



IN THE UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002174
First-tier Tribunal No: PA/50364/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

8th November 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MKH

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Akhter , Counsel Brit Solicitors

For the Respondent: Ms A Ahmed, Senior Presenting Officer

Heard at Field House on 20 October 2023

Order Regarding Anonymity

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.

DECISION AND REASONS

Introduction

1. This is the re-making of the decision in the appellant's appeal against the respondent's refusal of his protection and human rights claims. The appellant's appeal had initially been dismissed by the First-tier Tribunal, but this decision was set aside by Upper Tribunal Judge Bruce in an error of law decision promulgated on 12 September 2023. That error of law decision is annexed to this re-making decision and the two should be read together.
2. The appellant is a citizen of Bangladesh, born in 1986. He came to the United Kingdom in December 2009 as a student, but then overstayed. He made an asylum claim on 10 January 2019. The basis of that claim was a fear of persecution in Bangladesh on account of his political activities, both in that country and the United Kingdom. He claimed to have been involved in the Bangladeshi National Party ("BNP") at a local level and had been the subject of false legal cases the ruling Awami League. He claimed that the Bangladeshi authorities had harassed his family while searching for him. In addition, the appellant claimed to have undertaken anti-government activities in United Kingdom, attending a number of demonstrations.

3. The First-tier Tribunal rejected certain aspects of the appellant's account, but accepted others. The judge found that the appellant's credibility had been damaged by his delay in claiming asylum in this country. It was accepted that, between 2007 and 2009, the appellant had held the position of joint-secretary of the student wing of the BNP at the college at which he was then studying; this was described as "very low-level" political activity. The judge did not believe that there were any false cases instigated against the appellant. The judge found that the sur place activities amounted to taking part in demonstrations on behalf of the BNP, but that no formal position had been held. In summary, the judge found that "at its highest", the appellant was "simply an activist member of the BNP". It was not accepted that this profile would have placed him at risk on return to Bangladesh.

4. On appeal to the Upper Tribunal, Judge Bruce concluded that the judge below had failed to take proper account of country information included in the respondent's CPIN which indicated that even low-level political activists could be at risk of persecution in Bangladesh. That failure led to the First-tier Tribunal's decision being set aside. Judge Bruce also noted that there had been no analysis of the principle in HJ (Iran) [2010] UKSC 31: [2010] 3 WLR 386. Judge Bruce expressly preserved findings made by the judge below. Directions were issued for any further evidence to be provided within a month of the error of law decision being sent out.

5. A transfer order was made by the Upper Tribunal in order that I could conduct the resumed hearing.

The issues

6. In light of Judge Bruce's error of law decision and following preliminary discussions at the hearing before me, the following matters were clarified and confirmed:

- (a) The relevant preserved findings of fact made by the First-tier Tribunal are contained at [33]-[43] of its decision. The first sentence of [44], in which the appellant was described by the judge as “simply an activist member of the BNP” may or may not constitute a finding of fact, as opposed to a conclusion derived from previous findings. It makes no material difference;
- (b) In light of the preserved findings of fact and any additional evidence, is the appellant at risk of persecution on the grounds of political opinion if returned to Bangladesh?
- (c) As part of the risk assessment under (b), does the principle in HJ (Iran) assist the appellant in this case?
- (d) In light of the same factual matrix, is the appellant at risk of Article 3 ill-treatment if returned?
- (e) Article 8 has not been specifically pursued before me.

The evidence

7. Following Judge Bruce’s error of law decision and directions, the appellant did not provide any additional evidence within the permitted timeframe, or at all. At the hearing before me, Ms Akhter confirmed this to be the case. She confirmed that the appellant would not be called to give oral evidence and that the only evidence being relied on was that which had been before the First-tier Tribunal. She wished to proceed by way of submissions only.
8. I have no doubt that the decision not to call the appellant and to proceed directly to submissions based on the pre-existing evidence was taken on

instructions. Ms Ahmed indicated that she would have wanted to ask certain questions of the appellant, but that was beside the point: the appellant was not being called and that was a matter for him and his representatives.

