



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

Appeal Number: PA/10099/2019

THE IMMIGRATION ACTS

Heard at Field House

On 8 December 2020

**Decision & Reasons
Promulgated
On 3 March 2021**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**A Q A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Ali, Counsel, instructed by Maliks and Khan Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

**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 their 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.

1. This is an appeal against the decision of First-tier Tribunal Judge Robertson issued on 23 January 2020 which refused the appellant's asylum and human rights claim brought against a decision of the respondent dated 8 August 2019.
2. The appellant is a national of Bangladesh and was born in 1980.

Immigration History

3. The appellant maintains that he arrived in the UK illegally in March 2005. He was encountered working illegally by the immigration authorities and arrested on 14 October 2006, at which point he claimed asylum. His application was refused on 22 November 2006 and he did not appeal that decision.
4. On 23 September 2009 the appellant applied for leave to remain on human rights grounds. That application was refused on 14 January 2010. Further submissions made on 26 September 2013 were refused on 1 May 2015.
5. Further submissions made on 18 August 2015 were refused on 13 October 2015. The appellant lodged a judicial review against the decision of 13 October 2015 which led to a new decision refusing leave on 21 November 2016 affording an in country right of appeal. The appellant appealed the decision of 21 November 2016 but his appeal was refused by First-tier Tribunal Judge Thomas on 26 January 2018. The appellant challenged the decision of the First-tier Tribunal to the Upper Tribunal. In a decision dated 11 May 2018, Deputy Upper Tribunal Judge Hall found an error of law in the decision of the First-tier Tribunal, set it aside and remade the decision refusing the appeal on all grounds. The appellant became appeal rights exhausted on 18 November 2018.
6. The appellant made further submissions on 18 June 2019 which were refused on 18 August 2019. The appellant again appealed that refusal. His appeal was dismissed by First-tier Tribunal Judge Robertson in the decision dated 23 January 2020 which is under challenge here.

Asylum Claim

7. The appellant maintains that he was a supporter of the Bangladesh Jatiya Party (BJP) from 2000, that he became a member and then that he became secretary of the Biswanath Department of the party from 2001 onwards. As result of his activities, he was attacked on two occasions in 2004 and he reported both incidents to the police. He was also the subject of a false allegation or "ghost case" which was filed against him on 8 June 2008 even though, by that time, he had been in the UK for 4 years. The appellant also maintains that the false allegation led to an arrest warrant being issued against him on 10 February 2009. He submits that he will be targeted on return because the "ghost" case and arrest warrant are outstanding and the BJP and other opposition parties are being threatened

and harassed by the ruling Awami League (AL) party. He also maintains that he is at risk from another opposition party, the Bangladesh National Party (BNP).

First-tier Tribunal Decision

8. It was common ground before First-tier Tribunal Robertson that positive findings from the decision dated 11 May 2018 of Deputy Upper Tribunal Judge Hall remained extant. The preserved findings are set out in paragraph 3 of the decision of Judge Hall:

“3. The FTT accepted that the Appellant had given a credible account and made factual findings at paragraphs 22-29 which are summarised below;

- (a) The Appellant held the position of general secretary of the BJP Party in his home area of Biswanath from 2001 to 2004.
- (b) The Appellant was the victim of two attacks in Bangladesh which occurred in October and November 2004. These attacks were carried out by local members of the BNP and Awami League.
- (c) Documentary evidence produced by the Appellant, which he received from Bangladesh, was reliable.
- (d) After the Appellant's departure from Bangladesh his family were made the subject of false charges which were found not proven by the Judicial Magistrate.
- (e) An arrest warrant has been issued for the Appellant in Bangladesh.
- (f) The Appellant has not had any political involvement with the BJP or otherwise since he left Bangladesh in 2005 and has not continued his political activities in the UK.
- (g) The Appellant's credibility was damaged with reference to Section 8 of the Asylum and Immigration (Treatment of Claimant's, etc.) Act 2004 as he entered the UK illegally using a false passport and did not seek to regularise his immigration status for nineteen months, and only then after he was detained for working illegally. This behaviour weighs against the Appellant's credibility but is not fatal to his appeal.
- (h) The Appellant suffered persecution and serious harm in his home area of Biswanath.”

9. Before First-tier Tribunal Judge Robertson the appellant maintained that Deputy Upper Tribunal Judge Hall had erred in other parts of his decision, however, such that it should be distinguished following Devaseelan (Second Appeals, ECHR, Extra-Territorial Effect) Sri Lanka * [2002] UKIAT 00702 and the appeal allowed.

