Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: LP/00148/2021**
[PA/50132/2019]

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre **Decision & Reasons Promulgated**
On 27 January 2022 **On the 28 February 2022**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

AK
(ANONYMITY DIRECTION MADE)
Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Representation:
For the Appellant: Mr A Coyte, Seren Legal Practice
For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

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Introduction

2. The appellant is a citizen of Bangladesh who was born on 29 April 1980. He arrived in the United Kingdom in February 2013. The appellant entered with leave as a family visitor valid until 29 July 2013. Thereafter, the appellant overstayed.

3. The appellant was apprehended on 14 October 2017 working, it was said, illegally at a restaurant in Bristol. He was served with notice of removal as an overstayer. On 3 November 2017, the appellant claimed asylum. The appellant claimed that he was involved with the BNP in Bangladesh and was at risk on return because of his political opinion.

4. On 3 October 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR. The respondent did not accept that the appellant was involved with, or a member of, the BNP or that he had experienced any difficulties before leaving Bangladesh because of his political opinion.

The Appeal

5. The appellant appealed to the First-tier Tribunal. In a decision dated 29 April 2021. Judge Lloyd-Lawrie dismissed the appellant's appeal. The judge made an adverse credibility finding and rejected the appellant's account that he was involved with, or a member of, the BNP in Bangladesh and would be at risk because of his political opinion on return.

6. The appellant sought permission to appeal to the Upper Tribunal challenging the judge's adverse credibility finding.

7. On 20 May 2021, the First-tier Tribunal (Judge J K Swaney) granted the appellant permission to appeal.

8. On 7 December 2021, the respondent lodged a rule 24 notice seeking to uphold the judge's decision.

9. The appeal was listed on 27 January 2022 at the Cardiff Civil Justice Centre. The appellant was represented by Mr Alex Coyte and the respondent was represented by Ms Sian Rushforth.

The Appellant's Submissions

10. Mr Coyte relied upon the grounds of appeal. He submitted that there was essentially one ground challenging the judge's adverse credibility finding. However, he focused that one ground under a number of points.

11. First, Mr Coyte submitted that the judge had failed properly to consider all the evidence, including the documentary evidence as a whole and in the round, applying the approach set out in KB & AH (credibility–structured approach) Pakistan [2017] UKUT 00491 (IAC). In particular, Mr Coyte submitted that the judge had effectively decided against the appellant in

respect of credibility in para 24 of her decision when, having had regard to discrepancies between the appellant's screening interview and later evidence, the judge had said that: "I find the fact that he had stated that he had not been involved with any political organisations damning to his credibility." Mr Coyte relied upon that sentence as supporting his contention that the judge, although she went on to consider other aspects of the appellant's evidence, had already determined that he was not credible. Mr Coyte relied upon what the judge said in para 28 when she said:

> "Considering the evidence as a whole to the lower standard of proof, I find that the documentary evidence, which I accept has some expert backing as credible, does not undue the damage done to the appellant's credibility in his inconsistency in the very basis of his claim and his delay in claiming asylum."

12. Mr Coyte submitted that the other evidence which could "not undo the damage" done to the appellant's credibility by the inconsistency in his account identified in para 24 meant that the judge had not, although she had said she was doing this, considered the evidence in the round as a whole.

13. Secondly, Mr Coyte submitted that the judge had been wrong, in any event, in para 24 of her decision to place such weight upon what she perceived to be an inconsistency between the appellant's screening interview and his later evidence. She had been wrong to rely on the appellant's failure to mention in his screening interview his involvement with the BNP, which he later relied upon, namely that he had been a member and had stood as a BNP council candidate. Mr Coyte relied on the fact that the screening interview was unsigned, it had not been read back to the appellant and he had not agreed its contents. He relied on the fact that the appellant had, in a statement prepared for his subsequent substantive asylum interview, implicitly amended what he had said in his screening interview.

