



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

Appeal Number: PA/06390/2019

THE IMMIGRATION ACTS

Heard at Field House

On 28th April 2022

**Decision & Reasons
Promulgated
On 15th June 2022**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**AM
(ANONYMITY DIRECTION MADE)**

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: Mr Bobby Daniel (Solicitor) Law Dale Solicitors

For the Respondent: Ms Julie Isherwood, Home Office Presenting Officer

DECISION AND REASONS

- 1.** The appellant, a Bangladesh national born on 24th July 1981, appeals with permission against the decision of First-tier Tribunal Judge Loke, who dismissed the appellant's appeal against the refusal of the Secretary of State of his protection and human rights claim on 13th June 2019. The hearing before the First-tier Tribunal took place on 15th March 2021 and the decision was promulgated on 4th May 2021. The appellant arrived in the United Kingdom on 11th October 2006 on a spousal visa and received convictions for drinking and driving in 2008 and 2009, for which he received three months' imprisonment and for domestic assault against his wife, for which he received a suspended sentence.
- 2.** The appellant claims that he and his family are members of the BNP and that in 2004 he borrowed money from his uncle and an individual named Ana Miah in order to get married, but he claims that Ana Miah (linked to the Awami League) demanded excessive amount in recompense. He

states his brother Md S R is imprisoned in Bangladesh on a false charge of murder and his older brother Md H R had a false case of murder registered against him and had claimed asylum in Italy. The appellant claimed that Ana Miah had sent police to question the appellant's father and the Awami League had beaten the appellant's father and mother and uncle and, for example, on 14th February 2018 the appellant's mother and uncle were attacked and were in hiding. The appellant claimed he had a false case registered against him as a result of the debt dispute with Ana Miah, which the appellant claimed was political in nature, and in his absence, he had been sentenced to nine years' imprisonment with fines which amounted to over £100,000.

3. He feared persecution from the Awami League because of his political opinion as a supporter of the BNP and also attempts to extort money from him made by Ana Miah. He also claims he suffers from mental health problems and has suicidal thoughts relating to any return and any removal would be in breach of Article 3; further he faced very significant obstacles on removal to Bangladesh.

Grounds for Permission to Appeal to the Upper Tribunal

4. The appellant's grounds were threefold and interlinked as follows.
5. Ground 1. There was a failure to take into account material evidence, failure to give reasons and a misdirection of law when applying the correct standard of proof on material matters. The judge erred when considering whether there was sufficient evidence to indicate that Ana Miah was a high-ranking Awami League member. At paragraph 44 the judge stated, *'I am not satisfied there is sufficient evidence to indicate, even on the lower standard, that he [Ana Miah] has any or any significant profile within the Awami League'.*
6. Crucial evidence had been omitted for consideration by the judge which was:
 - (a) The newspaper article of violent clashes confirming Ana Miah as Jubo League president at A131. The article published on 9th January 2018 entitled "2 ruling party groups clash in Sylhet", specifically made reference to JL president Ana Miah. This newspaper link was provided and available and clearly corroborated the appellant's account. There was an omission of consideration of this material at paragraph 44 of the decision and it corroborated the role of the Jubo League and the Awami League, which was highlighted in paragraph 19 of the skeleton argument. The CPIN Note on Bangladesh: Political parties and affiliation, Version 3, September 2020 made specific reference at 3.6.1 that the Jubo League was the youth wing of the Awami League and had committed "violence and extortion with impunity".
7. The grounds asserted the judge erred following his conclusions at paragraphs 37 to 41. Even on the lower standard the judge found that Ana Miah had brought a case against the appellant to recover a debt, and specifically at paragraph 41 that there is a warrant outstanding against the

appellant, but the judge found it was merely a civil dispute between two individuals; this conclusion was refuted. In particular the appellant's case was supported by a credible account of facts set out in his witness statement and the statements of his brother, aunt and cousin. The appellant was an active member of the BNP in Bangladesh and his family had been long-time supporters and members of the BNP. There were newspaper articles confirming involvement with the BNP and the politically motivated case is filed against his brothers, a letter from the parents and the appellant's support of the BNP.

