Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11608/2019

THE IMMIGRATION ACTS

Heard Remotely at Field House	**Decision & Reasons Promulgated**
On 10 February 2021	**On 4 March 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

D A S
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Razzaq-Siddiq, Counsel instructed by Direct Access
For the Respondent: Mr T Melvin, 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 the decision of the Secretary of State on 12 November 2019 refusing his claim for international protection.
3. The appeal was brought with the permission of the Upper Tribunal on limited grounds. The essential point is it was arguable that the First-tier Tribunal had

given unlawful reasons for attaching little weight to supporting documents so that the decision as a whole became unreliable.

4. I begin by discerning exactly what the First-tier Tribunal did.

5. The appellant said that he was born in Sylhet and had an Islamic upbringing. He was a married man with a 13 year old daughter. He chose to support a political party called Jamaat-e-Islami, commonly abbreviated to "Jamaat", in April 2001. He became active and was appointed a ward secretary in 2003. He continued in that position until 2006 when he left Bangladesh to come to the United Kingdom. He said his work was to invite people to join the party and to promote the party and organise demonstrations.

6. He entered the United Kingdom with permission in July 2006 and his leave was extended until 15 November 2018. However, that leave was curtailed because of a problem with his sponsor's licence and the appellant was arrested and detained. He was released on 4 November 2016. He became ill and provided a medical certificate for the Home Office. He says he heard nothing further. In September 2019 he was arrested and detained and then claimed asylum during the course of that detention.

7. He said that in June 2010 one Moulana Delwar Hossain Sayedee, the then vice president of Jamaat, was arrested with several others. Mr Sayedee was charged with war crimes and crimes against humanity. There was a movement in Bangladesh and amongst the Bangladeshi community outside Bangladesh known as the Free Sayedee Movement. The appellant was a particular supporter of Mr Sayedee. He went to Bangladesh for a short visit in November 2011 and took part in a protest calling for his release. The protest took the form of a meeting and was attended by thousands of people. The appellant said that he was on a stage with eighteen other people. The meeting was attacked by a member of the Chhatra League and the police. There was a fight. The appellant took no part in the fight but went home. He was anxious not to be arrested in part because he wanted to return to the United Kingdom.

8. After three days the police came to his home looking for him but he was not there as he had been warned to expect such a visit. He did not stay at his home at all at night while he remained in Bangladesh.

9. Following the incident a criminal case was filed and he was named and there was a First Information Report, a charge sheet and an arrest warrant issued against him. After the case was filed he did not feel safe to remain in Bangladesh so he returned to England on 23 December 2011.

10. A second case was filed against him in 2013 after he had returned to the United Kingdom. He said there was background evidence to show that there were "ghost cases" filed against members of the opposition including people who were dead and who were clearly outside Bangladesh at the time of the alleged offence.

11. The appellant said that while he was detained in the United Kingdom his brother collected the documents from his lawyer in Bangladesh and posted them to the appellant at a detention centre and from there they were sent to the respondent. He had no difficulty leaving Bangladesh on his own passport. He said there is a "no fly list" but that only caught a limited number of people.

12. He had no confidence in the justice system in Bangladesh.

13. On returning to England in 2011 he said it did not occur to him that he could claim asylum on the basis of false cases filed. He realised later that he should have claimed asylum on or soon after his return to the United Kingdom in November 2011.

14. He said he did not complain to the police in Bangladesh for two reasons. They had been part of the attacking group at the meeting in 2011 and he feared persecution for his political beliefs if he returned to Bangladesh and the police would beat and torture him.

15. The judge then made findings of fact. She accepted that the appellant comes from Bangladesh and that he entered the United Kingdom in June 2006 with permission. She found that he had no leave since December 2015.

16. She accepted that he had claimed in interview that he was a supporter of the Jamaat-e-Islami Party and that he became secretary. The judge was unconcerned that he had described himself sometimes as a "member" and sometimes as a "supporter".

17. The judge set out the appellant's claim to have worked as a secretary by telling others about meetings. He supported his claim with a letter from one Mawlana A Karim dated 6 October 2019. It identified the appellant as someone who had joined the party and had been elected secretary from 2003 until 2006.

18. The judge then considered what weight to attach to the letter and directed herself that "like all the documents provided by the appellant, it was translated in Bangladesh rather than in the UK".

19. The judge found that the documents could have been translated in the United Kingdom.

20. The judge also noted how the writer of the letter said nothing about the writer's own role in the party or how he knew the information that he was passing on. The judge said:

> "I do consider that the letter is vague as to any detail of the appellant's involvement in the party other than saying he "played a vital role to organise the organisation from the route level" and he "participated in all activities".