10. The appellant maintained that Judge Hall erred when finding that the arrest warrant was issued by the BNP who, by the time of the hearing before Judge Hall, were in opposition and found not to be in a position to continue a false prosecution against the appellant. The appellant's evidence before Judge Hall had been that opposition party members had issued the arrest warrant rather than referring specifically to the BNP. Also, Judge Hall had failed to address correctly the fact of the arrest warrant being issued by the AL who were in power at the time of the hearing before him.
11. Judge Robertson referred to this point in paragraph 18 of her decision and set out in paragraphs 32 to 45 why it was not accepted. Firstly, Judge Hall's decision had not been subject to a successful challenge to the Court of Appeal on that or any other basis. His findings therefore remained the starting point for Judge Robertson unless something new was provided forming a basis on which they could be distinguished; see paragraph 33.
12. Secondly, Judge Hall had not found that the arrest warrant was issued by the BNP but had stated that the complaint or "ghost" case that led to the arrest warrant was issued by the BNP. That was correct on the basis of the appellant's evidence that had been before him; see paragraph 34.
13. Thirdly, Judge Robertson set out in paragraphs 35 and 36 why she found that Judge Hall's findings on insufficient risk arising from the arrest warrant being issued by the AL were not shown to be unsound or that they should be distinguished.
14. Fourthly, Judge Robertson set out in paragraphs 41 to 49 why she did not find that the expert report showed that the findings of Judge Hall on there being no risk on return should be distinguished. Judge Robertson said this in paragraphs 42 to 47:
 - "42. Mr Mahbub was specifically instructed to consider the Appellant's risk on return. However, he did not refer to a single specific case of a false or 'ghost' case being filed and maintained against a BJP member. Whilst opposition party members may be at risk, and the terms is used to indicate all opposition party members, those who appear to be targeted are BNP and Jamaat-e-Islami Bangladesh (JI) members. There is little reference in the CPIN to violence against BJP members. For example, it is stated at page 279 of AB at para 6.1.9 that:

'AL members and activists have also reportedly extorted BNP business owners in rural areas, threatening them with violence if they fail to comply with demands for money. DFAT understands that JI members are generally subjected to greater levels of harassment and intimidation than members of the BNP. According to the Internal Crises Group the AL pressured Jatiya Party leaders into contesting general elections in 2014 to create the appearance of a competitive contest.'
 43. Apart from the instances listed above, DFAT is not aware of any other, credible reports of authorities hassling Jatiya Party members or

relatives and associates of Jatiya, BNP and JI members. Violence during election times appears to be between AL, BNP and JI members (see p281 of AB, at paragraph 8.2.1).

44. I have considered the evidence at pp 174 - 257 of AB, and this evidence in general, in relation to human rights abuses by the authorities against human rights activists. Mr Ali did not refer to action taken by the AL against BJP members as set out in this background evidence. I note that there is one reference to a false or 'ghost' case against Maniru Huq Chowdhury, the coordinator of the Jatiya Oikya Front, but no reference to any false cases against BJP members.
45. On the evidence before me, I find that it is not established that there is a reasonable degree of likelihood that the current government in Bangladesh will actively pursue a false case against the Appellant on his return to Bangladesh. In so deciding, I have considered the expert report but find that (i) there is little support within it for any assertion that the AL actively pursue false cases against BJP members: and (ii) there is very little by way of specific 'ghost' cases against members of the BJP. There is some useful background in the second report (dated 29 May 2019, at pp 23 - 60 of AB) at paras 18 - 23 regarding the BJP, but much of the information regarding arrests and mistreatment and false or 'ghost' cases related to BNP, Jatiya Oikya Front and JI members (see paras 43 - 53 and 59 - 62 of the expert report). There is reference within the report to "the BJP's recent uncompromising stance against the ruling party" increasing the chances of the Appellant and fellow party men being singled out but there is little within the report that highlights how this 'uncompromising stance' is evidenced or the singling out of BJP members as a result. I bear in mind that the purpose of the report was to provide clarity on the Appellant's position on return. As such, I find that if there had in fact been any evidence which directly supported the assertion that the AL would target a former BJP member on return, it would have been provided within the body of the report. I therefore find that whilst the expert has the expertise and qualifications to provide an opinion, in this case his opinion is not transparently linked to the information provided within the body of his report and therefore I cannot attach significant weight to it. I therefore attach some weight to it but it does not add significantly to the Appellant's case. This, I find, does not go behind any concession in the RL at paras 12 - 17.
46. I find that I cannot go behind the findings of the UT Judge as to risk on return from the AL as set out above at para 35. It therefore follows that the assertion set out in the fresh submissions (that is, that the UT Judge, having found that if the Appellant was arrested, he would be detained, should simply have found that internal relocation was not an option as it was the AL that the Appellant feared and they are in government) is not made out.
47. Mr Ali submitted that to hold that the Appellant would not be at risk on return is to go against the positive credibility findings made by the FTT. This is obviously not the case. The UT Judge's decision that the Appellant would not be at risk on return was made against the backdrop of the positive credibility findings made by the FTT, which the