9. Therefore, I have had regard to the appellant's First-tier Tribunal bundle, indexed and paginated 1-26.
10. The only country information to which I have been referred by both representatives is contained in the respondent's CPINs entitled "Bangladesh: Political parties and affiliation", version 3.0, published in September 2020, and "Bangladesh: Actors of protection", version 1.0, published in April 2020.

The parties' submissions

11. Ms Akhter relied in particular on the preserved findings and the letters from the BNP, dated 1 January 2023 and 13 January 2023, contained in the appellant's bundle. The evidence indicated that the appellant was an active member of the party. She accepted that no details have been provided as to how many demonstrations had been attended and when these took place, nor had the appellant held any formal position in the party whilst in the United Kingdom. She suggested that paragraph 339K of the Immigration Rules applied because the appellant had been subjected to persecution whilst in Bangladesh. The country information indicated that a person with the appellant's profile would be at risk.
12. Ms Akhter relied on the following paragraphs of the Political parties CPIN:

10.2.1-10.2.4

10.2.7-10.2.9

10.2.11-10.2.12

10.2.15

10.6.9

11.2.2

13. The following paragraphs of the Actors of protection CPIN were relied on:

2.3.1

2.3.4-2.3.5

2.3.7-2.3.8

6.2.3

6.2.6

6.3.11

6.4.3

14. As regards the HJ (Iran) principle, Ms Akhter submitted that persecutory treatment would come from the Bangladeshi authorities themselves and so there would be no protection available to the appellant.

15. Ms Ahmed submitted that there was very limited evidence about the appellant's activities in the United Kingdom and that they were in any event opportunistic when seen in the context of the adverse credibility findings made by the First-tier Tribunal. At most, he had had a very low-level position in Bangladesh many years ago. The appellant had not been persecuted in the past. He had no social media profile. The Bangladeshi authorities did not operate a "hair-trigger" approach to returnees, unlike, for example Iran. The HJ (Iran) principle did not assist the appellant

because his sur place activities had been opportunistic and, in any event, there was no evidence that he would want to continue with any activities on return to Bangladesh.

16. In reply, Ms Akhter emphasised the appellant's "long-standing link" to the BNP. She submitted that his past political activities would come to light on return to Bangladesh. She submitted that the appellant would wish to carry on political activities on return.

17. At the end of the hearing, I reserved my decision.

Findings and conclusions

18. I have considered with care the evidence before me and have of course taken account of the preserved findings of fact, such as they are.

19. I now set out my assessment of the appellant's political profile.

20. The appellant's political involvement with the BNP whilst in Bangladesh was, on any view, very low-level indeed. He was, for two years only (2007-2009, at which point he came to the United Kingdom), a joint-secretary of the student wing of the party at the college at which he was then studying. There is no suggestion that he had any relevant influence or profile beyond that very limited sphere. As far as I can see from the asylum interview, all the appellant said was that he had attended demonstrations and meetings whilst the BNP was in power and that he had certain relationships with other individuals described as "leaders". Little detail was provided and the actual activities referred to appear to have been very limited in number and nature. The appellant's, witness statement, dated 18 January 2022, adds virtually nothing of substance to the issue of his political activities in Bangladesh. The same

applies to the BNP letters, which contain no details of activities undertaken in Bangladesh.

