



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/06023/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 13 April 2018

Decision & Reasons Promulgated  
On 04 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

KI  
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr R Claire, of Counsel

For the Respondent: Mr T Lindsay, Home Office Presenting Officer

**DECISION AND REASONS**

**Anonymity**

1. The First-tier Tribunal made an anonymity order. I have not been asked to rescind that order which remains appropriate. The order continues pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and prohibits the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court.

2. This is an appeal against the decision of First-tier Tribunal Judge Hosie (hereafter “the FtTJ”) promulgated on 1 September 2017 dismissing the Appellant’s appeal against a refusal of a protection claim, the protection claim having been refused by the Respondent for reasons set out in a decision letter dated 13 June 2017.
3. The Appellant is a national of Bangladesh, born on 1 January 1987. He has been living in the United Kingdom since his entry as a student on 14 January 2011. He claimed asylum on 17 November 2016 on the basis that he would be harmed or killed by the authorities due to his involvement with the Bangladesh National Party (BNP).
4. Prior to the hearing of the appeal before the FtTJ, the Appellant filed a bundle containing personal documentation corroborative of his claim that he is wanted by the authorities in Bangladesh including, inter alia, an arrest warrant and various court related papers.
5. The FtTJ heard evidence from the Appellant. A comprehensive summary of his claim and his oral evidence is set out at [16] to [22] and [27] to [34]. The FtTJ disbelieved the Appellant’s account in its entirety and his findings are comprehensively set out at [46] to [75]. The FtTJ noted various inconsistencies in the evidence and identified elements of the account that he considered were inherently unlikely. Further, in reaching his conclusions the FtTJ considered the documentary evidence and gave reasons as to why he concluded that evidence was unreliable. Notably, of relevance to the appeal before me, the FtTJ stated thus at [53] and [63]:

“I note that there is no arrest warrant or related documentation in relation to the Appellant’s alleged involvement in the protest.

...

D6 of RB is an arrest warrant dated 9 March 2009. The Appellant has not explained how he managed to leave Bangladesh with an extant arrest warrant in his name using his own passport. This must weaken his argument in relation to risk on return and internal relocation.”
6. The FtTJ concluded that the Appellant’s credibility was substantially “weakened by the many inconsistencies and implausibility in his evidence and his evidence in relation to the documentary evidence provided to support his claim” [65].
7. Having rejected the Appellant’s claim the FtTJ concluded that the Appellant was not at risk of persecution or serious harm in the event of a return to Bangladesh and found that a return there would not violate his human rights on any grounds.
8. Accordingly, the FtTJ dismissed the appeal.
9. The Appellant sought permission to appeal. In summary it was argued that the FtTJ erred in law by failing to take account of all the issues; failing to apply the correct standard of proof and erred in his consideration of the documentary evidence.

10. Permission to appeal was granted by First-tier Tribunal Judge Osbourne on 12 February 2018 in the following terms:

“In an otherwise careful decision and reasons it is nonetheless arguable that the judge at [53] noted that there is no arrest warrant or related documentation in relation to the Appellant’s alleged involvement in the protest. A warrant of arrest is included in the Appellant’s bundle at page 83. It is arguable that the judge failed to note the presence of that potentially important document and therefore failed to appropriately assess it in the context of the Appellant’s appeal.”

### **Consideration and Conclusions**

11. I have considered the submissions made by the representatives at the hearing. I consider that the central submissions made on behalf of the Appellant do not demonstrate that a material error of law was committed by the FtTJ. On the contrary, I find that the FtTJ’s decision is a comprehensive well-reasoned decision based on the evidence from which various adverse conclusions were drawn that cannot be categorised as perverse or irrational and were findings that were entirely open to him.
12. I first deal with an issue raised by Mr Lindsay during his submissions. Mr Lindsay contended that it should not be considered that there was a grant of permission on all grounds given the terms in which the grant of permission is couched. I do not agree. While the permission granting judge identified an arguable error in relation to the FtTJ’s consideration of the arrest warrant, he concluded his order by stating “all issues raised in the grounds are arguable”. It is evident therefore that the grant of permission is not limited solely to the ground relating to the arrest warrant.
13. While Mr Claire did not address each paragraph of the grounds of appeal purporting to identify an error of law, he highlighted and referred to some of them in his oral submissions. I will address the grounds and Mr Claire’s submissions commencing with the issue of the arrest warrant which was the focus of the grant of permission and the submissions before me from the outset.
14. The FtTJ dealt with the arrest warrant at [53] and [63], which I have set out above. The grounds of appeal and the grant of permission are misconceived in stating that the FtTJ failed to observe the presence of the arrest warrant at page 83 of the Appellant’s bundle. During my preliminary reading of the case papers, I noted that the arrest warrant at page 83 is duplicated at D6 of the Respondent’s bundle which was referred to by the FtTJ at [63]. It did not therefore seem correct to assert that the FtTJ failed to note an important document. I asked Mr Claire whether there was another arrest warrant before the FtTJ that he failed to note relating to the protest which he commented upon at [53]. While Mr Claire confirmed that the only arrest warrant before the FtTJ was the warrant exhibited at page 83, which was clearly considered, he submitted that there was some confusion in the mind of the FtTJ as to whether there was such a document.

