Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02301/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11th November 2019	**On 24th December 2019**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR MD R
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Turner instructed by Lawmatic Solicitors
For the Respondent: Ms R Bassi, Home Office Presenting Officer

DECISION AND REASONS

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.

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Bonavero promulgated on 8th August 2019, which dismissed the appellant's asylum, humanitarian protection and human rights appeal against the decision of the respondent dated 13th February 2019.

2. The appellant's claim was that he was born to a politically active father in Bangladesh and his father was a member of the Bangladesh Nationalist Party and encouraged the appellant along the same lines. In 2007 the appellant joined the Bangladesh Jatiyatabadi Chatra Dal (JCD) student wing of the BNP and was made sports secretary of his local branch.

3. As a result of his political activities he was targeted by members of the student wing of the Awami League, the governing party in Bangladesh, and he was stabbed in the leg on Christmas Day in 2008 and stabbed in the arm in May 2009. On 12th February 2009 a confected criminal case was filed against him accusing him of criminal damage and he was wanted by the police. He describes his life before coming to the UK in the following terms "as such I was hiding myself here and there with different costumes and led a gypsy live".

4. The appellant's activities in the UK were that he joined the UK BNP East London branch on 17th August 2017 and had been appointed as an executive member of that branch and attended demonstrations and meetings.

5. The judge made the following record of evidence and findings.

6. At paragraph 26 the judge referred to the documentation emanating from Bangladesh intended to evidence the appellant's activities there and also identified the documents produced in the UK intended to evidence the sur place activities. The judge referred and applied **Tanveer Ahmed (documents unreliable and forged) Pakistan** * [2002] UKIAT 00439 principles at the outset.

7. The judge in relation to documents emanating from Bangladesh had regard to the Country Policy and Information Note entitled Bangladesh Background Information including Actors of Protection and Internal Relocation dated 18th January and which identified that there was a significant prevalence of fraudulent documents in Bangladesh. The judge stated at the outset of his decision "I therefore approach the appellant's documents with a degree of circumspection". He proceeded to consider the two newspaper articles said to have been published in Bangladesh about the appellant. The first newspaper to which he refers at paragraph 29 is the "The Daily Alokito Bangladesh". The second newspaper article described the fact that a case had been lodged against a variety of people including a person with the appellant's name in relation to criminal damage occurring the previous day. That article is said to come from a newspaper entitled "The Daily Nirapekhho Sapatkik" and was dated 12th February 2009.

8. The judge noted at paragraph 30 that the appellant had provided the originals but considered it surprising that the two newspapers printed two months apart had pages 2 and 3 as being identical.

9. The judge put this to the appellant (as recorded at paragraph 32) but he could not explain it except to say that pages 2 and 3 contained advertisements. The judge found "that does not in my view explain why it should be that the two different newspapers published months apart should have precisely identical contents across half of its pages".

10. At paragraph 33 the judge proceeded "whilst on the topic of newspapers" to comment on the paper published in the UK namely "The Weekly Bangla Sanlap" published on 31st August 2018 which was a Bengali language newspaper containing a picture of the appellant and many others at a demonstration followed by an article which named each of the people. The judge was particularly concerned that beneath the article the two adverts, the paper contained the text:

> *"Office to Late"*
>
> *"Wanted to teach Year 1 to GCSE. Expart and 15 years experience in teaching"*

11. At paragraph 34 the judge stated he compared these two adverts to the others appearing in that addition of the Bangla Sanlap and could find "no other instances of such flagrant mistakes let alone obvious misspellings in an advert placed by a teacher seeking tutoring work". He also found that the relevant pages were the centrefold and therefore easily replaceable.

12. As such the judge stated at paragraph 35 the following:

> *"Taking all of those factors into account, I express doubts as to the reliability of the various documents I have described. Nonetheless, I consider them in the round and in line with the rest of my findings as to the appellant's credibility, applying the lower standard of proof."*

Grounds of Appeal

13. The grounds of appeal contended that the judge erred in failing to have proper regard to the evidence (i) the approach to the newspaper evidence was flawed (ii) the application of Section 8 of the Treatment of Claimant's Act 2008 was flawed and (iii) the approach to the witness evidence and sur place evidence was flawed.

Analysis

14. In the first ground it was advanced that when dismissing the newspaper evidence, the judge misunderstood the newspaper evidence. It was submitted that the two newspapers The Weekly Bangla and The Daily Alokito Bangladesh were by the same company. It was not improbable that the newspaper would reuse its advertisements between issues

especially given the period of time and the judge concluded that the advertisements were identical between the two newspapers damaged but misunderstood. The appellant was unaware why the same advertisements were used but he was unaware that the issue was that the newspapers were believed to be owned by different companies.

