



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01157/2013

THE IMMIGRATION ACTS

Heard at Field House
On 16 May 2013

Determination Promulgated

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

MR. S. R.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. Shah
For the Respondent: Mr. Hayes

DETERMINATION AND REASONS

1. The Appellant is a citizen of Bangladesh born in 1980. He appealed against a decision of the Respondent on 29 January 2013 to remove as an illegal entrant. He was refused asylum.
2. His immigration history is that he had previously entered and left the United Kingdom on three occasions in the period 2008 to 2011 with entry clearance as a

visitor. Having arrived in September 2012 he claimed asylum on 14 December 2012. His wife and newborn son were dependent on his claim.

3. The basis of his claim was that he was born and lived in Sylhet. He was a businessman. He was involved with the Bangladesh National Party (BNP) currently in opposition to the ruling Awami League. He was publicity secretary for the local branch in Sylhet of a youth branch of the BNP. He joined the party in 2008 and became publicity secretary in 2009. He accepted that his activities were low profile and localised.
4. His problems began in April 2012. On 17 April 2012 a prominent BNP politician disappeared along with his driver. The Appellant claimed that the Awami League filed two false First Information Reports (FIRs) against him, the first issued on 18 April 2012 alleging his involvement in a demonstration, the second issued on 23 April 2012 alleging his involvement in an arson attack on a car. He maintained at interview that he did not do what he was accused of doing in either of the FIRs.
5. The police came looking for him several times in May and June 2012 both at his home and his work place. He did not stay at his home at night and moved around during the day. An arrest warrant was issued against him on 10 July 2012.
6. He and his family sought entry clearance as visitors on 26 June 2012 receiving clearance on 10 July 2012. They could not leave immediately as he had to sort out his business affairs and think what to do with his wife who was pregnant.
7. He had no problems leaving Bangladesh through Dhaka airport on his own passport. He did not think the authorities had a sophisticated tracing system enabling them to identify suspects at the airport.
8. He did not claim asylum immediately because he was scared and thought he could be returned. He also wanted to get advice and see if the situation improved. If returned he feared the authorities. He could not he said in his statement go elsewhere because he is wanted by the authorities and because he had no friends or relatives outside Sylhet and could not move around with a wife and baby.
9. The Respondent in the refusal letter took issue with the Appellant's credibility. There were several inconsistencies in his account. It was also not believed that he would have been targeted for his political actions as they were low key and localised. He would in addition not have been able to leave via the airport were he of interest. Doubt was placed on the authenticity of various documents lodged. Adverse inference was also drawn from delay in making his claim.
10. Following a hearing at Hatton Cross on 11 March 2013 before Judge of the First tier Tribunal Blum, the appeal was dismissed on asylum, humanitarian protection and human rights grounds.
11. The judge's findings are at paragraphs [28] to [40]. He did not find significant an inconsistency about how often the Appellant had been sought by the authorities [28].

He found that the Appellant had demonstrated some knowledge of the BNP and this supported his claim to have been a member [29]. The judge also found “wholly credible” the aspect of the account about how, having been informed prior to the first visit from the police that a FIR had been issued, he was able, by moving around, to avoid the authorities [30].

12. The judge could find nothing in the background material put before him to indicate that security checks were conducted at airports. As such he drew “no adverse inference” from the Appellant not being stopped on his exit. He found, further, that he had reduced any risk by travelling from an airport in Dhaka rather than in Sylhet [31]. The judge also considered as speculation that the authorities, if unable to find the Appellant, would turn their attention to family members [32].
13. The judge attached little weight to certain of the documentation produced by the Appellant [33-35]. However he found nothing on the face of the FIRs and arrest warrant indicating that they were unreliable. Indeed, the content was not inconsistent with the Appellant’s account of events when looked at in light of background material [36, 37].
14. While the judge took against the Appellant’s credibility, under section 8 (4) of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 his delay in claiming asylum, looking at the evidence in the round, he did “not find the small delay of some two months to undermine his account of being pursued by the local police” [38]. The judge also considered that the Appellant’s evidence had been given in a direct and detailed manner, that his account was largely internally and externally consistent, and that there had been no attempt at embellishment. Also, that his previous immigration history which included several visits to the UK showed compliance with the Immigration Rules [35].
15. The judge summarised (at [40]) that the Appellant had given a “generally credible account”. He found that the Appellant was involved with the party as a publicity secretary, that his activities were “low profile and localised”. Also, that he was “involved in a street protest on 18/04/2012 against the disappearance of Ilia Ali”. As for a second protest on 23 April 2012 he “admitted to throwing bricks at the police during this protest. The protest itself involved the barricading of a public street. [Further] that two FIRs were issued against the Appellant on 18/04/2012 and 23/04/2012. The Appellant was only one amongst a large number of named individuals”. He went on to state that he accepted that the local police had searched for the Appellant four times at his shops and three times at his family home and that an arrest warrant was issued in July 2012. However, he also found that the Appellant having experienced no problems leaving through Dhaka airport, was not on a wanted list.
16. The judge then proceeded to the question of whether the Appellant faced persecution or prosecution. Noting references in the Country of Origin Information Service Report (COIS) he accepted “that the police are susceptible to political influence” but that there was nothing in the evidence to indicate the Awami League was behind the

