Upper Tribunal (Immigration and Asylum Chamber)

Appeal Number: PA/07142/2019

THE IMMIGRATION ACTS

Heard at Field House on:	**Decision & Reasons Promulgated**
27 September 2021, 24 January 2022	**On 07 June 2022**
and 15 March 2022.	
Written submissions on 11 October 2021	

Before

UPPER TRIBUNAL JUDGE BLUNDELL
DEPUTY UPPER TRIBUNAL JUDGE MALIK QC

Between

HA (BANGLADESH)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Rudolph Spurling, counsel, instructed by Hunter Stone Law
For the Respondent: David Clarke, Senior Presenting Officer (1st and 3rd hearing)
Tony Melvin, Senior Presenting Officer (2nd hearing)

DECISION AND REASONS

Anonymity Order – 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

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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. We make this order as this is a protection claim.

Background

1. The appellant is a Bangladeshi citizen who was born on 6 January 1986. He first entered the United Kingdom on 10 October 2009. He held entry clearance as a student which conferred leave to enter until 31 December 2012. On 18 December 2012, he made an application for leave to remain in the same capacity. That application was successful, and the appellant was granted leave until 10 October 2016.

2. On 9 January 2015, however, the appellant was notified that his leave was to be curtailed due to his non-attendance at his course of study. The curtailment was to take effect on 15 March 2015.

3. On 13 March 2015, the appellant made an application for leave to remain as a student. That application was rejected on 13 May 2015. The appellant did not leave the United Kingdom and he was discovered six months later hiding in a wardrobe during an enforcement visit. He was served with a removal notice.

4. On 15 November 2015, the appellant claimed asylum, stating that he had been politically active for the student wing (the Chatra Dal) of the Bangladesh National Party ("BNP") before he left Bangladesh. He claimed that he had been the Organisational Secretary in the years 2004, 2005 and 2006. He had returned from the United Kingdom to Bangladesh, for a holiday, in July 2013. Whilst he was out one evening, he was violently attacked by members of the Awami League. He was hospitalised for five days but the police took no action. When the appellant finally felt able to return to the United Kingdom to continue with his studies, he had been protected by an entourage of motorbikes on the way to the airport. Nevertheless, he stated that he had not claimed asylum when he returned to the UK because he had hoped that matters would improve in Bangladesh. He had attended a few BNP meetings in the UK, both before and after his holiday to Bangladesh.

5. The appellant was refused asylum on 28 January 2017 and he appealed against that refusal to the First-tier Tribunal.

First Appeal

6. The appellant's appeal was heard by First-tier Tribunal Judge Wylie on 8 December 2017. The judge heard oral evidence from the appellant and submissions from the advocates before reserving his decision.

7. In his reserved decision, Judge Wylie found that it was not credible that the appellant was an active member of the BNP (or its student wing) or that he would be at risk on return to Bangladesh: [61]. The judge found the appellant to have fabricated his account of BNP membership

and the problems which had arisen as a result. The appellant was refused permission to appeal against Judge Wylie's decision and he became appeal rights exhausted on 14 February 2018.

8. The appellant did not leave the United Kingdom and, on 6 April 2018, he was once again discovered by the respondent's officers during an enforcement visit. The appellant made further submissions on 8 April 2018 and then on 14 June 2019. In those representations, the appellant maintained that he was an Executive Committee Member of the London Metropolitan (Mohanagar) BNP; that his house had been raided by the authorities in his absence; and that his brother had been targeted in his stead. He submitted that he would be at risk on return to Bangladesh notwithstanding the adverse findings previously made by Judge Wylie.

9. The respondent accepted that the appellant's further submissions amounted to a fresh claim but she refused that claim on 22 July 2019. She did not accept that the appellant was a high-profile member of the BNP who would be at risk on return, or that the appellant's house in Bangladesh had been raided.

Second Appeal

10. The appellant appealed for a second time and his appeal was heard by Judge Gibbs, sitting at Hatton Cross on 22 November 2019. She heard oral evidence from the appellant and Mr Islam of the Bangladesh National Party in the UK. She then heard submissions from the Presenting Officer (not Mr Clarke) and counsel for the appellant (not Mr Spurling) before reserving her decision.

