



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

Appeal Number: UI-2023-003158
FTT case numbers: IA/02677/2022
PA/50888/2022

THE IMMIGRATION ACTS

**Decision & Reasons
Promulgated
On 19th of December 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MU
(Anonymity order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Davison, Counsel
For the Respondent: Mr A Basra, Home Office Presenting Officer

DECISION AND REASONS

Heard at Field House on 11 December 2023

The Appellant

1. The appellant is a national of Bangladesh, whose date of birth is 10 June 1944. He appeals against the decision of Judge of the First-tier Tribunal Monson dated 14 June 2023 dismissing his appeal against a decision of the respondent dated 1 February 2022. That decision refused the appellant's fresh submissions in support of an application for international protection.

The appellant arrived in the United Kingdom on 22 September 2003 with a visit visa. On 5 February 2010 the appellant applied for leave to remain in the United Kingdom outside the Immigration Rules. On 13 April 2010 that application was refused. The appellant claimed asylum on 11 December 2014 which was refused on 19 June 2015, and an appeal against that refusal was dismissed by the FTT on 23 June 2016. The appellant made fresh submissions on 24 September 2021 and it was the refusal of these further submissions which gave rise to the current proceedings.

The Appellant's Case

2. The appellant's case was summarised by the judge at [14] of the determination as follows:

"[I]n 1967, [the appellant] had become a member of Jamaat-e-Islami ("Jamaat"), which was a democratic Islamic party. In 1992 he was elected as a Union Councillor in his local branch for a 5-year term. He became the Assistant Secretary of his local branch in 2000 and held that position until he left Bangladesh in 2003. In that year, "Dacoits" began to threaten him on the telephone and at his business. They demanded 200,000 taka and said that he would be killed he did not pay. The Dacoits belonged to the [ruling] Awami League and he was threatened because of his membership of the party. He told the police, but they were not interested. He obtained a visa to visit his mother and family in this country and he left Bangladesh to escape the threats. After he came here, his family told him that the Dacoits had taken over his business."

3. The judge found that the appellant's case was in effect the same as the case rejected by the previous judge in 2016. At [49] the judge added: "the second strand of the appellant's asylum claim is that the appellant's risk-profile has been increased by his sur place activities in the UK. With respect to this aspect of the appellant's claim, the appellant is able to point to evidence that was not before the previous Judge, as it relates to sur place activities that he has undertaken since the previous appeal hearing in 2016."

The Decision at First Instance

4. The appellant relied on a report from Mr Solaiman, a practising advocate in Bangladesh, who said that documents were filed by a Police Sub-Inspector at Fenchugang Police Station, Sylhet, on 5 December 2009 against the appellant. The judge considered that the report fell to be treated, at the very least, with caution. When Mr Solaiman contacted the relevant police station, the officer at this police station was "not responsive". The judge recorded that the officer in question: "was not willing to disclose the necessary information to establish the documents or authenticity. So, on his own evidence, Mr Solaiman was unable to verify the authenticity of the case documents relating to the appellant." Mr Solaiman had not established that a case against the appellant was still pending. "Indeed,

he has completely failed to establish that there is a genuine case at all.” See [56].

5. In support of the second part of his claim, the appellant produced a letter dated 4 October 2022, from Mr Molla (Barrister) who said that the appellant had been actively participating in meetings, demonstrations and rallies in the UK. At [66] the judge commented: “However, none of the photographs that the appellant has provided by way of appeal show him participating in meetings, protests or rallies that have any visible connection with Jamaat, Save Bangladesh or the 20 Parties Alliance.” At [67] the judge wrote: “the appellant does not claim that any of the photographs show him in proximity to Mr Molla.” There were “no good reasons to depart from the finding of the previous Judge that the appellant is not a public figure so far as opposition to the Government and the ruling Party is concerned.”
6. The judge dismissed the appeal against refusal of asylum and refusal to grant leave to remain under Article 8 commenting: “I acknowledge that the appellant is close to satisfying the 20-year Rule, and I recognise that the appellant will probably be able to make an application for leave to remain on the grounds of 20 years’ continuous residence before he is removed. But this does not detract from the public interest in upholding at this stage the refusal of leave to remain on private life grounds.”

