Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/17420/2010

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11 October 2017	**On 30 November 2018**

Before

THE HON. LORD BURNS
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)

Between

XY
(ANONYMITY DECISION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr. Fripp Counsel instructed by Sutovic & Hartigan Solicitors
For the Respondent: Mr. Jarvis Home Office Presenting Officer for SSHD

DECISION AND REASONS

1. The appellant was born in Bangladesh on 7 January 1977. This is an appeal against the determination of First-tier Tribunal Judge Monson (the judge) promulgated on 21 July 2016 which refused the appellant's appeal against a decision of the respondent of December 2010 to refuse her claim for asylum as a divorced woman who had entered the UK as a temporary visitor and who became embroiled in a dispute between a male cousin (SM) who lives here.

2. This matter has a protracted history. In the autumn of 2009 the appellant applied for entry clearance as a family visitor stating that she intended to stay in the UK for approximately three months travelling to the UK on 26 November 2009 and leaving on 1 March 2010. Her application was supported by an email from her UK sponsor, SM, who lived in London and was employed as a senior accountant.

3. SM asked that the appellant be granted entry clearance on compassionate grounds since she was coming to the UK to save his life by donating one of her kidneys to him. He had been diagnosed with chronic kidney failure and required an urgent kidney transplant.

4. After some time the appellant was issued with a medical visa and entered the United Kingdom on 9 April 2010. It was valid until 25 September 2010.

5. On 10 September 2010 the appellant made a complaint about SM to the police. She gave a history of having been sexually assaulted by SM while living with him in London. This, together with medical problems of her own, had led her to decide not to donate a kidney to him and to leave his house and return to Bangladesh. She reported that "over the past three weeks" SM had made telephone calls to her threatening to kill her and get somebody to rape her. He had also threatened to get her family if she returned to Bangladesh. He wanted the money that he had paid for her air fare to be returned. She had recorded five telephone calls and could provide a transcript if required.

6. She applied for further leave to remain on 15 September 2010. The application was returned as invalid on 25 October 2010.

7. She attended at a screening interview at ASU Crowden on 6 December 2010. She claimed asylum. She could not return to Bangladesh because SM was threatening her because she had refused to give him her kidney. She repeated her claims about sexual abuse. She mentioned that on 27 July 2010 SM had filed a case against her through an intermediary in Bangladesh alleging that she had dishonestly obtained money from him. She explained that she was divorced from her husband. She was detained at Yarl's Wood IRC on 7 December 2010 and given a substantive Asylum interview on 14 December 2010. Prior to that interview a statement was taken from her by her solicitors. That statement is at F3 to F7 of the Home Office bundle. In it she gave a detailed account of the abuse which she had suffered at the hands of SM while she lived with him in London.

8. On 17 December 2010 the respondent gave reasons for refusing to recognise the appellant as a refugee or otherwise requiring international human rights protection. It was not accepted that she would be at real risk of serious harm on return to Bangladesh. She appealed against that decision.

9. An accelerated hearing was heard before First-tier Tribunal Judge Tiffen at Yarl's Wood. The date on which that occurred is not given but must have been shortly prior to 4 January 2011 when the determination is dated. The appellant was legally

represented. She gave evidence and was cross-examined by the Home Office representative. By that time she had provided certain documents from the court in Bangladesh and copies of newspaper articles published there supporting her contention that a court case had been instituted against her in that country. These papers had been sent by her sister who lived in Bangladesh. The case was also directed against other members of her family including her father.

10. The First-tier Tribunal Judge Tiffen issued a decision dated 4 January 2011 dismissing her appeal. Judge Tiffen accepted the appellant's claim that she had come to the United Kingdom in order to donate a kidney to SM and subsequently had been abused by him because she had refused to donate her kidney to him as a result of which she had been threatened by him. It was also accepted that a criminal case in Bangladesh had been started against her and other members of her family.