Judge set out in detail. It is possible to hold that there was past ill-treatment but that there is no reasonable degree of likelihood that this would be repeated on return provided reasons are given for so finding. I remind myself that an application for permission to appeal against the UT decision was not successful.”

The references to “DFAT” are to a report of the Department for Foreign Affairs and Trade of Australia

Grounds

15. The first ground maintains that the First-tier Tribunal took an incorrect approach to the expert evidence. The judge applied too high a standard when looking at the expert report and finding it insufficient because there were no details of specific difficulties for BJP members. It was not disputed that the expert report and country evidence showed mistreatment of the “opposition” by the AL. This included the BJP. The respondent used the term “opposition” BJP in her own Country Policy Information Note issued in January 2018 to refer to harassment and mistreatment of “all opposition”. Specific examples would be more likely to concern the BNP which was a much larger party than the BJP. The expert’s report set out in paragraph 21 that the BJP had contested the 2001, 2008 and 2018 general elections as part of the BNP-led alliance. This showed that the BJP would be associated in the minds of the AL with the BNP.
16. Further, the expert report set out that the BJP profile in opposition had been raised by the party withdrawing from the BNP led alliance because it did not feel that the BNP were sufficiently strong in its opposition to the AL. The expert stated in paragraph 23 that:

“The BJP’s opposition to the government is so strong that it has severed ties with the BNP as it felt the BNP was appeasing the government by withdrawing its boycott of the recent election results.”

The expert also referred to the ‘BJP’s recent, uncompromising position against the ruling party’ in paragraph 87 of the report.

17. The second ground maintained that the First-tier Tribunal failed to address the appellant’s claim that he was also at risk on return from the BNP.

Discussion

18. It is not my view that First-tier Tribunal Judge Robertson erred in her approach to the expert evidence. As she noted in paragraph 45 of her decision, the expert report did refer to members of specific parties other than just the BNP being subject to false allegations and mistreatment but there was almost no information about mistreatment of BJP members. Where that was so she was entitled to find that the absence of specific

references to BJP members facing difficulties was significant. In the same paragraph she specifically considered the fact of the BJP having left the BNP Alliance and was entitled to find that the expert report did not provide examples that this had led to specific difficulties for BJP members. As Judge Robertson pointed out in paragraph 45, the purpose of the expert report was to show why Judge Hall's decision on the appellant's profile being insufficient to show a risk on return should be distinguished. Where the expert report did not set out details of specific difficulties for members of the BJP, she was entitled to find that the report was not sufficient to show that Judge Hall's findings should be distinguished and that it did not show a risk on return for the appellant.

19. For these reasons, I concluded that First-tier Tribunal Judge Robertson took a lawful approach to the expert evidence. Judge Robertson was also correct to take into account the extant findings from the previous appeal, that the appellant was a low-level member of the BJP, that he had been absent for many years, and that his family were also subject to false allegations but had been able to defend themselves successfully before a magistrate with there being no evidence of mistreatment during or as a result of those proceedings; see paragraphs 49 to 53.
20. I also did not find that the First-tier Tribunal made a material error of law in failing to make a specific finding on the appellant's claim that he would be at risk on return from the BNP. The basis for this claim is that the BNP brought a false complaint against the appellant in 2008 at a time when they were in power. It will be evident from the discussion above that the BNP are no longer in power in Bangladesh. The country evidence showed, rather than the BNP acting against the BJP, that the parties were in an alliance for some years. Nothing was put forward showing that the decision of the BJP to leave the alliance had led to mistreatment of BJP members by the BNP. The expert report says nothing on this aspect of the appellant's claim. In my judgment, therefore, there was simply no material before the First-tier Tribunal showing that the appellant would be at risk from the BNP on return and it is not an issue that appears to have been argued with any force before the First-tier Tribunal. No error arises where this aspect of the claim could not succeed on the basis of what was before the First-tier Tribunal.
21. For these reasons, I do not find that there is an error of law in the decision of the First-tier Tribunal.

Notice of Decision

22. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed: S Pitt
Upper Tribunal Judge Pitt

Date: 21 February 2021