14. Thirdly, Mr Coyte submitted that the judge had failed properly to consider the documents. He had referred to one document, namely the BNP membership document (at page 52) but had discounted it, despite it's authenticity being supported by an expect report, on the basis that it did not contain the "correct date of birth" for the appellant. Mr Coyte pointed out that the document did not set out a date of birth but rather set out an age which, he accepted, should not have been "31" as the appellant was "30". Nevertheless, Mr Coyte submitted that the document contained a number of details which were correct, including the appellant's father's name, and the village from which he said they came.

15. In addition, Mr Coyte submitted that the judge had failed to take into account at all other documents produced from the BNP which supported the appellant's claimed membership (at pages 57 and 54). Mr Coyte pointed out that the expert (Dr Hoque) supported the authenticity of these documents at paras 21 – 23 of his report.

16. Further, Mr Coyte submitted that the judge failed to take into account medical evidence which showed that the appellant had been discharged from hospital in June 2011 and July 2011 (see pages 104 and 110) which was consistent with the appellant's account of two attacks which, he claimed, occurred at the hands of members or supporters of the Awami League and had resulted in his hospitalisation and discharge on those dates. Mr Coyte referred me to the appellant's witness statement dated 7 February 2018, prepared in advance of the appellant's asylum interview, which set out his evidence-in that regard at paras 11 and 13 respectively.

17. Fourthly, Mr Coyte submitted that the judge had wrongly speculated that the appellant was working illegally when he was encountered when, on his own evidence, the appellant said that he was being paid in kind (namely by receiving food) rather than cash. Mr Coyte submitted that the judge had been wrong to infer, and count against the appellant's credibility, that the appellant was consequently an economic migrant (see para 30 of the decision). Mr Coyte submitted that these points were not put to the appellant at the hearing.

18. Fifthly, Mr Coyte submitted that the judge had been wrong to discount the evidence of the appellant's witness, Mr Islam on the basis that it was, in effect, implausible that he would not know about asylum in order to speak to the appellant about it because he was "an educated man". Mr Coyte submitted that that had not been put to the witness and there was nothing to show that he was "an educated man" who would be able to assist the appellant in relation to claiming asylum. Mr Islam was, in fact, a taxi driver.

19. Taking all these five points together, Mr Coyte invited me to find that the judge had materially erred in law in reaching her adverse credibility finding and invited me to set aside her decision.

The Respondent's Submissions

20. On behalf of the respondent, Ms Rushforth relied upon the rule 24 response which she expanded upon in her oral submissions.

21. First, she submitted that the judge had not reached a conclusion in respect of credibility at para 24 or para 28 without having considered, as she had made explicit, in paras 25 – 27 other relevant evidence as a whole, including delay in claiming asylum, that the appellant was working and that he had previously unsuccessfully applied for a visit visa.

22. Secondly, Ms Rushforth submitted that the judge was entitled to take into account the significant discrepancy in the appellant's evidence, namely that in his screening interview he only referred to his having voted for the BNP without also referring to, as he later said, that he was a member and had stood as a candidate. Ms Rushforth referred me to the decision of the Immigration Appeal Tribunal in YL (Reply on SEF) China [2004] UKIAT 00145 that, although caution should be exercised in relying upon

inconsistencies between a screening interview and later evidence, an individual was nevertheless, expected to set out truthfully the essentials of their claim.

23. Thirdly, as regards the documentation, Ms Rushforth submitted that the medical records were not relevant as the appellant had not been found to be a member of the BNP. She accepted that the judge had not specifically referred to the documents (purporting to come) from the BNP but that given the judge’s other findings, she submitted that was not material. She submitted that the judge had considered the expert report and was entitled not to rely upon it given, in relation to the membership document, that the appellant’s age was misstated. She submitted that it was sufficient for the judge to state at para 28, that she had looked at all the documents, including the expert report which gave some “backing” to their credibility, but to find that overall the appellant’s credibility was sufficiently damaged for the reasons that the judge gave and to make an adverse credibility finding.

24. Finally, as regards the evidence of the witness whom the appellant had called at the hearing, the judge was entitled to take into account that the witness had said in cross-examination that he did not know anyone who had claimed asylum. Even though the witness’s educational qualifications have not been put to him, it was open to the judge to doubt that he would not, given his own immigration history, be unaware of the concept of asylum, even though he did not know the details.

