IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004861

First-tier Tribunal No: PA/50429/2023
LP/01209/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 29 December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE BLACK

Between

KA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Spurling (Counsel instructed by Hubers Law)
For the Respondent: Ms S LeCointe (Senior Home office presenting officer)

Heard at Field House on 13 December 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals against the Decision of the First-tier Tribunal Judge Bunting ("the Decision") dated 4 October 2023 dismissing his appeal against the Respondent's decision made on 28 December 2022 refusing his application for asylum, humanitarian protection and human rights.

2. The appellant, born in 1982, is a citizen of Bangladesh claimed to be in fear of persecution as a result of his online political activity and his sexuality as a gay man. He entered the UK in 2013 as a visitor. He claimed that he joined the Bangladesh National Party in 2009 and attended protests and was involved in recruitment. In 2012 he was detained and assaulted following a demonstration and bailed. He claimed that he was attacked by members of the Awami League (AL) at his home and stabbed in the stomach. Since entering the UK he was sentenced to 7 years imprisonment in a politically motivated prosecution conducted in his absence. His family have been targeted by the AL; his brother fled to France. He states that he was gay, but now is heterosexual. He claimed asylum first on 7 July 2016 and his appeal was dismissed by the UT in 2018; the political claim on credibility grounds and his sexuality rejected as it was found that this aspect of his life would be kept private. That his political claim was found not credible was not challenged by the appellant. He made a fresh claim for asylum again on 13 July 2022 on political grounds. He submitted 70 statements and numerous photocopies of blog posts.

The Decision

3. In the Decision the Judge followed the approach in **Devaseelan** [2002] UKIAT 00702 [2003] and cited BK (Afghanistan) v SSHD [2019] UKCA [44]. There was a previous decision of FTJ Doyle which was set aside by the Upper Tribunal. A further decision was made by FTJ Buckwell who allowed the appeal. That decision was set aside by UTJ Dawson in June 2018 who confirmed that the findings of fact [by FTJ Doyle] stood in respect of the political grounds; the appellant was found to be lacking in credibility. He was found not a to be member but a supporter of the BNP and at too low a level to attract persecution. If he was assaulted this was as a victim of an unpleasant crime. He found that his claim to be gay was fabricated [49]. This was the starting point for Judge Bunting [50].

4. The appellant produced evidence in the form of screen shots of blogs he claimed to have written under the title of 'Peace for Bangladesh'. The Judge reminded himself of the headnote in XX (PIAK – sur place activities – Facebook) Iran CG [2022] UKUT 23 (IAC) citing paras 5-9 [54]. The printouts were produced to prove the provenance of the social media post. The respondent's view was that they did not provide support for the claim in the absence of clear evidence of attribution of the social media posts. The Judge found that the printouts did not prove themselves in light of the other concerns about the appellant's credibility [55]. "*A screen shot captures a moment in time and does not provide evidence beyond that*".

The Judge considered the distinction as between public and private settings [56]. He further considered that there was room for manipulation of interest (such as "likes") which made the evidence unreliable [57]. He found there not to be clear evidence of widespread interaction on all the appellant's postings. He was not persuaded that having 44,000 followers meant that the appellant had interest from 44,000 individuals [59]. The Judge found that the social media material did not prove that the appellant was a political activist [60]. The Judge considered posts specifically drawn to his attention at pages 485, 317 and 761[55 &58] in finding a lack of evidence as to widespread interaction. The appellant's credibility was relevant and he applied Tanver Ahmed principles [74]. The Judge declined to consider the appellant's apparent change in sexual identity as a credibility factor [63].

5. In assessing credibility the Judge relied on the previous findings of FTJ Doyle that the appellant was not a BNP member [65] and the delay of 3 and a half years before claiming asylum [66] and the lack of evidence as to the prosecution in his absence. The Judge found unhelpful the numerous witness statements produced which largely appeared in a standard format and contained the same text [67]. He accepted that there were practical difficulties in calling witnesses from Bangladesh but there were others living in Luton, USA or Sweden who could have been called [68-69] and he did not accept the appellant's explanation that only close relatives would be willing to attend Court [71]. Whilst acknowledging that corroboration was not a requirement, the Judge found the lack of support lead him to place little weight on the letters. He had in mind the ease with which a witness could attend remotely by video link.

6. The Judge concluded at [73] " *Whilst there is a lot of material provided, none of it proves itself and the addition of more of such material cannot add support for its veracity. His immigration history, the inconsistencies identified by previous Judges and the lack of support for his account means that, even taking account of the low standard of proof, I cannot place weight on his account*".

Grounds of appeal

7. Ground 1 – the Judge erred by failing to take into account that the appellant had provided his online address for his Facebook blog in addition to the 493 pages of screen shots. The Judge was able to access the account that had been fully disclosed.

8. Ground 2 – The Judge's reasoning, that the statements were in the same format and the ease with which individuals could have attended as witnesses, for rejecting the written evidence was flawed. The appellant adduced witness statements which provided relevant personal information such as the General Diary entry made by his sister dated 14.6.2021 and the news report and statement from P Begum about threats made against the appellant because of his blogging. The statements of his mother, brother and nephew as to the problems faced by the family because of the blogging. The statements from his uncle and his friend about his

participation in demonstrations. It had not been suggested to the appellant that he could have used a video link for witnesses from abroad.