11. In her reserved decision, Judge Gibbs found that the further medical evidence upon which the appellant relied, containing a diagnosis of depression, did not persuade her to depart from Judge Wylie's findings: [23]-[24]. She specifically rejected the submission that there was good reason to depart from the conclusion of the first Tribunal that the appellant had not been politically active in Bangladesh and that he had not been attacked there when he returned on holiday: [28].

12. Judge Gibbs found that the appellant was one of eighty Executive Members of the BNP London Mohanagar: [34]. In the same paragraph, the judge noted that the appellant had accepted in his own oral evidence that he was not a high-profile member. He was one of many people in the photographs adduced and the judge was not persuaded that the Bangladeshi authorities would be able to identify him: [35]

13. Judge Gibbs found there to be flaws in the newspaper articles upon which the appellant relied and she did not accept that she could attach weight to those articles. Those articles did not persuade her to depart from Judge Wylie's analysis of the situation in Bangladesh: [36]-[38]. At [39], the judge found as follows:

> I am however satisfied that there is evidence before me which post dates his decision which I can taken into account regarding the appellant's political activities in the UK. I find

> that there is persuasive evidence before me that the appellant attends demonstration with the BNP in the UK and is an Executive Member. I am not however, satisfied that this is in itself a high-profile position and I do not accept, for the reasons set out above, that the appellant is involved in policy making or high-level organisation. I am satisfied that his photograph has been published (without his name) and that his name, as an Executive Member, has been published. Is this sufficient for me to conclude that he would face a real risk of serious harm on return to Bangladesh notwithstanding my conclusion that he has no previous political profile?

14. At [41], having considered the respondent's Country Information and Policy Note, the judge considered that ordinary supporters of the BNP did not face a real risk of serious harm and that there was no evidence to show that the authorities maintained surveillance on opposition members abroad. The judge noted that other background evidence was to similar effect: [42]. She noted that he had a social media profile and that there was a government crackdown on social media users but she was not persuaded that the type of content he had shared would place him at risk: [43]. The appeal was accordingly dismissed on protection grounds.

The Appeal to the Upper Tribunal

15. The progress of this appeal was significantly delayed by the Covid-19 pandemic. The appellant's appeal was dismissed by the First-tier Tribunal (Judge Gibbs) on 30 December 2019. Permission to appeal was granted by the First-tier Tribunal on 11 February 2020. There were three grounds of appeal but the nub of the challenge was that the judge had failed to consider material evidence in concluding that the appellant would not be at risk on account of his *sur place* activity.

16. It was initially thought, following the onset of the pandemic, that the appeal could properly be determined on the papers but Upper Tribunal Judge Gill took a different view upon consideration of written submissions which were settled by Mr Spurling. There was therefore a hearing before Upper Tribunal Judge Kekic on 23 June 2021.

17. It was accepted by the respondent's representative before Judge Kekic that Judge Gibbs' decision was erroneous in law and that it fell to be set aside in part. The respondent accepted, in particular, that 'the issue of the appellant's *sur place* activities should have been better considered': Judge Kekic's [8] refers. Judge Kekic agreed with that concession and ordered that there would be a resumed hearing before the Upper Tribunal. At [10]-[11] of her decision, Judge Kekic observed as follows:

> [10] Following discussion with the parties, it was agreed that the main issues for the Tribunal judge deciding the resumed hearing would be: (i) findings on any updated evidence in relation to sur place activities; (ii) findings on the appellant's profile and risk to him as a result of that following the BA (Iraq) op cit structure; [iii] an assessment of the evidence of

> Bangladeshi state authorities monitoring online activities abroad and any arising risk. These matters are to be assessment [sic] in the context of the appellant having no political profile or history of detention prior to his arrival here (at paragraph 29). It was agreed that there may be other matters arising from the fresh oral and documentary evidence to be provided. The appellant's mental health, his ability to give evidence and to undertake activities for his party shall also have to be addressed.
>
> [11] The following findings are to be preserved: (i) that the appellant had claimed to be politically active at his first appeal hearing before First-tier Tribunal Judge Wylie (at paragraph 25 of Judge Gibbs' determination); (ii) that the appellant is an executive member of the BNP (at paragraph 34); (iii) that the appellant attended demonstrations and could be seen in photographs attending same (at paragraph 35); and (iv) that there was no good reason to depart from the decision of the first Tribunal regarding the appellant's activities in Bangladesh and the rejection of his claim that he was attacked there in 2013 (at paragraph 28).