15. At the hearing in the Upper Tribunal Mr Turner repeated that the appellant would not have knowledge over what was in the newspapers or the editorial content or why the newspapers had republished the adverts. It was an error to hold it against him. In my view, however the judge had clearly, as plain from paragraph 32, put the issues of the newspapers to the appellant and the appellant could not explain the repetition and did not give evidence that the two newspapers were owned by the same company. That was an explanation that was produced at later date and cannot be used to form criticism of the judge's reasoning. As the judge pointed out at paragraph 32, that the two different newspapers were published months apart and have precisely identical contents across half its pages was simply not credible.

16. The submissions also criticise the judge's approach to the weekly Bangla Sanlap dated 31st August 2018 which contained the spelling errors in advertisements and that the advertisement "printed by the newspaper is not edited by the newspaper the same way an article would be: "It is published as received". The appellant believed that these were genuine typing errors. It was submitted in the grounds of permission to appeal that the judge erred in respect of **Tanveer Ahmed** by failing to apply the appropriate weight to such evidence especially in the light of the fact that the appellant provided the original documents and postal envelopes of any evidence which was sent from Bangladesh.

17. In my view once again the judge applied the correct standard of proof and nothing in the language of the determination suggests that a higher or civil standard of proof was applied rather than the 'reasonable degree of likelihood'. The judge gave unambiguous findings and very clear reasons for why he rejected the evidence in relation to the newspapers. He noted the content of the advertisements finding that the relevant pages were at the centrefold of the relevant edition and therefore easily replaceable at paragraph 34. The judge did not misunderstand the evidence, he specifically had compared the two adverts to the others appearing in that addition a copy which was on file and stated he could find no other instances of such flagrant mistakes. The appellant clearly had the opportunity to give observations in relation to the newspapers. Mr Turner's point was if the appellant was going to fabricate the newspaper by putting an advert this type of obvious illiteracy should not be held against the appellant and it was not said that the newspapers were false or do not exist. Mr Turner thought it daft to go to the time and trouble to put in incorrect information and it was outside the appellant's control but that is also a post decision explanation.

18. However, the judge considered all the evidence, offered the appellant an opportunity to respond to his criticism and gave adequate reasoning as indicated above for rejecting the credibility of the articles. His conclusions were open to him.

19. Mere disagreement about the weight to be accorded to the evidence, which is a matter for the judge, should not be characterised as an error of law, **Herrera v SSHD** [2018] EWCA Civ 412. It is for the judge to accord the weight given to a piece of evidence and the judge saw the evidence in the light of the previous observations in relation to the newspapers.

20. I find no error of law in the judge's approach in relation to the judge's approach or treatment of the newspaper articles. Although the judge referred to the principles of **Tanveer Ahmed** at the outset of his findings, he has to start somewhere and he paid adequate and careful attention to the evidence which shows that he did treat the evidence holistically and with an open mind albeit with a degree of circumspection. The judge confirmed that he took all the factors into account.

21. Turning to the second ground of appeal, I am not persuaded that the judge erred in the application of Section 8 of The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ('the Act')**.**

22. The grounds of appeal state that the

> *"Appellant intended to return to Bangladesh following his studies under the impression that the BNP would come back into power following the past election. In such circumstances he did not believe there was a need to claim asylum upon arrival in the UK or whilst he was studying. After 2014 when the Awami League were voted back into power the appellant became concerned...*
>
> *Unfortunately, his college's licence was suspended and he was unable to find another sponsor...*
>
> *he was afraid if he claimed asylum he would be returned to Bangladesh*".

23. The judge found at paragraph 36, that

> *'he [the appellant] did not claim asylum until some 6 years after his arrival here. This strikes me as inconsistent with his claimed fear of persecution in Bangladesh, which had crystallised as early as 2009'*

24. The judge's findings were entirely open to him. He had regard to the delay as enjoined by Section 8 of the Act. There was no indication contrary to **JT (Cameroon)** [2008] EWCA Civ 878 such that he had dismissed the appeal without considering the evidence as a whole or on the basis of the delay in claiming asylum alone. As the judge recorded, the appellant maintained that as early as February 2009, prior to him leaving Bangladesh that he was in fear of his life; the judge also recorded

at paragraph 8 and found at paragraph 36, that the appellant did not claim asylum for some six years after his arrival in the UK on 20th May 2011 as a Tier 4 Student, and until 28th September 2017. The grounds of appeal appear to be giving a post-decision explanation, particularly as the appellant knew that the Awami League had been re-elected in 2014 and did not claim until 3 years later. Whilst the appellant was engaged in immigration litigation being in the process of lodging a notice of appeal in April 2014 and became appeal rights exhausted on 29th May 2014, he still failed to claim asylum until some three years later. The history of that claim was recorded in the determination and it is inconceivable that the judge did not take that into account when reaching his decision. The challenge to the decision on this ground amounts to no more than a mere disagreement with the judge's findings at paragraph 36.

