



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/11555/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 November 2019**

**Decision & Reasons Promulgated  
On 25 November 2019**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**MR M L A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Waheed, Counsel instructed by Kalam solicitors  
For the Respondent: Mr Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, who is a citizen of Bangladesh born on 28 February 1987, is appealing against the decision of Judge of the First-tier Tribunal Cockrill promulgated on 29 August 2019 to refuse his protection and human rights claim.
2. The appellant entered the UK in 2009 as a student. However, it was not until 22 August 2016, following the refusal of an application for leave to remain as the spouse of a British citizen on 14 April 2016, that he applied for asylum.

3. The appellant claims that he faces an objectively well-founded fear of persecution if he is returned to Bangladesh because:
  - (a) between 2004 and 2009 he was an active member of the Bangladesh Islami Chhatrashibir (BIC). In his witness statement, the appellant states that he was the Finance Secretary, Secretary and President of BIC for a residential area of Shahjalal University of Science and Technology and the Organising Secretary for BIC of the Department of Political Studies of Shahjalal University of Science and Technology. In order to corroborate this, the appellant submitted a letter from the current President of BIC at Shahjalal University in which it is stated that the appellant held the aforementioned positions;
  - (b) his father is a prominent and eminent figure in the Bangladesh jamaat-e-Islami (BJI) who has suffered imprisonment, and whose family has been harassed and attacked as a consequence of his prominence. To support his claim that his family has suffered because of the role of his father, the appellant submitted evidence showing that his younger brother, who worked as a journalist, had been attacked, as well as a statement from his father which refers to the family being at risk and a statement from the President of the BJI Sylhet branch where reference is made to the family being subject to adversity and persecution because the appellant's father is an eminent and vocal figure.
4. The appellant's protection and human rights claim was refused by the respondent on 17 September 2018. The respondent did not accept that the appellant was a member of BIC or that his father was politically active.
5. The appellant appealed to the First-tier Tribunal, where his appeal was heard at Taylor House by First-tier Tribunal Judge Cockrill ("the judge").

### **Decision of the First-tier Tribunal**

6. The judge accepted that the appellant's father has been associated with BJI and has suffered arrest and imprisonment as a consequence. However, the judge did not accept that the appellant's family faced, or faces, a risk because of the father's role in BJI. The judge reached this view because he found that the attack on the appellant's younger brother occurred because he is a journalist, not because he is the son of the appellant's father. At paragraph 64 the judge stated:

"As regards the position with the younger brother, there is a report in a newspaper about an incident where there was an attack. That has been well enough documented. I accept that an attack took place, but the cause or causes of the attack are very far from clear. Again, the respondent was rightly critical in my judgment of this assertion that it was as a result of the relationship between the appellant's younger brother and their father. The newspaper report at face value appears to be far more suggestive that it was because the younger brother was a journalist. As a matter of fact I accept that that was the reason for the attack and not anything to do necessarily with the father."

7. With respect to the appellant's claim that he had a prominent role in BIC for several years up until he left Bangladesh in 2009, the judge stated:-

"61. I note that the appellant contends that he was part of the student wing of Jamaat-e-Islami and there is some evidence on that issue in favour of the appellant. However, and I stress this, what is very noticeable by its absence is that there really is not in this claim for protection any narrative that the appellant suffered real difficulties back in Bangladesh right up to 2009, when of course on his case he was associated with that student wing.

62. I recognise the point that is made properly by the appellant's Counsel that the political climate did alter in 2009 but the fact remains that for the appellant who was born in 1987 he was in his early 20s before he left Bangladesh and, and I stress this, there really were not difficulties being suffered by him back in Bangladesh because of any expression of political opinion or perception of political opinion."

8. At paragraph 67 of the decision the judge stated:-

"What I do accept specifically as a fact is that the appellant has a general sympathy with the cause of Jamaat-e-Islami and its student wing, but that in and of itself is not sufficient in my judgment to enable the appellant to gain the international protection that he seeks."

### **Grounds of Appeal**

9. The first ground of appeal submits that the judge failed to make a clear finding about the appellant's involvement with BIC or explain why the involvement he claimed to have, as corroborated by the President of BIC at Shahjalal University, was rejected.
10. When developing this ground of appeal in his submissions, Mr Waheed made the further argument that the judge fell into error by attaching significance to the fact that the appellant did not suffer difficulties in Bangladesh up until 2009 when the objective evidence showed that the Awami League only came to power in 2009 and therefore there would be no reason why he would have suffered persecution prior to 2009. He argued that what mattered, for the assessment of whether the appellant would face a risk, was his profile in BIC prior to leaving Bangladesh, not whether he faced any hostility during that period.
11. The second ground of appeal submits that the judge failed to recognise that the profile of the appellant's father increased the likelihood of the appellant facing risk. Mr Waheed drew attention to the statements of three witnesses (Mr S I S, Mr A I M, and the appellant's father) which, he claimed, support the view that the appellant would be at risk because of his father but had not been considered by the judge. The grounds also argue that the evidence before the judge did not support his conclusion that the appellant's brother was victimised only because he was a journalist and not because of his connection to his father.

