned as she needs to help her brother, and as a British Citizen and lawyer does not feel that she is at risk. She said that she informed the British Embassy when she returned but has not done so on every occasion.
49. I find that [Miss H] gave credible evidence about her experience at the airport and why she feels that she has been able to return to Bangladesh. Given that her brother had been abducted, it not implausible that she felt intimidated and threatened by this exchange with officers. It is also possible that her arrival coincided with the news of his arrest. However, it has been noted that in the exchange, there was no mention of her brother at all. She has returned frequently to Bangladesh since then and visited her brother in prison. She claims her British Citizenship and status as a lawyer are protective factors. However, she was questioned at the airport in spite of this, so I do not accept that it is as much of a protective factor as she might perceive. I am not satisfied that she was 'target' as a result of her connection with her brother. I am not satisfied that her experience is a portent for how the appellants will be treated. I therefore find that this incident does not indicate that other family members will also be at risk or persecution or serious harm on return."

Assessment

9. At para 38 of her decision, the judge accepted that Mr H was abducted on 11 May 2017 by government agents and that he was missing in the period between 11 May 2017 and January 2019 when he reappeared in government custody. It follows that she found not only that he was abducted by government agents but also that he 'disappeared' whilst in government custody for a period of 1 year 8 months. On the evidence before her, there were two possible reasons for his abduction and disappearance, i.e. that it was due (as the appellants claimed) to his lack of support for the Bangladeshi government or (in the alternative) to suspicion on the part of the Bangladeshi government that he had committed offences under the Anti-Terrorism Act 2009, something that was alluded to by the judge at paras 43 and 47 of her decision. Plainly, she rejected the former but she made no clear finding as to whether his abduction, disappearance and continued detention was due to the latter.
10. Mr Melvin submitted that the judge was not required to make a definite finding on the reason for Mr H's abduction and continued detention. However, as Mr Malik submitted, it is not the case that the judge was required to make a *definite* finding. She was required to make a finding as to the reason for Mr H's abduction, disappearance and continued detention on the standard of a reasonable likelihood. She erred in law by failing to do so.
11. Next, it is clear that the judge expected to see evidence of charges having been brought against Mr H in order for the appellants to establish their claim that the reason for his abduction, disappearance and continued detention was reasonably likely to be due to his perceived anti-government stance and that she took the lack of evidence of such charges as undermining their case on this point whereas their case was that the lack of such charges supported their claim that Mr H's abduction, disappearance and continued detention was reasonably likely to be due to his perceived anti-government stance. However, the judge failed to refer to any background evidence to resolve this important issue. She should have explained, by reference to background material, why her expectation (that charges would have

been brought against Mr H if it was reasonably likely that his abduction, disappearance and continued detention was due to his perceived anti-government stance) was based on the background evidence. In the absence of such explanation, it is difficult to avoid the conclusion that she was considering the behaviour of the Bangladeshi authorities from the western perspective. In the alternative, that there was no evidential basis for her expectation that charges would have been brought against Mr H if it was reasonably likely that his abduction, disappearance and continued detention was due to his perceived anti-government stance.

12. The fact that Mr H's business and assets had not been seized was potentially evidence in support of the appellants' claims concerning the reason for his abduction, disappearance and continued detention. For the reasons given at para 11 above, there was no evidential basis for the judge to take into account the lack of charges as an adverse factor as opposed to a positive factor.
13. In addition, I am satisfied that, in reaching her finding at para 45 that she was not satisfied that "[Mr H] has a political profile which has resulted in his being targeted due to his actual or perceived lack of support for the Government", the judge erred as follows:
 - (i) I agree with Mr Malik that, in her assessment at para 49 of the evidence of Miss H of her experience at the airport on arrival in Bangladesh, the judge failed to take into account that Miss H had taken the precaution of informing the British Embassy of her travel to Bangladesh.
 - (ii) At para 44, the judge considered the evidence of Miss H and said that her evidence of the efforts she had made to obtain Mr H's release was "*quite vague*" but failed to explain why it was vague, given the evidence summarised in the third sentence of para 44. As this was an important aspect of the evidence, it was not sufficient for the judge merely to say that the evidence was "*quite vague*" without explaining *why* it was vague.
 - (iii) At para 42, the judge took into account that there was no evidence that Mr H's lack of support for the Bangladeshi government had presented a problem before May 2017. I agree with Mr Malik that this ignored the fact that the appellants' case was that Mr H's problems began with his abduction in May 2017. More importantly, I am satisfied that the judge failed to take into account that (as Mr Melvin informed me at the hearing) the evidence was that Mr H had spent a lot of time prior to May 2017 in the United Kingdom.
14. I am conscious that some of the issues I have considered above were not raised in the grounds. However, to the extent that this is the case, I am satisfied that it is/they are '*Robinson obvious*' issue(s).
15. For all of the reasons given above, I am satisfied that the judge materially erred in law in making her adverse credibility assessment and also by failing to make a clear finding as to whether the abduction, disappearance and continued detention without charge of Mr H was reasonably likely to be due to suspicion of financing of terrorist activities.
16. For all of the reasons given above, I set aside the decision of the judge on the appellants' appeals in the entirety.

17. Initially, Mr Malik submitted that the judge's finding at para 38, where she said that she was satisfied that Mr H was abducted on 11 May 2017 by government agents, should stand. When I pointed out that the judge's adverse credibility assessment could not be compartmentalised so as to preserve the findings that were in the appellants' favour, Mr Malik said that, on reflection, the appeals could be decided afresh.
18. The facts upon which these appeals rely are complex. Mr Malik informed me that the appellants wish to obtain an expert report. Taking these matters into account and also that none of the judge's findings can stand, I am satisfied that para 7.2(b) of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal applies.

Notice of Decision

The decisions of the First-tier Tribunal on these appeals involved the making of errors on points of law such that the decisions are set aside in their entirety. The appeals are remitted to the First-tier Tribunal on the merits on all issues by a judge other than Judge of the First-tier Tribunal Karbani.

Signed: Upper Tribunal Judge Gill

Date: 21 December 2021

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