21. What is of significance is that the central plank of the appellant's claim to have had a sufficiently high profile to have attracted the adverse attention of the Bangladeshi authorities and political opponents was rejected by the First-tier Tribunal and those relevant findings have been preserved. The appellant was never subject of false cases, was not arrested, and has not been persecuted or otherwise ill-treated in Bangladesh on account of any political activities. It follows that paragraph 339K of the Immigration Rules does not apply. Further, the First-tier Tribunal's description of the appellant having operated at a "very low-level" is apt, if not even somewhat overstating the true position.
22. I make it clear that I have received no submissions on any other claimed political activities in Bangladesh.
23. I turn to the appellant's activities in the United Kingdom. There is no evidence at all of any social media presence and I find that he has never posted any relevant material on any platform. I find that there is no social media profile at all and certainly none that would be reasonably likely to excite the adverse interest of the Bangladeshi authorities.
24. Ms Akhter suggested that photographs of the appellant attending demonstrations in this country could have been posted on social media by other people (she may have been asking me to infer that the BNP might have done this). I do not accept that to be a reasonably likely occurrence. There is no evidence that any photograph showing the appellant has appeared on social media platforms and/or websites. I am not prepared to take what I would consider to be a highly speculative

leap and find that photographs may have been made publicly available, albeit unknown to the appellant and his legal representatives.

25. In his witness statement the appellant asserted that the Bangladeshi authorities monitor the diaspora and, by inference, might be aware of his attendance at demonstrations. Having considered the country evidence in the Political parties CPIN at section 10.6, I see no material support for his case. There is no evidence specifically relating to the surveillance of demonstrations. There is of course no expert evidence on the issue before me. I do not accept the appellant's word alone, given the state of the evidence as a whole. I do not accept that the Bangladeshi authorities would currently be aware of any attendance at demonstrations in this country.

26. Still on the subject of demonstrations attended in the United Kingdom, I have very little information on these. As fairly acknowledged by Ms Akhter, no dates have been provided as to when these events took place. I cannot discern from the evidence before me (and have not received any specific submissions) as to how many demonstrations the appellant has attended. Such basic information as this seems to be missing from both the asylum interview and the witness statement. The latter is largely taken up by assertions of past events which were rejected by the First-tier Tribunal and an overview of the political climate in Bangladesh. As far as I can see, no further information was provided at the hearing before the First-tier Tribunal either.

27. There is a dearth of evidence relating to the demonstrations in this country. In light of the extremely limited evidence, I find that the attendances have not been significant. I find that the appellant has not taken any prominent role in them. In the absence of any further evidence for the resumed hearing, I find that the appellant has not attended any

recent demonstrations. It is reasonably likely that he has attended no more than a handful.

28. I note that no reference to attending demonstrations was made at the screening or asylum interviews. I do not accept that the appellant attended any demonstrations prior to those interviews (in other words, between his arrival in late 2009 and May 2019). Indeed, it is highly likely that the appellant did not attend any demonstrations until after his asylum claim had been refused by the respondent in late January 2022.

29. The BNP letter dated 13 January 2023 contains the following passage:

“Mr [MKH] is being a regular and very enthusiastic activist of the BNP, UK and currently he is an active member of Bangladesh Jatiotabadi Judodal UK Central London unit. He is a dedicated political activist of our party and involved himself in organising various political activities in the UK. As part of his political activities, he has been raising his voice against the present autocratic government of Bangladesh.”

30. The remainder of the letter refers to the political situation in Bangladesh and the author’s view that the appellant would be at risk on return.

31. What is conspicuous by its absence is any detail as to what was meant by “organising various political activities” how the appellant was “dedicated”, and in what way he had been “raising his voice against the present autocratic government of Bangladesh”. The letter does not confirm when the appellant began his activities with the party in this country. No such detail has been alternatively provided by the appellant. I note that the author of the letter did not attend the hearing before the

First-tier Tribunal and did not attend the resumed hearing. There is no subsequent letter from the BNP providing further information.