11. Judge Tiffen found that, although it had been claimed that an arrest warrant had been issued in Bangladesh against her, no copy of that arrest warrant had been issued. While it was accepted that those proceedings had been instigated there was no reason why the appellant could not avail herself of the legal representation which her father had instructed.

12. Furthermore, it was found that the appellant had family in Bangladesh to whom she could return. Members of her family had supplied her with documentation in support of her claim. Judge Tiffen considered that the appellant was an educated woman who had had the strength of character to bring divorce proceedings against her husband in Bangladesh. If she was wanted by the authorities in Bangladesh, that was because of a prosecution not persecution. Reference was made to the case of *RA and Others (particular social group – woman) Bangladesh* 2005 UKAIT 00070 in which it was found that while there was some discrimination against women in Bangladesh, it is not as extreme as in Pakistan. There was domestic protection available to the appropriate standard and internal relocation was available. Accordingly, her appeal was refused.

13. That decision was appealed to the Upper Tribunal.

14. In a decision dated 25 March 2011 her appeal was allowed. It was accepted by the Home Office Presenting Officer that Judge Tiffen had erred materially in appearing to ignore the risk from the appellant's cousin SM. The Upper Tribunal judge also considered that the First-tier Tribunal judge had erred in the approach to the question of the risk of ill-treatment arising from the civil and criminal proceedings in Bangladesh. The matter was remitted to the First-tier Tribunal for a rehearing. There was, in addition, a question as to whether the case might be suitable for country guidance.

15. Thereafter, consideration was given to the question of country guidance but it was decided that it was not suitable for such guidance. A further decision and directions were issued by Upper Tribunal Judge Gleeson on 7 March 2016. It was pointed out there that it had now been over 5 years since the facts of the appeal had been

assessed. Furthermore the respondent's file had been lost in the meantime. The matter was remitted to the First-tier Tribunal for a substantive hearing on 5 July 2016.

16. Upper Tribunal Judge Gleeson also directed that the findings at paragraph 20, 21 and 23 of Judge Tiffen's decision of January 2011 should be preserved (with the exception of a final sentence of paragraph 23). That was subject:

> "as always to the displacement of those findings in the light of further evidence and or other changes which the First-tier Tribunal considers to be relevant to the continued validity of such findings."

17. Accordingly, the matter came before the First-tier Tribunal once more for a Hearing on 5 July 2016. By that time the appellant had provided a number of additional statements. In addition to the statement given prior to the asylum interview of 14 December 2010 there was before the judge statements dated 14 February 2012, 24 November 2014 and 8 June 2016. In these statements she repeated her claims that she had come to the United Kingdom in 2010 in order to give a kidney to her cousin. SM had proceeded to abuse her. Furthermore, after she left his house SM had threatened her and her family in Bangladesh. She stated that the court case in Bangladesh continued and she was at risk from the authorities since a warrant for arrest had been issued and she would be detained on return. She stated that her family had turned against her and she would have no family support on return. That was because they considered that she was not following her religion by, among other behaviour, failing to wear the hijad, and had brought disrepute on the family.

18. Her evidence was supported by witness NA who was married to the appellant's first cousin. He lived in Manchester. He and his wife had become aware in July 2010 that the appellant was in distress and being pursued by SM as a result of the dispute already described. They suspected that harm might come to her and told her that she could come and live with them until the matter was resolved. His evidence was contained in a statement dated 20 November 2014. He was cross-examined. He stated that one week after her arrival, the appellant began to receive numerous threatening phone calls from Nanu a cousin of SM who objected to the appellant's presence in NA's house. He threatened to maim and cripple family members of NA in Bangladesh if continued to harbour her. Further he stated that SM himself regularly phoned to threaten NA, his family and the appellant.

19. He also said that received several phone calls from the appellant's older sister in Bangladesh expressing dissatisfaction about the appellant. She claimed that the appellant had brought a bad name to the good repute of her family and that the family had basically disowned her and did not wish to see her again. Her village kinsfolk were adamant that the appellant should be physically lashed if she was to return to Bangladesh.

