



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

Appeal Number: PA/02754/2019

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 9 October 2019**

**Decision & Reasons  
Promulgated  
On 9 March 2020**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

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

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr T Shah, a solicitor from Taj Solicitors

For the Respondent: Mr L Tarlow, a Senior 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 the appellant is an asylum seeker and so is entitled to privacy.
2. This is an appeal against a decision of the First-tier Tribunal dismissing the appeal of the appellant against a decision of the respondent on 4 March 2019 refusing him asylum and/or humanitarian protection or leave to remain on human rights grounds.

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3. The appellant is a citizen of Bangladesh. For the purposes of introduction, it is his case that he is at risk because of activities in the United Kingdom and the main reason for his having permission to appeal against the First-tier Tribunal Judge's decision is that the judge, arguably, did not have proper regard to the background material and therefore made findings of fact that were unsafe.
4. To understand this appeal it is necessary to look carefully both at the decisions complained of by the Secretary of State and by the First-tier Tribunal.
5. This shows that the appellant is a national of Bangladesh born in 1982. He appears to have lived in the United Kingdom since June 2007 when he entered on a student visa. His leave was extended until 30 October 2015 but curtailed when his sponsor's licence was revoked. He was given further leave but that too was curtailed because the sponsor's licence was revoked and his leave expired on 25 December 2015.
6. He claimed asylum shortly before that leave expired. The application was refused and an appeal dismissed. His appeal rights were exhausted on 27 October 2017. On 11 April 2018 he made further submissions which the respondent decided did not amount to a fresh claim but upon judicial review the respondent looked again at the submissions and further submissions and then made the decision complained of.
7. The claim is summarised. It is said that the appellant identified as a member of the Bangladesh Nationalist Party (BNP) and he claimed to have been ill-treated by the Awami-League Party (ALP) and he maintained his claim to have been ill-treated in Bangladesh.
8. He also said that he had been politically active as a blogger and to have campaigned for the BNP in demonstrations against the ALP. He supported the claim with newspapers and online articles. He said he had been photographed. It was his case that he would be identifiable in the event of his return and risked persecution as a result.
9. The Secretary of State then looked at the previous application and the reasons for refusing it and, appropriately, took that decision as the starting point.
10. The further submissions that had not been considered previously were summarised as a claim that he would be persecuted both by the Bangladeshi authorities and members of the ALP because he was a member of the BNP, that he had actively campaigned for the BNP against the Bangladeshi prime minister whilst he was in the United Kingdom and that as a result of sur place political activities the Bangladeshi authorities and ALP activists were aware of his role.
11. The Secretary of State considered background material and accepted that "interparty violence is common in Bangladesh and some political opponents face harassment and ill-treatment". It was also accepted that "prominent members of the BNP have faced arrest and that ALP activists have previously threatened BNP supporters and candidates".
12. The respondent then explained that it was not accepted that the appellant would be at risk. He had not shown that he had been politically active in Bangladesh or that ALP activists were aware of him.

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13. The respondent set out explain that decision to refuse the application.
14. The respondent considered letters from the BNP Party in the United Kingdom.
15. One, from M A Malique, says that the appellant is “personally known” to the writer because of his activities with the BNP and describes him as an “online activist” and says he has been an active member of the BNP Party since 2002. The writer believed that the appellant was on a list of government agency lists and would be persecuted in the event of his return as his pictures had been published in newspapers. The Secretary of State did not accept that the appellant would be at risk due to political activities sur place or that the authorities were aware of him.
16. The second letter was from one Nasir Ahmed Sahin, also describing the appellant as an active member of Jatiyobati Shecchasebok but the respondent then said (paragraph 39) that it was:

