IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001771

First-tier Tribunal Nos: IA/05834/2022
PA/52336/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
22 September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE METZER KC

Between

AHMED MD SUHAL
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr N Aghayere, Counsel, instructed by Lawland Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

Heard at Field House on 11 September 2023

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh born on 1 January 1987. He has been granted permission to appeal on four grounds arising out of a decision of First-tier Tribunal Judge Hillis ("the Judge") who in a determination promulgated on 12 March 2023 ("the decision") refused the appellant's appeal under the Refugee Convention; the Qualification Directive and under the Human Rights Convention.

2. Of the four grounds advanced at the hearing, Mr Aghayere did not make any submissions in respect of ground 2 and I therefore will only make passing reference to that ground. The parties both made submissions in respect of the other three grounds which I shall set out below.

3. The first ground relates to paragraph 10 of the decision in which it is accepted by Mr Lindsay on behalf of the respondent, the Judge made an error in recording the wrong date where he made reference to the appellant becoming a member of the BNP since August 2022 in the United Kingdom.

4. As the parties agreed this was factually wrong because throughout the recitation of evidence and at paragraph 19 of the decision, the Judge correctly recorded that the appellant joined the UK branch of the BNP in 2016. At paragraph 50 of the decision, the Judge in finding against the appellant, made reference to his failure to mention his membership of the BNP in the letter dated 2 April 2014 and the letter makes reference to the appellant's involvement with the BNP.

5. In respect of this ground, whilst I would not characterise this error as "a slip of the pen" as suggested by Mr Lindsay, I do consider that this error was not material as it is clear from the decision primarily at paragraph 19 but also at paragraphs 55 to 56, which is the substantive part of the decision that the Judge correctly identified that the appellant had been a member of the BNP since 2016 and that therefore the error at paragraph 10 was not material in relation to the findings that he made against the appellant in relation to his credibility. At paragraphs 55 to 56 the Judge clearly recognised that the appellant had been a member since 2016 in finding that he had only attended one demonstration in December 2022. Accordingly, the error in ground 1 was not a material error of law.

6. In respect of ground 2 which Mr Aghayere did not pursue before me, in my judgment correctly, which is, taken shortly a failure to assess the claim in the absence of corroborating evidence, I do not find there is any merit in relation to that ground which goes no further than to express disagreement with the outcome of the appeal and therefore dismiss this ground.

7. Ground 3 is closely connected to ground 1 as it relates to the appellant's *sur place* findings set out primarily at paragraphs 55 to 59 of the decision. Although it was correctly conceded by Mr Lindsay in relation to the appellant's credibility that the number of demonstrations that the appellant attended – whilst he claimed he had attended four to five in the United Kingdom, the Judge only accepted one demonstration that the appellant attended on 8 December 2022 – nonetheless the question is whether what the appellant had done amounted only to low-level activity which the Judge found was primarily conducted in private meetings, save for his attendance at a BNP demonstration.

8. Mr Aghayere sought to draw my attention to cases relating to Iran and Sri Lanka but I did not consider that they gave me any assistance as the risks in relation to return to Bangladesh will necessarily be different and on the face of the examples presented before me of much lower level concern than those relating to Iran and Sri Lanka particularly in the latter's case, in that country's recent history.

9. I therefore agree with Mr Lindsay that it is not possible to apply country guidance for one country to another in determining the risk to the appellant upon return, in this case to Bangladesh, on the basis of *sur place* activities in the United Kingdom. Given that the Judge had found only low-level activity in private and only in relation to attendance at one BNP demonstration, a credibility finding to which the Judge was entitled to come to, I do not consider that there was any error of law, yet alone a material error of law in relation to the Judge's findings

concerning the appellant's *sur place* activities in the United Kingdom and that therefore the finding he made at paragraph 59 concerning the risk to the appellant upon return to Bangladesh by reason of his low-level involvement in the United Kingdom in which the Judge found he had not been engaged in any political activity on the internet or any social media and had simply attended one demonstration and some private meetings, did not amount to a material error of law.

10. In relation to ground 4 which concerns the Judge's failure to make reference to Section 117B of the Nationality, Immigration and Asylum Act 2002, I find, as was conceded by Mr Lindsay, that the Judge did err in his failure to take into account this legislation when assessing the appellant's Article 8 claim. However, in **Krasniqi v Secretary of State for the Home Department [2006] EWCA Civ 391**, it was held that when grounds of appeal take issue with the Judge's findings of fact care must be taken that there is sufficient foundation for an argument that the findings are both demonstrably – not merely arguably – unfounded or erroneous, and capable of affecting the outcome. In other words, even where there is an error of law, the question of materiality is central.

11. When the decision is carefully considered, where the Judge had looked at the appellant's Section 8 right to private life case on the evidence by the appellant, I find that is covered at paragraphs 62 to 69 of the decision. The Judge determined the five questions he must analyse in accordance with the relevant authorities, including that in **AM [2015] UKUT 2620** in carrying out the balancing exercise under Article 8 of the European Convention on Human Rights. The five- limb test is fully set out at paragraph 64. The Judge made findings of fact in relation to the appellant's private and family life in the United Kingdom including his marriage in an Islamic ceremony on 26 October 2020 and a civil ceremony on 14 August 2021 and accepted that they had been living together in a genuine and subsisting relationship since October 2020. He noted they have no children and that his wife is in permanent employment and that the appellant's wife was aware of the appellant's lack of immigration status when the two marriages took place. He also noted that the appellant left Bangladesh in 2006 at the age of 19 years and had been in the United Kingdom for sixteen years at the date of the appeal. He noted that his wife is a British citizen entitled to retain her Bangladeshi nationality, having arrived in the United Kingdom aged 23 or 24, having been born in 1988.

12. Although the Judge did not refer to Section 117B of the Act as I find he should have done, he did make findings in relation to the absence of exceptional or compassionate circumstances and carried out the necessary five- limbed test in determining that it was proportionate to the UK government's legitimate aims of maintaining proper immigration control to require the appellant to return to Bangladesh to make an out of country application to join his wife in the United Kingdom pursuant to the relevant Rules without him and his wife suffering undue hardship. In accordance with the authorities, I find that had the Judge considered Section 117B expressly, then taking into account all factors that could have been referenced, they would have either been neutral or would have been held against the appellant and in those circumstances I find that although there was an error of law, it was not material as it would have made no difference to the outcome.

13. I therefore find that none of the four grounds advanced on behalf of the appellant for which permission had been granted amount a to material error of law.

14. In the circumstances, this appeal is dismissed.

Notice of Decision

15. The Judge made did not make a material error of law. The appeal is dismissed.

Anthony Metzer KC

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 September 2023