20. A mutual uncle, AM, also repeatedly called from Bangladesh warning him against giving the appellant shelter. That uncle's son also phoned to the same effect.

21. A further witness, Munirul Mazumder, who was a friend of the appellant and had known her since April 2011, also gave evidence. He had been introduced by the appellant to her cousin HA. Mr Mazumder had invited HA to his birthday party in December 2015. Subsequently HA had contacted him expressing disapproval of the appellant's behaviour and dress at that party. Mr Mazumder claimed that HA had sent him threatening text messages.

22. In the determination of 16 July 2016 the judge set out in detail the history of the case and the appellant's claims and summarised the evidence he heard. He recognised that certain findings made by Judge Tiffen had been preserved and observed at paragraph 87 that those findings were his starting point but did not disable him from making findings which were at variance with those preserved findings where he found them to be displaced by further evidence not before the previous judge.

23. He was not persuaded to depart from the findings of Judge Tiffen in relation to what he described as "the core claim", namely that the appellant had offered to come from Bangladesh to the UK to donate a kidney to her cousin, that he had paid her expenses and supported her, that she had contracted hepatitis and SM had become angry and had sexually assaulted her. He accepted that, as a result, she decided not to donate her kidney and left SM's house. This had caused SM to spread rumours about her, to threaten her and her relatives in the UK and to arrange for a case to be brought against her and her family in Bangladesh. He narrates at paragraphs 89 and 90 and 91 the reasons why he finds that part of the appellant's evidence credible.

24. The judge then turned to considering whether or not the appellant would be at risk on return to Bangladesh. He noted that the preserved findings of the First-tier Tribunal Judge Tiffen included those at paragraph 21(iv), (v) and (vi). Those were as follows:

    iv. The appellant has family in Bangladesh to whom she can return.

    v. The appellant's family in Bangladesh have supplied her with documentation in support of her claim and

    vi. The appellant's father has a legal representative to assist him in the case which has been brought against the appellant and her family in Bangladesh.

    The judge stated that the appellant had sought to displace or neutralise these preserved findings by presenting evidence that all her family in Bangladesh had turned against her and that they had already turned against her by the time she sought sanctuary with MA in Manchester in about July 2010. She therefore would not have their support on return.

25. The judge states at paragraph 93 that this "new case" was inconsistent with what the appellant had told the police and with the fact that the family in Bangladesh provided her with documents to assist her appeal hearing in January 2011. The judge also points to what he describes as a fundamental discrepancy between the appellant's account and that of NA about her family's reaction to the news that she

was not going to go through with a plan to donate a kidney to SM. The judge points out that, while the appellant's position was that SM began to make threats against her in June 2010 and those threats escalated while she stayed with NA in July, she did not go to the police about them until 10 September 2010. At that time her claim was that she had only recently begun to receive threats from SM, contrary to the claim now being made that she had received such threats earlier when staying with NA and had been harassed by SM even earlier. It is also pointed out that, although she was now saying the threat from SM materialised in June 2010, she had sold a shop in Dahka within two months of her arrival in the UK which was inconsistent with her having any genuine intention to return to Bangladesh. In the alternative, if she was genuinely intending to return there in 2010 as she stated, she could not have regard to the threats made by SM or the effects of his "scandal mongering", as posing a significant risk to her return to Bangladesh.

26. On that basis the judge was not persuaded to depart from the preserved finding that, as at January 2011, the appellant had supportive family to whom to return in Bangladesh.