“... noted that the letters provide no real insight into your political activities and does(sic) not give individual accounts of how the signatories know you personally and politically. Further the letters do not state specifically where they have gotten [sic] their information. It is considered that as the letters only give a generic account of their involvement with you that they have been produced to bolster your claim for asylum and do not give a true reflection of you having had any involvement with the BNP”.
17. The respondent then looked at supporting documents from relatives. It is a feature of his case that his brother has been granted asylum in France.
18. The respondent looked at the “Country Policy and Information Note Bangladesh: Journalists, publishers and internet bloggers, July 2017.” This recognised that the Bangladeshi authorities were reported to have sometimes used legal provisions to harass, detain, threaten or persecute publishers, editors and journalists including internet bloggers and social media users. The same Note also recognised that certain Bangladeshi writers, bloggers and human rights activists in the UK “have appeared on ‘hit lists’ issued by extremist groups in Bangladesh”. The Note encouraged decision makers to assess the risk alleged by a claimant against a background of factors including the nature and extent of the activity, whether the material produced by the person in the UK has received media coverage or publicity in Bangladesh, whether the person has been subject to serious threats from extremists in Bangladesh after leaving the country, and the likelihood that the person will be recognised and pursued by non-state actors on return.
19. The respondent did not accept that the multiple photographs, social media posts and articles submitted demonstrated either that the appellant is politically active in the UK or that he would be of interest to ALP activists or the Bangladeshi authorities.
20. The respondent accepted that the appellant had produced “multiple photographs” of him attending BNP demonstrations between February and April 2018 but gave no details of what contribution he had made other than attending. The respondent decided the photographs showed only that he had attended and that was not enough to put him in the category of people who

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were at risk. The respondent described him as a “low level participant” and that he was “simply a member of the crowd”.

21. The respondent referred again to the letter from Mr M A Malique which explained how the appellant had attended multiple demonstrations and that he was identifiable. The second letter said that the appellant was a member of the BNP and that he had played a “prominent part in co-ordinating event and programmes, demonstrations and party gatherings”. The respondent regarded these claims as “inconsistent with each other” as the appellant was described in one as a participant and the other as an organiser.
22. The appellant had produced multiple articles saying that he had posted on his blog “The Journal of Freedom” but he had only submitted five posts in the course of four years and none of the posts mentioned his involvement with the BNP. He had provided no evidence to demonstrate the extent of his blogging activities or his follower count.
23. The respondent accepted that the appellant had posted online but not that he had shown he was a prolific blogger that had attracted attention.
24. The respondent was similarly unimpressed with a series of screenshots from the appellant’s Facebook profile. The posts began in January 2019. He had provided no evidence that he had attended activities before that or that his Facebook profile remained open. Screenshots were of poor quality and did not help the respondent decide any possible risk.
25. The appellant produced an article from the Dhaka Tribune published in February 2018 which he said showed him attacking the Bangladeshi High Commission in February 2018 and he had produced a photocopy of a Brit Bangla 24 article which was undated, and a photocopy from the Daily Observer dated 28 April 2018. The respondent did not regard them as reliable documents. They were photocopies and the translators’ credentials were obscure.
26. The respondent noted (paragraph 78) that the Country of Origin Request Bangladesh – Media – journalist fraud use (9 November 2018) drew attention to  
“Fraudulent newspaper pages, produced to a high standard by external parties, are also available in Bangladesh, sometimes involving reputable publications such as The Daily Star and The Dhaka Tribune”.
27. The respondent did accept that the appellant’s image had appeared on something that appeared to be the Dhaka Tribune website but not that it was a genuine website. No names were listed in the article and the appellant’s appearance in the photographs suggested he was a member of the crowd. The respondent further complained that the posted images from Brit Bangla 24 were of poor quality. The photocopy from the Daily Observer dated 28 April 2018 was said to identify the appellant at the Bangladeshi “Embassy” in London but there is no picture identifying the appellant nor was his full name published. Neither was the Secretary of State satisfied that the photocopy was in fact a true photocopy from the published newspaper.
28. All in all, the Secretary of State considered the evidence but formed a very unsatisfactory view and that led to the application being refused.

