Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06942/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13th May 2019	**On 29th May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MU
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Haque (LR)
For the Respondent: Ms S Jones (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Turner, promulgated on 28th February 2019, following the hearing at Bradford on 8th February 2019. 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, and was born on 22nd September 1985. He appealed against the decision of the Respondent dated 18th May 2018, refusing his application for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he is a member of the Chattra Dahl (JCD), the student wing of the Bangladesh National Party (BNP). He was an officer of the JCD. He had been involved in political activity against the ruling party. He was also heavily involved in the mayoral election which saw the victory for the BNP. Given that he was seen as an opponent of the ruling party, he was arrested in 2009 in relation to an allegation of possession of firearms. He was detained for six months. He was subjected to torture. He was beaten. He was electrocuted. He was forced to make confessions. He did not make any admissions. His solicitor then secured bail for him on payment of money. He was required to report on a three monthly basis to the court and to answer bail which he did. The Appellant lived near the border with India. He applied for a visa for India. He could cross the border to India with an official visa. In the alternative, he could also cross by a small river when he needed to. He had family in India where he could stay temporarily. He would visit and return to Bangladesh. The Appellant was then arrested on a further five or six occasions. He was detained for two or three days before being released. He was also sexually assaulted whilst in Bangladesh by an unknown group of men. The attack was not on account of his political opinion. The Appellant was left with enduring physical and mental problems. The Appellant left Bangladesh and arrived in the UK on 19th February 2014. In the UK he initially made a human rights application on Article 8 grounds to remain here. This was unsuccessful. He then applied for asylum after that. In the UK also, he has been engaged in political activity on behalf of the BNP (see paragraphs 3 to 12 of the determination).

The Judge's Findings

4. The judge was not satisfied that the Appellant had discharged the burden of proof that was upon him. In his screening interview he had failed to make any reference to the torture, starvation or sexual assault that he had subsequently referred to (see paragraph 34). He had also not provided details of such mistreatment in his statement which he prepared on the same day (paragraph 35). Moreover, he had come on a visitor's visa in February 2014 and, despite the fact that in his oral evidence he stated that he had been at risk since 2008, he had not claimed asylum until much later.

5. The appeal was dismissed.

The Grounds of Application

6. The grounds of application state that the judge erred in stating (at paragraph 34) that the Appellant's failure to mention his mistreatment in his screening interview was an error. A screening interview is simply designed to provide the basics of the claim. The judge was wrong to have drawn undue inferences from this.

7. On 5th April 2019 permission to appeal was granted.

Submissions

8. At the hearing before me on 13th May 2019, Mr Haque, appearing on behalf of the Appellant, as his representative, submitted that the judge's undermining of the Appellant's credibility on the basis of his having failed to refer to his mistreatment at the screening interview (see paragraph 34) was a misdirection. The judge should not have drawn an adverse inference. Furthermore, the judge had wrongly treated the documentary evidence as being unreliable (at paragraph 49). He had been given a range of different forms of evidence and yet he had concluded by saying that "I attach no weight to these documents" (paragraph 49).

9. For her part, Ms Jones submitted that there was no material error of law at all. This was simply a disagreement with the decision of the judge. The question that the Appellant had been asked in his screening interview, which was at question 2.3 (and not at question 3.2 as erroneously stated by the judge at paragraph 34) is: "Is there anything else you would like to tell me about your physical and mental health". If the Appellant's claim was that he had been tortured, starved and subject to sexual assault, he could not have answered by saying that there were no health issues. This is particularly given that in relation to the allegation of sexual assault upon him, he had maintained that "the attack has left the Appellant with physical and mental health problems" (paragraph 8).

10. Second, the Appellant in 2016 had made a human rights application, and yet as early as 2008, some six years earlier, he knew he was at risk. In the UK, he had provided no evidence of torture. He had provided no authentication of the documentation submitted. He had gone to India on a visa. He had been bailed and he had answered bail. This was unlikely for him to do if he was at risk. Even if there was an error in looking at paragraph 34, it could not, in the circumstances, be a material error.

11. Finally, there could be no criticism of the judge (at paragraph 49) in not finding the documentation to be credible, because fraudulent documents are not uncommon.

No Error of Law

12. 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.

13. First, as far as the criticism of the Appellant is concerned, in not having referred to torture and sexual assault during his screening interview (at paragraph 34), the judge had concluded that "the Appellant did state that he had problems in Bangladesh in regard of his political activity, but it would be reasonable to expect him to go further than this and to at least explain that he had suffered mistreatment as a result thereof". The judge had also gone on to say that "a lot of information was provided at question 4.1 about his claim for protection however there is no mention of mistreatment" (paragraph 34). These conclusions were not unreasonable for the judge to draw upon.