25. In relation to the third ground of challenge the judge having rejected his account of the appellant's treatment in Bangladesh turned to the appellant's sur place activities from paragraph 39 onwards and stated the following:

> *"41. As for the oral evidence provided by Mr B, I found it problematic. He was asked by Ms Lake whether his knowledge of the appellant's experiences and activities in Bangladesh comes solely from the appellant, or whether he has some other source of information. He said that before inviting the appellant to become a member of the BNP he contacted a gentleman called Rahul in Bangladesh to confirm that the appellant had been politically active there. Rahul confirmed this to be the case. However, Mr B never told the appellant that he had done this. Asked why, he said that the appellant might then have contacted people in Bangladesh to lie on his behalf. When he was asked whether he was concerned about the fact that members of his organisation might lie in this way to him, he said that people in his organisation would not be prepared to lie. There are plainly a number of problems with this evidence. First, it is inconsistent on its face. Second, it is entirely unclear how the appellant might know who was being contacted in Bangladesh in order to prime them to lie to Mr B. Lastly, there was no reason at all why Mr B would not have told the appellant about this course of action after he had completed his checks. All in all, I found Mr B to be an unsatisfactory witness.*
>
> *42. The papers before me do show the appellant's presence at a number of demonstrations. I take this into account. However, it has not been demonstrated by the appellant that there is a real risk that his mere presence at such demonstrations would be known by the Bangladesh authorities, or that this would in any event place him at risk of persecution.*

> *43. I take the same view about the appellant's facebook posts. There is nothing before me to suggest that the authorities would have access to or interest in the appellant's facebook account. Whilst the country evidence shows that there have been some prosecutions relating to political material posted on facebook, it does not follow that there is a real risk that the same would befall the appellant. Given my finding that he is of no interest to the authorities, I have been shown no evidence that they would nonetheless scrutinise his social media accounts."*

26. The grounds for permission to appeal challenged the treatment of the witness, Mr B's evidence again asserting the judge had erred in approach to the credibility findings. The BNP members were entitled to run checks on members, there was no obligation on the organisers to inform potential members of such and "the situation in Bangladesh was such that a person would need to be verified and checked to see if they were politically active in support of any party before being allowed to join a party". It was not a question of whether the witness thought members of the party would lie but whether the appellant would have someone inside the party acting on his behalf because of the risk that a person may be spying on the BNP for the Awami League. The judge had concluded on the basis of his earlier findings that the appellant was not of interest but the standard of proof in asylum claims was lower than the civil standard and his fear of persecution was supported by the newspaper and criminal evidence provided. The misunderstanding as to the newspapers infected the entire decision and the judge failed to properly consider the evidence including the witness evidence. The judge failed to consider all of the evidence in the round.

27. I am not, however, persuaded that any of the criticisms of the decision are well-founded in respect of the treatment of the witness. The judge as can be seen above specifically addressed the evidence of Mr B. It was open to the judge to find the evidence inconsistent on its face. On the one hand the witness stated that he did not tell the appellant in case he "primed" a member of the BNP in Bangladesh to "lie on his behalf" but he then proceeded to state that "people in his organisation would not be prepared to lie". The evidence <u>was</u> on its face contradictory. It was thus open to the judge to find there were plainly a number of problems with this evidence and secondly that the appellant would not have known who was being contacted.

28. The judge considered the sur place activity and it was open to him to find, in the context of the evidence overall mere presence at demonstrations, as illustrated in this appeal, would not place the appellant at real risk from the Bangladesh authorities; simply there was no evidence that Bangladesh authorities would scrutinise his social media accounts. Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense,

which this determination does, having regard to the material accepted by the judge**, Shizad (sufficiency of reasons: set aside)** [2013] UKUT 00085 (IAC).

29. From a careful reading of the determination, the judge did not misunderstand the evidence or misdirect himself or fail to consider the evidence in the round. The Upper Tribunal has been cautioned to be slow to unsettle determinations on the basis of disagreement. **UT Sri Lanka** [2019] EWCA Civ 1095 held at [19]

> *'although "error of law" is widely defined, it is not the case that the UT is entitled to remake the decision of the FTT simply because it does not agree with it, or because it thinks it can produce a better one'.*

30. I find no error of law in the determination and it will stand. The appellant's appeal remains dismissed.

Signed Helen Rimington Date 20th December 2019

Upper Tribunal Judge Rimington