Discussion

25. The appellant’s appeal turned, in substance, upon his credibility. Each of Mr Coyte’s five points raised under the single ground of appeal seeks to challenge the judge’s adverse credibility finding.

26. In KB & AH, the Upper Tribunal set out a “structured approach” to determining credibility. The Upper Tribunal identified a number of “credibility indicators” which it summarised, in para (1) of the judicial headnote, as comprising: “sufficiency of details; internal consistency; external consistency; and plausibility”.

27. In para (2) of the judicial headnote, however, the UT noted that the “structural approach” necessarily carried with it a number of important caveats including that these “indicators” were “merely indicators” and “not necessary conditions” and were “not an exhaustive list”. The UT recognised that the assessment of credibility was a “highly fact-sensitive affair” and that the use of the indicators was “not a substitute for the requirement to consider the evidence as a whole or ‘in the round’”. But, of course, there are additional factors such as statutory obligation to treat certain types of behaviour as potentially damaging of credibility under s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

28. In setting out this "structured approach" the UT did not intend to place a straight-jacket around decision makers in reaching factual determinations where credibility is a central feature. The crucial point is that these were "indicators" and that a judge may find the structured approach to be helpful to ensure that all relevant matters are considered. But, the ultimate question is whether, in fact, the judge has considered all relevant matters in reaching a credibility finding. The UT meant no more than that when, in para (3) of the judicial headnote, it said this:

> "Consideration of credibility in the light of such indicators, if approached subject to the aforementioned caveats, is a valid and useful exercise, based squarely on existed learning."

29. It is, therefore, the substance of the judge's decision in relation to credibility which is crucial and not simply its form.

30. It will be helpful to take Mr Coyte's five points in turn.

Point 1

31. Mr Coyte's first point is that the judge looked (at para 24) at certain inconsistencies (as she perceived them to be) in the appellant's evidence in his screening interview and subsequently but that, in subsequent paragraphs, when considering other matters, she had already reached her adverse credibility finding. Consequently, what she said at paras 25–27 in relation to the appellant's previous failed visit visa application and delay in claiming asylum (para 25); that he was encountered working illegally (para 23) and that the membership document was unreliable as an incorrect "date of birth" appeared on it (para 27) were not part of the judge's reasoning leading to her adverse credibility finding. Mr Coyte submitted that, when in para 28, the judge said "[t]he documentary evidence, which I accept has some expert backing is credible, does not undue the damage done to the appellant's credibility in his inconsistency in the very basis of his claim and his delay in claiming asylum", that merely reflected the judge's already reached an adverse conclusion in respect of the appellant's credibility.

32. I do not accept that submission. As Ms Rushforth submitted, if that were so, the judge's consideration of other aspects of the evidence at paras 25 – 27 and reference to some of the documentary evidence in para 28, would have been unnecessary and superfluous to her adverse credibility finding. I accept that the judge used a strong word, namely "damning", when referring to the effect upon the appellant's credibility of his failure to mention his specific BNP involvement in his screening interview but that was no more, in my judgment, than a forceful way of expressing her reasoning in para 24 that the failure to mention a significant aspect of the appellant's claim in the screening interview, adversely affected his credibility. The reference by the judge in para 28 to the documentary evidence, which had some expert backing as credible, not "undo[ing] the damage done to the appellant's credibility in his inconsistency in the basis of his claim and his delay in claiming asylum", was no more than a global

assessment that the significance of the omission of this aspect of his claim in his screening interview was, for the judge, of such import that other aspects of his evidence, (i.e. those supporting his credibility) did not have sufficient force to undo the omission in his screening interview. For these reasons, therefore, I reject the first point relied upon byMr Coyte.