18. Following Judge Kekic's retirement, the Principal Resident Judge made a Transfer Order so that the appeal could be heard by differently constituted Tribunal. On 27 September 2021, the appeal came before this constitution of the Upper Tribunal. Mr Spurling of counsel confirmed that we should have before us the following documents:

    (i) The main and supplementary bundles before the FtT (502 and 160 pages respectively).

    (ii) A supplementary bundle filed in the Upper Tribunal (71 pages)

    (iii) The appellant's supplementary statement, attached to which is a printout from Facebook;

    (iv) A newspaper report and a Google translation thereof;

    (v) A single page letter regarding the appellant's mental health, dated 31 March 2021.

19. We confirmed that we had those documents, as did Mr Clarke. Mr Spurling also had access to the September 2020 Country Policy and Information Note entitled *Bangladesh: Political Parties and Affiliation*, upon which Mr Clarke proposed to rely.

20. Mr Spurling stated that he had proposed to call Tajul Islam, the President of the Bangladesh Nationalist Party ("BNP") London Mohanagar Unit but that Mr Islam was isolating at that stage. He had no application to adjourn on that account, however.

21. Mr Clarke helpfully indicated that the respondent did not seek to go behind Judge Gibbs' acceptance that the appellant was a political participant in the UK. The real issues, as agreed by the advocates,

were the appellant's reasons for that participation and the extent of any risk arising therefrom. It was accepted by Mr Clarke that the appellant attends political events and that he is an Executive member of the BNP London Mohanagar Branch. Mr Clarke also accepted that the appellant's name and photograph appeared on the website of the London Mohanagar BNP, showing that he was a member of the Executive Committee. Mr Clarke also accepted that the London Mohanagar was part of the main Bangladesh National Party.

22. We then heard oral evidence from the appellant in English. He was treated as a vulnerable witness throughout, as he was in the First-tier Tribunal, on account of his diagnosis of depression. The appellant was examined by Mr Spurling and cross-examined by Mr Clarke before he answered some clarificatory questions from the Bench. At the end of his oral evidence, it became clear that the advocates were not able to agree the meaning of certain symbols which appeared on the printouts from Facebook. The appeal was therefore adjourned, with Mr Spurling being directed to produce a short note on the meaning of those symbols. Mr Clarke was given an opportunity to respond to that note in writing, if so minded, absent which it would be taken to be agreed. Mr Clarke did not respond to the note.

23. On 24 January 2021, the appeal was due to resume part-heard. Mr Spurling attended for the appellant but Mr Clarke did not attend for the respondent. Mr Melvin, who did appear for the respondent, had not appreciated that the matter was part-heard and found himself at a considerable disadvantage for that reason. He applied for an adjournment so that Mr Clarke (who was appearing elsewhere) could attend. That application was not opposed by Mr Spurling, although an application for wasted costs was made subsequently. We acceded to Mr Melvin's adjournment request and have considered the application for wasted costs for the January hearing in a separate decision.

24. The appeal therefore resumed for a second time on 15 March 2022. Mr Spurling indicated that Mr Islam had attended on this occasion and he applied to call him as a witness. That application was sensibly not opposed by Mr Clarke and we acceded to it. We heard oral evidence from Mr Islam, therefore, before we heard closing submissions from the advocates.

25. We do not propose to rehearse the oral evidence given by the appellant and Mr Islam. Their evidence was digitally recorded and was noted carefully by both members of the panel. We will refer to it insofar as it is necessary to explain our conclusions.

<u>Submissions</u>

26. Mr Clarke made very lengthy submissions in which he took us through every part of the appellant's evidence, oral and documentary. We can summarise the fundamental aspects of those submissions as follows, however. The appellant had been found for good and proper reason to have lied about his past in Bangladesh. All of his activities in the UK had been borne out of bad faith. He had no commitment to the cause of the BNP and no intention of continuing any activities in the event

that he returned. The activities which he had undertaken in the UK were not such as to expose him to risk. He was one of many such people and there was no risk of his having been identified as a result of either his physical protests or his online activity. His appeal fell to be dismissed because he was not at risk, whether on account of his sur place activity or on account of what he would do upon return.

