Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07369/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 June 2021	**On 22 July 2021**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

MAR
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr West, Counsel instructed by Kalam Solicitors
For the Respondent: Mr Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which both parties have consented. The form of remote hearing was video by Microsoft Teams (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties, and neither party expressed any concern, with the process.

2. The appellant is appealing against the decision of Judge Roots of the First-tier Tribunal ("the judge") promulgated on 17 September 2020 dismissing his protection and human rights appeal. This was the third time the First-tier Tribunal considered this appeal (the previous two decisions were set aside).

3. In summary, the appellant, who is a citizen of Bangladesh born on 13 August 1991, claims that in 2009, after witnessing his friend being assaulted by a gang associated with the Awami League ("the gang"), he agreed to provide a statement to the police and testify in court. He claims that he has faced, and continues to face, politically motivated retribution as a result. In addition, the appellant claims that he is an atheist with a social media presence who has received online threats and that he faces a risk from Islamic extremists in Bangladesh.

4. The appellant first entered the UK in 2011 as a student. He left in 2015, and travelled to Sweden, where he claimed asylum. He was returned to the UK in August 2016, pursuant to the Dublin Regulations. He applied for asylum upon arrival in the UK. His application was refused on 14 July 2017.

Decision of the First-tier Tribunal

5. The judge noted that the respondent accepted as genuine the First Information Report ("FIR") and charge sheet submitted by the appellant in respect of the attack in 2009 and that the respondent also accepted that the appellant had witnessed an attack. It was not, however, accepted by the respondent that the gang were connected to the Awami league and that the appellant faced a risk as a consequence of witnessing the attack.

6. In respect of the attack in 2009, the judge found:

    a. Several of the attackers were known to the appellant (including a childhood friend and cousin).

    b. The attack was relatively mild (the appellant's friend was beaten up and suffered some injuries including broken teeth).

    c. The appellant and his friend were involved in community activities to try and help street children who had become involved in crime and drugs and this may have brought them into conflict with the gang.

    d. The attack was not politically motivated or by a gang connected to or affiliated with the Awami League. The judge supported this finding by noting (i) the FIR and charge sheet do not refer to the attackers having a political motive; and (ii) the appellant's contemporaneous deposition in the Bangladeshi proceedings does not refer to any political motivation or political background. At paragraph 49 the judge stated that there was not credible evidence of the gang who attacked him having political connections or affiliations, or a link to the government.

    e. There is a contradiction between the appellant stating that he was the only witness to the attack in 2009 and the evidence submitted by the

appellant concerning proceedings in Bangladesh which includes statements from other witnesses to the attack.

f. The appellant's evidence was that in 2013 police came to his house asking for him as they were continuing to pursue the case against the perpetrators but they could not continue because of his absence. The judge stated that the appellant had not given a credible explanation as to why his role was so crucial in the proceedings given the witness statements from other witnesses.

g. The appellant gave inconsistent evidence about whether the proceedings against the perpetrators in Bangladesh are ongoing or have been withdrawn.

h. The appellant remained in Bangladesh for almost two years after the attack. The judge stated that the appellant had not given a credible explanation as to his whereabouts or how he was able to continue to study. The judge noted that in the AIR (q.89) the appellant said "in those two years they didn't hurt me because they know me and see me grow up together. We locally know each other". The judge found that this suggested that as long as the appellant stayed out of their area and did not interfere with their activities the gang would leave him alone.

i. The relatively minor attack in 2009 does not remain the source or cause of ongoing risk on return to the appellant or his family.

7. The appellant submitted a declaration by a lawyer stating that he received a petition from the appellant's mother to take action against "terrorists" who are threatening the appellant's family and will kill them if he testifies against them. The judge found that the letter did little to support the appellant's claim because (a) it is dated 2017 and therefore some years after the attack, (b) the author of the letter states that he knows the appellant but does not say how, and (c) the letter states that the trial depends on the appellant without explaining why given the existence of three other witnesses.

8. The judge found that there was a significant delay in making the protection claim as the appellant did not make a claim when he came to the UK in 2011 as a student. However, the judge stated at paragraph 73 (and again in paragraph 81) that the delay was only a relatively minor consideration.