Point 2

33. Turning to Mr Coyte's second point, this relates to the judge's reasoning in para 24 concerning the appellant's screening interview and the omission of reference in that screening interview to what the appellant later relied upon, namely that he was a member of the BNP and had stood as a local candidate. At para 24 the judge said this:

> "I heard the submissions of Mr Coyte as to whether I could rely on the Screening Interview based on the document not being signed. I find that as the matter was put to the Appellant at the asylum interview when the Appellant confirmed that he understood the Interpreter and the Appellant claimed that what he had said was correctly reported, I find that I can rely on the Screening Interview. I find that whilst a person may embellish an account in desperation to have their genuine claim believed, or may misremember certain facts, I find that a person would be in no doubt if they were indeed just someone who had voted for a certain party or had stood as a party candidate and held a position in the local division of the BNP. In the Screening Interview, not only did the Appellant state that he was targeting *(sic)* for voting for the BNP, he also advised that he had not been involved in a political party. Even if, which I do not accept due to his later confirmation and veracity, that the Screening Interview Officer did not give him a chance to give the full story, I find the fact that he had stated that he had not been involved with any political organisation is damning to his credibility. I consider this in the round of the other evidence."

34. The screening interview took place on 17 November 2017. In his screening interview, in answer to question 4.1 when asked to explain briefly the reasons why he could not return home, the appellant said that:

> "I support the BNP which opposes the government.
>
> I have been threatened and beaten in BGD because I voted for the BNP, this happened in 2011/2012.
>
> I fear I will be sent to court if I return to BGD and I will be accused by the police and put in prison.
>
> This happened in the town I am from near Sylhet."

35. Then, in answer to question 5.5 where the appellant was asked whether he had been involved with or accused of being involved with, inter alia, any political organisation, he replied "no".

36. In advance of the asylum interview which took place on 9 February 2018, the appellant submitted a pre-interview statement dated 7 February 2018. In that statement, the appellant set out in detail his claimed activities with the BNP, including that he was a "popular member of the party" and was "nominated as BNP candidate" local councillor (see para 10). The

appellant also sets out a number of adverse incidents at the hands of members of the Awami League including attacks in June 2011 and July 2011, which led to the appellant's hospitalisation. That statement does not explicitly, on its face, seek to correct anything recorded as said by the appellant in his screening interview.

37. Then, on 9 February 2018, the appellant underwent his asylum interview. In that interview he was asked, at question 1, to confirm the information provided in his screening interview was correct, to which he replied "yes". At question 2, he was asked whether there was anything he would like to add or amend to his screening interview, to which he replied: "As I do have some memory problems, when we talk, when you ask me the question, then I can recall".

38. At question 34 of his interview, the appellant was asked to elaborate on what he was doing with the BNP and he replied: "I was a worker for the BNP, an activist".

39. At question 35 the appellant was asked whether he meant that he was "a member of the BNP in Bangladesh" to which he replied "yes".

40. At question 36 it was pointed out to him that in his screening interview he had simply stated that he was a "supporter of the BNP, and voted for the BNP twice," and that he had not mentioned anywhere that he was a member. To that the appellant replied:

> "Maybe the person like you, he or she did not understand, but I told them that I was a worker and supporter for BNP".

41. At question 37 it was pointed out to the appellant that at the start of the interview he was asked whether there was anything in his screening interview he wanted to amend and he had said no, to which he replied:

> "Thank you, the interpreter then did not make me understand, but you do. Back then I did say to him that I was a worker and a supporter."

42. Following the interview, on 16 February 2018 the appellant's representatives wrote to the Home Office seeking to clarify some of his answers given in his asylum interview. There, in relation to question 36 of his asylum interview it is stated that:

> "Our client wishes to clarify that the interpreter did not understand that question at 4.1 SCR. Our client did not simply vote for the B[N]P twice, he campaigned for them as a counsellor. He was attacked twice in 2011 and an attempted attack was made on him in 2012, from which he managed to escape unharmed."