27. For the appellant, Mr Spurling relied upon his skeleton and submitted that the approaches of the parties were asymmetrical, as they often were in such cases. Whereas the respondent sought positive evidence of surveillance on the part of the Bangladeshi authorities, a more precautionary approach was necessary. The appellant's *sur place* activity had taken place over more than five years, and it was reasonably likely that he would encounter difficulty as a result.

28. Mr Spurling asked us to accept that the appellant's activities were reasonably likely to be sincere, given their extent and the fact that the appellant had been entrusted with an official position. He was part of the leadership cadre and his activities had emerged organically, as part of his evidence before the Wylie Tribunal. His Facebook activity, his Zoom meetings and his physical protests all showed a committed participant. There was some suggestion by the respondent that the evidence had been 'manipulated' but it had actually been merely annotated.

29. Mr Spurling drew our attention to legislation in Bangladesh which enabled the authorities to take action against opponents who had been active abroad. This was more than propaganda and all that was required was something more than membership of an opposition party. This was an authoritarian regime which sought to create fear and maintain its authority. One of the London demonstrations had got out of hand and a participant had been arrested on his return to Bangladesh. The authorities had followed up on the information extracted from that individual and this showed that they were interested in such activities in the UK. They would know about the appellant and he would be at risk as a result.

30. We reserved our decision at the end of the submissions.

Analysis

31. In making the factual findings which we are shortly to set out, we have heeded the *Joint Presidential Guidance Note No 2 of 2010*, the importance of which was underlined by the Court of Appeal in AM (Afghanistan)v SSHD [2017] EWCA Civ 1123; [2017] Imm AR 1508. We note that the appellant has been diagnosed with depression by his General Practitioner and that he received a course of Cognitive Behavioural Therapy in 2019. We have considered the extent to which any difficulties with his evidence might be attributable not to a lack of truthfulness but to his suffering from a recognised mental health condition.

32. We begin with our conclusions about the appellant's oral evidence. As we have recounted above, he was found to be an untruthful witness by

Judge Wylie and Judge Gibbs and we reached much the same conclusion. The findings in respect of his claimed political activity on behalf of the BNP in Bangladesh were made for cogent reasons and have been preserved. The appellant was plainly not involved in the Bangladesh National Party whilst he was in Bangladesh and he fabricated his account of having been attacked upon his return to Bangladesh. Judge Gibbs did not accept that he was wanted there, or that his family had been sought, and there were cogent reasons for those findings as well. The focus, therefore, as the advocates agreed, is on the appellant's *sur place* activity.

33. We are required by Article 4(3)(d) of the Qualification Directive to consider whether the appellant's sur place activities were "engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection". We find that the sole reason that the appellant has engaged in activity on behalf of the BNP in the United Kingdom is to create or continue with his claim for international protection. Insofar as he has been embraced by the organisation, including by Mr Islam (who gave evidence before us), we are satisfied that they have been hoodwinked by the appellant, as part of his determined attempt to secure asylum in this country. We are wholly unable to accept that he is 'a passionate BNP activist', as he claimed at [25] of his witness statement of 21 August 2019. We make those finding for the following reasons.

34. Firstly, as Mr Clarke noted in his submissions, the appellant undertook very little political activity when he first came to the UK. He did so, in our judgment, because he preferred at that stage to rely on the falsified account of difficulties in Bangladesh, as rejected by Judge Wylie. When that account had been disbelieved, and once the appellant had been discovered in hiding during an enforcement visit for a second time, he began increasing his *sur place* activities in order to create a different basis of claim. We note the paucity of evidence of *sur place* activity before 2018 in this connection. When that was put to the appellant by Mr Clarke at the hearing, he said that he had undertaken very little activity for the BNP in this country before 2018 because he had thought that his party would be elected that year. We did not consider that to be the evidence of a seasoned party activist with a strong commitment to his cause.

35. Secondly, we note that Judge Gibbs attached little weight to the newspaper articles from Bangladesh partly on account of the fact that they gave different accounts of the appellant's role in the BNP in the UK. In one of the newspapers, he was described as a 'leader', whereas he has never been anything more than one of more than a hundred members of the Executive Committee of the BNP. We consider that it was the appellant who was responsible for the placement of these articles and that it was he who was responsible for the description of himself as a leader, in an attempt to enhance his profile for the purposes of this appeal. The erroneous description of the appellant was put to him by Mr Clarke at the hearing. He avoided the question, preferring instead to maintain his claim that there had been two raids on his house, which claims were obviously rejected by Judge Gibbs.