9. The judge summarised her findings in respect of the attack in paragraphs 74 – 81. The judge stated that the attack was relatively minor, did not involve a gang with political motivations or connections, one of the perpetrators was the appellant's cousin who lived next door to him, the appellant remain safely in Bangladesh for nearly two years continuing his studies and for a time living at home, the appellant did not report the threats made against him to

the police in Bangladesh, and the appellant gave inconsistent evidence about why his evidence was so crucial.

10. With respect to the appellant's claimed blogging and Facebook activity, the judge found that the appellant's evidence was very limited and he had not given a credible explanation as to why he would use his own name or post a photo of himself on some posts and a fake identity on others. The judge found that the appellant's witness statement of 26 August 2020 did not address any specific documents or attempt to explain what they were in any detail.

11. The judge noted that the evidence submitted by the appellant included an on-line threat. However, the judge found that the appellant did not address this threat in his evidence and it is not clear when it was sent, where it was posted or at whom it was directed.

12. The judge also considered a document indicating an on-line threat from another person. The judge noted that this, too, is not referred to in the appellant's witness statement and was not relied on in submissions. The judge found that the threat did not appear to contain any reference to the appellant.

13. The judge found at paragraph 90 that the evidence of threats against the appellant was limited and considerably out of date. The judge stated that the appellant confirmed that there was no evidence before the Tribunal of threats from after 2017. The judge found to be not credible the appellant's explanation that he did not put further threats into the bundle as this would simply be repetition.

14. After finding that the appellant would not be at risk on return, the judge considered whether, in the event that he was wrong, there would in any event be sufficiency of protection or a viable internal relocation option.

15. With respect to sufficiency of protection, the judge found that the evidence submitted by the appellant indicated that the police had shown a willingness to pursue the gang and had only ceased doing so because he had left the country, and that the appellant had not adduced evidence to show that he would not be afforded protection.

16. With respect to internal relocation, the judge noted that the appellant had lived for two years in Bangladesh without any harm coming to him and, even taken at its highest, the appellant's evidence did not show that the gang had the influence or resources to locate him elsewhere in Bangladesh. With respect to the reasonableness of internal relocation, the judge found that the appellant is from a wealthy family, supported by his father and would be able to live in Dhaka.

17. The judge also found that it would not breach article 8 ECHR to remove the appellant. The judge found that he is from a wealthy family, well educated, remains in close contact with family and does not have significant health concerns. The judge found that in these circumstances his removal would be proportionate.

Grounds of Appeal

18. The grounds of appeal are lengthy and challenge almost every aspect of the decision. They are divided into seven "grounds" but within each of the seven grounds are various different arguments. I have summarised the various challenges, following the structure and order in the grounds, as follows:

19. Ground 1: Failure to properly assess the credibility of the appellant. Under this heading, the appellant claims that the judge:

    a. placed too high a burden of proof on the appellant;

    b. was wrong to state at paragraph 44 that there was no evidence of the gang being linked to the ruling party;

    c. failed to state why she did not accept that the appellant knew the assailants in the gang personally, and knew that they had Awami League connections; and

    d. erred by stating that there was no evidence to support the claim that the gang were supported by the Awami league when the appellant gave evidence in the form of the AIR and written and oral evidence, and provided evidence in the form of a declaration from a Bangladeshi lawyer, which was authentic and strong evidence.

20. Ground 2. Making adverse findings without giving the appellant an opportunity to deal with the issues. Under this heading, the appellant claims that the judge erred by drawing an adverse inference from an issue that was not raised by the respondent or judge at the hearing, and which the appellant did not have an opportunity to respond to as it was not put to him. The issue was that there is an apparent inconsistency between the appellant saying that he was the only witness to the attack and there being three witness statements from other witnesses to the attack in the appellant's bundle.

21. Ground 3. Error in respect of considering the appellant's ability to continue studying in Bangladesh. Under this heading, the appellant claims that the judge erred by not putting to him that he considered that the appellant had not given a credible account of how he managed to continue studying if he was at risk from the attackers. The grounds contend that this was never at

issue and therefore the appellant did not have an opportunity to provide an explanation.

22. Ground 4. Error in considering the lawyer's letter. Under this heading, the appellant claims that the judge:

    a. erred by drawing an adverse inference from the appellant not giving the date when his father attempted to lodge a FIR, when he was not asked this;

    b. failed to ascribe proper weight to the lawyer's letter, in accordance with *PJ v Secretary of State for the Home Department* [2014] EWCA Civ 1011; and

    c. irrationally rejected that the gang of assailants had political connections as the lawyer's letter was written by a lawyer.