32. I do not accept that the appellant has played any organisational role for the BNP in the United Kingdom. I do not accept that he has proffered any anti-government views beyond mere attendance at a handful of demonstrations. Whatever was meant by the author of the BNP letter by the appellant being a “very enthusiastic activist”, I am not prepared to simply fill in the significant gaps in detail by assuming involvement in activities of which I have no evidence at all. I do not accept that the appellant’s activities, such as they have been, have been ongoing for a significant period of time. There is no reliable evidence to indicate that the appellant has been a “long-standing” activist. In short, I find that the BNP letter is not reliable as to the support sought to be attributed to it by the appellant.
33. Having regard to the above and my findings on the appellant’s very limited involvement in demonstrations, I also find that the appellant was not in fact materially active for the BNP for any appreciable period of time between his arrival 2009 and the respondent’s refusal of his asylum claim in January 2022. For reasons set out later, that finding is not incompatible with Judge Bruce’s observation in her error of law decision.
34. Although it has not been specifically suggested, I do not accept that any activities other than the demonstrations (which I have addressed previously) undertaken by the appellant in the United Kingdom have been publicised on any social media platforms or websites. Having regard once again to section 10.6 of the Political parties CPIN, I conclude that it is not reasonably likely that the Bangladeshi authorities would be aware of any activities undertaken by the appellant here. There is evidence to indicate that there might be monitoring of bloggers and possibly social media, but that is not relevant to the appellant’s case.

Even if informants were operating in this country, it is not reasonably likely that anything done by the appellant would have been noted and passed through the information-gathering chain.

35. Ms Ahmed submitted that the appellant's activities in United Kingdom have been opportunistic. For the following reasons, I agree.
36. Firstly, the preserved adverse credibility findings are a relevant consideration. The appellant has been untruthful about significant aspects of his claim (relating to past events in Bangladesh) and had no good reason to have delayed his asylum claim for close to 10 years after arriving in the United Kingdom.
37. Secondly, I have found that the appellant was not in any way politically active in the United Kingdom between 2009 and approximately the beginning of 2022.
38. Thirdly, I have found that his attendance at demonstrations was limited in both number and nature.
39. Fourthly, the appellant's evidence (leaving aside that which has been specifically rejected previously) does not demonstrate, even on the lower standard, an ongoing commitment to the BNP.
40. Fifthly, I take full account of the preserved finding that the appellant is "an activist". However, there was no finding that his activism was based on a genuine belief, at least whilst in the United Kingdom. There is no inconsistency in finding that an individual has been an "activist" for an organisation, but for opportunistic reasons. In addition, I recognise that Judge Bruce commented that the appellant had been involved with the BNP for a "very long period of time": [19] of the error of

law decision. As far as I can see, the respondent never conceded that the appellant's sur place activities were genuine. Judge Bruce was of course concerned with the error of law issue, not an evaluation of the evidence as a whole. She did not purport to make a finding that the appellant had in fact been consistently involved with the BNP throughout, or at least for a significant period during, his time in this country. My task has been to assess the evidence as a whole. My finding on the genuineness of the political activities conducted in this country is not inconsistent with either the preserved findings or judge Bruce's error of law decision.

41. Sixthly, and relating to the HJ (Iran) principle, there is no evidence from the appellant that he would wish to continue any activities on return to Bangladesh (whether by way of demonstrations, social media activity, or otherwise), or that he would wish to do so but would desist because of the fear of being persecuted. Ms Akhter has effectively asked me to infer that he would, but that, in the context of the evidence as a whole, is not a step I am prepared to take.
42. My finding that the appellant's activities in the United Kingdom have been undertaken on an opportunistic basis means that the principle in HJ (Iran) does not assist him. He does not currently hold a genuine commitment to political activities on behalf of the BNP and there is no question of him having to conceal any relevant political beliefs.
43. Even if I were to have found that the appellant's very limited sur place activities had been undertaken out of an ongoing genuine belief, the sixth point I have made at paragraph 41, above, still applies. There is no evidence from the appellant that he would wish to continue any relevant activities if returned to Bangladesh. Again, I am not prepared to draw the inference that he would. Even on the lower standard, it does not follow that an individual who has undertaken very low-level activities in a

host country would wish to do so on return to their country of origin, or that they would not do so because of a fear of persecution.