issuing of the FIRs. Having admitted to having been involved in a violent street protest, while he may have had a political motivation in protesting his actions such were “on the face of it criminal in nature and the FIR reflects this” [42].

17. Whilst the second FIR related to an alleged offence on 23 April 2012 the Appellant was not asked about the allegations contained therein.
18. In going on to consider the criminal justice process as a whole the judge, noting country guidance, concluded that prison conditions at least for ordinary prisoners did not violate Article 3 of ECHR [45].
19. As for his receiving a fair trial the judge having considered COIS concluded that while there were “shortcomings with the judiciary and the trial system” they were not such as to “amount to a threat to the very existence of the right to a fair trial” for the Appellant. It was noted that he has a lawyer who was able to get the arrest warrant for him and that the authorities had complied with the rule of law by issuing a warrant for him. The judge found that he would receive a fair trial [46].
20. The judge went on (at [48]) to state “on return to Sylhet [he would] be lawfully prosecuted for his involvement in a street protest... Any evidence against him in respect of either of the FIRs would be capable of being tested in a court given that he does have access to a lawyer... and there is no threat to the very existence of a fair trial... If found guilty of any offence it will be as an ordinary criminal and that he would not be subject to article 3 ill treatment in prison”.
21. The judge went on to decide that if he was wrong in concluding that the Appellant faced prosecution not persecution he could avoid risk by internally relocating.
22. He noted the Appellant’s position at the hearing that he could not live elsewhere than Sylhet because it was “his birthplace and he did not have much contact with other areas”. He “did not mention having any fear from the authorities in other parts of the country”. He “did not explain in his statement how the police in another part of Bangladesh would find out about his problems with the local police in Sylhet”. His answers ... suggest he was more concerned with the lack of any family or friends than with the authorities finding him elsewhere” [50].
23. Further, no background material was provided about any mechanism “by which police and state authorities in another part of Bangladesh would become aware of the arrest warrant issued against the Appellant in Sylhet”. Whilst it was appreciated that he has a wife and a baby he “still has family in Bangladesh who could presumably provide him with some financial assistance”. Further factors including language, culture, health, and business experience led the judge to conclude that it would not be unduly harsh to expect the Appellant to relocate if necessary.
24. The Appellant sought permission to appeal which was granted by a judge on 8 April 2013. He stated:

- 2 *“First tier Tribunal Judge Blum dismissed the Appellant’s appeal against the decision of the Respondent to refuse him international protection and to remove him to Bangladesh by way of directions despite finding him generally credible.*
- 3 *It is arguable that having found the Appellant generally credible, the finding that the Appellant feared prosecution rather than persecution was inconsistent with the general findings of credibility. It is also arguable that if the Appellant feared prosecution the finding that it was still open to him to relocated needs to be considered further. The determination arguably lacks clarity amounting to an error of law for the reasons set out in the grounds”.*