The Onward Appeal

7. In lengthy grounds of onward appeal the appellant argued that the judge had failed properly to take into account the new evidence both in relation to the documents at the police station and the evidence of the appellant’s sur place activities. Permission to appeal was refused by the First-tier Tribunal but after renewal to the Upper Tribunal, permission was granted: “as to the evidence concerning the sur place activities , paragraph 8 of the grounds is arguable. The photographic evidence (page 108 - 109) viewed alongside p126 - 128 appears to be inconsistent with the factual findings made between paragraphs 66-68 and that the photos do have links with the Jammata party. It is further arguable that the FtTJ did not take account or consider the sur place activities and risk on return in view of the country objective materials relevant to risk and return and profiles (see paragraphs 18 - 20 of the grounds). As to the challenge made [under] article 8, the FtTJ address this issue between paragraphs 81 - 82 and the grounds do not particularise why the decision on proportionality was not open to the FtTJ on the evidence. However I do not restrict the grounds given that the issue of “very significant obstacles” also related to his political opinion which is the subject of the main thrust of the grounds. “

The Hearing Before Me

8. In consequence of the grant of permission the matter came before me to determine in the first place where there was a material error of law in the decision of the First-tier Tribunal such that it fell to be set aside. If there

was then I would make directions on the rehearing of the appeal. If there was not the decision at first instance would stand.

9. In oral submissions counsel argued that the onward appeal made three points, the judge had not considered the appellant's sur plus activities properly, the judge had failed to consider the expert evidence correctly and the judge's treatment of article 8 disclosed a material error. The appellant's appearance was distinctive and his attendance at rallies could be seen from the photographic evidence. If a person had any kind of profile there was a risk. Sur plus activities had been looked at incorrectly by the judge which left the determination subject challenge. In relation to the treatment of the expert's evidence, the expert had said which documents he had seen. If it was being contended that the expert had looked at documents other than those which the police had, that was immaterial. The judge appeared to confirm that the expert had contacted the police and that a case had been lodged against the appellant. The appellant had always contended that the charges were fraudulent.
10. In relation to article 8, the judge had dealt with that in a perfunctory manner. At the time of the appeal hearing the appellant was three months short of fulfilling his 20 years when he would be able to make a claim for leave to remain on that basis. The appellant was suffering from cognitive disorder and that was confirmed in medical evidence. While it was not necessarily the case that the appellant would be bound to have succeeded the judge did not give proper consideration to the issue of the appellant's length of residence.
11. In response the presenting officer argued that the judge had correctly applied the necessary principles in the case. He had dealt with whether there was any new evidence. None of the photographs produced showed the appellant participating in meetings. Although the judge may have erred in saying that no photographic evidence showed the appellant with Mr Molla there was an important contradiction in the appellant's evidence. The appellant had said that the organisation, Jaamat, did not have a direct presence in the United Kingdom when in fact Mr Molla who was a spokesman for the organisation had the name of it on his letterhead. The grounds were no more than a disagreement with the findings of the judge. On his own evidence the expert had been unable to verify the documents.
12. Finally in reply counsel argued that the various anti-government organisations operated as a conglomerate so when individuals referred to them, they said they were not a stand-alone organisation. The expert had said he had spoken to someone at the police station to verify the documents and he was careful about which ones he had looked at. It was not true to say he had had no response from anyone..

Discussion and Reasons

13. The appellant was unsuccessful in his appeal hearing in 2016 against the refusal of the first asylum claim he had made. When he made his second

claim it was on the basis that new country background evidence showed the increasing intolerance of the government in Bangladesh towards opposition groups such as Jamaat, the one which the appellant claimed to belong to. The appellant said he had participated in anti-government demonstrations and activities whilst in the United Kingdom. The appellant said false claims made against him had been filed with the Bangladesh police as a result of which if he were to return to Bangladesh he would be at risk of adverse police attention.

