



IAC-AH-SC-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01981/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On 14 February 2022 and 5
October 2022**

**Decision & Reasons Promulgated
On the 4th January 2023**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

**KHK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Wilcox, Counsel instructed by Morgan Hill Solicitors

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision promulgated on 18 November 2021, I set aside a decision of First-tier Tribunal Pooler dismissing the appellant's protection and human rights appeal. I now remake the decision.

Introduction

2. The appellant is a citizen of Bangladesh, born in June 1977. He came to the UK in 2010 as a student and his leave expired in January 2015. He claimed asylum in 2016, shortly after being served with notice as an overstayer.
3. In the First-tier Tribunal, before Judge of the First-tier Tribunal Pooler, the appellant claimed to face a risk of persecution on return to Bangladesh on account of:
 - (a) being a Bangladeshi National Party (BNP) activist in Bangladesh who had been falsely accused of murder following a land dispute with Awami supporters; and
 - (b) his involvement with and support for the BNP in the UK.
4. Judge Pooler did not accept that the appellant had been truthful about events in Bangladesh prior to coming to the UK in 2010. He accepted that the appellant had engaged in some sur place activities in the UK, but was not satisfied that these activities reflected a genuine belief, or that they would put him at risk on return.
5. At the error of law hearing, I found (following a concession from Ms Everett, who represented the respondent) that the judge erred in respect of his assessment of the appellant's sur place activities. However, I did not accept that the judge erred in other respects. I directed that the remaking of the decision would be concerned with the risk arising from the appellant's sur place activities.

Evidence

6. The hearing for the remaking of the decision took place over two days. I heard evidence from the appellant and two witnesses on 14 February 2022; and I heard submissions on 5 October 2022.
7. The evidence of the appellant is that he is an active supporter of the BNP, with a prominent role in JASAS (the cultural wing of the BNP) and a particularly high profile because of his popular and widely distributed political poetry. Amongst other things, he claims to have:
 - (a) Written a poem (titled "Proclaimer of Independence") extolling the BNP's founder Mr Ziaur Rahman as the "father of Bangladeshi nationalism" that has been viewed over a million times on Facebook, has been praised by senior BNP leaders, and has led to threats against him (posted on Facebook) by members of the Awami League. Extensive documentation was submitted to corroborate this. The appellant also included in his evidence a photograph with him, the BNP UK President and other senior BNP figures in the UK standing next to a large banner with this poem written on it.
 - (b) The appellant is on the editorial team of a magazine "Prothom Bangladesh", where his poetry is regularly published. He also

manages several Facebook pages where his poetry is published, including one which has had over 80,000 “likes”. In his witness statement he describes his poetry as “weapons against the regime in Bangladesh”. Several of the appellant’s poems contain inflammatory language that is highly critical of the Awami League. For example, in a poem called “Abarar’s assassin” he describes the Awami League in these terms:

Bribe-takers and vote-thieves sunk the nation dip to the bottom. Lay open the casino in pleasure the drunks and gamblers.... occupies time by Thieves or suckers looted the country to naught leap into stealing by hook or by crook”.

(c) He has participated in demonstrations, alongside leading BNP figures. Multiple photographs and video clips have been submitted to corroborate this.

8. The two witnesses who gave evidence in support of the appellant at the hearing are the President of UK JASAS and the General Secretary of JASAS. Both stated, inter alia, that the appellant’s poetry has a significant profile and influence.

Submissions

9. Ms Cunha accepted that the appellant is the Organising Secretary of JASAS and that he has written poetry which is widely circulated (including a poem viewed on Facebook well over a million times). She also accepted that he has provided evidence of engagement in some political and social media activity against the current government in Bangladesh.

10. She submitted, however, that the appellant has a profile that would not lead to him being targeted or persecuted. Relying primarily on paragraphs 3.2 – 3.4 on the respondent’s Country Policy and Information Note on Bangladesh: Journalists, the Press and Social Media dated January 2021 (“the media CPIN”), she submitted that criticism of the government is commonplace in Bangladesh and the concerns expressed by the appellant about the authorities are no different in substance to those that are regularly expressed by citizens of Bangladesh in their own country without repercussions.

11. She also submitted that the country evidence indicates that only BNP leaders are targeted, not people such as the appellant who just express a cultural opinion, especially when the person concerned, like the appellant, has not been involved in politics or policy-making. She argued that posting on Facebook poetry that is critical of the government is not enough to put someone at risk in Bangladesh. She also submitted that being photographed alongside senior BNP individuals does not put a person who is not himself a senior individual at risk.

12. A further point made by Ms Cunha is that the appellant’s sur place claim must be assessed in the context of the appellant having been found to

have fabricated his account of a false claim against him in Bangladesh and having not made an asylum claim until after notice of removal as an overstayer was served.