25. At the error of law hearing before me Mr. Shah sought, essentially, to rely on the grounds. The main thrust of his submission was that the judge had failed to take full account of the background material before him. Such included references indicating that law enforcement agencies were the tool of the authorities and prison conditions had got worse. Also that low level activists were at risk. Mr. Shah invited me to set aside the determination and remake it by allowing the appeal.
26. In reply Mr. Hayes submitted that the judge had looked properly at the background material including in respect of the police and prison conditions. There was insufficient information to indicate that the police were solely a political tool. There was no good reason not to follow the country guidance about prison conditions. The conclusion about internal relocation, if the judge was wrong in finding that there was not a risk of persecution, was sustainable for the reasons given. He invited me to uphold the determination.
27. In considering this matter, as indicated, the judge found the Appellant’s account of being wanted by the authorities in his home area to be credible. The issue is whether he, having also been found to be a low level political oppositionist and to have admitted to criminal acts at a political demonstration, faced a real risk of persecution rather than prosecution.
28. Mr. Shah in the grounds and submissions claimed that the judge made contradictory findings and had overlooked significant information in the country reports. In respect of the former (ground 6(a)) there was no contradiction in the judge finding that the Appellant was a publicity secretary and was also low level. The Appellant in his statement described himself as low level.
29. The grounds correctly note that the judge acknowledged that law enforcement agencies such as the police are susceptible to political influence. It may well also be that the police would not state in FIRs that they prepared them on instructions of the ruling Awami League Party. However, I disagree with the comment in the grounds (6(c)) that the clear evidence was that “alongside with others he was involved in a politically motivated case to suppress him”. The judge, while accepting that the Appellant “may have had a political motivation in protesting his actions” [42], was entitled on the evidence, to find that there was nothing to indicate that the Awami League was behind the issuance of the FIRs. He was entitled not least because of the

Appellant's own admission, to conclude that his actions were, on the face of it, criminal in nature as was reflected in an FIR.

30. Nor do I agree with the assertion that the judge did not consider the "clear evidence" of "repressive police action against a peaceful demonstration by the BNP..." The barricading of a public road and throwing bricks at the police by the Appellant and many others hardly amounts to a peaceful demonstration.
31. The grounds acknowledge that the judge considered the guidelines on the issue of whether prosecution amounts to persecution as set out in **Iqbal (Muzafar) (Fair Trial - Pre Trial Conditions) [2002] Pakistan CG UKAIT 02239**. However, it is claimed that had he properly considered the country reports he would have concluded that the "proper local procedure is not in place to safe guard the Appellant" for the "politically motivated" FIRs and for "alleged criminal offences". There follow a number of references to background material including particularly the COIS report, reporting, *inter alia*, abuses, killings and impunity by the authorities.
32. It is clear from his determination that the judge, as he was required to do, carefully considered the criminal justice process as a whole in the context of the background material before him. He makes close reference to it at [42], [45] and [46].
33. I do not see that in the skeleton argument before the judge or in the submissions by the representative at the hearing reference was made to the extracts reproduced in the grounds before me which are mostly COIS. Indeed the judge stated specifically that he was not asked to look at anything in the COIS reports [24]. In the circumstances I do not consider it to be a fair allegation that the judge failed to take account of specific references amongst the voluminous material that was before him, particularly when it is clear that he did consider the material with care.
34. I consider that the conclusions he reached about whether the Appellant would receive a fair trial, and having properly considered the country guidance in respect of the possibility of pre-trial detention and post conviction prison, were such that he was entitled to reach on the evidence and background material before him.
35. Turning to internal relocation, in the event that he was wrong in concluding that the Appellant did not face a real risk of persecution in his home area from the local police politically aligned with the ruling party, the judge was entitled to find on the background material put before him that there was no indication of any mechanism by which police or state authorities in another part of Bangladesh would become aware of the arrest warrant issued against him in Sylhet. Also, that having been able to leave the country through Dhaka airport openly there is no reason to believe that he would be at real risk of being detained if returned to the same place and chose to live other than in his home area. As the Judge noted when the Appellant was asked about this at his asylum interview he did not mention having any fear from the authorities in other parts of the country. Such was also his evidence at the hearing [22].

36. The judge applied the correct test (*per* **Januzi [2006] UKHL 5**) in assessing whether internal relocation was appropriate. He looked at the circumstances holistically. While he noted that the Appellant has a wife and baby he also noted factors which included that he has family in Bangladesh who could provide him financial help; he knows the language and culture of the country; he has business experience; he and his family have no health issues. The judge was entitled to conclude that it would not be unreasonable or unduly harsh for the Appellant and his family to make use of the internal relocation alternative.
37. The judge's decision to dismiss the appeal on asylum and human rights grounds was one he was entitled to reach on the evidence and background material before him.

Decision

The decision of the First tier Tribunal shows no material error of law and the decision dismissing the appeal shall stand.

Signed
D Conway
Upper Tribunal Judge

Date