27. At paragraph 102 the judge finds that the appellant had not brought forward credible evidence to show that the previously supportive family's stance of her family in Bangladesh has changed as a result of any development since the beginning of 2011. That conclusion is reached because of the finding that the family did not believe SM's malicious slurs in 2010 and there was no reason why they would start to believe them subsequently. It is also pointed out that there was evidence that the appellant did not wear a headscarf or otherwise observe Muslim dress code in Bangladesh so that it was not credible that continuing such liberal behaviour in the UK has caused the family in Bangladesh to turn against her. He therefore found that the appellant could return to live with supportive family members in Bangladesh and that she can access the services of a lawyer instructed by her parents to defend her claim as found by the previous First-tier Tribunal judge.

Ground of Appeal 1

28. Mr Fripp on behalf of the appellant advanced all his grounds of appeal. The first is directed towards the treatment by the judge of the new evidence presented by NA and Mazumder which he submitted was not properly dealt with.

29. The particular criticism is that the judge made no findings in respect of the evidence of NA of threatening attitudes to the appellant by a substantial number of her relatives, including her sister in Bangladesh. Due to that omission, the judge's conclusion that the appellant retained sufficient family support in Bangladesh was unsustainable.

Discussion on Ground 1.

30. At paragraphs 71 to 80 the judge narrates in detail the evidence of NA as contained in his statement, in cross-examination and re-examination. It is correct to say that

there is no explicit reference to that evidence in his discussion in the findings section and in particular at paragraphs 92 to 102. However, the judge refers expressly in that section to the appellant's "new case" and "the evidence that her family had turned against her". That must be a reference to the evidence of NA, among others. The judge says that in doing so she sought to displace or neutralise the preserved findings to effect that she had supportive family in Bangladesh. The judge approached this matter in two stages. First, he examines the position in relation to the appellant's family as at the date of the hearing in January 2011. He observes that those findings had been preserved at paragraph 87 but that they can be displaced by further evidence, as directed by Upper Tribunal Judge Gleeson. He then sets out his reasons for refusing to depart from those findings. He gives three reasons for that. The first is that the appellant's "new case" is not consistent with what she had told the police (paragraph 93). When she first went to the police in September 2010 to complain about the conduct of SM towards her, she informed them that she intended to return to Bangladesh "in two weeks" (see the "Primary Investigation" details dated 10 September 2010 at page J21 of the Home Office bundle). If she intended to return to Bangladesh some time in September 2010 that would indicate that she had a supportive family, otherwise she would not want to go back, in the face of threats from SM. As such, it was capable of undermining her evidence that her family had turned against her, as at September 2010. It could also be used as a reason for rejecting the evidence of NA who spoke to the attitude of the appellant's family in the second half of 2010. The second reason given at paragraph 93 is that the appellant had previously stated that her sister had assisted her in connection with the appeal hearing at Yarl's Wood in January 2011 by providing documents. That was inconsistent with the proposition that her sister had turned against her by that time and wanted nothing to do with her. So that evidence was again capable of undermining not only the evidence of the appellant but that of NA about the family's attitude. The third reason given is the discrepancy between her account and that of NA about the family's alleged reaction the news that she was not going to go through with a plan to donate a kidney to SM. The appellant had claimed that her proposal to donate a kidney was contrary to Islam and that was one of the reasons that members of her family had turned against her. However, that evidence was contradicted by the evidence of NA who was asked about this matter in cross-examination. This exchange is recorded at paragraph 74 of the determination. In cross-examination NA had said that he had learned this from the appellant and was happy to hear that news. Anybody would be happy. In re-examination set out in paragraph 78, he was asked whether he had discussed this matter with family in Bangladesh. He answered: "Yes, he had discussed it with Asma (the appellant's sister) and with the appellant's uncle". That evidence was, as the judge stated, fundamentally at odds with that of the appellant. It also undermined the contention that the sister and indeed the appellant's uncle, had turned against her. It is pointed out in this ground of appeal that NA's evidence is expressly accepted as credible on this issue. The implication being that there is no explicit rejection of his evidence on other issues. I do not consider that it was necessary for there to be any such rejection. The reasons advanced in paragraphs 93-97 provide a legitimate basis upon which to reject the evidence of NA as to conversations he claimed to have had with members of the appellant's family.