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29. In her Decision and Reasons the First-tier Tribunal Judge set out the case and particularly recognised evidence that the authorities in Bangladesh have been involved in closing down “YouTube channels” and “Facebook IDs” originating from people who had been involved in making anti-government comments.
30. Importantly she said at paragraph 24:

“I find that such information shows that although there is some surveillance of the internet, such surveillance is at its operational beginnings and it is very limited. In my view, the appellant would need to be a prominent adversary of the government to attract their attention when considering the sheer volume of internet postings, blogs, Facebook accounts and web pages that are available”.
31. The judge then looked at the letter from Mr Malique who identifies himself as the president of the BNP in the UK. She acknowledged that the appellant is described there as a “very active and dedicated member” but also found little evidence to confirm those claims. Certainly there was evidence that the appellant was in a crowd and held a banner but the judge did not regard that as evidence that he was a prominent speaker.
32. The judge noted that Mr Malique had not explained why the appellant would be on the list of people targeted just because his name and photograph had appeared, and in any event his full name did not seem to have been published.
33. The judge found that the most prominent photograph was at page 44 of the supplementary bundle and that the appellant was barely recognisable in the others.
34. The judge decided that there were “thousands and thousands” of photographs on the internet in respect of BNP demonstrations.
35. The judge looked very carefully at the appellant’s blog entitled “The Journey of Freedom”. There were two articles posted in 2015, one in 2017, one in 2018 and two in 2019. No one had commented and it was not signed in the appellant’s full name. The judge described the interaction with the appellant’s blog as “non-existent” and found that would not be sufficient to bring any adverse attention from the authorities upon return.
36. The judge had also seen video clips and found that the appellant was not prominent in any of them or on screen for more than a few seconds. The judge found they did not show the appellant as someone prominent or doing anything to attract attention.
37. The appellant’s Facebook account attracted few comments and less than 2,000 followers.
38. The judge then commented on the fact that close members of the appellant’s family had been recognised as refugees. Like the Secretary of State, she regarded this as a little more than passing interest. Cases are decided on the evidence presented in them and it did nothing to enrich the appellant’s claim.
39. At paragraph 32 the judge said:

“I do not, therefore, find that he is a sufficient active or prominent member of the BNP to be of adverse interest on return. There is insufficient evidence provided which shows that he is a known person in Bangladesh or that he is likely to be

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targeted on return due to any '*sur place*' activities. I find that he has failed to establish the core elements of his claim".

40. Although not identified as such the grounds supporting the application for permission serve as a skeleton argument. The grounds particularly challenge the First-tier Tribunal Judge's finding that the appellant was "among thousands" in a photograph. They assert he was clearly visible in the front line and amongst less than hundreds.
41. They also complain that the appellant produced clear photographs for use at the hearing and should not be criticised for the deficiencies in the copies provided in the bundle.
42. The grounds contend that the judge was wrong to write off the dangers arising from the postings on YouTube and the like.
43. Further, the judge was said to have erred by not explaining her finding that the appellant's critical remarks would not be of interest to the authorities and her finding that he would not come to their attention. The judge should have concluded from the evidence that the appellant's brother was recognised as a refugee that the appellant comes from a family of political activists and this should have supported his case.
44. The grounds particularly relied on the Odhikar Human Rights Report - October 2018 which was said to support the appellant's case.
45. Paragraph 13 of that report made reference to "many cases were filed against grassroots level leaders, activists" and also to the accused persons including people living abroad. Paragraph 4 of a similar report for January to March 2019 referred to "many dissenters, opposition activists and ordinary citizens" being sued for defamation. There was a further reference to "ordinary citizens critical of the government" being subject to such cases. The Human Rights Watch Report entitled "Creating Panic - 2018" referred to "widespread surveillance" and that according to the BNP over 300,000 of its leaders and activists had been implicated in false and fabricated cases. It gave an example of a British national arrested in the Sylhet district accused of straightforward criminal offences but the relatives claiming that he was not a criminal but a BNP activist. Again, according to Human Rights Watch there was a telephone recording in which a senior police officer could be heard explaining how that person "was arrested for protesting against the prime minister in London".
46. Similar comments found in the Home Office Country Information Report for January 2018 which recorded how since 2009 opposition leaders and activists have faced harassment and intimidation in various forms at paragraph 2.2.4 and at paragraph 6.1.10 there are attacks against "leaders and activists of opposition political parties, women and children and ordinary citizens".
47. The grounds supported the contention that the judge had just not engaged adequately with the background evidence before reaching her conclusions.
48. In his oral submissions Mr Shah concentrated on the guidance given in **BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36**.
49. I acknowledge the obvious comment that that concerned Iran, not Bangladesh but Mr Shah argued that that decision had wider application than just Iran. Mr

