Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2022-002529**
[PA/54517/2021]; IA/13602/2021

THE IMMIGRATION ACTS

Heard at Field House
On the 10 October 2022

Decision & Reasons Promulgated
On the 16 November 2022

Before

UPPER TRIBUNAL JUDGE KOPIECZEK
DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

AHCB
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation
For the Appellant: Mr Sajib Hosen, Solicitor, IBW Solicitors
For the Respondent: Ms Susana Cunha, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal from the decision of First-tier Tribunal Judge Shiner ("the Judge") promulgated on 13 April 2022. By that decision, the Judge dismissed the Appellant's appeal from the Secretary of State's decision to refuse his protection and human rights claim.

Factual background

2. The Appellant is a citizen of Bangladesh and was born in 1994.

3. The Appellant arrived in the United Kingdom on 14 February 2014 with entry clearance as a Tier 4 (General) Student valid from 28 January 2014 until 16 August 2015. He was granted further leave to remain as a Tier 4 (General) Student on two successive occasions until 30 October 2018. He made a protection claim on 18 October 2019. The Secretary of State refused that claim on 2 September 2021. The Secretary of State held that his removal from the United Kingdom would not breach the United Kingdom's obligations under the Refugee Convention or in relation to persons eligible for a grant of humanitarian protection. The Secretary of State also held that the Appellant's removal from the United Kingdom would not be incompatible with Articles 2, 3 or 8 of the European Convention on Human Rights.

4. The Appellant's appeal from the Secretary of State's decision was heard by the Judge on 29 March 2022. The Appellant was legally represented and gave oral evidence. In short, he submitted he was a member of the Bangladesh National Party ("the BNP") and was involved with its student wing, the Bangladesh Jatiyatabadi Chhatra Dal ("the JCD"). He claimed to be at risk at the hands of the ruling party in Bangladesh, the Awami League ("the AL") because of his political affiliation. The Judge rejected his account of being a member of the BNP or the JCD, or having any political affiliation at all. The Judge found his evidence to be implausible. The Judge accordingly dismissed the appeal on all grounds by a decision promulgated on 13 April 2022.

5. The Appellant was granted permission to appeal from the Judge's decision on 30 May 2022.

Grounds of appeal

6. The Appellant's pleaded grounds of appeal are fairly prolix. The basic point made in those grounds is that the Judge's conclusion that the Appellant was not a member of the BNP or the JCD was not justified on the evidence.

Submissions

7. We are grateful to Mr Hosen, who appeared for the Appellant, and Ms Cunha, who appeared for the Secretary of State, for their assistance and able submissions.

8. Mr Hosen submitted that the Judge erred in law in failing to have regard to a letter issued by the JCD confirming the Appellant's membership. He invited us to allow the appeal and set aside the Judge's decision.

9. Ms Cunha submitted that the Judge's decision disclosed no material error of law. She acknowledged that the Judge did not expressly refer to the JCD's letter in his decision. She accepted that the JCD was the student wing of the BNP. She argued that the JCD's letter was self-serving and, on analysis, was inconsistent with the Appellant's account. She submitted that the Judge properly considered all the evidence and made reasonable findings. She highlighted the fact that the Appellant's evidence was rejected as not being credible and submitted that the Judge properly engaged with the evidence in making his decision. She invited us dismiss the appeal and uphold the Judge's decision.

Discussion

10. The key issue of fact before the Judge was whether the Appellant was a member of the BNP or the JCD. The Judge, at paragraph 35, resolved that issue of fact against the Appellant. Giving his reasons, at paragraph 36, the Judge stated that "I do not have documentary evidence that connects the Appellant with the BNP save for the receipt of membership/membership card". The Judge added that "I have no credible explanation from the Appellant as to why I do not have such documents".

11. However, at pages 121-122 of the hearing bundle that was before the Judge, there was a letter issued by the JCD along with its English translation. The letter was written by the General Secretary and the President of the JCD. It stated that the Appellant "is an active member" and then added that he "was a member" until his departure from the country. It further stated that he "is a dedicated and hardworking activist of the party".

12. In the circumstances, the Judge's finding at paragraph 36 is irreconcilable with the evidence. Contrary to the Judge's view, there was indeed a letter in the evidence by the JCD confirming the Appellant's membership. There is no dispute between the parties that the JCD is indeed the student wing of the BNP. The Judge evidently failed to take the JCD's letter into account in making his decision.

13. We emphasise that the Judge was not required to accept what was said in the JCD's letter, or indeed that it was a genuine or reliable document. As Ms Cunha pointed out in her submissions, there are certain difficulties as to this letter. It is apparently inconsistent with an answer given by the Appellant in his oral evidence before the Judge. The Judge, at paragraph 36, records the Appellant stating that he had no contact with the BNP for a long time and did not obtain any evidence from them because he was worried that his details would be broadly published. The letter, at one hand, suggests that the Appellant was a member prior to his departure from Bangladesh but then adds that he is still an active member. Further,

we were not taken to any country evidence suggesting that all members of the BNP or the JCD, irrespective of their profile, are at risk in Bangladesh at the hands of the AL. The Judge, however, was required to engage with the JCD's letter and to give proper reasons for reaching a contrary view. There is no engagement with the JCD's letter in the Judge's analysis, nor did he give reasons for rejecting it.

14. We are not sitting as a first instance tribunal making findings of fact as to the reliability of the JCD's letter and the issue of whether the Appellant is politically affiliated as claimed. Our task it to decide whether the Judge erred on a point of law in making his decision. This appeal, given that it involves a protection claim, calls for anxious scrutiny. As was explained in *YH v Secretary of State for the Home Department* [2010] EWCA Civ 116 [2010] 4 All ER 448, at [24], in this context, there is a need for decisions to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account. The Judge's decision and reasons do not reflect anxious scrutiny of the evidence.

15. We also acknowledge that the Judge found that the Appellant was not a credible witness and rejected his account as implausible. It is, however, clear that the Judge's findings as to the credibility of the Appellant's account were informed by his view that there was no documentary evidence connecting him to the BNP. Given that the Judge failed to take the JCD's letter into account in making his decision, his findings as to the credibility cannot stand.

16. We entirely accept, as Ms Cunha submitted, that we should not rush to find an error of law in the Judge's decision merely because we might have reached a different conclusion on the facts or expressed it differently. Where a relevant point is not expressly mentioned, it does not necessarily mean that it has been disregarded altogether. It should not be assumed too readily that a judge erred in law just because not every step in the reasoning is fully set out. Experienced judges in this specialised field are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically.

17. In this instance, we are satisfied that the Judge's decision is wrong in law. In our judgment, the Judge resolved the key issue of fact against the Appellant without taking into account, or properly engaging with, the JCD's letter. The error of law made by the Judge was plainly material to the outcome.

Conclusion

18. For all these reasons, we find that the Judge erred on a point of law in dismissing the Appellant's appeal. We therefore set aside the Judge's decision in its entirety.

19. Having regard to paragraph 7.2 of the Senior President of Tribunals Practice Statement for the Immigration and Asylum Chambers, and the

extent of the fact-finding which is required, we remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than First-tier Tribunal Judge Shiner, with no findings of fact preserved.

Decision

20. The First-tier Tribunal's decision is set aside and the appeal is remitted to the First-tier Tribunal for a fresh hearing.

Anonymity order

21. In our judgment, given that this is a protection claim, having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the Overriding Objective, an anonymity order is justified in the circumstances of this case. We therefore make an order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, 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.

Zane Malik KC
Deputy Judge of Upper Tribunal
Immigration and Asylum Chamber
Date: 24 October 2022