Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00684/2020

THE IMMIGRATION ACTS

Heard at Field House by video conference on 11 August 2021	**Decision & Reasons Promulgated On 14 January 2022**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

M H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity should have been granted at an earlier stage of the proceedings because the case involves protection issues. For this reason, I find that it is appropriate to make an order. 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.

Representation:
For the appellant: Mr Z. Malik QC, instructed by Liberty Legal Solicitors
For the respondent: Mr S. Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 16 January 2020 to refuse a protection and human rights claim.

2. First-tier Tribunal Judge Coll ('the judge') dismissed the appeal in a decision promulgated on 25 March 2021.

3. The appellant was granted permission to appeal to the Upper Tribunal. The original grounds of appeal, which were not drafted by Mr Malik, ran to seven points. Mr Malik expressly did not rely on the sixth (ETS) and seventh points (Article 8). At the hearing, he reduced the remaining points to the following broad grounds of appeal against the First-tier Tribunal Judge's findings relating to the protection claim.

   (i) The judge acted unfairly by taking into account her knowledge of a different expert report of Professor Aguilar, which she said was 'in the public domain'. In that report she said that Professor Aguilar had taken steps to verify documents. This was not raised as an issue with the appellant or his representative for them to address the point [58]. Although acknowledging that this was not the only reason given, Mr Malik argued that it was one of the key reasons given for placing little weight on the expert's opinion.

   The unfairness was compounded by the judge's findings at [74], where her own expectations about how the appellant's representatives should have prepared the evidence were used to reject the weight to be given to the documents from Bangladesh. At [75] she appeared to place weight on the fact that the police and court documents were not originals. Had she raised this point with the appellant's representatives she would have been told that the originals were given to the Home Office.

   (ii) The judge failed to take into account relevant evidence, including evidence of political activities in the UK, and/or conducted a flawed assessment of the evidence.

   (iii) The judge failed to give adequate reasons for her findings relating to the credibility of the appellant as a witness.

4. Due to the continued need to take precautions to prevent the spread of Covid 19 the hearing took place in a court room at Field House with the legal representatives appearing by video conference, and with the facility for others to attend remotely. I was satisfied that this was consistent with the open justice principle, that the parties could make their submissions clearly, and that the case could be heard fairly by this mode of hearing.

Decision and reasons

5. At the crux of the case was a series of documents relating to the appellant's assertion that he had been convicted *in absentia* on politically motivated false charges. The judge rejected the set of documents on the grounds that (i) the background evidence showed that there was a 'significant prevalence' of fraudulent documents in Bangladesh; (ii) there

was no evidence to show how the documents had been obtained and the judge was surprised that his representatives had not corresponded directly with lawyers in Bangladesh given that his evidence was that his friend collected them from a solicitor there; (iii) that the documents were not originals; (iv) supporting letters from the President of the local branch of ICS did not mention the major elements of his claim; (v) letters purporting to be from a lawyer in Bangladesh were unsupported by any evidence of his identity or qualifications; and (vi) the country expert was not asked to comment on the reliability or authenticity of the documents.

6. The assertions made in the original grounds of appeal about the fairness of the hearing, and whether or not the judge asked about certain aspects of the evidence, were not supported by evidence from the appellant or counsel who attended the First-tier Tribunal hearing: see *HA (Conduct of hearing: evidence required) Somalia* [2009] UKAIT 00018.

7. Mr Malik argued that it was procedurally unfair for the judge not to ask the appellant's counsel, Mr Karim, where the original documents were. It is said that he could have told her that they were sent to the Home Office. These may be Mr Malik's instructions, but there was no evidence before the First-tier Tribunal judge, nor before this tribunal, to indicate that original documents were sent to the Home Office. At [75] the judge noted that the appellant sent the documents to the respondent by cover letter dated 22 July 2019, but nothing in that letter states that the documents were originals given that the appellant had said in interview on 15 July 2019, only a few days before, that he had only 'seen a copy' of the arrest warrant (qu.136). In relation to other documents he said that he was still trying to translate some of the 'soft copies' (qu.148). He said that he received the documents in the post from his friend (qu.148) and that his friend had got them from a solicitor (qu.149). In light of this, there was no reliable evidence to suggest that the appellant had the original documents and fairness did not require the judge to clarify the matter.

8. A related concern was the lack of evidence relating to the provenance of the documents. Again, it is argued that the judge should have raised any concerns about the role of the appellant's representative, or lack thereof, at the hearing. The judge noted at [74] that it was open to the appellant to obtain the evidence directly. It was open to her to observe that the appellant was represented and that it might have lent weight to the chain of custody of those documents if his representative had contacted the Bangladeshi lawyer who was said to have the documents. This is done in many cases and is a matter that can give greater weight to documentary evidence said to come from a person's country of origin.