12. The third ground of appeal submits that the judge erred by drawing an adverse inference from the absence of documentation to support the appellant's claim that the authorities have been pursuing him.
13. The fourth ground of appeal submits that the judge erred by treating as determinative (or placing too much weight) on the delay in the appellant bringing the asylum claim.
14. Mr Clarke argued that the judge, applying the correct standard of proof, had adequately addressed the appellant's claim to have been involved with BIC at paragraph 61 of the decision (which is quoted above) and that the conclusion reached was one which was open to him based on the evidence. He also argued that the absence of persecution prior to 2009 was relevant to whether the appellant had a profile in Bangladesh that would put him at risk.
15. Mr Clarke maintained that the objective evidence did not support the contention that the appellant would be at risk merely because of his father's role and that the evidence clearly supported the conclusion that the appellant's younger brother faced hostility because he is a journalist, not because of his father. He also highlighted that the delay in making a claim was an important factor, to which the judge was entitled to give considerable weight. He also drew attention to the answers given by the appellant at his asylum interview which, in his view, demonstrated that the judge was correct to describe him as vague and lacking credibility in respect of the claim that the authorities have shown an interest in him.

## **Analysis**

16. In my view, there are two errors in the decision of the First-tier Tribunal which, when taken together, are sufficiently significant that they undermine the decision, such that it will need to be set aside in its entirety.
17. The first error concerns the judge's assessment of the appellant's role in BIC prior to his leaving Bangladesh in 2009.
18. The appellant's claim, as set out in his witness statement and as set out in the letter from the President of BIC at Shahjalal University, is that between 2004 and 2009 he had a prominent public role within BIC including as President of a residential area.
19. It is not expressly stated in the decision whether the judge accepted or rejected this part of the appellant's claim. At paragraph 67 the judge stated that he accepted that the appellant has "a general sympathy with the cause of Jamaat-e-Islami and its student wing" and that this, of itself, was insufficient to gain international protection. However, the judge did not address, or make finding as to (a) whether or not the appellant had a significant and active role within BIC between 2004 and 2009; and (b) if he

had such a role, whether this (as opposed to merely being a supporter of BIC) would give rise to risk on return.

20. The failure to make a finding of fact on whether the appellant had been a prominent member of BIC led to the judge, at paragraph 67, addressing the wrong question. At paragraph 67 the judge found that being a sympathiser with BJI and BIC would not, of itself, give rise to risk; but the appellant's claim was not that he was merely a sympathiser, it was that he was a member with a leadership role.
21. The second error which undermines the decision is that the judge at paragraphs 61 and 62 appears to take the view that it is relevant to whether or not the appellant would be at risk in Bangladesh that he did not experience any difficulties prior to leaving the country in 2009. Although the judge at paragraph 62 acknowledged the political climate altered in 2009, he does not appear to have taken into consideration that it was only in 2009 that the Awami League (which is the party the appellant claims to be at risk from) came to power and that, therefore, there was no reason for the appellant to have suffered ill-treatment prior to 2009. As argued by Mr Waheed, the absence of ill-treatment prior to 2009 does not undermine the credibility of the appellant's account. Nor does it render him less likely to be at risk on return, if that risk arises from the role he had in the BIC prior to 2009.
22. The above described errors are, in my view, material because if the appellant, as he claims, had a prominent and public role within BIC than this, taken together with the profile of his father (as accepted by the judge) might have led to the judge finding that the appellant had an objectively well-founded fear of persecution.
23. Given that the errors of law identified relate to the assessment of the appellant's credibility and that credibility is a central issue in this appeal, having regard to paragraph 7.2(b) of the Practice Statements of the Immigration and Asylum Chambers of the First-tier Tribunal and Upper Tribunal, I consider this an appeal which should be remitted to the First-tier Tribunal with no findings preserved.

### **Notice of Decision**

24. The appeal is allowed.
25. The decision of the First-tier Tribunal is set aside on the basis that it contains a material error of law and the appeal is remitted to the First-tier Tribunal to be heard afresh by a different judge. No findings of the First-tier Tribunal are preserved.

### **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 his 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

A handwritten signature in black ink, appearing to be 'SUSAN', followed by a horizontal line extending to the right.

Upper Tribunal Judge Sheridan

Dated: 21 November 2019