Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00895/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 October 2019	**On 28 October 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

M D R I
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Jorro, Counsel, instructed by Waterstone Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting 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. I make this order because this is a protection claim and so the appellant is entitled to privacy. There is a risk that publicity could create a risk of harm.

2. This is an appeal against a decision of the First-tier Tribunal dismissing for the second time the appellant's appeal against a decision of the Secretary of State on 10 January 2018 refusing him asylum and humanitarian

© CROWN COPYRIGHT 2019

protection. As I have already indicated, the appeal has already been dealt with unsatisfactorily and was sent back by this Tribunal to be determined again. It was redetermined on 11 July 2019 following a hearing on 27 June and that decision has also been criticised. Permission to appeal was granted by Upper Tribunal Judge Finch.

3. The appellant is a citizen of Bangladesh. He is, he says, active politically in Bangladesh. He is from Sylhet and he joined the Islami Chatra Shibir Party as a member of its student wing and as a result of activities got into trouble. Contrary to the Secretary of State's case it was accepted by the First-tier Tribunal on both the occasions that this appeal was heard that he was indeed detained in a round up following some demonstration or similar activities in November 2010.

4. It is the appellant's case that he was ill-treated during that detention. The First-tier Tribunal did not accept that. That finding is criticised because it is said that it does not relate to background evidence showing in rather strong terms that people who were arrested on occasions such as that tended to be subjected to very serious violence. Confirmation for this can be found in a Human Rights Watch Report. Mr Jorro relies particularly, but by way of example, upon a Human Rights Watch Report in the bundle at page 154. It is a report entitled "Creating Panic" and was prepared in December 2018 by Human Rights Watch. I therefore find it surprising that the First-tier Tribunal Judge did not accept the evidence that the appellant had been ill-treated. I cannot resolve that matter further without hearing evidence today but I can certainly say that it is, I am satisfied, an error of law not to have dealt with the background evidence once it was accepted that the person had been detained.

5. The second feature of the appellant's case is that he is the victim of a false charge. There is apparently contemporaneous evidence in the form of an announcement on "Facebook", or comparable social media, in which he expresses his despair of the authorities in Bangladesh bringing a claim against him for a criminal offence when he was in fact in the United Kingdom and well out of the way. If this is a contemporaneous record as it appears to be it is still more powerful evidence, but there is evidence in other forms, that a false charge has been laid against him. There is evidence in the background material (in same report identified above) that it was the practice of the Bangladeshi authorities at that time to make up false charges. Indeed, the Human Rights Watch Report gives an indication that over 300,000 over BNP activists had been implicated in false and fabricated cases. That is a staggeringly high number but even if it is only a tenth right it gives credibility to the claim that has been made. Again, the First-tier Tribunal Judge is criticised for not factoring this background material into the determination.

6. There is a further point that is not investigated properly in the First-tier Tribunal and this is that the appellant has been active in the United Kingdom in Bangladeshi politics and has been posting matters on the internet showing his opposition to the present government. Some of these

things are taunting and might be in some ways rather silly. Mr Jorro has particularly drawn to my attention to a photograph the appellant has prepared where he has adapted a photograph of the Prime Minister of Bangladesh by scribbling over the photograph a Hitler-like moustache. It lacks sophistication but is clearly rude and clearly going to be offensive to the authorities. There is background evidence that the authorities in Bangladesh are alert to people who are engaged in the internet in this way and are looking for people who take part in that kind of activity.

7. The same report gives two pieces of information that are particularly pertinent to this case. The first can be found at page 167 where there is reference to Human Rights Watch being told that the authorities are particularly intolerant of criticisms of the Prime Minister or her son and also told on page 168 that the Rapid Action Battalion, a paramilitary force implicated in serious human rights violations is interested in internet activity and monitors social media.

8. Clearly, these are points that ought to have been considered in the Determination and Reasons but were not and I regret that I have to record that the determination is unsatisfactory and I set it aside.

9. Mr Tarlow had the benefit of considering a skeleton argument provided by Mr Jorro and did not feel able to say very much in opposition to the arguments raised.

10. The appeal could be reheard again but it could not be heard without a further adjournment because an interpreter is needed and it was not practicable to arrange for an interpreter to attend before the Upper Tribunal in case evidence was called.

11. I have decided that it is not necessary to hear further evidence because I have decided that the evidence that is before me is sufficient to allow this appeal. I cannot decide without hearing evidence that the appellant definitely has been ill-treated. I can only say that there is evidence that makes it very likely that he was and that is something I bear in mind. I can say that there is clear evidence that he has been involved in activities that have attracted attention in the past. That much has been accepted. There is clear evidence that he has been a victim of a false charge. That of itself is probably persecutory but its relevance is that it is inherently likely that there will be some record about him that will attract attention when he crosses the paths of the authority, which he must surely be likely to do in the event of his return.

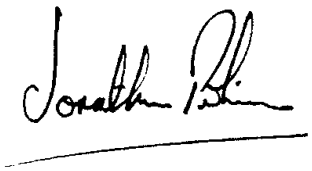
12. What is outstanding then is whether this all creates a real risk of persecution. I must conclude that it does. There is past arrest, there is false accusation, there is background evidence of the authorities being intolerant of critics and beating people, particularly young people. These factors overcome the elements of the case where there might be reasons to think that the appellant has not been entirely straightforward at every stage. That does not stop him being a refugee.

13. Mindful of the low standard of proof, I am satisfied that not only should I set aside the decision, which I do, but I allow it for the reasons I have given above. That is my decision.

Notice of Decision

14. The First-tier Tribunal erred. I set aside the decision and I substitute a decision allowing the appeal on refugee grounds.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 24 October 2019