44. I now turn to the country information contained in the CPINs. I have recorded the specific paragraphs upon which reliance was placed earlier in my decision and I do not propose to go through each and every passage here. Judge Bruce set out a number of these in her error of law decision. In summary, I accept that the overall picture painted by the evidence indicates that the targeting of political opponents of the Awami League is not confined to those with a high profile. “Activists”, “members” and “supporters” of the BNP appear to be included in those potentially targeted. False cases are employed to intimidate opponents. It is clear that problems for political opponents are exacerbated in the run-up to elections. It is also clear that the Bangladeshi authorities perpetrate human rights abuses and are not, generally speaking, willing or able to protect those targeted by the Awami League.

45. The question is whether it is reasonably likely that the appellant’s particular profile would place him at risk on return, given the relatively broad category of those who might be targeted by the Bangladeshi authorities and/or the Awami League.

46. I conclude that the appellant would not be at risk on return. His history in Bangladesh was only ever very limited and it ceased in 2009. He has not been the subject of any material adverse interest in the past. He has never been involved in anti-regime social media activity, nor would he wish to do so in the future. His activities in the United Kingdom have been extremely limited both in duration and nature and they have been undertaken for opportunistic reasons. Whether or not those activities have been opportunistic, the appellant would not wish to undertake any on return to Bangladesh, nor would he feel unable to do so out of fear of the consequences. His attendance at demonstrations has

not appeared on any social media platform or website. None of his activities have come to detention of the Bangladeshi authorities.

47. The country evidence does not show that the Bangladeshi authorities operate a form of “hair-trigger” approach to returnees at the airport or thereafter. It is not reasonably likely that the appellant would be interrogated about his history at that point. I conclude that even if he was asked questions at some stage, and on the premise that he could not be expected to lie, the extent of his background (based on the findings of fact) would not, if revealed, place him at risk of persecution and/or Article 3 ill-treatment. Without wishing to repeat myself, the profile described in the previous paragraph is not reasonably likely to create a sufficiently adverse interest from the Bangladeshi authorities, or indeed members of the Awami League. That conclusion is reached in the context that the risk threshold for political opponents is not particularly high, both in terms of the legal test (reasonable likelihood) and the country evidence contained in the CPINs.

48. It follows from the above that the appellant’s appeal must be dismissed.

Anonymity

49. I maintain the anonymity direction previously made. This case concerns protection issues and there is the potential that these proceedings may continue following my re-making decision.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and that decision has been set aside.

The decision in this appeal is re-made and the appeal is dismissed on all grounds.

**H Norton-Taylor
Judge of the Upper Tribunal
Immigration and Asylum Chamber
Dated: 1 November 2023**

ANNEX: THE ERROR OF LAW DECISION

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

MKH

(anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

For the Appellant: Ms R. Akhter, Counsel instructed by Brit Solicitors

For the Respondent : Mrs A. Ahmed, Senior Home Office Presenting Officer

ANONYMITY

Until such time as the Appellant's protection appeal is finally determined, no-one shall publish or reveal any information, including his name or address, likely to lead members of the public to identify him or any member of his family. Failure to comply with this order could amount to a contempt of court.

DECISION ON 'ERROR OF LAW'

DECISION TO ADJOURN

1. The Appellant is a national of Bangladesh born on the 7th May 1986. He appeals with permission against the decision of the First-tier Tribunal (Judge Hussain) to dismiss his appeal on human rights and protection grounds.