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Shah particularly drew to my attention paragraph 64 in **BA** where the Court of Appeal identified the most relevant factors in assessing a risk on return because of sur place activity. They are the nature of the sur place activity, the risk of being identified, factors triggering enquiry or action on return, consequences of identification on the risk of being identified on return rather than the risk of being identified from sur place activities. I accept Mr Shah's point that this is not considered in any great deal in the Decision and Reasons but that is only material fault if there is some reason to think that the most detailed consideration would have helped the appellant. The problem I have with the appellant's case is that although I can see that the photographic evidence might have been underplayed by the First-tier Tribunal Judge, because there are certainly good quality photographs before me, albeit copies, from which the appellant could be identified, I have not found anything in the background material that establishes the risk consequent on sur place activities of the kind carried out by this appellant. My attention has not been drawn to any decided case where a person has been identified because of sur place activities and persecuted on return.

50. I take Mr Shah's point that there is evidence that low level activists can be in trouble in Bangladesh and even of activists not in Bangladesh being "identified" in some way as having done wrong not because of any misconduct but because the authorities want and excuse to condemn them.
51. This does bring me to a lurking concern about the appellant's family having been recognised as refugees. I do not know the quality of that evidence. Again, I have seen nothing in the background material that suggests that a person will be in trouble simply for being the brother of somebody who has done some bad things in the minds of the authorities.
52. Rather, I find there are two categories of risk. People who have reached a sufficiently prominent degree of activism may well be at risk although each case has to be looked at on its own facts. This appellant's activities are not of high order. He has openly taken part in a demonstration and he has "blogged" (?) but does not seem to have attracted much support.
53. Like the First-tier Tribunal Judge, I cannot find anything that bridges the gap between the possibility of ill-treatment and the real risk of ill-treatment.
54. The standard of proof is low and the threshold is low but the case has to be proved I cannot find evidence that suggests that the appellant would be at risk.
55. No doubt anticipating this line of argument if not addressing questions based on it, Mr Shah drew my attention to a document in the bundle at page 289, beginning at 282 headed "Creating Panic" and published by Human Rights Watch. This report states that:

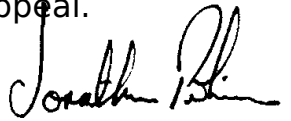
"Thousands of cases had been filed in recent months against leaders and supporters of opposition parties. 'The police are indiscriminately arresting people,' a newspaper columnist told Human Rights Watch. According to a law professor, 'they do not bother with legal formalities, these police. They are arresting people just to harass and put pressure on the politicians'".
56. The same report then referred to the BNP stating that over 300,000 of its leaders and activists have been implicated in "false and fabricated" cases. I

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find 300,000 a staggeringly high number and although I accept completely that this is the number reported to Human Rights Watch I have great difficulty accepting that that figure in the absence of some sort of confirmation.

57. Be that as it may, it does not assist the appellant. The arrests seem to be random and, bearing in mind that Bangladesh is a populace country, the risk of such ill-treatment is low.
58. I agree with Mr Tarlow that there is no basis for finding this appellant would be singled out for ill-treatment. He is not a high level activist. His activity is low level and there is nothing to suggest that low level activists generally are at risk. There is some evidence of random charging but no reason to conclude that there is a real risk that this appellant being one of the unfortunate people chosen for that kind of ill-treatment.
59. Clearly the appellant is desperate not to be returned to Bangladesh. He would prefer to be in the United Kingdom but he has not satisfied me that there is anything in the papers not considered fully, or obviously considered fully by the First-tier Tribunal Judge that could support a different conclusion.
60. Putting all these things together although I understand entirely why permission was granted I dismiss the appeal.

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal



Dated 6 March 2020