8. There was a misdirection as to the standard of proof, see **ME (Sri Lanka) v The Secretary of State for the Home Department** [2018] EWCA Civ 1486 where Lewison LJ stated at paragraph 18 that it was unsatisfactory for the factfinder to express findings of fact in the negative, particularly where the real question was whether there is a "real risk of persecution".
9. Ground 2. Misdirection and failure to apply **Karanakaran [2000]** EWCA Civ 11 and **Tanveer Ahmed (documents unreliable and forged) Pakistan** * [2002] UKIAT 00439 properly, which resulted in procedural unfairness and the application of too high a standard of proof. The appellant provided Bangladeshi newspaper articles and online articles as corroborative support of his claim and a report from a Bangladeshi lawyer Mr M Muhammad Ullah.
10. The judge noted the legal certificates for the lawyer were provided but questioned the omission of verification in respect of the documents relating to the appellant's brothers. In rejecting the authenticity of the corroborative documents in the face of the evidence the judge failed to apply in practice the approach in **Karanakaran** at and **Tanveer Ahmed**.
11. Ground 3. There was an irrational and inadequately reasoned conclusion in the face of the background evidence that the appellant would have state protection from persecutory harm at the hands of non-state actors and that he could internally relocate. The appellant could not be expected to remove his association from the BNP given his previous political activities, but the judge rejected that he had any profile with the BNP in Bangladesh or that it was reasonably likely that the appellant's family had been actively involved with the BNP. This was effectively contrary to the corroborative evidence. Realistically in the context of the appellant's circumstances persecutory level harm would be at the hands of the Awami League actors and indeed it was accepted that Ana Miah was previously violent toward the appellant's family.
12. The notion that the appellant would be able to obtain state protection in Bangladesh as a BNP supporter, from Ana Miah who was the president of the Jubo League and who was motivated by greed to obtain his money and for political reasons, was irrational and inadequately reasoned in the light of the background evidence concerning the political situation and the nature of political violence in Bangladesh. The grounds referred to the background evidence including the respondent's CPIN on 'Bangladesh

opposition to the government (January 2018) and Bangladesh: Background information, including actors of persecution and internal relocation (January 2018).

- 13.** Finally it was determined that the appellant did have a case pending against him. It was wholly unreasonable to conclude that taking into account Dr Hussain's report at paragraph 50 that there was "no evidence as to how or the extent to which the deterioration would manifest". The psychiatric report of Dr Hussain noted the prognosis at A129 and given the appellant's health conditions as detailed in his skeleton argument, in relation to prison conditions in Bangladesh, return would be unduly harsh. The appellant would be imprisoned upon arrival and this imprisonment would be for at least a period of nine years and Mr Ana Miah yielded considerable power. It was likely he would be re-imprisoned at the end of the nine years for inability to have paid the debt.

The hearing

- 14.** At the hearing before me Mr Daniel referred me to the bundle that was before the Tribunal and confirmed that the newspaper article, in relation to Ana Miah at page 131, was an extract from an online platform which was still live, and which mentioned Ana Miah. I was taken to further materials which were said to have been ignored by the judge. The key question was whether the debt was a civil debt or pursued for political grounds. It was asserted that the parents had been attacked and his brother was in prison on a false charge and his second brother had then escaped to Italy. In the bundle there were various photographs and Ana Miah's role, and his Facebook account highlighted his position. Ana Miah could be seen sitting with individuals at rallies and giving speeches. It was clear that he would have influence and one could see his photographs on Facebook. Further, the country expert material had been focused on the appellant.
- 15.** I did raise with Mr Daniel that the newspaper article referred to interparty conflict and had not mentioned the BNP. Further, the photographs on Facebook were screenshots and there were no dates. Although Mr Daniel stated he did not speak Bengali he stated that there were lots of banners in the photographs and a photograph subtitled Ana Mia which gave a date of 6th July 2020, and this indicated political activity on behalf of Ana Miah.
- 16.** In relation to ground 2, the judge had rejected the authenticity of the appellant's corroborative documents in the face of reports from an ostensibly qualified advocate. The qualifications and the investigation of the lawyer were reported at pages 112 to 120 of the appellant's bundle, which confirmed that the advocate was a lawyer of the Supreme Court.
- 17.** Ground 3 related to ground 1 and if the appellant were to be returned, he would face a lengthy sentence and the medical report had highlighted that he would be at risk on return because of his mental health.
- 18.** Ms Isherwood opposed the appeal and submitted that the evidence did not assist. The photographs were not dated or translated. The grounds accept that the appellant had not been active in the BNP whilst in the UK

and it was not challenged that family members were not connected to the BNP. Simply the appellant borrowed money and was required to pay it back. The judge undertook a thorough analysis of the evidence of the appellant and found at paragraph 16 that he had attended merely a few BNP meetings [16(iii)]. This did not signify a political profile. Indeed at paragraph 23, although the appellant stated he attended some demonstrations in the United Kingdom, there is no independent evidence of any sur place activities. The judge accepted that the appellant may have joined the BNP in 2005 on the basis of the BNP letter but did not accept that he had any political profile. He accepted that he had been a member of BNP in Bangladesh for approximately eighteen months but “there was no evidence of how and to what extent the Appellant was active within BNP at all”. At paragraph 27 there was no official documentation to show that his family were members of the BNP and at paragraph 29 the judge noted that, MHR, the brother’s witness statement made no mention of his family’s BNP connections. The appellant’s mother had also provided a letter in which she made no mention of any attacks being motivated by her family’s support for the BNP and whilst the appellant’s aunt and cousins both provided statements which raised Ana Miah’s Awami League links they significantly omitted any mention of the family’s support of the BNP. The judge, at paragraph 31, considered evidence including newspaper articles and found that the provenance of the articles was not explained.

