



Upper Tribunal

(Immigration and Asylum Chamber)
AA/11420/2014

Appeal Number:

THE IMMIGRATION ACTS

Heard at Crown Square, Manchester
Promulgated
On the 14th March 2016

Decision & Reasons

On 11th April 2016

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

MR S. K.

(Anonymity Direction made)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holt (Counsel)

For the Respondent: Miss Johnson (Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Alis promulgated on the 9th February 2015, in which he dismissed the Appellant's appeal on asylum grounds, humanitarian protection grounds and on human rights grounds, both under the Immigration Rules and outside of the Rules.

2. The Appellant is a citizen of Burma who was born on the 4th April 1980. It is the Appellant's case that he would be at a real risk of persecution from the authorities in Burma, were he to be returned, such that he is entitled to asylum. The Appellant's previous asylum claim was rejected by Immigration Judge Blair in 2009. However, the Appellant sought to argue before First-Tier Tribunal Judge Alis that between 2010 and 2014, he had attended, as a member of the Burmese Democracy Movement, at least 51 separate demonstrations, public meetings or discussions and had stood alongside Ko Aung, a famous political prisoner and Ben Rogers at political demonstrations and that he involved himself in 2012 with the Christian Solidarity Movement dealing with the persecuted minorities in Burma, the Chin people and Kachin ethnic issues and that as a result of his Chin ethnicity and Christian beliefs, combined with his political activities, he will be seen to be a threat to the stability of the regime and Burmese union because of his opposition to the government. It is his case that he will at a real risk of detention, amounting to serious ill-treatment contrary to Article 3 of the ECHR and persecution/serious harm within the meaning of the Qualification Directive, such that he falls within the risk categories set out by the Upper Tribunal in the case of TS (Political opponents-risk) Burma CG [2013] UKUT 00281.
3. First-Tier Tribunal Judge Alis rejected the Appellant's asylum claim within his decision promulgated on the 9th February 2015. The Appellant has sought to appeal that decision to the Upper Tribunal, and permission to appeal has been granted by Upper Tribunal Judge Blum on the 11th June 2015.
4. Within the grounds of appeal it is argued, inter-alia, that the First-Tier Tribunal Judge made a mistake of fact and/or failed to have any proper regard to material evidence and that the Judge repeatedly stated that the Appellant activities ceased in January 2012, but it is argued that this is not correct and that the Appellant participated in events after January 2012 until February 2014. It is said that the document setting out the events he attended between March 2012 and February 2014 was omitted from the Appellant's bundle, but was filed separately at the hearing and that the Appellant participated in 7 events after January 2012, as set out in this

document. It is said the Judge was wrong to say the Appellant had not participated in any events after January 2012 and had made a material mistake of fact in that regard and failed to have regard to the Appellant's evidence, as set out within that second document. It is argued this was a material error which affected the Judge's view of the genuineness of the Appellant's political motivation and his risk upon return.

5. Within the second ground of appeal it is argued that the Judge failed to have regard to the risk factors cumulatively, when considering the factors set out by the Upper Tribunal in the case of TS (Political opponents-risk) Burma CG [2013] UKUT 00281 (IAC). It is argued that the Judge when considering cumulative risk failed to take account of the fact the Appellant participated in events in 2012, 2013 and 2014 and failed to have proper regard to his activities spanning 5 years and 44 events, of which at seven it is said he made speeches. It is argued the Judge failed to have regard for the fact that the Appellant was named in a published news article and identified as Chin activist, who had publicly criticised the Burmese government. It is also argued the Judge failed to have regard to the fact the Appellant mixed with high-profile figures and failed to have proper regard to the fact the Appellant belonged to an ethnic community that is considered to be a threat to the union of Burma and that the Appellant had publicly advocated for the rights of the Chin Community.
6. Within the grant of permission to appeal, Upper Tribunal Judge Blum stated that:

"2. The grounds of appeal content that the Judge failed to take into account evidence that the Appellant had been politically active between January 2012 and February 2014, which are relevant to both the Appellant's credibility and the assessment of any risk on return. The Judge concentrated on the Appellant's activities between 2010 and January 2012 [paragraph 44] and noted that Appellant's "level of activity" ceased after January 2012, which may suggest that the Judge was aware that the Appellant continued to engage in some activities. However, at para 52 the Judge refers to "a total abstinence of support post January 2012" from the Appellant. It is apparent from the document dated 27/01/2015 received by

the Tribunal on 30/01/2015 that the Appellant in fact engaged in 7 further activities of a political nature after January 2012. It is therefore arguable that the Judge failed to take account of relevant considerations.