15. Given that it is accepted that there was no arrest warrant before the FtTJ relating to the protest referred to at [53], I have some difficulty in accepting that there was any confusion and, in any event, the FtTJ was plainly aware of the existence of the only arrest warrant that was before him at [63] and reached his conclusion having borne that evidence in mind. I find that the Appellant has failed to establish a material error of law was committed in this regard.
16. Mr Claire turned next to the FtTJ's observation at [63] that the Appellant had not explained how he managed to leave Bangladesh with an extant arrest warrant in his name using his own passport. Mr Claire's complaint was that the FtTJ failed to refer to background evidence to support the adverse inference drawn by that observation. While Mr Claire referred to recent background evidence dated in 2017, which he stated referred to the level of surveillance at the airport, he properly acknowledged that this did not reflect the position in 2011 when the Appellant left Bangladesh, and nor did he produce that evidence before me and no such evidence was indeed placed before the FtTJ. No justifiable criticisms therefore can be made of the FtTJ in failing to consider evidence that was not placed before him.
17. Moreover, the FtTJ did not predicate his comments at [63] on any background evidence or the lack thereof, but on the Appellant's failure to explain how he was able to leave Bangladesh given the existence of an extant arrest warrant. The grounds complain that the FtTJ failed to take into account the explanation given in the grounds of appeal to the First-tier Tribunal, but the difficulty with that submission is that the grounds are not evidence and are not signed by the Appellant; there is no indication or assertion that the explanation therein was adopted by the Appellant in evidence before the FtTJ and none of the assertions advanced therein are supported by evidence.
18. I have no hesitation in concluding that the FtTJ did not err in his consideration of the arrest warrant.
19. In his concluding submissions Mr Claire submitted that the Respondent had failed to discharge the burden of proof and adduce evidence to support her case that the documentary evidence was fraudulent. While that contention as a matter of fact and law is correct, it fails to identify any error on the part of the FtTJ. In the absence of any evidence of fraud the FtTJ applied the correct approach to the consideration of documentary evidence in-line with the principles enunciated in Tanveer Ahmed at [50] and [60].
20. The grounds raise additional issues which Mr Claire did not expand upon in his oral submissions which I have considered. In my judgement, they are without merit and amount to a mere disagreement with the FtTJ's findings.
21. First, there is a bold assertion that the FtTJ applied a higher standard of proof to that applicable in protection claims. The assertion is not particularised and is

another unjustified criticism. The FtTJ was plainly aware of the lower standard of proof and applied that standard throughout.

22. Second, criticism is made of the FtTJ's consideration of the BNP letter at [51]. The FtTJ noted various anomalies in its content and noted it was undated where a space for the date is specified and that the contents did not refer to the Appellant's prison sentence. The grounds point to the fact that the letter is dated at the bottom by the signature and while there is a date as asserted, the grounds fail to point out that the FtTJ also noted that date at [51]. That date, I note, relates to the date the Notary Public signed the document rather than the date of the actual letter and, in any event, the FtTJ correctly observed the omission of a date at the top of the letter in the specified space. The FtTJ was entitled to take that omission into account.
23. Further, it is asserted that the BNP letter was a mere confirmation of the Appellant's membership and thus would not usually refer to personal information such as a prison sentence. Notwithstanding the fact that there is no evidence to support that contention, the letter itself refers to the Appellant facing police harassment, false charges and to an arrest warrant. The letter therefore does refer to personal information which goes beyond merely confirming the Appellant's membership. In the circumstances, I am satisfied that the FtTJ was entitled to have regard to this omission also.
24. The remaining arguments advanced in the grounds I consider seek to reargue the Appellant's case. No discernible error of law can be identified, and I find that these challenges amount to no more than a disagreement with the FtTJ's findings.
25. The grounds in conclusion contend that the FtTJ's reasoning in respect of Article 8 was inadequate. That claim is surprising given that the FtTJ noted that the Appellant "does not insist upon an article 8 ECHR Claim" (sic). A bare assertion that the Appellant has established his rights under Article 8 without any reference to the exceptional circumstances that would have led the FtTJ to a different conclusion does not establish an error on the part of the FtTJ. There is no merit in this challenge whatsoever.
26. In summary, this is a well-reasoned decision. The FtTJ reached conclusions that were entirely open to him on the evidence and is sufficiently reasoned.

### **Notice of Decision**

The Decision of the First-tier Tribunal does not contain a material error of law and shall stand. The Appellant's appeal is dismissed.

Signed:

Date: 20 June 2018

Deputy Upper Tribunal Judge Bagral