Background

2. The Appellant first came to the United Kingdom on the 21st December 2009 as a Tier 4 (General) Student Migrant. At some point after the 27th July 2014, unclear to me, his leave expired. He became an overstayer. On the 10th January 2019 he made a claim for asylum.
3. The basis of the Appellant's claim was that he has a well-founded fear of persecution in Bangladesh for reasons of his political opinion. He averred that he is an active member of the Bangladeshi National Party (BNP) and that he will for that reason be persecuted by members of the ruling Awami League. In particular he avers that the authorities in Bangladesh have issued warrants for his arrest in 2010 and 2014 relating to false charges of rioting, and that his family home has been raided between 15-20 times by policemen looking for him. He further states that he has continued his involvement in the party since his arrival in the UK, attending many demonstrations against the present government.
4. The Secretary of State rejected the claim for a want of credibility. The long delay in claiming asylum was found to detract from the weight to be attached to his evidence, and various inconsistencies were identified in his account.
5. The Appellant appealed and the matter came before Judge Hussain. Judge Hussain noted the Respondent's doubts about the account, but declares at his paragraph 38 that it is unnecessary for him to visit her reasons because "I am prepared to determine this appeal on the basis that the appellant's account is true". Judge Hussain finds the Appellant's position in the BNP whilst in Bangladesh to have been a "very low-level one" that would be unlikely to have brought him to the attention of the government nationally. The alleged arrest warrants were unreliable and the account of

police raids and attempted arrests made no sense. The Appellant may have been in attendance at demonstrations in the UK but he was simply one of thousands. Judge Hussain found nothing in the background material to show that he would be identified as an activist or otherwise someone who would be at risk.

6. The Appellant now appeals on four grounds. I take each in turn.

Ground (i): Standard of Proof

7. Ground (i) is that Judge Hussain has failed to direct himself to, or apply, the lower standard of proof applicable in this asylum appeal. At his paragraph 26 he directs himself to the standard being one of “serious possibility”. Ms Akhtar takes issue with that on the basis that the correct standard was a “reasonable possibility”.
8. I am not satisfied that this is made out. The First-tier Tribunal’s decision plainly contains the correct direction as to the applicable standard:

26. In asylum appeals the burden of proof is on the appellant. The standard of proof as regards both the likelihood of persecution and the establishment of past and future events is a reasonable degree of likelihood which can be expressed also by a "reasonable chance" or "a serious possibility". The question of whether a person has a well-founded fear of persecution for a Convention reason has to be looked at in the round in the light of all the relevant circumstances and judged against the situation as at the time of the hearing of the appeal. I have also borne in mind that great care must be taken before making adverse findings on credibility in asylum cases.

9. Nothing in the substantive reasoning leads me to conclude that the Tribunal forgot its own direction when assessing this claim. Furthermore I would note that the ground takes the case no further at all because Judge Hussain proceeded on the basis that the core of the claim was true. Even if the Tribunal did err in supplanting the word “reasonable” for “serious”, any such error would be immaterial.

Ground (ii): Section 8

10. The same point about materiality can be made about ground (ii), which critiques the Tribunal's approach to the fact that the Appellant did not claim asylum at the earliest possible opportunity. In accordance with s8 of the Asylum, Immigration (Treatment of Claimants etc) Act 2004 the Tribunal found this to detract from his overall credibility as a witness. It is submitted that in so finding the Tribunal omitted to consider whether there was "good reason" for the failure to claim at an earlier date. In circumstances where the Tribunal accepted both the Appellant's political involvement before he arrived in the UK, and that which has continued after, conclusions which the Appellant now submits are sufficient to establish risk, it is with respect difficult to see why a finding that there was a good reason would have made a difference.
11. In any event the ground is unarguable. The Appellant was involved in politics before he ever left Bangladesh. On his own case he knew as early as 2010 that the authorities were looking to frame him on politically motivated trumped-up charges. Further such charges were threatened in 2014. The actor of persecution - the Awami League - held power in Bangladesh throughout that entire period but the Appellant's explanation for why he did not claim earlier than he did, on the 10th January 2019, was that he was waiting to see if the BNP would win an election so he could go home. In oral submissions Counsel also drew my attention to the Appellant's evidence that he was very afraid of returning home as long as the Awami League held power. With respect, none of that amounts to a 'good reason'. At least since 2010 the Appellant has believed that he cannot return safely to Bangladesh. The fact that he believed that is not a good reason not to claim. It should have been a powerful motivator driving him to claim at the earliest possible opportunity. Finally it seems to me that the Tribunal actually did consider, between its paragraphs 32 and 36, whether there was a good reason, but concluded that there was not.