3. It is further submitted that the Judge failed to approach the risk factors relevant to the Appellant cumulatively only in light of the authority of TS (political opponents-risk) Burma (2013) UKUT 00281 (IAC). This ground is also properly arguable."

7. Within the Respondent's Rule 24 reply dated the 3rd July 2015, the Respondent contends that the First-Tier Tribunal Judge properly directed himself, and when the determination is read in the round it is clear that the findings of the Judge amount to. It is said the Judge correctly noted that the Appellant had ceased attending demonstrations and that the findings at paragraph 52 had to be read in light of those at paragraphs 47 to 49 and the concept of "support" is to be read in that context. It is argued that the Judge found that there was a significant falling away of the Appellant's activities, such that any risk did not meet the required level to result in persecution upon return. It is said the findings made were open to the Judge on the evidence before him and that no material error of law is established.
8. In his oral submissions, Mr Holt argued that the Judge made a fundamental error of fact when stating at [52] that there had been a "total abstinence of support post January 2012". He argued that at [47] the Judge found that the Appellant's level of activity had "ceased" after January 2012, to the extent of him not having attended any public demonstration, rather than his activities having produced "reduced". Although he conceded that the Judge stated that the Appellant had attended meetings and on occasion had spoken, he argued that no findings were made as to the dates of those meetings or times when the Appellant spoke and that it appeared the Judge simply considered that there was no activity undertaken by the Appellant post January 2012. He argued that this affected the Judge's consideration of the credibility of the Appellant and also the question of the Appellant's risk in light of the risk categories set out within TS. He argued that not only attending

demonstrations, but also becoming a prominent voice in political meetings was relevant to the risk the Appellant faced. He argued that the error was caused as a result of the Judge only have been given the list of the subsequent activities post 2012 at the date of the hearing and that this had been missed out from the bundle itself.

9. In respect of the second ground Mr Holt argued that when considering the risk factors the Judge should have considered the same cumulatively. He argued that the Appellant was a Christian and a Chin, who has taken part in demonstrations and political meetings, and who did actually participate with people such as Ko Aung and Ben Rogers. He argued the Judge had failed to consider at all in considering the cumulative risk, the Appellant's associations. He argued that the Appellant have been named in a Chinland Guardian newspaper, but that was not referred to by the Judge.

10. In her submissions on behalf of the Respondent, Miss Johnson relied upon the Respondent's Rule 24 reply. She argued that the First-Tier Tribunal Judge had set out at [35] that the Appellant had attended at demonstrations, but that he had not attended public demonstrations since the 26th January 2012 and had gone on to make findings regarding the Appellants attendance at meetings and the fact he did occasionally speak at meetings at [51]. She argued that the Judge had not make findings that the Appellant was a prominent voice at such meetings. She said he was not said to chair the meetings or to have organised such meetings. She argued that in respect of the question as to who the Appellant mixed with, and that the article purportedly from the Chinland Guardian naming the Appellant as an activist, the page in the Appellant's bundle did not indicate where that document came from and if it was a webpage, she argued strange that there was no reference to the webpage details at the bottom of the page. She argued that the photograph at page 70 showing the Appellant sat at a desk did not prove that he was a close associate with Ko Aung. She further argued that there was no evidence before the First-Tier Tribunal show that if the Appellant's name was Googled, it would show him as a Chin activist who was contrary to the Burma regime. She argued the Appellant's ethnicity and religion did not show that he was going to be seen as a destabilising threat to the union and that the

Appellant had been able to come to the UK on a Tier 5 visa.

11. In reply Mr Holt argued that the Appellant had been prominent voice at meetings.

12. I have also taken into account in consideration of this appeal the Appellant's Rule 25 response to the Respondent's Rule 24 notice. Within that Rule 25 response which is wrongly entitled a Rule 24 response, it is argued that the Appellant's passport expired on 21st May 2010, which is said to be an important issue which it is argued should be considered by the Tribunal along with the Appellant's post arrival activities. It is argued that the Appellant would need to go to the Embassy to renew his passport and would be questioned as to why did not renew his passport for nearly 5 years and that he would have to reveal that he participated in demonstrations and Embassy officials would have records of his participation. However, this was not an argument that was said to have been raised before First-Tier Tribunal Judge Alis and amounts to new evidence. No explanation as to why this evidence was only being raised now was advanced at the appeal hearing. I therefore do not consider that this should be allowed to be argued at such a late stage, in terms of error of law, and would only be relevant upon a remaking of the decision if a material error of law is found.