13. Mr Wilcox also relied on the media CPIN. He noted, in particular, paragraph 4.3.2 where it is stated that the Digital Security Act 2018 (“the DSA”) provides for sentences of up to fourteen years in prison for anyone who uses digital devices to spread negative propaganda regarding the Liberation War or the “Father of the Nation”. He also drew attention to paragraph 7.1 of the media CPIN, where it is explained that an offence committed under the DSA outside Bangladesh is punishable as if committed inside Bangladesh.
14. Mr Wilcox submitted that the appellant has written a poem, viewed over a million times on Facebook and included in a magazine that he is involved in editing, that describes as the “Father of the Nation” Ziaur Rahman and where one of the paragraphs in the poem states in respect of Ziaur Rahman:

You’re the just ruler of the century like a glowing morning star, no matching model to you, incomparable unique favourite state son.”
15. Mr Wilcox argued that the appellant’s poem, which promotes the BNP’s narrative of the founding of the state, is precisely the type of publication that the DSA is concerned with preventing.
16. He also argued that the media CPIN indicates that the authorities are proactive in taking steps against people who publish material critical of the state. He submitted that in the light of the appellant’s significant profile there is a real risk that he would be targeted by the authorities.

Analysis

17. The appellant’s account of his sur place activities is supported by detailed and comprehensive documentary evidence. In the light of this evidence, I have no hesitation in finding that the appellant:
 - (i) Has a significant involvement with JASAS in the UK.
 - (ii) Has published a poem promoting the BNP narrative about the origins of Bangladesh that (a) has been very widely distributed (viewed over a million times on Facebook); (b) has attracted significant attention from senior BNP figures (for example, it was printed on a large banner at an event attended by the BNP leader in the UK); and (c) has resulted in online threats against the appellant from Awami League members.
 - (iii) Has published other poems which have been seen by a significant number of people that are highly critical of, and use inflammatory language in respect of, the Awami league and government of Bangladesh.

(iv) Has attended several demonstrations in the UK protesting against the government of Bangladesh.

18. The media CPIN indicates that the authorities in Bangladesh are sensitive to criticism of the state, particularly where the official narrative as to the country's origins are challenged. Paragraph 2.4.2 states:

The authorities sometimes use legal provisions, such as the Information and Communication Technology (ICT) Act or Digital Security Act (DSA), to harass, arrest, detain or prosecute persons who have published material that is deemed to be critical of the state, the Constitution or the ruling party, and thus considered seditious or defamatory. It is also a criminal offence to publish material that is deemed to hurt religious sentiment or values or that may spread hatred or hostility that threatens public order, decency or morality. The DSA also provides for extra-territorial application of the law, that is, comments made or articles published outside of Bangladesh which contravene the law may be punishable under this legislation.

19. Paragraph 2.4.7 states:

Whether a person is at risk of persecution or serious harm from the state will depend on particular factors specific to them, for example: the subject matter and legality of the material published and the publicity attracted of said material. Each case must be considered on its facts with the onus on the person to show that they would be at real risk of serious harm or persecution on account of their actual or perceived political opinion or religion.

20. Paragraph 4.3.2 states:

Freedom House noted in its 2020 Freedom on the Net report: 'While Section 57 of the ICT Act was repealed by the legislation, the [DSA] imposes similarly restrictive provisions. Section 21 provides for sentences of up to 14 years in prison for anyone who uses digital devices to spread negative propaganda regarding the Liberation War or the "father of the nation." Section 25 introduces sentences of up to three years in prison for deliberately publishing intimidating or distorted information against an individual online. Section 28 mandates up to 10 years in prison for harming someone's religious sentiments. Section 29 provides for up to three years in prison for publishing information intended to defame someone. Section 31 provides for sentences of up to seven years in prison for deliberately publishing information that can spread hatred among communities. Section 32 has been criticized by rights groups for potentially stifling investigative journalism by imposing sentences of up to 14 years for recording or accessing information digitally without prior consent.

'Under the DSA, no warrant is required before making ICT-related arrests, and some crimes are "nonbailable," meaning suspects must apply for bail at a court.

'In January 2020, a group of professors, journalists, and lawyers from Dhaka Supreme Court filed a writ petition with the High Court

requesting that it declares certain sections of DSA illegal for being too broad and infringing on free expression. In February 2020, the High Court asked the government to explain why sections 25 and 31 of DSA are constitutional, and should not be repealed. There were no reports on the petition by the end of the coverage period.'

21. The appellant has published political poetry that is highly critical of the Awami League. One of his poems challenges the Awami League's narrative of the origins of the country. Other poems criticise the Awami League using extremely inflammatory language. In my view, it is reasonably likely that the appellant's poetry would be viewed by the authorities in Bangladesh as seditious, defamatory and hostile to public order. This might not give rise to a real risk of persecution if the poetry had not been widely distributed. However, the appellant's poetry has been distributed extremely widely. His poem challenging the Awami League's narrative of the origins of the country has been viewed over a million times on Facebook and has been displayed prominently at a BNP event. Other poems have been seen by tens of thousands of people on Facebook.
22. In paragraph 2.4.7 of the media CPIN it is stated that the risk of harm from a publication can depend on factors such as the subject matter and publicity attracted. Given that the appellant has written poetry that is reasonably likely to be viewed as seditious and threatening to public order, and that this poetry has been very widely distributed (attracting significant publicity as well as interest from senior figures in the BNP), I am satisfied that there is a reasonable degree of likelihood that the appellant, on return to Bangladesh, would be persecuted on account of the political opinions expressed in his poetry. Accordingly, he is entitled to protection as a refugee.

Notice of Decision

23. I allow the appeal on the basis that the appellant's removal from the UK would breach the UK's obligations under the Refugee Convention.

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.

Signed D. Sheridan

Date 15.12.2022

Upper Tribunal Judge Sheridan