43. Additional further amendments or clarifications are set out in the letter.

44. Mr Coyte also referred me to a letter from the appellant's representatives dated 17 December 2020, responding to the respondent's refusal letter dated 3 October 2019, where at para 7 it is stated:

> "My screening interview is very short, and I explain my entire account in my witness statement which was submitted before my asylum interview. I have also explained this in m[y] Asylum Interview Record amendments. My legal representative also pointed out that my screening interview does not appear to have been signed either by me or by the Immigration Officer and I do not remember the interpreter reading it back to me at the end."

45. In YL, the IAT set out the purpose of a screening interview at [19] as follows:

> "19. When a person seeks asylum in the United Kingdom he is usually made the subject of a 'screening interview' (called, perhaps rather confusingly a "Statement of Evidence Form – SEF Screening–). The purpose of that is to establish the general nature of the claimant's case so that the Home Office official can decide how best to process it. It is concerned with the country of origin, means of travel, circumstances of arrival in the United Kingdom, preferred language and other matters that might help the Secretary of State understand the case. Asylum seekers are still expected to tell the truth and answers given in screening interviews can be compared fairly with answers given later. However, it has to be remembered that a screening interview is not done to establish in detail the reasons a person gives to support her claim for asylum. It would not normally be appropriate for the Secretary of State to ask supplementary questions or to entertain elaborate answers and an inaccurate summary by an interviewing officer at that stage would be excusable. Further the screening interview may well be conducted when the asylum seeker is tired after a long journey. These things have to be considered when any inconsistencies between the screening interview and the later case are evaluated."

46. As Ms Rushforth submitted, an asylum seeker may be expected to tell the truth in answering questions in his or her screening interview. The purpose of the screening interview is to set out, in general terms, the nature of the appellant's claim for asylum. It is not, however, necessarily a place in which the appellant can be expected to set out in detail the basis of his claim. The nature of the questions and the process does not make this possible.

47. In YL the IAT contrasted the screening interview with the SEF self-completion form which, at the time, an asylum seeker subsequently returned, which the IAT recognised was an individual's opportunity to set out in fuller form his or her claim (see [10]-[13]). At [20], the IAT said this about that form:

> "20. The Statement of Evidence Form –SEF Self Completion– (that is the "SEF" that the adjudicator considered) is an entirely different document. As has been explained above, it is the appellant's opportunity to set out his case. The asylum seeker has to return the form by a specified date, usually about a fortnight after the form is given to him. However the asylum seeker is allowed to choose his own interpreter and obtain all the assistance he wants in order to complete the form. He is in control of how the form is answered. It is hard to imagine a fairer way to enable the claimant to set out his case. That being so,

the Secretary of State, and if it comes before him, an Adjudicator, is entitled to assume that it is right."

48. The IAT added at [22]:

> "22. We recognise, of course, that sometimes mistakes will be made and sometimes, for whatever reason, claimants will withhold information until a later stage or will answer questions inaccurately or downright untruthfully. However, the starting point must be that the form SEF is a complete and accurate statement of a case. If it is not, and the asylum seeker has been advised properly, he will say so at the first possible opportunity so that complaints can be investigated and put right. If an error has been made by solicitors then the Secretary of State, or the Adjudicator, can expect to see evidence from the solicitor concerned explaining how the mistake came to be made and exhibiting any notes or instructions in support. It is hard to see why a claimant who had been let down in this way would not waive any privilege that prevented proper instructions being disclosed. Solicitors who carelessly set out a claimant's case can be expected to be reported to their professional body."

49. As I understand it, apart from claims by minors, that latter process no longer applies. Instead, an asylum seeker undergoes an asylum interview and, as occurred in this case, may well submit a statement in advance of that interview setting out their claim. That is, perhaps, the equivalent place where, as the IAT recognised for the SEF self-completion form, an individual can be expected to set out the details, at least the significant details, of their claim.