Ground (iii): the Risk to 'Low-Level' Activists?

Ground (iv): Sur Place Activities

12. I take these grounds together since they amount to the same point, albeit about different aspects of the evidence. The Appellant here submits that Judge Hussain acted irrationally, or failed to take material country background evidence into account, in assessing the risk for the Appellant should he return to Bangladesh today. The crux of the Appellant's case is that on the facts as found by Judge Hussain, that country background evidence pointed unequivocally to there being a real risk of harm.

13. The finding on the Appellant's role in the BNP in Bangladesh is found at paragraph 38 of the decision:

38 The respondent has given detailed reasons as to why she found the appellant's account of his political activism and victimisation in the hands of the ruling government not believable. It seems to me unnecessary for me to visit those because I am prepared to determine this appeal on the basis that the appellant's account is true. What this amounts to then is that he held the position of Joint-secretary in the BNP branch of the college where he was studying. I do not have any idea of how many branches of the BNP there are, or were, in Bangladesh at the time. However, it is proper to note that the position he held would have been, in the grand scheme of things, a very low-level one and one that is unlikely to have him brought to the attention of the government nationally.

14. No issue is taken with the characterisation of the Appellant's activity as "low level". Nor does Ms Akhter resile from the finding that it may not have brought him to national attention. She submits, however, that even on that finding there was evidence establishing a real risk of harm. In the September 2020 Country Policy and Information Note Bangladesh: Political parties and affiliation (Version 3.0) the section on politically motivated harassment, arrests and detention contains the following information:

10.2.1 The BTI 2020 Report noted 'There is complete intolerance for any point of view that is seen as being in opposition to the government.' According to the Freedom House report, Freedom on the Net 2019, covering the period 1 June 2018 to 31 May 2019, 'The ruling Awami League (AL) has consolidated political power through

sustained harassment of the opposition and those perceived to be allied with it [...].’

10.2.2 The DFAT report noted that, since the AL came into power in 2008, it had considerably restricted the activities of opposition parties, particularly the BNP and JI, by ‘... using police and other security forces to arrest thousands of opposition political party members and supporters, often in conjunction with political demonstrations; using police and other security forces to prevent opposition parties from holding meetings and demonstrations; and pressuring opposition candidates to withdraw from local and municipal elections, including through preventing them from submitting election nominations.’

10.2.3 According to Human Rights Watch (HRW), since the 2013 protests by the BNP and other opposition parties, who demanded the reinstatement of a caretaker government to oversee elections: ‘[T]he Awami League government has cracked down on the political opposition. Law enforcement authorities have illegally detained scores of opposition activists and held them in secret without producing them before courts, as the law requires. In most cases, those arrested remain in custody for weeks or months, before being formally arrested or released. Torture in police custody, including mutilations such “knee-capping” has been widely practiced. Others have been killed in so-called armed exchanges, and many remain “disappeared.” Many of these cases appear to have been politically motivated, sometimes targeting the relatives of political opponents.’

10.2.4 The HRW report also noted ‘While the police promptly launched investigations and made arrests in attacks on the ruling party, it ignored complaints from the opposition.’

10.2.11 Human Rights Watch explained that: ‘Since the beginning of 2018, the authorities have dramatically increased the practice of filing false or fictitious cases against the government’s democratic opponents, primarily from the BNP. Typically, a single case accuses a

list of named individuals, sometimes more than 100, of participating in a crime, plus an unspecified number of “unknown” perpetrators. Other people can then be added to the case later, if the police claim that they were among the earlier “unknown accused”.’