36. Thirdly, and even making proper allowance for the fact that the appellant has a diagnosis of depression, we found his oral evidence about his online activity to be vague, particularly as regards the way in which he decided whether to make his posts on Facebook public or private. When asked about this by Mr Clarke, he said that he 'hid' some posts so that they could not be seen but that he was content for other people (the BNP, friends or the public) to see some others. He gave no indication of why he felt that some posts fell into the former category and some fell into the latter. The point called for an explanation, not least because the appellant's preference has seemingly changed during the course of this appeal. The majority of the Facebook posts in the original bundle are marked with an icon showing a silhouette of two people, denoting that they are only visible to the poster's friends, whereas the majority of the posts in the later bundle are marked with a globe icon, denoting that they are visible to anyone[1].

37. Fourthly, we have not been provided with the appellant's full Facebook activity profile by way of the Download Your Information ("DYI") function in Facebook. The importance of full disclosure was highlighted by the Upper Tribunal at [96] of XX (PJAK – sur place activities – Facebook) Iran CG [2022] UKUT 23 (IAC):

> We make the observation that in terms of evidence produced by those seeking protection, to the respondent or a Tribunal, social media evidence is often limited to production of printed photographs, without full disclosure in electronic format. In view of what we have found, as a general matter, production of a small part of a Facebook or social media account, for example, photocopied photographs, may be of very limited evidential value in a protection claim, when such a wealth of wider information, including a person's locations of access to Facebook and full timeline of social media activities, readily available on the "Download Your Information" function of Facebook in a matter of moments, has not been disclosed. It is easy for an apparent printout or electronic excerpt of an internet page to be manipulated by changing the page source data. 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.

38. We have nothing more than a snapshot of the appellant's Facebook activity in this case. The original bundle shows that he was active on Facebook between June 2018 and July 2019. The supplementary bundle for the FtT hearing shows activity between May and September 2019. The additional bundle for the Upper Tribunal (filed on 16 September 2021) mostly shows Facebook activity in 2018 and 2019.

39. It is necessary to recall the way in which those dates relate to the appellant's protection claim. He made further representations to the respondent in April 2018 and then additional representations were

[1] We take the meanings of these symbols from [4] of Mr Spurling's extremely helpful note on Facebook, as filed in compliance with directions on 11 October 2021.

made in June 2019. His fresh claim was refused in July 2019. His appeal was heard and dismissed by the FtT at the end of 2019 and his appeal to the Upper Tribunal has been pending since then.

40. In the absence of full DYI disclosure, the inference which might be drawn is that the appellant was particularly active on Facebook in order to supplement the further submissions which were made to the respondent and that he has continued with those activities as and when he wished to augment his *sur place* claim before the FtT and the Upper Tribunal. There is, in other words, nothing in the Facebook material to show that the appellant has been using the platform to air his views constantly, as might a committed political activist, as opposed to the more sporadic use which might be expected of a person acting in bad faith.

41. There is, of course, other evidence before us of the appellant's activities in the UK; it is not confined to Facebook activity. There are a number of photographs. Some of those photographs are of poor quality. In many, the appellant is not clearly identifiable. None of the photographs is date stamped. There is no schedule to identify the nature of the event recorded and the date on which it occurred. Many of the photographs are not accompanied by any explanation of what they are said to show; they are thought simply to speak for themselves. Those in the supplementary FtT bundle which are described at 'BNP Activity Videos – screenshots (x4)' fall into this category. There is page after page of blurred screenshots. The appellant is visible in some of those images, seemingly holding a placard, but there is no indication of when or where these images were captured. These particular images are of low evidential value.

42. Some of the photographs appear opposite a page in the bundle which bears a manuscript annotation which is not particularly informative. The annotation on p219 of the original bundle is but one example of this. We reproduce it verbatim:

> *2019* *15*
>
> *Westminster Parliament Square Demonstration attending with London BNP President M A Malek, Secretary Koysor M Ahmed.*

43. Insofar as the photographs are annotated in this way, the annotation begs more questions than it answers. When was the protest in 2019? What was it about? Why was it in Parliament Square, rather than outside the Bangladeshi High Commission in South Kensington?