50. In relation to a screening interview, the Court of Appeal in JA (Afghanistan) v SSHD [2014] EWCA Civ 450 considered the proper approach of a decision maker to a screening interview when relying on evidential inconsistencies. The Court (at [24]) recognised the need for caution depending upon the circumstances:

> "24. …[A Tribunal] does, however, have an obligation to consider with care how much weight is to be attached to it, having regard to the circumstances in which it came into existence. That is particularly important when considering the significance to be attached to answers given in the course of an interview and recorded only by the person asking questions on behalf of the Secretary of State. Such evidence may be entirely reliable, but there is obviously room for mistakes and misunderstandings, even when the person being questioned speaks English fluently. The possibility of error becomes greater when the person being interviewed requires the services of an interpreter, particularly if the interpreter is not physically present. It becomes greater still if the person being interviewed is vulnerable by reason of age or infirmity. The written word acquires a degree of certainty which the spoken word may not command. The 'anxious scrutiny' which all claimants for asylum are entitled to expect begins with a careful consideration of the weight that should properly be attached to answers given in their interviews. In the present case the decision-maker would need to bear in mind the age and background of the applicant, his limited command of English and the circumstances under which the initial interview and screening interview took place."

51. The approach in YL and JA (Afghanistan), which is uncontroversial, was recently cited with approval by the Inner House of the Court of Session in

Scotland in Guvenc v SSHD [2022] CSIH 3 at [2] per Lady Paton and at [20] per Lord Turnbull.

52. Mr Coyte accepted that the appellant had never explicitly corrected his answer of "no" to question 5.5 in the screening interview of whether he had ever been involved with, or accused of being involved with, any political organisation, when his case was that, in fact, he had been both a member and candidate for the BNP. Of course, the appellant's later evidence (specifically his pre-interview statement of 7 February 2018) does explicitly contradicts that answer. It is also, possible, to see the appellant's answer to question 5.5 as not sitting wholly comfortably with his answers given to question 4.1 that he had supported the BNP and he had been threatened and beaten because of voting for the BNP.

53. There is also an ambiguity in the appellant's evidence at his asylum interview. His answers to questions 34 – 35 indicate that his reference to being a "worker" or, perhaps, an "activist", the appellant meant that he was a "member" of the BNP. At question 36, when the apparent discrepancy in his screening interview is pointed out to the appellant, he says that he did in fact refer to himself as being a "worker" in his screening interview but that that was not, perhaps, understood by the interpreter and/or properly recorded.

54. This was not a case in which the appellant had failed to disclose in his screening interview that it was because he was at risk on return because of his support of the BNP. Whilst the appellant did not, in the immediate aftermath, of his screening interview point out that he was a "member" of the BNP and had stood as a counsellor, these details were disclosed in his written statement immediately prior to his asylum interview, just under three months later. There were, however, already potential 'warning signs' when contrasting the appellant's answers to question 4.1 of his screening interview with his bald response of "no" to question 5.5. and whether he had ever been involved with, or accused of being involved with a political party in Bangladesh. In addition, although the appellant confirmed the information in his screening interview at question 1 of his asylum interview, he immediately at question 2 pointed out that he did have some memory problems and that he would add to or amend his answers to his screening interview as he was asked questions. That is precisely what he did in answer to questions 34 – 37, which I set out above.

55. Mr Coyte accepted that the judge was entitled to look at the appellant's screening interview in his subsequent evidence, but had not exercised the necessary caution, given all the circumstances, in placing upon it the weight that she did in para 24. I accept that submission.

56. In approaching the appellant's evidence in his screening interview and subsequently, the judge was required to exercise the "careful consideration" or "caution" recognised in JA (Afghanistan) at [24] and in YL at [19]. This is not a case where the appellant failed to mention a complete strand of his claim unrelated to his claim based upon his political

support of the BNP. The judge has, in effect, relied upon an inconsistency which is potentially a "detail" of that claim. That detail followed in his statement only about 3 months later and prior to his asylum interview.

57. Given the potential ambiguity in the appellant's answers in his screening interview, taken together with the fact that it does not appear that he was asked to confirm the details of that screening interview at the time and that in confirming its contents at his asylum interview the appellant effectively reserved his position to explain in more detail which he did, I have serious concerns with the judge's approach to that evidence in para 24 of her decision. She has not, in my judgment, grappled sufficiently with the nuances of his evidence subsequent to the screening interview including his explanations of what he said, and why his screening interview might not be a complete and fully detailed description of his claim based upon his BNP support.

