Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10956/2016

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 27th July 2017	**On 20th September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR MD MIZANUL KARIM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M A Syed Ali (Counsel)
For the Respondent: Mr David Mills (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge O'Hagan, promulgated on 3rd March 2017, following a hearing at Birmingham, Sheldon Court on 1st February 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Bangladesh, who was born on 10th October 1984. He appealed against a decision of the Respondent, dated 30th September 2016, refusing his claim for asylum and humanitarian protection.

The Appellant's Claim

3. The Appellant's claim is that he fears persecution and ill-treatment in Bangladesh on account of his political activities because he became a member of the Chatra Dol whilst at college, a party which he joined in 2007, and with respect to which he remained involved in politics from 2007 until 2009. He was the organising secretary in 2008. There was a demonstration on 28th May 2009 which he had organised. The demonstration became violent because of trouble caused by the Chatra League. He ran away. That evening some ten or twelve people came to his house and threatened his father. A few days later he was tracked down. He was stabbed in the hand and required hospital treatment. Subsequently two false cases were lodged against him. The police sent a letter to his house. He is now at risk of ill-treatment if he were to be returned.

The Judge's Findings

4. In his section on "The Evidence at the Hearing", the judge considered the Appellant's claim with respect to his activities over a two year period with the Chatra Dol. The judge found that the Appellant did not have sufficient knowledge of the Chatra Dol and that his evidence was very general and vague (see paragraphs 15 to 16). The judge also found that the Appellant, who had entered the UK as a student, waited for seven years in order to make his asylum claim (see paragraph 19). Having concluded that the Appellant's evidence was "vague and lacking in detail" (paragraph 30), the judge then ended with the observation that, having considered the documents in the bundle that purport to support the Appellant's claim, he would not accept the authenticity of these documents because the Appellant was not a reliable witness (see paragraph 38).

5. The appeal was dismissed.

6. On 28th March 2017, permission to appeal was granted on the basis that the only consideration of the documentary evidence (at paragraph 38) appears to be after the judge had already made findings on the lack of credibility of the Appellant, and the judge does not appear to have engaged adequately with the documentation.

7. On 20th April 2017 a Rule 24 was entered to the effect that the judge had made a holistic assessment of the evidence and it was a matter for the judge to come to his decision.

Submissions

8. At the hearing before me on 27th July 2017, Mr Syed Ali, appearing on behalf of the Appellant, made the following submissions. First, that from paragraphs 22 to 37 onwards, the judge was principally preoccupied with the timeliness of the Appellant filing an asylum claim, which he regarded to have taken seven years to file, such that it was inherently for that

reason lacking in credibility. Only at paragraphs 38 to 39 does the judge consider the documentation provided in support of the claim. Second, the judge did not consider the Home Office Country Information and Guidance: Bangladesh: Prison conditions (March 2015) with respect to an Article 3 assessment in favour of the Appellant (and I note that this was also asserted at paragraph 5 of the Grounds of Appeal). Third, the judge did not consider the political position in Bangladesh at all in the context of the claim that was raised, because there was no reference to the Country Information and Guidance that had been submitted. Finally, there was no representation before the Tribunal, because although there was a Mr S Kumar in attendance on behalf of the Appellant, he was not representing the Appellant.

9. For his part, Mr Mills submitted that the last point was inaccurate because Mr S Kumar was actually a solicitor for the Appellant. I pointed out that this was entirely correct because Mr S Kumar not only "accepted that the Appellant's evidence was vague" (see paragraph 21), but had also made closing submissions before the judge (see paragraph 22).

10. Second, Mr Mills submitted that whereas a number of Grounds of Appeal had been lodged, the only question upon which permission has been granted, is whether the judge considered the documentary evidence as a whole in conjunction with the other evidence, rather than leave it for a consideration at the end of his decision. In order to answer this question, one has to bear in mind that the judge at the outset, under the heading "Analysis, Findings and Conclusions", had stated at paragraph 2, that consideration would be given to the "cumulative impact of all those matters" before the judge, and that this included the "overall tapestry of oral and written evidence" (paragraph 28). It was clear that this self-direction was entirely accurate and that the judge was mindful at the outset of how he would be approaching the evidence before him.

11. Third, the issue before the judge was that of credibility and he had made it clear that, "this is a case in which the sole issue is credibility", such that even Ms Akhtar had "conceded, that if the Appellant is telling the truth, he would be at risk" (paragraph 27). Given that credibility was the sole question, it was entirely proper for the judge to raise an eyebrow over the Appellant's lack of knowledge, with respect to his involvement with the Chatra Dol Party, where he had actually been an activist for a period of two years from 2007 to 2008, and even held the position of a secretary, but with respect to which he gave wholly vague and insufficient information. The Appellant was simply unable to say what this party stood for and yet he was fighting for this party. It was wholly implausible for such a state of affairs to exist.