10.2.12 Despite the claims that cases were filed against persons who were dead, disabled, absent from the country or in jail at the time of the reported offences, the government insisted such cases were not politically motivated.

15. None of that evidence is contested. What it indicates is that there is a high level of political violence in the country, that the government use the security forces to enforce their political agenda, and that a great many people are impacted by this repression. Nowhere does it say that only certain kinds of BNP activists are targeted. On the contrary, it would appear that the net is cast wide, sufficiently wide to catch ‘low-level’ secretaries of student branches.
16. Ground (iv) is concerned with the Appellant’s activities on behalf of the BNP in the UK.

44 At its highest, the appellant is simply an activist member of the BNP in the United Kingdom of whom, there must be thousands. In my view, there is nothing in the background material to show that on return to Bangladesh, the appellant would be identified as an activist of the BNP in the United Kingdom and in consequence of that identification, there is a real risk that he would be persecuted or otherwise treated in a manner contrary to Article 3 of the Human Rights Convention.

17. The Appellant submits that in making that finding the Tribunal appears to have overlooked the section in the CPIN ‘Sur Place activities’ [10.6] which details how both the Awami League and the BNP have a significant presence in the diaspora. BNP members who are not Bangladeshi citizens have reported having visas denied to visit the country [10.6.4]; BNP members are active in London, having organised large demonstrations and events including against the visit of Bangladeshi Prime Minister Sheikh Hasina [10.6.5]. A British national was arrested in 2018 in Bangladesh and accused of carjacking, but his family claimed that it was a politically-

motivated charge stemming from his involvement in those BNP protests in London, and anti-government material on his Facebook page [10.6.6]. Evidence gathered by Human Rights Watch in support of this contention included a telephone recording of a senior police commander confirming the same [10.6.10]. HRW also cite the case of a dual national, the chair of a BNP branch in London, who was arrested during a visit to Bangladesh from the UK and his name added to an existing murder indictment [10.6.11]. Freedom House report that the government also target opposition activity online, with the Bangladeshi authorities reporting that they have brought cases against ex-patriates in several countries for “spreading anti-state rumours on social media” [10.6.13].

18. In responding to this ground Mrs Akhtar conceded that none of that material appears to have been taken into account. She further pointed out that the Tribunal, having accepted that the Appellant is “simply an activist”, should have gone on to ask itself whether he would be likely to continue to hold that political opinion should he return to Bangladesh. Whilst this HJ (Iran) analysis is absent from the grounds as well as the decision, Mrs Akhtar very fairly suggested that it would be a Robinson obvious error that I would be entitled to take into account.
19. I am satisfied that grounds (iii) and (iv) are made out. The CPIN I was referred to contains numerous instances of apparently low level BNP members, supporters or activists being targeted for their political beliefs in Bangladesh. None of that evidence features in the risk assessment undertaken by the Tribunal. Nor does the decision contain any assessment of whether the Appellant’s commitment to the BNP is such that he would be likely to continue it in the future if he returned to the country. Given the very long period of time over which he has been involved with the party, and given what is said in the background material, that is a material omission.
20. I therefore set the decision aside for error of law.

Re-Making the Decision

21. The findings of fact made by Judge Hussain are preserved. I have given consideration to Ms Akhter's invitation to simply allow the appeal but have decided that it would not be appropriate to do so without the parties having had the opportunity to address me in more detail on the background material, or to make submissions on the HJ (Iran) point. I will therefore have the matter listed back before me at a date to be notified so that that can be done.

Decision

22. The decision of the First-tier Tribunal is set aside for error of law.
23. The decision in the appeal must be remade. A listing in the Upper Tribunal will follow in due course.
24. The parties have leave to file and serve any further evidence upon which they wish to rely, but this must be done within one month of this decision being served.
25. There is at present an order for anonymity.

Upper Tribunal Judge Bruce

2nd August 2023