- 19.** At paragraph 32 the judge was not disputing that the advocate may be a qualified lawyer, but he was not saying he was an expert able to verify the documentation or their genuineness.
- 20.** At paragraph 34 the judge found that in the absence of adequate evidence to indicate any BNP profile held by the appellant’s family there was no evidence to show that even if genuine these are cases which have been falsely brought or politically motivated. In essence the case was to recover a debt and the judge accepted certain elements of the case but found it was not politically motivated. Paragraph 45 was not challenged which included that there was no evidence that the family were being systematically persecuted by Ana Miah. Critically, the aunt, contrary to the mother’s evidence, confirmed that the mother continued to live in her own home, stayed with the appellant’s uncle on one occasion and the judge was satisfied that the family had continued to live in their own homes without incident since 2011 which belied the claim that they were hiding or in perpetual fear of Ana Miah.
- 21.** Ms Isherwood noted that the medical report talked of a loan and curiously a land dispute. The decision was clear and detailed and should be upheld.
- 22.** Mr Daniel responded that there was evidence that the family were involved with the BNP in the bundle. The Home Office had not undertaken any form of document verification. There was an email from the lawyer at 108 which gave his credentials. The brother’s documents were genuine.

Analysis

23. It is clear that the judge directed himself properly in respect of the burden of proof and identified the low standard of proof at [20], at the commencement of his deliberations, in terms of “a reasonable likelihood or serious possibility on return of persecution”. There is no misdirection in-law in an application of the standard of proof on material matters.
24. The points made by Ms Isherwood in her submissions have force.
25. I carefully considered the evidence in relation to the challenge of the judge’s treatment of the evidence of Ana Miah being a *high-ranking* Awami League member. The judge indeed considered the matter at paragraph 44(a) to (e). The judge’s treatment of the role of Ana Miah was criticised, particularly the finding at paragraph 44 that “The only evidence regarding Ana Miah’s status is his Facebook page”. It is asserted that the Newage article referring to Ana Miah as president of the Juboleague was online and remained live. It is clear at 44(a) that even if the judge overlooked the Newage article, he had identified that the Facebook page indicated that Ana Miah was president of the Juboligue (sic) since 2006 and stated that there was no evidence as to what profile this group had or any other details about this group but, additionally, at 44(b) he stated that there was no evidence as to what *role* Ana Miah has as president of this unspecified league within the Awami party as a whole. On the evidence as presented, that finding was open to him when the nature of the evidence is considered as below. Even if the judge did not identify the role of the Juboleague (and there were numerous spellings of the said organisation) as part of the Awami League, as a key point the judge did not accept the role of Ana Miah in the Juboleague.
26. Turning to the evidence the Facebook page relays little. In the light of **XX (PJAK - sur place activities - Facebook) Iran CG** [2022] UKUT 23 (IAC), the Facebook page does not assist in identifying the role that Ana Miah played or that he is linked to the Jubo League or Jubileague. As held in **XX (PJAK - sur place activities - Facebook)** on social media generally
- ‘8) It is easy for an apparent printout or electronic excerpt of an internet page to be manipulated by changing the page source data. For the same reason, where a decision maker does not have access to an actual account, purported printouts from such an account may also have very limited evidential value’.*
27. The one clear link between Ana Miah and the Jubo League was the Newage newspaper article and that included the word ‘advertisement’ within it and at the outset, and thus such articles can be paid for and placed. The appellant in his own witness statement states that Ana Miah is not identified in newspaper articles because people are too afraid to cite his name and yet curiously his appears in this online ‘article’. That piece of evidence stands alone.
28. The judge did consider the pictures of official meetings; however, he was entitled to state that there was no evidence as to what these meetings were and that the posts were untranslated. That is correct. Ana Miah

does not feature in the CPIN Note Bangladesh: Political parties and affiliation, Version, 3 September 2020.