21. The judge found that the letter added little to the claim to have been a party secretary.

22. The judge noted that, apart from a short trip to Bangladesh in 2011, appellant had been in the United Kingdom since 2006. He had not involved himself in the Jamaat-e-Islami Party in the United Kingdom although he clearly knew that the party had a presence in the United Kingdom. He attributed his lack of activity to "my head is not working properly" (question 213). The appellant explained in cross-examination that he was suffering from stress although he had worked as a religious worker at a mosque in the United Kingdom.

23. It was the appellant's case that although he had not been involved in the party since 2006 he would re-join it in the event of his return to Bangladesh. At paragraph 35 the judge said:

> "On the evidence before me considered as a whole, I find that the appellant's claim to have been active in the party in Bangladesh is not borne out by his subsequent actions in the UK."

24. The judge then considered the appellant's claim to have attended a party meeting in November 2011 during his return visit to Bangladesh and that meeting ending in a disturbance that led to people being sentenced to seven years imprisonment in their absence. The judge acknowledged background evidence showing how the Jamaat-e-Islami leader known as Sayedee was arrested and detained in June 2010. The judge noted it was the appellant's account that although visible at the meeting because he sat on the stage he took no part in the meeting and left as soon as trouble broke out. He claimed at interview that thousands of people had been at the meeting and the fight that was said to have taken place was reported in the media, but he did not know the name of the newspaper.

25. At paragraph 36 the judge said:

> "I bear in mind that the appellant was talking of events that happened in 2011. This was a large meeting and presumably therefore a large disturbance. I was provided with a great deal of background evidence from local media sources some dating back to 2010. I was provided with background evidence to show that violence had broken out following the trial of Delwar Hossain Sayedee in 2013. There is nothing however to support the claim of a disturbance at a meeting in 2011. The credibility of the appellant's account in relation to this claimed disturbance is undermined by the absence of any background material in circumstances where the appellant might reasonably have been expected to be in a position to provide such material."

26. The judge noted at paragraph 35 that by November 2011 the appellant had been out of the UK (she must have meant Bangladesh) for five years and that even if the appellant had been active in the Jamaat Party in 2006 he was not active by 2011.

27. His account was that a case was filed against him after that meeting. He was asked in interview how he had found out about the case and he replied that he had found out from the leader but the leader was not subject to such a case. Apparently he was not the leader at the material time. The judge noted how the appellant's case rested in part on criminal cases being levied against people who were not even present in the country, so it made no sense to the judge that proceedings were not made against the person who was now, but was not then, the leader. If the appellant's account was right Mr Karim was the leader on 21 November 2011 because that is when he told the appellant about what had happened but he was not the leader on 20 November. The judge found no credible explanation for trumped up charges being brought against a person of a low profile, such as the appellant, but not against somebody who was bound to be the leader on the day after the event. The judge did not accept that the appellant's account was right.

28. It was the appellant's case that once he found out he was wanted he remained in hiding until he could leave for the United Kingdom.

29. The judge considered background material and accepted that the evidence did not show that the Bangladeshi authorities were particularly astute or interested

in stopping suspects leaving the country and the judge did not draw any adverse inference from the appellant's ability to leave Bangladesh at a time when he said he was subject to police interest.

30. The judge acknowledged it was the appellant's case that in his absence he had been charged with committing the offence of murder. The judge accepted that such things happen in Bangladesh but the judge could not accept is that the appellant with his low profile would be singled out for such treatment.

31. The appellant said he had found out about the case from his brother a month after the case was filed. There was no statement from the brother explaining how he had acquired the documents he had forwarded and the judge found that a disturbing omission.

32. However the appellant had submitted a copy of a letter from an advocate in Bangladesh dated 7 October 2019. The advocate, Mr Das, said that he had been "engaged by the state" but it was the appellant's case that the law had been engaged by the party. The judge found that a relevant inconsistency.

33. The judge considered the documents that had been produced and listed them. She said they included a "warrant of punishment" in relation to the 2011 case, the judgment in that case, an order sheet relating to the allegation of murder made in 2013, a warrant of arrest for the appellant and a First Information Report in relation to the murder. Again the judge commented that the documents were not translated in the United Kingdom and no good explanation had been given for not providing such a translation.

34. The judge looked at the documents. She found that they were dated but each document contained different dates. They were marked 1 October 2019, 2 October 2019 and 6 October 2019. She could not understand that and no explanation was offered.

35. The complainant in the murder on the documents is identified as one Monir Uddin but in the appellant's interview he was identified as "Monirar Ahmed".