14. In any event, there can be no material error in this respect, given that the judge does not confine himself simply to the failure to disclose the mistreatment at the earliest possible time during the screening interview. This is because straight after paragraph 34, the judge goes on to state at paragraph 35 that, "the statement that was signed and dated the same day as the screening interview also made no reference to mistreatment at the hands of the state" (paragraph 34). This being so, it is clear from the manner in which the determination is constructed, that paragraphs 34 and 35 need to be read together.

15. Indeed, the judge goes on to say that the Appellant "makes reference to attack on him and his property generally and false allegations being made against him". However, he had made no reference to an attack on him (paragraph 35). The judge comes to this conclusion notwithstanding the fact that he also makes proper allowance for the fact that the Appellant does give more detail in his AIR in particular (paragraph 35). This indicates that the entirety of the claim is properly taken into account by the judge.

16. In fact, during cross-examination, when the Appellant was actually asked about the mistreatment and torture that he had suffered, what is recorded as having happened is that "the Appellant made reference to false allegations. He failed to mention until prompted about the electrocution and the sexual assault" (paragraph 36). It is clear from all of this that a criticism of the Appellant not having referred to the mistreatment in the screening interview on its own does not explain the comprehensive manner in which the judge had approached the credibility of the Appellant's claim. It did not stop there.

17. This is because, when the Appellant was specifically asked why he had not mentioned these issues before, he had said that he had a difficult time and had memory loss problems. He was then asked if he had sought any medical attention. He said that he attended at his GP. He was referred to counselling. The appointment was then four months thereafter, "but the Appellant had failed to attend. He had not attended for a further referral

as he had moved areas and GPs." The Appellant had not provided any medical evidence about this (paragraph 36).

18. This, then, is the proper manner in which the judge's appraisal of the Appellant's account should be considered. It is clear from this that the Appellant's account about his mistreatment was far from credible, as the judge found, and that was a finding which he was entitled to come to. Having considered all of the evidence, the judge concluded that the lack of reference to torture and mistreatment was a matter which continued even during oral evidence such as to give him concern (see paragraph 37). These findings were entirely open and proper for the judge to come to.

19. Second, Mr Haque made a determined criticism of the judge's rejection of the documentary evidence that was before him. He stated that the judge was simply not correct in treating the arrest warrants as not being genuine. However, the precise manner in which the judge has dealt with this issue was not addressed by Mr Haque. What the judge states is that, on the basis of paragraph 13.2.1 of the Country Policy and Information Note for Bangladesh, where it is stated that "official documents are readily available", the judge was entitled to be sceptical and to conclude that, "I have not been provided with any formal expert evidence to verify the authenticity of the documents" (paragraph 49). Indeed, Mr Haque neglected to mention the judge's additional statement that "the objective evidence on balance suggested that it was more likely that the documents were genuine", but that the burden lay on the Appellant to prove that the documents were authentic. In this, the judge was entitled to state that, "I do not find that the Appellant had discharged this burden and as such I attach no weight to these documents" (paragraph 49).

20. Finally, the judge had also, in looking at the factual situation comprehensively before him, observed how the Appellant had entered the UK on a visitor's visa on 19th February 2014. He did not tell the Immigration Officer at the airport that he had been subjected to mistreatment (see paragraphs 39 to 40). Given that "it was the Appellant's claim in oral evidence that his life had been at risk since 2008 during which time he stated he had been tortured, attacked, beaten and assaulted", it was not credible that the Appellant failed to immediately make a protection claim on arrival in the UK (paragraph 41). Even after learning of further problems in relation to his father and the business, he failed to make a protection claim (paragraph 42). He made a claim under Article 8 of the ECHR. Indeed, given that he could cross the river to go to India, he applied for an official visa, which he procured. This indeed further indicated that he was not at risk (paragraph 43). Moreover, "the Appellant stated he had gone to India and returned back to Bangladesh more times than he could recall" even though he claimed that he was at risk (paragraph 44). The judge also went on to say that if the arrest warrants were genuine, it was not credible that the Appellant would continue to place himself at risk of detention by answering his bail (paragraph 46). He had even been able to renew his passport in 2013 despite his case that he was on bail (paragraph 47). Finally, the judge was

of the view that he questioned how it was possible for the Appellant to secure a formal reason to leave Bangladesh if he was always at risk (paragraph 48). All in all, the judge has given ample grounds for rejecting the appeal. There is no error of law here.

Notice of Decision

21. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall stand.

22. An anonymity direction is made.

23. This appeal is dismissed.

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.

Signed Date

Deputy Upper Tribunal Judge Juss 24th May 2019