My findings on material of error of law and materiality

13. In a very thorough and detailed decision, First-Tier Tribunal Judge Alis set out the entire background to the Appellant's case, including the previous findings of Immigration Judge Blair on the 5th November 2009, and the subsequent history of the further submissions that were lodged, the application for Judicial Review, and then the subsequent consideration of the Appellant's claim as a fresh claim. First-Tier Tribunal Judge Alis further quite properly fully set out the Law and set out the basis of the Appellant's claim in detail between paragraphs [24 and 31] and set out the details of the evidence between [32 and 37] inclusive, before then fully setting out the submissions, before going on to assesses the evidence between [40 and 57].

14. At [29] First-Tier Tribunal Judge Alis properly set out how the Appellant's case was that between 2000 and 2014 the Appellant had claimed that he had attended as a member of the Burmese Democracy Movement at least 51 separate demonstrations, public meetings or discussions, as to how he had stood alongside Ko Aung, a famous political prisoner and Ben Rogers at political demonstrations. It is clear that the Judge had fully considered not only the details of the original demonstrations, but also the addendum list that was submitted on the day of the hearing, as he made specific reference thereto. However, the Judge found that "However, since 2012 the amount of demonstrations have reduced so the the Appellant involved himself with the Christian Solidarity movement with the persecuted minorities in Burma, the Chin people and Kachin ethnic issues". Judge Alis went on to consider at [35] the evidence given by the Appellant in cross examination regarding the last time the Appellant attended demonstrations and how the Appellant could not recall whether or not there have been any demonstrations commemorating the 8888 uprising either in 2013 or 2014. He noted that the last demonstration the Appellant attended was on the 26th January 2012, outside the Embassy and that he had not attended any more as the amount of demonstrations had decreased and the person he lived with had his own problems and he was unable to leave him.

15. Although criticism is made of the findings of Judge Alis at [47], in my judgment, these findings cannot be criticised. The Judge stated at [47] that "taking the Appellant's activities at its highest he pursued a vocal and active participation in the United Kingdom between 2010 and 2012 in which he attended 37 demonstrations and meetings. However, for whatever the reason this level of activity ceased after January 2012, to the extent that he did not attend any public demonstrations." Although criticism was made by Mr Holt of the use of the word "ceased" rather than it having "diminished", the Judge makes it clear within this paragraph that he simply found that the Appellant, as the Appellant himself stated in cross examination, had not attended any public demonstration since January 2012. The Judge does not make any findings that the Appellant did not attend any public meetings after that date and made it clear that he

was talking about the Appellant not attending "public demonstrations". It is clear from [29] that the Judge had in fact considered the addendum list with the additional dates of the meetings that the Appellant was said to have attended, as he specifically referred to it.

16. Further, in respect of the Judge's findings at [52] that:

"Whilst I take on-board his activities I agree with Mr Spence that for someone who claimed to be politically motivated a total abstinence of support post January 2012 places the Appellant's political position into some perspective"

this paragraph has to be read in conjunction with the other findings of First-tier Tribunal Judge Alis, and the submissions made by Mr Spence which were summarised at [38]. Mr Spence argued specifically that whilst there was evidence of the Appellant attending a number of events, it was significant that since 2012 he had not attended any political events and that this raised questions about the Appellant's beliefs and intentions and that the Appellant was merely a "hanger-on" who had used his attendance at meetings in the years following the initial refusal to bolster what was a rejected asylum claim.

17. When the whole of the decision of First-Tier Tribunal Judge Alis is read, it is clear that the reference to the "total abstinence of support post January 2012" is referring to the Appellant not having attended at political demonstration since January 2012, rather than attendance at meetings. At [51] the First-Tier Tribunal Judge did state specifically that he was prepared to accept that the Appellant attended meetings and on occasions did speak. However, the Judge found that he was not a member of any committee that organised such events, but attended as someone who claim to have an interest and that he had chosen to attend such events following the refusal of his earlier asylum claim and that he attended such events as he believed it would raise his profile and place in one of the risk categories that were originally envisaged in TL.

18. Although criticism is made of the failure of Judge Alis to specify the dates

of those meetings within [51], given the Judge made it perfectly clear that it was only the Appellant's attendance at public demonstrations that ceased after January 2012 at [47], I do accept that the First-Tier Tribunal Judge was referring to attendance at meetings during the period up until March 2014, as claimed by the Appellant.