44. The screenshots in the Upper Tribunal bundle are also of little evidential value. They merely show images of people who are seemingly participating in an online meeting. There is nothing to show what the meeting was about (although we note that some of those in attendance are identified as BNP members), when the meeting(s) took place, and what (if anything) the appellant is said to have contributed.

45. There are letters and statements from figures in the BNP, one of whom is Mr Islam, who gave evidence before us. It is claimed in these letters that the appellant is passionately committed to the cause of the BNP but the authors give little if any indication of the activities he has undertaken on behalf of the party and why they believe he is so committed to it. Some of those letters speak to the appellant's activities in Bangladesh, all of which were rejected by the FtT. Some of them speak to the appellant's difficulties in Bangladesh, which were also rejected by the FtT. Having evaluated the evidence in the round, we attach little weight to these letters and statements from BNP members in this country.

46. Insofar as we have observed above that the appellant's own evidence was vague, that he avoided a question or that he gave an inadequate answer to a proper question, we have reflected carefully on the extent to which those difficulties might be attributable to his depression. We have concluded that it is more likely that those difficulties are attributable to the appellant's lack of any real commitment to the BNP than to his depression. There is no suggestion in the medical evidence that he would have difficulty in answering straightforward questions or explaining his own actions. Questions were asked in simple terms and the appellant was given regular breaks. He gave no indication that he was having difficulty answering questions. In our judgment, the reason that he was unable to give a proper account of his commitment to the cause is because he has none. Since 2018, when he decided that he needed to generate a *sur place* claim, he has inveigled his way into the BNP in the UK. Whatever activities he has undertaken here were all undertaken in bad faith, pursuant to that goal.

47. Having reached the conclusion that the appellant has no commitment whatsoever to the oppositionist cause, we reject the submission that the appellant would place himself in danger upon return to Bangladesh by supporting the BNP there. We come to the clear conclusion that he would not do so, since his only reason for participating in the UK has been to secure asylum.

48. The mainstay of Mr Spurling's written and oral argument focused, however, on the risk arising from the activities in which the appellant has already been involved in the UK. Whether on account of his Facebook activity or his attendance at demonstrations in the UK, the primary submission is that the Bangladeshi authorities would know, or would come to know, about these activities and that they would target the appellant on account of his political activity in the UK, whether or not it was bona fide. In evaluating that submission, we take particular account of two matters. The first of those matters is what was said by Sedley LJ in <u>YB (Eritrea) v SSHD</u> [2008] EWCA Civ 360:

> [18] As has been seen (§7 above), the tribunal, while accepting that the appellant's political activity in this country was genuine, were not prepared to accept in the absence of positive evidence that the Eritrean authorities had "the means and the inclination" to monitor such activities as a demonstration outside their embassy, or that they would be able to identify the appellant from photographs of the

> demonstration. In my judgment, and without disrespect to what is a specialist tribunal, this is a finding which risks losing contact with reality. Where, as here, the tribunal has objective evidence which "paints a bleak picture of the suppression of political opponents" by a named government, it requires little or no evidence or speculation to arrive at a strong possibility – and perhaps more – that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among expatriate oppositionist organisations who can name the people who are filmed or photographed. Similarly it does not require affirmative evidence to establish a probability that the intelligence services of such states monitor the internet for information about oppositionist groups. The real question in most cases will be what follows for the individual claimant. If, for example, any information reaching the embassy is likely to be that the claimant identified in a photograph is a hanger-on with no real commitment to the oppositionist cause, that will go directly to the issue flagged up by art 4(3)(d) of the Directive.

49. Those remarks must be read alongside what was said by Maurice Kay LJ (with whom Moore-Bick and Rimer LJJ agreed) at [31] of KS (Burma) v SSHD [2013] EWCA Civ 67, which was that there was no reason to assume that the authorities of a repressive regime can be expected to operate a rational decision-making process by which they 'distinguish between a genuine political opponent and a hanger-on'.

50. We also take careful account of the background material, and particularly that which was drawn to our attention by Mr Spurling at [15]-[22] of his skeleton argument. We have also been provided by Mr Clarke with a copy of the Home Office's Country Policy and Information Note ("CPIN") entitled Bangladesh: *Political Parties and Affiliation*. The sources cited in the respondent's note are often rather more recent than those cited in Mr Spurling's skeleton but that is not a criticism; it is simply a reflection of the fact that the background material adduced by the appellant is in the original FtT bundle from 2019.