31. Since NA's evidence only impacted on the attitude of the family towards the appellant in the period during which she had stayed at his house, he could not contribute any evidence of the attitude of the family since that date. His evidence therefore only impacted upon the first stage of the judge's approach. But it is clear from the analysis I have set out above that the judge did deal with NA's evidence, albeit he does not again rehearse it or name NA in this section of his determination.

32. Furthermore, the judge points out that the appellant's position was that SM began to make threats against her prior to her leaving his house on 10 June 2010 and, by the time she arrived at NA's house in Manchester two weeks later, those threats had become more extreme and extended to threats of violence against relatives in the UK who harboured her. The fact that she did not go to the police until 10 September 2010 and told the police that she had only recently begun to receive threats "over the past three weeks" (see the Primary Investigation details 10 September 2010 at J21 of the Home Office papers) undermined her claim she had received threatening calls when staying with NA in Manchester. That discrepancy was also capable of undermining NA's evidence.

33. At paragraph 102 the judge proceeds to deal to the second stage, that is the position after January 2011. He states that the appellant had not brought forward credible evidence to show that the previously supportive stance of her family in Bangladesh had changed. The judge states that, since the family had not believed SM's "malicious slurs" in 2010, there is no reason why they would start to believe them subsequently. Having made the finding that the appellant was prepared to return to Bangladesh in September 2010 and having rejected the evidence of NA, it was open to the judge to infer that that was because she had supportive family to whom to return and further that, as a consequence, the family had not taken SM's malicious slurs "at their face value" (see paragraph 98).

34. He also deals with the new evidence of Mr Mazumder in the context of her fear that the threats on her life made in the UK will be carried out on her return to Bangladesh at paragraphs 103 to 105. I have summarised that evidence at paragraph 21. Mr Fripp criticised the judge for falling into error in the treatment of this evidence because there was no "general finding" as to the credibility of this witness and because he mistakenly found there to be a disparity between the dates of the text messages (they appear as email messages in the documents provided) to which he spoke and the timing in the body of the messages themselves. I do not consider there is any force in the lack of what is termed general findings on credibility. The question is whether the judge gave adequate reasons for rejecting this evidence. The messages are contained in exhibit 1 attached to the appellant's statement of 8 June 2016. The first bears to have been sent by HA (an email address is shown) to the appellant and bears a date 3 April 2016. It is mentioned in the appellant's statement at paragraph 8 where she states "He followed this conversation up with threatening texts". There are also 2 emails which contain identical messages said by Mr Mazumder to be from HA but which do not bear his name or his address. They each indicate they were sent by Mr Muzumder to the appellant. One has a date of 30

April and the other 8 June 2016. Mr Mazumder in his statement says that he received one text message on his mobile from HA on 2 April. He does not mention passing that on to the appellant by phone or email. These 2 messages are accordingly on the face of them contradictory as not bearing the same dates, being emails not text messages and bearing no indication that they were sent by HA. Furthermore, the third page of exhibit 1 contains more messages also bearing dates of 30 April and 8 June sent by Mr Mazumder to the appellant to which the former does not appear to speak at all. Attached to Mr Mazumder's statement there is a document which is said in his statement to be a text message from HA but in this case it consists simply of typing and there is no address of any sort, no date or any provenance. It is not replicated in the appellant's exhibit 1. In the circumstances, the judge was entitled to reject the evidence of these messages. There is no material error of law shown in this ground of appeal and I reject it.

35. Mr Fripp also argued that the judge had failed to consider the plausibility of the appellant's claims as to the hostility of her family against the objective and expert evidence as to the general position of single women in Bangladesh who have no support there. The evidence highlighted focusses upon the plight of women who are subject to domestic abuse and is not easily transferred to the sort of situation in which the appellant would find herself if returned. In any event, having found that the appellant would have supportive family in Bangladesh, the judge cannot be said to have materially erred in law in this respect.