12. Fourth, the judge could not be criticised for taking into account the fact that the Appellant had not claimed asylum for seven years until March 2016, because in doing so, the judge gave regard to the Court of Appeal case of **JT (Cameroon) [2008] EWCA Civ 878**. Despite a reference to this Court of Appeal judgment, the judge made it clear that, "the guidance

that such a failure is something which may damage credibility but does not automatically do so" (paragraph 32).

13. Finally, it is in this context that the judge at paragraph 38 addresses the question of documents in the bundle and finds them to be lacking in plausibility on the basis of the rule in **Tanveer Ahmed [2002] UKAIT 00439**. The finding here was entirely consistent with what the judge had heard by way of submissions from Ms Akhtar, who appeared on behalf of the Home Office, at paragraph 21, because she had argued that,

> "His answers were vague and insubstantial. Further, he claimed asylum only when all other avenues were closed. In respect of his documentary evidence, she reminded me of the principles set out in **Tanveer Ahmed [2002] UKAIT 00439**, and asked me to find that they were not credible".

14. In reply, Mr Syed Ali submitted that the judge was wrong at paragraph 27 to simply say that, "this is a case in which the sole issue is credibility" because he then relied entirely upon the issue of credibility in the form of the oral evidence given by the Appellant.

No Error of Law

15. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.

16. First, it is abundantly plain that the Appellant had adequate representation from Mr S Kumar, a solicitor, before the Tribunal. He accepted the shortcomings in the Appellant's evidence as being "vague" (paragraph 31), and he also drew to the Tribunal's attention a letter, whereby the Appellant told his then solicitors that "he wanted to remain in the UK because of the political situation in Bangladesh" (paragraph 35).

17. Second, the judge was entirely correct in identifying the relevant issue before him as that of "credibility". So much so, that the Home Office Presenting Officer even accepted, that were the Appellant to put forward a credible claim, then he would be at risk (paragraph 27).

18. Third, the judge properly directed himself at the outset that he would look at the position of the evidence before him in terms of its "cumulative impact" and that consideration would be given to the "overall tapestry of oral and written evidence" (paragraph 28). There is nothing to suggest therefore that the judge ignored the documentary evidence. What the judge did was to then hear the Appellant's oral evidence.

19. Fourth, it is the Appellant's actual evidence before the Tribunal which is woefully inadequate and directly points to the implausibility of his claim, which the judge rightly described as having been a "fabricated" claim (see paragraph 39). This is because the Appellant, who had become an activist for the Chatra Dol for a two year period, such that he even organised a demonstration, after he had become "the organising secretary in 2008"

(paragraph 29), was simply unable to pinpoint a single credible policy of this organisation.

20. At the outset of his evidence he simply described the main policy as being "idealistic" and one that pursued "truthful policy", and one which "believed in the unity of Bangladesh" (paragraph 15). The judge repeatedly asked of the Appellant to be more specific (see paragraphs 15 to 16), pointing it out that, "this was all very general" (paragraph 16). So much so, that even Mr Kumar "accepted that the Appellant's evidence was vague" (paragraph 31).

21. The judge himself gave adequate reasons for showing why this evidence was vague, pointing out that,

> "It was strikingly so when he was cross-examined on the point before me. He was unable, when asked, to explain the policies and beliefs of Chatra Dol, other than in the most generalised and vacuous of terms. He was equally unable to give any meaningful account of his own role in the organisation ..." (paragraph 30).

22. Finally, it is in that context that the documentary evidence, and its role in the judge's estimation of the evidence before him, has to be evaluated, and the judge is absolutely correct in saying that had the Appellant been a "reliable witness, I would have accepted the documents", but the documentation could not assert that the Appellant was a member of the Chatra Dol, when the Appellant himself was found by the judge to have no knowledge of the Chatra Dol in any meaningful sense. This is the crux of the matter.

23. In addition to this, the Appellant had not claimed asylum for close to seven years, and had only done so when all other avenues had closed, and no credible explanation was provided before the judge as to why this course of action had been pursued in this manner. It went directly to the Appellant's bona fides in making the asylum claim. The judge was entitled to so find.

Notice of Decision

24. There is no material error of law in the original judge's decision. The determination shall stand.

25. No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Juss 19th September 2017