29. In the light of the evidence linking Ana Miah with the Jubo League or Jubileague, when properly analysed, I am not persuaded that the judge materially erred, even if he failed to refer to the Newage article, when finding that Ana Miah did not have a significant role, because of the nature of the Newage article.
30. The CPIN does refer to AL members and activists reportedly had “extorted business owners *affiliated with the BNP* threatening them with violence if they do not comply with demands for money”. However the connection of Ana Miah to the Juboleague was not made out even to the lower standard of proof.
31. The further critical point, however, being made at 4.4.2 is the appellant’s and his family’s affiliations with the BNP. The appellant asserted that his family were all BNP supporters. That has not been established in this instance for the reasons which are explored below.
32. The judge at [23] to [26] analysed the appellant’s role in the BNP. The appellant gave evidence that he had attended some demonstrations in the UK but since the issues with his wife, (he was convicted of assault on his wife in 2009 and given a suspended sentence) this had stopped. The letter dated 19th February 2019 on BNP headed paper, as the judge identified was “*without a named author*” although it purported to confirm the appellant’s membership. The judge recorded that “*as far as the author knows the Appellant is an active member, although there is no specific evidence as to what the author knows as to the kind of activities the appellant involves himself in*” [23]. The judge found at [23] that the appellant gave evidence that he attended some demonstrations in the UK, however there was ‘*no evidence of any sur place activities whatsoever*’. The judge here was clearly referring to objective evidence. The judge at [24] stated that although he accepted the appellant may have joined the BNP in 2005 and was a member for 18 months before coming the UK in 2006, the judge stated, “*There is no evidence of how and to what extent the appellant was active within the BNP at all*”. The judge finally concluded at [26]

‘On the evidence provided, I am not satisfied that it is reasonably likely that the Appellant has been actively involved, or has had any profile within the BNP in Bangladesh or in the United Kingdom’.

Those were not challenged findings and that is the context in which the overall assessment of the claim was made.

33. The judge also carefully analysed the appellant’s family’s support of the BNP finding there was no official documentation (which the judge accepted) to indicate that the appellant’s father, mother, uncle or brothers are members of the BNP. The judge found there were no BNP membership cards or letters confirming their membership had been provided (although witness statements were provided and court documentation in relation to

the brothers and so could reasonably have been expected), and there was no evidence as to the nature or level of the family's political involvement [27]. That too was not challenged in the grounds save as touched on by the generally pleaded grounds and which I reject.

- 34.** The judge states at [29] that the aunt RA, and the cousin, both provided statements and raised Ana Miah's Awami League links but omitted mention of the family's support of the BNP. Equally his brother MHR made no mention of BNP links, as identified at [29]. The grounds at paragraph 8 merely assert that the appellant has been a long-time member and involved with the BNP but the judge, for sustainable and clear reasons, found that was not made out.
- 35.** At [32] the judge specifically considered the court documentation which purported to show that there had been cases raised against the appellant's brothers and the appellant claimed these were false cases raised against his brothers for political reasons. The judge was entitled to find that these lacked weight because as he cogently reasoned at [32]:
- "There is no verification evidence by a lawyer or otherwise to confirm the genuineness of these documents. Given a lawyer was instructed to verify the Appellant's court documents I see no reason why there is no similar evidence with respect of the documents relating to the Appellant's brothers".*
- 36.** Additionally, the judge found that there was no evidence as to the provenance of these documents or how they came into the appellant's possession. The judge was entitled to give no weight to these documents for the sustainable reasons that he gave.
- 37.** There is no indication that the judge failed to apply **ME (Sri Lanka) v The Secretary of State for the Home Department [2018] EWCA Civ 1486**. He makes series of clear findings.
- 38.** In relation to ground 2 the judge applied the correct standard of proof. He did not fall foul of **Karanakaran** by excluding matters which are relevant or fail to consider purportedly corroborative material documentation but gave sound reasoning for his approach to the evidence. The judge was obliged to consider whether a document is one on which reliance should properly be placed as per **Tanveer Ahmed** and see [35]. In asylum cases it is for an individual claimant to show that a document on which he seeks to rely can be relied on. It is clear that the judge looked at the evidence in the round and at [33] analysed the background material in relation to police and court documents. Even failure to show a document is a forgery does not necessarily mean it is reliable and having made credibility findings and having considered the documentation in its own terms the judge, considered the evidence in the round.
- 39.** The judge noted the court documentation regarding the appellant's case and that the lawyer in Bangladesh had provided a witness statement and that the lawyer had provided his legal certificates. The judge did not reject the lawyer's credentials, but it was open to the judge citing the CPIN

Bangladesh documents at 5.3.6 to find that “*corruption is widespread in the courts and the police and it is possible that genuine documents are fraudulently obtained as part of this process*” to find the evidence unreliable. That said, the judge accepted on the lower standard that there was indeed a case brought by Ana Miah against the appellant to recover his debt [38]-[39]. The judge accepted the documents from the advocate rather than rejecting his evidence as contended in the grounds. It was clearly not accepted that the claim was politically motivated as can be seen from the findings at [34] and [42].