36. The judge noted however one of the documents indicated the trial had been fixed to 23 October 2019 and when the appellant made a statement on 23 December 2019, he did not mention the trial date. Neither was there any suggestion that any kind of representation had been arranged.

37. The judge noted that there was background evidence showing how forged documents can be obtained easily in Bangladesh.

38. The judge reviewed the background evidence and noted there was also one report referring to the difficulties of obtaining fraudulent police or court documents "because of counter signature processes and the fact that all documents could be checked against the database".

39. The judge found that she could not put weight on the documents.

40. The judge noted the appellant returned to the United Kingdom in December 2011 and did not claim asylum until October 2019. The judge was sympathetic to his explanation that he did not see any need to make an asylum claim while he still had leave to be in the United Kingdom, in his case as a religious worker, but that leave ran out and he made a fresh application for leave as a religious worker in September 2012. The appellant said that he anticipated getting

indefinite leave to remain and did not see any point in a protection claim but he did not get indefinite leave to remain when he made a further application as a religious worker in October 2014 at a time when he knew, if he was truthful, that there was a murder charge against him that was unjustified. However when he was encountered by immigration officials working irregularly in December 2015 so that his leave was curtailed on 19 December 2015 leaving him without permission to be in the United Kingdom he still made no claim for protection. The judge found it "inconceivable" that if he really were the subject of a false murder charge in Bangladesh and in fear of his life in the event of his return, he would have delayed in making a claim when his leave had expired. The judge found the appellant's credibility damaged and dismissed the appeal.

41. Mr Razzaq-Siddiq made his submissions with commendable directness. He referred me to the Joint Practice Directions and indeed to the Border Agency policy dealing with documents and said there was nothing to indicate there was any requirement whatsoever for documents to be translated in the United Kingdom. He also pointed out, as the judge had acknowledged, there was something in the background material suggesting that it was not easy to get copies because of the checking provisions.

42. Of course Mr Razzaq-Siddiq is right. There is no reason why documents should be translated in any particular country or why translation in one country should be regarded as inherently preference to translation in another country. It all depends on the document. Here nothing turns on the details of the translation. It has not been necessary to look at the documents and, for example, interpret a particular clause. If the documents are not translated accurately then someone has taken the very bold step of obtaining court documents written in Sylheti that bear no resemblance to their intended purpose in these proceedings and has forged a purported translation and hoped that nobody would notice. That would be very bold. There is no reason to find anything wrong with the translations. I do not understand why the judge thought it worth saying that they were not translated in the United Kingdom. Certainly Mr Razzaq-Siddiq again is right to say that they were not challenged for their accuracy rather than their authenticity by the Secretary of State.

43. There is always a concern that when a thoroughly bad point is taken, as it appears to have been taken here, the adverse credibility findings are unreliable because they are infected by something that should not be there. I do understand that point and have it very much in my mind. However, when the Decision and Reasons is read as a whole it is not apparent that the judge has given much weight to the quality of the translation. She dealt with the case on the basis that court documents are quite easy to obtain in Bangladesh and that the documents were unreliable because there was no proper evidence about their provenance and the appellant's conduct in delaying his asylum claim to seem inconsistent with someone with a genuine fear of being unlawfully prosecuted and punished for a grave crime.

44. I disagree with Mr Razzaq-Saddiq in his important contention that there is at least a real risk of the findings being invalidated by this bad point. The judge has really done no more than observe that the documents were not translated in the United Kingdom. Although it is, I find, a strange comment, nothing turns

on it. In particular the judge has not doubted the quality of the translation but rather the reliability of the documents.

45. The judge referred to the strand of evidence to the background material about documents from the police or court not being easily obtainable because of the counter signature process. These documents are each counter signed. Mr Razzaq-Saddiq drew that to my attention and he is clearly right. However, I do not agree that on its own this is any protection against fraud at all. A person who was forging a document would forge a signature three times if necessary. That would make the documents look right. The point being made is that there is a counter signature process and the documents can be checked against the database. I have no evidence about who can access the database. I would find it inherently surprising if there was some kind of public access to that. Surely the point that is being made is that police officers or other state officials can easily check a document to see if it is genuine because they can access a database and if that does not give a satisfactory or convincing outcome there are three people they can speak to who purported to sign the document. These are not checking measures that are readily available to the public at large and are not relevant here.

46. Of course the Secretary of State had notice of these documents and theoretically could have made enquiries but it is a very dangerous thing for the Secretary of State in asylum appeals to start making enquiries about documents from the country of nationality of the purported refugee and, by and large, it is not something that should be done.

47. I am quite confident that the decision is not undermined by this strange pre-occupation with the place of translation of key documents. There is no material error and I dismiss the appeal.

Notice of Decision

48. This appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 23 February 2021