Ground of Appeal 2.

36. The second ground criticises the judge for pointing out that the appellant's delay in claiming asylum undermined her evidence as to the hostility of her family. It is said that this indicates that the judge unfairly departed from the preserved findings.

Discussion on Ground 2

37. In the paragraph highlighted at paragraph 97, the judge is expressly dealing with the appellant's "new case" which was a challenge to the previous findings (themselves preserved) that she had family support in Bangladesh. In doing so, evidence was advanced from, among others, NA. It was the appellant's position at the hearing of July 2016 that her family had already turned against her by July 2010, due to the attitude of SM, which was consistent with NA's evidence. In those circumstances, the judge was entitled to test that evidence against the factual backdrop of her complaints to the police in September 2010 as he did at paragraph 96 and 97. She stated at that time that "over the last 3 weeks" SM had made phone calls threatening her (see J21 of the Home Office bundle). That was, as the judge says at paragraph 96, inconsistent with her new case (as spoken to by NA) that SM had been threatening her since July 2010. Furthermore, NA would have been an obvious candidate at that time as a supporting witness but no mention was apparently made of him by the appellant to the police. Accordingly, the criticisms made at paragraph 97 are legitimate ones in the analysis of the appellant's new case as presented to the judge. I therefore reject this ground also.

Ground of Appeal 3.

38. Mr Fripp also argued that the judge had erred in reaching the conclusion that the case in Bangladesh raised against the appellant and other members of her family was no longer proceeding. The judge accepted the preserved finding that the case had been initiated in 2010 and accepted in that regard the evidence of Mr Chanda, an expert in Bangladesh law. But Mr Chanda did not address the question as to whether in 2016 the case was still proceeding, notwithstanding the fact that his report is dated 20 February 2016. However, the judge found that there was no reliable evidence that it was ongoing at the time of the hearing. He did so for the reasons set out in paragraph 100. The first of these related to the evidence of NA that the debt said to be owed to SM by the appellant in respect of financing her trip to the UK had been repaid. The judge concluded that there would be no reason for it to be continuing if the debt had been repaid. Secondly, he placed no weight on a handwritten note attached to the appellant's statement of 24 November 2014 which purported to demonstrate that the case was still proceeding, at least up to June 2014. Thirdly the appellant had produced a recent newspaper announcement showing that an arrest warrant was outstanding against her. This is attached to her statement of 8 June 2016. This is a "Memorandum" published in a national newspaper on 16 December 2015 intimating that an arrest warrant was outstanding against her and, if she did not surrender herself to the Court for trial within 10 days of the order, the trial would take place in her absence. The judge states that this document is self-serving and lacking in internal credibility. He found that it was not credible that the court would proceed on the fictional basis that the appellant is an absconder from justice and that her whereabouts are unknown when her family is in Bangladesh and they had instructed a lawyer the defend the claim who knew where the appellant is. He therefore found that the appellant had failed to discharge the burden on her of proving to the lower standard of proof that the case was ongoing and that there was an outstanding warrant against her.

39. It was argued for the respondent that there was no expert evidence that the case had been terminated and there was evidence from NA that it had (see paragraph 80). It was also argued that there was no background evidence that all women were treated in the same way by their family or by the State. The appellant had the support of her family, she had run her own business and had come to the UK on her own. She had been found by First-tier Tribunal judge Tiffen to be an educated woman who had strength of character. Her circumstances could not be said to be analogous to those outlined in *SA (Divorced woman-illegitimate child) Bangladesh CG* paragraph 74. The judge was entitled on the evidence before him to conclude she would not suffer any serious harm on return.