9. **Permission to appeal** was granted by FTJ Dainty who considered that it was arguable that the failure to mention the provision of his Facebook online address in the Decision was material to the assessment of risk.

10. The matter comes before me to determine whether the Decision contained an error of law.

Discussion

11. There was no issue taken with the approach taken by the Judge to take the previous findings as his starting point. The Judge 's Decision concluded that in light of the previous credibility findings made, that the 'new' evidence was insufficient to lead to him to reach a different conclusion. Further this was an appeal in which the appellant had not previously challenged the findings dismissing his political activity as lacking in credibility. The respondent relied in the main on the previous decisions and did not respond in the refusal letter in any detail to the social media evidence or statements save in the Review.

12. Dealing with the first ground of appeal, Mr Spurling questioned the relevance of XX in this appeal. XX deals with *"the issue of risk on return arising from a person's social media use (in particular, Facebook) and surveillance of that person by the authorities in Iran."* There are general points of relevance in the headnote at 4-9 cited by the Judge and which were properly taken into account.

13. Mr Spurling accepted that most of the letters/ statements were in a similar format but that it was incumbent on the Judge to have considered those mentioned specifically in the ASA and drawn to his attention at the hearing, the same was true for the online address, to which no reference was made in the Decision. The appellant had provided more evidence material to his claim than simply the printouts and statements and the Judge ought to have considered that evidence in particular that which linked his blogging activities to threats made to his family, or at least to have explained why he discounted the evidence. Mr Spurling referred to the statement from the appellant's mother in which she claims that the police made reference to the appellant's blogs.

14. Ms LeCointe submitted that the decision should be considered as a whole and the credibility assessment having regard to the starting point. The findings made as to the blogging activities were sustainable notwithstanding that the Judge made no reference to the email address. The Judge's consideration was adequate and he applied the caselaw properly. She accepted that the respondent could have accessed the appellant's account via the email address but the fact remains, as found by the Judge, that the printouts are a reflection of one time frame and could be changed at any time. The provision of the FB account would not alter that conclusion given the credibility findings.

15. I am satisfied that the Judge reached an independent decision on the 'new' evidence and found it to be lacking. The fact that he failed to refer to the email address and to access the appellant's account does not amount to a material error in my view. It is correct that the address was given in the appellant's witness statement and the ASA, but that is all. It was not put to me that the Judge was specifically invited to access the account. The Judge determined the appeal on the evidence before him. I note that the Grounds of appeal document contains the email address, a list of the 70 names and includes reference to the general diary dated 14.6.2021. It is not evident that specific attention was drawn to the mother's and brother's witness statements in the Grounds of appeal document. Clearly the Judge could have taken steps to look at the account from the address given, as could the respondent and more particularly so could the appellant. The burden is on the appellant to produce evidence to support his claim and he could have done so himself providing the detailed history on his account and the password (which was not provided), rather than leaving it open to the Judge. What it would have revealed is a matter of speculation. The appellant was aware of the concerns raised by the respondent as to the reliability of the social media evidence and could have raised and fully dealt with those matters at the hearing including the proviso of his FB history. I accept the submission made by Ms LeCointe that the Judge found the evidence to be unreliable to the extent that it reflects one time frame and that the settings can be changed and manipulated. This is what the Judge reasoned in rejecting the evidence. The Judge specifically referred to various posts that were drawn to his attention. He found that none showed any full date for the posts and found there to be minimal interaction. The failure to refer to the email address does not detract from the findings made which are entirely sustainable on the evidence before the Judge and which were considered in the context of the previous findings that the appellant's claim to be a political activist lacked credibility. There was no evidence as to the significance of the disclosure of the blog address on its own. There was no direct evidence that the security services were aware of the blogs. The appellant adduced no evidence that his account had been hacked or that it had been blocked or "scraped" and significantly as found by the Judge that it appeared on a public setting. The Judge placed weight on the issue of permanence of the FB account [56].

16. As to the witness evidence the Judge gave reasons for rejecting the same which were adequate given the large number of statements (70) produced which largely contained the same information and were in a standardised format. The Judge rejected the appellant's explanation for why none of the witnesses were called [71]. It is reasonable that the appellant and or his representatives could have made arrangements for the witnesses to have given evidence via video link. It was not necessary for the Judge to have specifically put this to the appellant given that he had provided an explanation in any event, that only close family would have been prepared to attend. Furthermore, some of the witnesses were based in Luton and France from where it would have been possible for them to attend in person. Whilst accepting that the Judge made no specific reference to the

mother's or brother's statements, which were self serving, the Judge properly found them to be unhelpful given the concerns as to the social media evidence and the credibility issues, and in light of the fact that the statements were written which carried less weight.

17. Having considered and rejected the evidence supporting the fresh claim, the Judge properly relied on the credibility findings as found by the previous Judges in dismissing the appeal.

Notice of Decision

18. The making of the decision did not involve and error in law and shall stand.

19. The appeal is dismissed.

G.A.BLACK

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

19.12.2023