23. Ground 5. Error in considering section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. Under this heading, the appellant claims that the judge erred by failing to consider that the appellant was lawfully in the UK from 2011 to February 2015 as a student and that he claimed asylum as soon as he was returned from Sweden under the Dublin Regulations (having travelled to Sweden once his leave expired in order to claim asylum there).

24. Ground 6. Error in considering the *sur place* protection claim. Under this heading, the appellant claims that:

    a. it was illogical for the judge to presuppose that a political or religious activist would not have a picture of themselves online;

    b. it was wrong for the judge to find that it was unclear which website the appellant had posted on as it was accepted by the respondent that his posts were on Facebook; and

    c. it was bizarre for the judge to find as relevant that the appellant has not reported the threats to the police in the UK when the threats originated from Bangladesh.

25. Ground 7. Error in considering sufficiency of protection and internal relocation. Under this heading, the appellant claims that:

    a. the judge ignored the fact that the assailants were bailed out easily and able to resume threatening the appellant due to their political connections;

b. the judge failed to take into consideration that the appellant's father's FIR was not accepted by the authorities;

c. the judge did not explain why the objective evidence provided by the appellant was not accepted, in particular as to the culture of corruption within the police and judiciary;

d. the judge failed to take into consideration that the only way the appellant was able to remain in Bangladesh for two years after the attack was by hiding; and

e. the judge failed to explain why it would be reasonable for the appellant to relocate by going back into hiding.

Submissions

26. I heard submissions from Mr West, on behalf of the appellant, and Mr Kotas, on behalf of the respondent.

27. Although Mr West relied upon all of the grounds of appeal, the focus of his submissions was on the first ground, which he characterised as the core challenge. He submitted that the judge fell into error by failing to explain why she rejected the consistent evidence of the appellant that he knew the assailants were connected to the Awami league. He argued that it was incumbent on the judge to make a clear finding on this crucial point and explain her reasoning.

28. He also argued that the judge failed to adequately address the letter from the Bangladeshi lawyer, which, he claimed, clearly corroborated the appellant's claim that there was a link between the gang and the Awami league. Mr West submitted that it was critical for the judge to explain with clarity why this key aspects of the lawyer's letter were rejected.

29. With respect to the other grounds, Mr West stated that there was an overarching issue, which is that the judge repeatedly failed to put points, in respect of which she drew an adverse inference, to the appellant, thereby depriving him of an opportunity to make his case. Mr West argued that it is not for an appellant pre-empt issues that a judge might take against him; and had these points been put to the appellant he may have been able to explain them. Mr West described this as a persistent feature in the decision.

30. Mr Kotas argued that the first ground is no more than a disagreement with the judge's factual findings, which the judge was entitled to make for the sustainable reasons she gave. With respect to the other grounds, relying on *WN (Surendran; credibility; new evidence) Democratic Republic of Congo* [2004]

UKIAT 00213, Mr Kotas argued that the judge did not need to put points to the appellant and it was for the appellant to make his case.

31. I asked the parties whether, even if the judge erred as claimed, this was immaterial if the appellant could safely and reasonably relocate internally. Mr Kotas stated that he accepted that if the judge erred in relation to grounds 1-5 the decision could not stand as the judge's findings on internal relocation, although framed as a finding in the alternative, relied on findings that are subject to the challenge in grounds 1-5.

Analysis

Ground 1: Failure to properly assess the credibility of the appellant

32. An issue in contention before the First-tier Tribunal was whether or not the gang was affiliated to the Awami league, as claimed by the appellant. This was a key issue because the risk the appellant claims to face on return arises from the gang having this political connection.

33. The judge made a finding of fact that the gang was not politically connected to the Awami league. In the first ground of appeal, and during his submissions, Mr West sought to challenge this finding of fact from various angles. His arguments, however, are not persuasive, for the following reasons:

    a. First, the judge clearly understood and recognised that it was the appellant's evidence that he personally knows some of the assailants and their affiliation to the Awami league. This is plain from paragraph 46 where the judge stated that the appellant claimed to know the gang was affiliated to the Awami league because of "his own local knowledge". The judge can legitimately be criticised for stating at paragraph 44 that there was "no evidence" to support the political connection to the gang when, clearly, it was the appellant's own evidence that he knew there was a connection. However, as is clear from paragraph 46 (as well as from reading the decision as a whole), the judge did in fact recognise and appreciate that the appellant gave evidence stating that he knew, from local knowledge, that the gang was politically connected. This is not a case where the judge overlooked, or misconstrued, the appellant's evidence. Rather, it is one where the judge did not accept it. It is well established that where, as here, a challenge is being made to a finding of fact, caution must be exercised before interfering with it. See, for example, *Lowe v The Secretary of State for the Home Department* [2021] EWCA Civ 62