19. The Judge properly considered the Appellant's attendance at meetings, but in any event found that on the findings that he had made that although the Appellant had attended meetings and on occasions did speak, as set out in paragraph 5 of the headnote of IS, "A person who has a profile of voicing opposition to the government in the United Kingdom through participation in demonstrations or attendance at political meetings will not for this reason alone be of sufficient concern to the Burmese authorities to result in detention immediately upon arrival. This is irrespective of whether the UK activity has been driven by opportunistic or genuinely held views and is regardless of the prominence of the profile in this country." It was stated within paragraph 7 of the headnote that whether there is a real risk that monitoring will lead to detention following return will in each case depend upon the Burmese authorities' view of the information it already possesses, coupled with what it receives as the result of any post-arrival monitoring. Their view will be shaped by (i) how active the person had been in the United Kingdom, for example by leading demonstrations or becoming a prominent voice in political meetings, (ii) what he/she did before leaving Burma, (iii) what that person does on return, (iv) the profile of the people he or she mixes with and (v) whether a person is of an ethnicity that is seen by the government to be destabilising the union, or if the person's activity is of a kind that has an ethnic, geopolitical or economic regional component, which is regarded by the Burmese government as a sensitive issue.

20. The findings of First-Tier Tribunal Judge Alis that the Appellant attended meetings and on occasions did not speak would not be sufficient to mean that he had become a prominent voice in political meetings. On this basis, even if First-tier Tribunal Judge Alis was wrong not specify the dates of those meetings, given his findings as to the limited role that the Appellant played in those meetings, any such error in this regard was not material.

21. In respect of the second ground of appeal in which it is argued that the First-Tier Tribunal Judge failed to consider the risk factors set out within the headnote at paragraph 7 of TS cumulatively, when one reads [55, 56 and 57] in this regard, it is clear that Judge Alis did consider the factors cumulatively. The First-Tier Tribunal Judge accepted that the Appellant had produced photographs and videos of rallies which he attended, but noted how the Tribunal in TS made it clear that merely voicing opposition did not mean that a person would be at risk upon return, but the fact that he had not attended such demonstrations for over three years was an important consideration in that regard. The Judge also noted how the Tribunal also made clear in TS that the Appellant's activities before he left Burma would be a relevant consideration and he accepted and adopted Immigration Judge Blair's findings on that issue. Judge Alis found that the Appellant's failure to take part in any political demonstrations against the authorities for three years coupled with the findings about his activities in Burma meant that he did not find it reasonably likely that he would take part in any such activities were he to return". These were findings open to him on the evidence and have been adequately and sufficiently reasoned.

22. In respect of the Appellant's ethnicity and religious beliefs, First-tier Tribunal Judge Alis noted how Miss Smith on behalf the Appellant conceded that on their own these would not place him at risk, but specifically stated that even bearing in mind the letter from the Christian Solidarity which had not stated what risk the Appellant faced, Judge Alis found that "In light of my other findings on his activities I am satisfied that mere monitoring would not amount to persecution". I therefore do find that Judge Alis has properly considered the risk categories cumulatively.

23. Criticism is made that the Judge has not set out the profile of the people the Appellant mixed with, in terms of his associations, and failed to take account of the fact that it was said the Appellant mixed with and knew Ko Aung and Ben Rogers. Although Judge Alis has not stated the extent to which the Appellant associated with these individuals, on the evidence before him such omission does not amount to a material error on the facts

of this case. The photograph of the Appellant seated at a desk at page 70 the Appellant's bundle does not in itself show the Appellant attended at that seminar with Ko Aung, or prove what role the Appellant had in that seminar, even if he did attend. Photographs with Ko Aung or Ben Rogers does not show that he actually mixes with them on a regular basis, or to the extent that he will be subject to monitoring by the Burmese authorities likely to lead to detention. The Appellant's evidence in this regard was insufficient in any event to establish a real risk upon retrn and therefore any failure of First-Tier Tribunal Judge Alis to consider the evidence regarding showing the Appellant with himself with Ko Aung and Ben Rogers was not material, even when considering the risk to the Appellant cumulatively pursuant to the country guidance case of IS.

24. The decision of First-Tier Tribunal Judge Alis therefore does not reveal any material error of law and is maintained.

Notice of Decision

The decision First-Tier Tribunal Judge Alis does not contain a material error of law and is maintained.

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed



Deputy Upper Tribunal Judge McGinty
2016

Dated 15th March