58. When taken with the third point made by Mr Coyte in relation to the judge's approach to the documentary evidence, which I will deal with next, I am satisfied that the judge erred in law in her assessment of the appellant's evidence.

Point 3

59. Turning to Mr Coyte's third point, in relation the documentary evidence the judge discounted the document from the BNP purporting to show that the appellant was a member of the BNP because it did not show his "correct date of birth". That document in translation is at page 52 of Section B of the bundle. As Mr Coyte submitted, the document does not in fact set out the appellant's date of birth but rather his age which, he accepted, wrongly states his age to be "31“ when he was, instead, "30" years of age. However, as Mr Coyte submitted, the document does contain correct information concerning the appellant's father and their local village. Further, the document is considered to be "genuine" by Dr Hoque, whom it is accepted is an expert (see paras 19–20 of his report at p.6 of Section B of the bundle). The judge rejected the authenticity of this document simply on the basis that it does not provide the "correct date of birth" for the appellant and that therefore it "cannot be said to relate to him" (see para 27). The judge continued that it is "quite possible that the appellant was not the only person of his name". That, of course, fails to take into account the fact that the appellant's father is correctly identified by name in the document. He would, therefore, on this argument have to be a coincidence both of his, and his father's, names. The judge's reasoning fails properly to take into account the whole of the evidence concerning this document and, in my judgment, unreasonably she concluded that it simply cannot "relate" to the appellant because it lacks his "correct date of birth" when, in fact, rather than having a specific date of birth it simply states his age, albeit stating it wrongly by one year.

60. Further, I accept Mr Coyte's submission that the judge erred by failing to take into account a number of other documents which potentially supported the appellant's claim.

61. First, there are the two letters from the BNP in Bangladesh at pages 54 and 57 (Section B of the bundle) which Dr Hoque states at paras 21–23 of his report are "genuine". The judge made no specific reference to these documents at all. I do not accept the submission that these documents were not material to the judge's finding in relation to the appellant's credibility. At the heart of the appellant's claim was that he was a member of the BNP and had been adversely treated by members of the Awami League as a result. Further, the judge fails to engage with the documents other than to state that she has considered the evidence "in the round" (para 24) and that she does not accept that the "documentary evidence", despite its credibility being supported by the expert evidence undoes the damage to the appellant's credibility as a result of the perceived inconsistency in his evidence and his delay in claiming asylum (see para 28). That is not an adequate consideration of these documents, potentially supportive of the appellant's account and which the expert considers are genuine.

62. Secondly, the appellant's claim, as set out in his statement made in advance of his asylum interview, involved a detailed account of two attacks, followed by hospitalisations, in June and July 2011. In the documentary bundle, there are two discharge letters (pages 104 and 110, Section B of the bundle) which are consistent with that account showing discharge dates as stated in the appellant's witness statement. The judge made no reference to these documents at all. They were, if genuine and reliable, supportive of the appellant's claim. I do not accept Ms Rushforth's submission that these documents were not relevant to whether or not the appellant was a member of the BNP. The events to which these documents relate arose, on the appellant's claim, out of events which happened to the appellant because of his BNP activities. They were, in my judgment, clearly relevant to a significant aspect of his claim and his credibility. The judge's failure to grapple with, and properly consider, these documents was a material error of law in reaching her adverse credibility finding.

63. In the result, taking together the second and third points made by Mr Coyte, I am satisfied that the judge materially erred in law in reaching her adverse credibility finding and that finding cannot be sustained.

Points 4 and 5

64. As a consequence, it is unnecessary to consider the remaining points relied on by Mr Coyte, namely the judge's comment that the appellant was working "illegally" and as a result was an economic migrant; her treatment of the evidence of Mr Islam; and her comment that the appellant had previously been refused a family visit visa.

Decision

65. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.

66. Given the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other that Judge Lloyd-Lawrie. No factual findings are preserved.

Signed

Andrew Grubb

Judge of the Upper Tribunal
3 February 2022