    b. Second, the judge did not apply the wrong standard of proof when making this evaluative finding of fact. The judge directed herself

correctly to the standard of proof in paragraph 32 and there is nothing in the language used by the judge when assessing whether the gang is politically connected – or elsewhere in the decision – to indicate that the wrong standard was applied.

c. Third, the judge did not overlook any evidence when making her findings of fact. It is plain, from reading the decision as a whole, that the judge had regard to the documentation submitted by the appellant to corroborate the occurrence of the attack (see paragraph 51), the letter from a Bangladeshi lawyer (see paragraphs 61 – 65), the evidence of the appellant (see, for example, paragraphs 45,46, 50, 53, 57-60, and 66-68), and the objective evidence which was said to support the claim that the gang is Awami league affiliated (see paragraphs 47 – 48). There is no merit, therefore, to the contention that legal error arises from a failure to have regard to material evidence.

d. Fourth, the judge did not fail to give adequate reasons for this finding of fact. Reasons are adequate if they provide a party with sufficient detail to understand why a decision was reached. See *Fage UK Ltd. v Chobani UK Ltd.* [2014] EWCA Civ 5 at [115]. The parties can be in no doubt as to why the judge found that the attackers were not affiliated to the Awami league, as the judge explained her reasoning clearly. In short, the judge found that the FIR and charge sheet do not refer to the attackers having a political motive or affiliation, and the contemporaneous depositions (including that of the appellant) in the Bangladeshi proceedings do not refer to any political motivation or connection.

34. In summary, the first ground cannot succeed because it fails to identify a legal error and amounts to no more than a disagreement with a finding of fact that the judge was entitled, for the reasons she gave, to make.

Ground 2. Making adverse findings without giving the appellant an opportunity to deal with the issues.

35. In some cases, such as where a point is conceded by the respondent, fairness may require an issue to be put to an appellant before it is decided against him. However, this will not normally be the case where an issue is in contention. As explained in *WN (Surendran; credibility; new evidence) Democratic Republic of Congo* [2004] UKIAT 00213 at paragraph 28:

> [N]either in Scotland nor in England and Wales is it thought in the higher courts that every point which concerns an Adjudicator when dealing with the credibility of an Appellant needs to be raised explicitly with the Appellant in order for him to pass a comment upon it. There may be tactical reasons why an Appellant and his advocate decide not to grapple with what might be thought to be a problem; they may hope that the Adjudicator will not see it as

> a significant point or indeed may not spot it at all; but it is for an Appellant whose credibility is challenged as this Appellant's credibility most emphatically was, and challenged in almost every possible respect, to put forward all the evidence he can and to deal with the discrepancies which arise. Even where the Secretary of State is not represented, the Appellant cannot assume that points which are not put by the Adjudicator to him for his comment are points which are to be regarded as accepted, especially if they are obvious points of contradiction or implausibility which he has failed to grapple with. It is not necessary for a fair hearing that every point of concern which an Adjudicator has, be put expressly to a party, where credibility is plainly at issue. As we have said elsewhere, it is a matter of judgment whether to omit to do so is unfair or whether to do so risks appearing to be unfair as a form of cross-examination. On balance, the Adjudicator's major points of concern are better put, especially if they are not obvious. The questions should be focussed but open, not leading, expressed in a neutral way and manner, and not at too great a length or in too great a number. But, whether or not that is done, it is for the Claimant to make his case.

36. In this case, as is made clear in paragraph 24 of the decision, although the respondent conceded that the appellant had witnessed the gang attacking his friend, the appellant's claim that the gang was politically connected to the Awami league was not conceded. It is also clear, from the judge's summary of the submissions in paragraphs 28-29, that this issue was very much in dispute before the First-tier Tribunal. The appellant therefore was aware (or ought to have been aware) that the judge would consider, and make an evaluative finding in respect of, the evidence before her relevant to the question of whether the gang was politically connected.