14. To sustain that claim the appellant had to produce something to show that there were indeed claims against him. I accept counsel's point that it was not a question of whether the allegations contained in any documents were genuine it was a question of whether there were any documents at all whose existence would put the appellant at risk regardless of whether those documents accurately stated matters. The appellant prayed in aid an expert report from a barrister practising in Bangladesh. The judge in his determination spent some considerable time analysing this report and considering its impact on the appellant's case generally. As can be seen from the excerpts from the determination which I have quoted above the judge was not impressed by the expert's report and gave his reasons for that scepticism. Those were conclusions which were open to the judge on the evidence. The respondent's submission is correct in saying that the grounds of onward appeal are no more than a lengthy disagreement with the result at first instance.
15. It is also important to note that the grant of permission to appeal by the Upper Tribunal focused on two grounds namely the judge's treatment of the sur plus activities and the judge's treatment of article 8. The issue as to the shortcomings of the evidence in relation to false claims made against the appellant in Bangladesh is not therefore strictly of relevance to this onward appeal. However for the sake of completeness I consider that the judge gave cogent reasons for rejecting the appellant's claim that there were false claims lodged against the appellant in Bangladesh. The judge was entitled to take a sceptical view of the evidence and treat the expert report with caution in the light of the shortcomings in evidence gathering by the expert identified by the judge in the determination.
16. The main thrust of the appeal was the treatment by the judge of the sur plus activities and in particular a seeming mistake in the determination where the judge commented that the appellant has not produced any photographs of himself with Mr Molla (see paragraph 5 above) when in fact the bundle did contain at least one photograph showing both men. The issue is whether such a mistake undermines the judge's findings particularly his credibility findings as to whether the appellant did in fact take part in any sur plus activities and whether any such participation would put him at risk from the Bangladesh authorities. What the judge went on to say in the same paragraph was that there was a contradiction between the appellant's claim that Jamaat had no direct presence in the United Kingdom and the fact that from the letterhead it obviously did have such a direct presence. This contradiction was relevant because it

demonstrated the appellant had very little if any idea of who was protesting against the Bangladesh authorities. In that respect it was a far more significant discrepancy than the judges mistake in saying that the appellant had not been seen in a photograph with Mr Molla. What the appellant had to show was that he had participated in sur plus activities and it was reasonably likely that they would come to the attention of the authorities who would be taken to have an intolerant view of such activities.

17. The judge's finding was that the case never got beyond the appellant showing that he had taken part in some activities but they could not reasonably be said to become known to the authorities. The appellant was not an organiser of the demonstrations and had no particular profile, see [70] of the determination. The appellant did not claim to have taken part in any activities outside the Bangladesh High Commission and it was difficult to see how such activities as he had engaged in would lead to him having a profile that would put him at risk. As with the complaints about the treatment of the expert's report, the complaints made by the appellant about the judge's treatment of the sur plus activities amount to no more than a disagreement with the result.
18. One other matter relied upon by the appellant is the treatment of article 8. Undoubtedly the appellant has been in the United Kingdom for a very long time but the judge could not deal with a stand alone claim under the Rules based on 20 years residence. The respondent's view on whether a new matter could be considered had not been canvassed during the proceedings. While the judge had to look at the case on the basis of how long the appellant had been in the United Kingdom that length by itself did not mean that for the purposes of the appeal the appellant had acquired a right to remain.

Most of the time the appellant has been here, he has been here unlawfully. He has made a number of applications to obtain lawful status but they have been unsuccessful. Any private life that the appellant has built up during his time in this country could only be ascribed limited weight in the proportionality exercise which the judge had to carry out. As the judge pointed out, there was a public interest in removal on the other side of the scales. I do not find that there was any material error in the judge's treatment of the appellant's article 8 claim. It may be that the appellant is now in a position to claim under the 20 year rule as it does not appear that the respondent has taken any action to stop the clock. However that was not a matter for the judge and it is not a relevant issue in the onward appeal. I do not consider that the onward grounds of appeal for all their length disclose any material error of law on the judge's part and I dismiss the onward appeal. The anonymity order previously made is continued.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

Signed this 13th December 2023

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Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

As the appeal has been dismissed there can be no fee award.

Signed this 13th December 2023

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Judge Woodcraft
Deputy Upper Tribunal Judge