40. As held by **QC (verification of documents; Mibanga duty) China [2021] UKUT 3** in all cases it remains the task of the judicial factfinder to assess the document’s relevance to the claim in the light of and by reference to the rest of the evidence. That is what the judge did.
41. Overall it was open to the judge at [48] to find that “the court proceedings are in my view a civil dispute between two individuals”.
42. In terms of ground 3 it is asserted the judge had not ruled out a real risk of the appellant being subjected to persecutory treatment and was incorrect to entertain the notion that the appellant would be able to obtain state protection as a BNP supporter.
43. The judge clearly found despite the said “corroborative evidence”, which was rejected, that the appellant had no political profile and as such there was no irrational or inadequately reasoned conclusion the appellant would have state protection from persecutory harm against the hands of non-state actors.
44. The judge at [42] made clear adverse findings with respect to the appellant and his family’s involvement with the BNP and thus the appellant was not at risk for his political or imputed political opinion.
45. The judge specifically considered the Article 3 claim and found that there was “no evidence to indicate that Ana Miah had been subjecting the appellant’s family to systematic persecution”. Not least, the judge found at 45(c) that they had continued to live in their own homes without incident. The judge referred to the background material and clearly found, relying on the CPIN: Bangladesh Actors of Protection, Version 1, April 2020, paragraph 7.2 that the evidence indicated that law provided for an independent judiciary and whilst there was a judicial system in place albeit it was subject to corruption and political pressure. The judge, with sound underpinning reasoning at [48], did not find that the proceedings against the appellant were politically motivated and concluded the court proceedings were merely a civil dispute between two individuals in which Ana Miah had raised the issue of debt in the civil courts which was open to him and “not completely unfounded”. As the judge found, even on the appellant’s own case, he owes the debt and if he wished to challenge it there was a system which enabled him to do so. The judge also found that there was nothing to stop the appellant from instructing a lawyer to lodge an appeal, [49]. Further, the judge identified that should the appellant be

detained the prison conditions in Bangladesh for ordinary prisoners did not violate Article 3, **SH (Prison conditions) Bangladesh CG [2008] UKAIT 00076**.

- 46.** The judge nevertheless considered the individual circumstances of the appellant and gave a precis of the doctor's conclusions. The judge addressed the psychiatric report of Dr Hussain at paragraph 50 and accurately recorded the main findings. The appellant had a mixed anxiety and depressive disorder [50] (a) and it was noted if left untreated his condition *may* worsen and imprisonment *may* aggravate his symptoms [50](c) significantly. As the judge recorded, however, there was no indication, even whilst the appellant was in the UK that he was on any medication or receiving any other treatment. In that context the judge was entitled to take the approach he did both to the mental health condition and suicide risk.
- 47.** Turning specifically to the final part of ground 3, I shall not repeat extensively my observations above but the rejection of the independent medical evidence from the report of Dr Hussain was open to the judge. It was submitted that return to Bangladesh would be unduly harsh and that he may be imprisoned which may be for at least nine years and the aggressor was someone who is highly politicalised. That said, the judge must take into account the expert evidence, which he did, but is not obliged to follow the conclusions and for the reasons given above it was open to the judge to depart from Dr Hussain's conclusions.
- 48.** The judge properly applied, in effect, **AM (Zimbabwe) [2020] UKSC 17** and correctly identified that "there is no evidence as to how or the extent to which deterioration would manifest" and this fell far short of satisfying him that there was a real risk the Article 3 threshold would be breached even if detained.
- 49.** The grounds assert irrationality but that demands a high threshold which is not met here. The judge gave adequate reasons for his conclusions having considered the background evidence.
- 50.** In closure of consideration of the asylum and article 3 claim the judge confirmed that he had considered the oral and documentary evidence as a whole. The judge again directed himself properly at paragraph 51 in relation to the standard of proof. The judge gave a host of reasons for rejecting the claim particularly that the appellant had no BNP profile either in Bangladesh or in the UK and his family were not involved with the BNP as claimed.

Notice of Decision

- 51.** There is no material error of law in the First-tier Tribunal decision and the decision will stand. The appellant's appeal remains dismissed.

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

“Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.”

Signed Helen Rimington

Date 7th June 2022

Upper Tribunal Judge Rimington