51. In any event, the picture which emerges is essentially the same. We need not attempt as comprehensive review as that in Mr Spurling's skeleton argument. It suffices for present purposes to note as follows.

52. The Awami League and the BNP are the two main political parties in Bangladesh and there is intense rivalry and frequent violence between the two. The Awami League has been in power since 2009. The police and the security apparatus are hand-in-glove with the government and seek to further their interests. There were elections in 2018, which were reported to be 'relatively peaceful' but it gives a flavour of the political climate in Bangladesh that Al Jazeera noted at the end of the year that the relative peace was achieved through the systemic oppression the state machinery carried out against the opposition over the preceding decade, 'leaving it effectively hobbled and neutered': [8.2.2] of the CPIN refers.

53. As will be apparent from the above, opposition activists face the constant threat of surveillance, harassment and violence in Bangladesh. In recent years, the surveillance has expanded to the internet. The Digital Security Act came into force in 2018 and conferred vague and overly broad powers which have been used to intimidate political opponents and those who speak out against the government on social media. A number of international agencies including Amnesty International have expressed concern about the Act and the misuse of it by the police in defence of the Awami League. As recorded at [15] of Mr Spurling's skeleton, scores of people have been arrested for Facebook posts which are critical of the Awami League or the Prime Minister. A report cited at [16] of Mr Spurling's skeleton suggest that the government closely observes all social media platforms to monitor who is saying what.

54. Within Bangladesh, it is quite clear that the security agencies have a network of informers who closely monitor the activities of BNP leaders and activists: the CPIN refers at [10.5.1]. [10.5.5] of the same note shows that the government monitored social media and internet-based communications, particularly in the run-up to the 2018 elections. It is undoubtedly this surveillance which has led to the arrests we have described above.

55. We are grateful to Mr Spurling for his reproduction of the salient parts of the Digital Security Act in his skeleton and we accept the submission, which was not contested by Mr Clarke, that the Act has extraterritorial effect, thereby potentially criminalising statements made against the state whilst abroad. We also note that the Australian Department of Foreign Affairs and Trade reported in August 2019 that most political blogs are now written outside Bangladesh and that major political parties have a strong presence outside the country, including in Australia.

56. Given the historical oppression of the opposition, the widespread oppositionist activity abroad, the ongoing surveillance of social media, and the extraterritorial effect of the widely condemned Digital Security Act, we have turned to the background evidence to consider what evidence there is of activists and/or bloggers in the sizeable diaspora being targeted upon return to Bangladesh. We have found very little indeed.

57. In his skeleton argument, Mr Spurling highlights the case of Shohidul Islam Mamun, the Joint General Secretary of the BNP in the UK, who was arrested and detained when he visited his home in Sylhet in 2018. Mr Spurling notes that Mr Mamun was seemingly arrested in connection with a protest which took place in London in 2018, during which the Bangladesh High Commission was entered by protesters who committed criminal damage before being removed by the police.

58. The appellant maintains in his statement that he was at the same protest, although Mr Spurling accepted in his closing submissions that there is nothing in the material before us which identifies the appellant as a demonstrator at that protest. The appellant claims that he has since been warned that Mr Mamun was tortured in detention and that

he revealed the appellant's name to the Bangladeshi authorities as another protester. This important assertion appears at [24] of the appellant's August 2019 statement. There is no reference to it in the statements made by Mr Islam, Mr Raja (the General Secretary of the BNP UK) or Mr Abdur Rob (the Assistant President of the London BNP). There is no indication in the appellant's statement of who gave him this information, or when it was given to him. He merely states that he was told about it. We do not accept this vague assertion, made as it is by a man whose credibility has been found wanting in so many respects over the course of two separate appeals.

59. Be that as it may, it is a matter of record that Mr Mamum was arrested on return to Bangladesh. The case is reported at [10.6.11] of the CPIN and inspection of the source article, published by Human Rights Watch, names the dual national concerned as Mr Mamun. We also note from [10.6.9] of the CPIN that a British national called Mr Khoyer (or Khayer) was arrested by the Sylhet police in September 2018, ostensibly on charges of car-jacking and robbery. His family claimed, however, that the arrest was motivated by his participation in the BNP in the UK and his participation in the protest against the Prime Minister of Bangladesh in London in 2018. In his letter of 26 November 2018, Mr Raja states that Mr Khayer was the former President of the London Mohanagar Jubodal.