Decision on ground 3

40. There are a number of difficulties with the analysis set out in paragraph 100. The first reason given appears to proceed on the assumption that the case was a civil one which would be rendered academic if the debt had been repaid. Thus it was unlikely

still to be proceeding. However, it is clear from Mr Chanda's report that the case is a criminal one taken under various sections of the Penal Code. One of the offences is under section 420 which creates the crime of "cheating and dishonesty inducing delivery of property". This brings with it a sentence of imprisonment of up to 7 years. It cannot be said with any degree of confidence, absent some evidence on the matter, that such a charge would necessarily fall away on payment of the debt constituting the property delivered. The judge had pointed out at paragraph 90 that SM was motivated by "anger, bitterness and hatred towards the appellant" and it was thus credible that he had launched a criminal case against her. If so, payment of the debt would not necessarily lead him to abandon it. The second reason is a legitimate one since the document referred to has, on its face, no real provenance and the judge was entitled to place no weight upon it. The third reason, however, is not sustainable. It cannot be assumed, again without evidence, that the procedure of the Bangladeshi courts would proceed on the reasoning outlined by the judge. On the face of the Memorandum, it gives notice that the case will proceed in the absence of the appellant if she does not surrender herself. There is nothing inherently incredible about a court making such an order, even if informed that the appellant is not within the jurisdiction of the court.

41. The judge goes on to state that, even if he is wrong, the appellant still has the support of her family and can "access the services of the lawyer instructed by her parents". This conclusion derives from the preserved finding, at paragraph 23 of First-tier Tribunal judge Tiffen that, since the appellant's father had instructed a legal representative, there was no reason why the appellant could not avail herself of the same representation. But that finding was made in January 2011 and the assumption that such a course was still open 5 years on may not be well founded. But even if it is, there remains the point that the appellant, because of her circumstances as a divorced single woman and the position of SM, who is said to have some political influence, would not be able properly to defend herself against the accusations made in the charges. As this ground of appeal contends, there was evidence of substantial bias in the justice system against women, of corruption and of excessive cost of litigation (see, for example Asian Human Rights Commission, Bangladesh May 2013 at page 473 to 475 of the appellant's bundle). I conclude on this ground that the judge has materially misdirected himself and has failed to apply appropriate scrutiny to the question of whether the case is still proceeding against the appellant and, if it is, whether the appellant would thereby have a well-founded fear of persecution or would face a real risk of suffering serious harm on return. I therefore sustain this ground

42. In his Order of 3 May 2017, Mr Justice Collins, sitting as a judge of the Upper Tribunal, directed that parties should file updated statements and evidence and serve skeleton arguments prior to the hearing before me. Although the appellant did so, the respondent failed to respond to that order. The appellant has produced further material relating to the case in Bangladesh and has submitted a further statement from NA, who seeks to withdraw some of his evidence already given. Even though I have not sustained ground 1 and various facts are preserved, there is some element of fact finding to be done. In the circumstances, I consider that the

matter should be remitted once again to the First-tier Tribunal for a re-hearing, as Mr Fripp requested. Mr Jarvis did not demur from that suggestion. At that hearing the following facts will be preserved:

(i) those set out at paragraphs 20, 21 and 23 of First-tier Tribunal Judge Tiffen's determination (with the exception of the last sentence of paragraph 23).

(ii) those set out at paragraphs 88 and 89 of First-tier Tribunal Judge Monson's determination regarding the appellant's "core claim".

(iii) those set out in the first 7 lines of paragraph 90 of that determination regarding the attitude of SM and his motivation for launching the case against the appellant in Bangladesh.

(iv) those set out at paragraph 91 of that determination.

Once again, those findings are subject to displacement in the light of further evidence and/or other changes which the First-tier Tribunal considers to be relevant to the continued validity thereof. If the tribunal are satisfied that the case against the appellant is still proceeding or has been concluded with a decision against her, it will be necessary to consider whether she is entitled to asylum or protection in the light of the background evidence provided.

Notice of Decision

The Appellant's appeal is allowed in respect of ground of appeal 3.

Lord Burns
Sitting as a Judge of the Upper Tribunal
(Immigration and Asylum Chamber)

Date:

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 their 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.