37. The documentary evidence submitted by the appellant about the attack included statements of three witnesses to the attack (statements of D. Hossain, M. Ali and H. Ali). None of these statements indicate that the gang was politically connected. Rather, they describe an assault in which a mobile phone was stolen. This evidence, on its face, does not assist the appellant in establishing that the gang are connected to the Awami league. It was a matter for the appellant (and his representatives) to decide whether to address (and thereby draw to the judge's attention) the content of these three witness statements. The appellant having chosen to not do so (and the issue not having been raised by the respondent) it still remained for the judge to consider the statements, as it related to an issue in contention. In these circumstances, there was no duty on the judge to "put to" the appellant that the witness statements were being considered, or that she considered them inconsistent with the appellant's witness evidence. Such an obligation would be inconsistent with *WN*.

Ground 3. Error in respect of considering the appellant's ability to continue studying in Bangladesh

38. The judge was entitled to take into consideration that the appellant was able to continue studying in Bangladesh after the attack, as this was relevant to whether he faced a risk from the gang. The judge did not need to "put this" to the appellant for the reasons given in *WN*. This ground lacks merit for the same reason as ground 2.

Ground 4. Error in considering the lawyer's letter.

39. The appellant relied on a letter written by a Bangladeshi lawyer, Imrul Hasan, dated 27 August 2017. In his letter, Mr Hasan states that he received a petition from the appellant's mother to assist in respect of a threat to the appellant and his family from "powerful terrorists" who are sheltered by the governing political party.

40. The judge considered Mr Hasan's letter in detail in paragraphs 61 -65. She gave it little weight because (a) it is dated 2017 and therefore some years after the attack, (b) Mr Hasan states that he knows the appellant but does not say how, and (c) the letter states that the trial depends on the appellant without explaining why given the existence of three other witnesses.

41. The grounds challenge the judge's approach to Mr Hasan's letter and contend that adverse points were not put to the appellant.

42. This ground lacks merit because it was open to the judge, having considered Mr Hassan's letter, to attach little weight to it for the sustainable reasons she gave. Reliance on *PJ (Sri Lanka)* is misconceived. That case concerned the veracity of court documents obtained by a local lawyer. In contrast, this case concerns a local lawyer (Mr Hasan) stating that he knows that the gang are "powerful terrorists", "sheltered by the governing political party" and that they "must kill [the appellant] and ruin his social respect including his family" if he returns to Bangladesh. Mr Hasan, however, has not explained how he has come to know this information about the gang. In the absence of an explanation as to how he obtained this information about the gang, it plainly was open to the judge to attach only little weight to the letter.

Ground 5. Error in considering section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

43. This ground has no merit because (a) the judge was entitled to take into consideration that the appellant did not claim asylum when he arrived in the UK in 2011; and (b) in any event, the judge did not attach significant weight to the delay in claiming asylum. In paragraph 73 the judge stated that the delay was only a relatively minor consideration. Accordingly, even if the judge erred (which I do not accept) by treating as relevant the delay in claiming asylum, this was immaterial because it did not affect the outcome.

Ground 6. Error in considering the *sur place* protection claim.

44. Mr West did not make any submissions on this ground. He stated that he relied on his written submissions.

45. The judge described, in paragraph 92, the evidence submitted by the appellant to support his sur place claim as "weak and confusing" and containing "many unresolved issues". Having reviewed for myself the evidence that was before the First-tier Tribunal, I am satisfied that this conclusion was open to the judge. Indeed, based on the documentary evidence, it is difficult to see how any other conclusion could have been reached. No error of law arises because the judge plainly had regard to the documents submitted by the appellant purporting to show his sur place activities, evaluated this evidence in the context of the background material about Bangladesh, and gave clear reasons to explain the conclusion she reached. This ground amounts to no more than a disagreement.

Ground 7. Error in considering sufficiency of protection and internal relocation

46. The judge adequately explain why she found there to be sufficiency of protection and a viable internal relocation alternative for the appellant. However, any error would in any event be immaterial as, for the reasons given above, the judge was entitled to find that the appellant would not be at risk (and would not need state protection) in his home area.

Notice of Decision

47. The appeal is dismissed. The decision of the First-tier Tribunal did not involve the making of an error of law and stands.

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 the appellant or any member of the appellant's 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.

Signed

D. Sheridan

Upper Tribunal Judge Sheridan Dated: 20 July 2021