60. There is little else to suggest that action has been taken against members of the diaspora on account of political activity abroad, whether in person or online. At [10.6.13], the CPIN records a claim by the Bangladeshi CID that it had filed charges against at least 12 expatriates in countries including the UK for 'allegedly spreading antistate rumours on social media'. Nothing more is known about those cases. Nor is there any further information about the 291 Bangladeshi expatriates who were arrested for tarnishing the image of Bangladesh after serving prison sentences for crimes in various Gulf states. In our view, the absence of further information about the former cohort is likely to be an indication that the Bangladeshi authorities were engaged in propaganda (as in XX (Iran)). The latter category were most likely to have been targeted for their criminality, not for any political activity outside Bangladesh.

61. With that overview of what the background evidence does and does not reveal, we return to what was said by Sedley LJ in YB (Eritrea) to be the real question in a case such as this: what are the consequences for this particular appellant of his own *sur place* activities? We accept that he has aligned himself with the BNP on Facebook and that some of the posts in which he has done so are public. We accept that he has written things online which are critical of the Awami League Government and of the Prime Minister. We accept that he has attended protests in London and that he has spoken at some of those protests (since he can be seen holding a megaphone in some of the photographs). We accept that he is named, as one of very many others, in two newspapers articles about the 2019 activities of the BNP in London. We also accept that he is one of 135 members of the Executive Committee of the BNP in London and that his name and photograph appear on the website of the organisation as such.

62. We do not accept that the appellant's activity in the United Kingdom will have aroused the attention of the Bangladeshi authorities. It is clear from the background evidence that the majority of political blogging takes place abroad but that there have been very few arrests of expatriate Bangladeshis returning from abroad who have taken part in such activity. What evidence there is suggests, in our judgment, that it is only those (such as Mr Mamun and Mr Khayer) who have a higher profile *and* have spoken out against the Awami League whilst abroad who are reasonably likely to be targeted on return.

63. The government of Bangladesh has unarguably invested in technology and personnel to enable it to monitor the activities of its domestic opposition but there is insufficient evidence before us to show that it wishes, or is able, to keep the activities of Bangladesh's enormous diaspora under the same level of scrutiny. There are those such as Mr Khoyer or Mr Mamun who have achieved a prominent position and then go on to transgress against the regime such that they become of interest. But the evidence simply does not show that a person with the profile of this appellant would have come to the adverse interest of the Bangladeshi authorities. If he was at risk on account of such activities, we think it likely that thousands or even tens of thousands of other expatriate Bangladeshis would be in the same position and the evidence simply does not suggest that to be the case.

64. We do not accept the submission that the appellant is currently of interest to the Bangladeshi authorities. He has lied about his past in Bangladesh and he has fabricated the account that he is actively sought in connection with the events in 2018 when the High Commission was invaded by BNP supporters. And his activities (in person and online) are not such as to have aroused the attention of the authorities.

65. We turn to consider what will happen to the appellant on return to Bangladesh. In contrast to Iran, there is no evidence to suggest that those returning to Bangladesh are asked to give their Facebook password or are the subject of a search on Google, so as to ascertain whether they have been critical of the regime whilst abroad. There is no reason to think that the appellant will not be able to leave the airport, therefore, and to return to his home area.

66. The appellant will not be known in his home area as a man with any connections to the BNP. He had no such connections before he left in 2009 and there is no reason to think that any of his activities in the UK will be known about in his home area. Given that his political activities in this country were undertaken consistently in bad faith, there is no reason that he cannot be expected to delete his social media accounts: XX (Iran) refers. As we have found above, there is also no reason to think that the appellant, who is a person with no commitment to the oppositionist cause, would undertake any political activity on return to Bangladesh, whether for the BNP or otherwise. We therefore find that he would not be at risk at the point of return, or at any point thereafter.

67. The appellant's appeal was advanced on protection grounds only. No separate case under the ECHR was advanced.

Notice of Decision

The FtT's decision to dismiss the appellant's appeal was set aside. We remake the decision on the appeal by dismissing it on all grounds.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 May 2022