9. There is a distinction between evidential matters that might need to be put to a witness, such as internal discrepancies or inconsistencies with other evidence, and the reasons given to explain a judge's evaluation of the evidence. Just as a judge is not required to make findings on each and every piece of evidence, save for that which is central to a proper determination of the case, procedural fairness does not require a judge to

put each and every potential reason for their decision to an appellant during the hearing.

10. In assessing what weight to place on the documents it was open to the judge to take into account the fact that the appellant's representative did not obtain the documents and that the appellant's evidence relating to their provenance was vague and not even supported by proof of posting. I find that these were findings that formed part of her evaluation of the evidence and were not in the realm of evidential matters that the judge was required, as matter of procedural fairness, to put to the appellant or his representative during the hearing.

11. The last of the series of points made about procedural fairness was a critique of the judge's comments relating to the country report of Professor Aguilar. The judge gave several reasons for placing little weight on the report as evidence to support the series of documents relied upon by the appellant. She noted that the expert listed the documents he was asked to consider, which included the legal documents that the appellant relied on at the hearing [50]. She observed that Professor Aguilar considered the case uncritically and gave his opinion taking the facts at their highest [52]. It was open to the judge to evaluate whether Professor Aguilar, who is an anthropologist specialising in religion and politics, had expertise to comment on the authenticity of Bangladeshi legal documents [53]. It was within a range of reasonable responses to the evidence relating to Professor Aguilar's experience to conclude that the report did not indicate the extent of any direct experience of research in Bangladesh or give any reasons as to why Professor Aguilar might have considered the documents reliable [54]. It was open to the judge to note that, in the summary of his instructions, Professor Aguilar was not asked to comment on the authenticity of the official documentation and that he proceeded to give his opinion based on the assumption, without more, that they were reliable [56]-[57]. This finding was open to the judge to make on the face of what was said in the expert country report.

12. The judge went on to say:

> '58. It would have been helpful if for example he had been instructed as a preliminary step to outline the methodology used to assess the reliability of the document and to outline clear, unambiguous and detailed reasons for confirming whether the documents could be relied upon or not. His qualifications and experience do not appear to show expertise in assessing the reliability of documents from Bangladesh but it would have been open to him to enlist the services of a scholar on the justice system in Bangladesh with first-hand knowledge of Bengali to examine the documents and comment on the accuracy of translation and their reliability. This is something Professor Aguilar has done in another of his expert reports. I draw here on knowledge which is in the public domain.
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> 59. I am aware of *QC (verification of documents: Mibanga Duty) China* [2021] UKUT 00033 IAC and I discuss QC below but I find that the absence of any comments in Professor Aguilar's report on police, solicitors' and court documents emanating from Bangladesh is a

> matter which I am entitled to consider. With regard to Professor Aguilar's report, I therefore cannot place any weight upon it unless I find that the documents listed above can be relied upon. I find that the documents… are not reliable and I set out why below.'

13. The First-tier Tribunal is an expert tribunal which deals with cases from a relatively small range of common countries. An immigration judge often sees reports from the same country experts in different cases. However, I accept that some criticism of the last two sentences of [58] might be justified. It was unwise of the judge to refer to a report of Professor Aguilar which she had seen in another case. The judge did not explain why the report she had seen was 'in the public domain'. If his expert evidence was considered in a reported decision of the Upper Tribunal then the case should have been cited. Even if the judge had seen another report, it is highly unlikely that an expert report produced in First-tier Tribunal proceedings would be 'in the public domain' as stated.

14. Having made those observations, I conclude that the judge's comments, while inadvisable, did not engage an issue relating to procedural fairness that amounts to an error of law when read in the context of her overall findings relating to the expert report. Even if the judge had told the appellant's representative that she was aware that Professor Aguilar had enlisted legal experts in Bangladesh to authenticate documents in another case, it is clear from the face of the report that the appellant's representative had not, as a matter of fact, asked Professor Aguilar to give an opinion on the authenticity of the documents in this case. It is also clear from the summary of his instructions outlined at [16] of the expert report that he was asked to give his opinion based on the assumption that the documents were reliable. Professor Aguilar proceeded to give his opinion on the potential risk of return based on those instructions.

15. To the extent that the report outlined Professor Aguilar's opinion on the potential risk to the appellant based on the case taken at its highest, it was open to the judge to find that, in so far as authenticating the documents was concerned, the report could not be given weight because it simply did not address the reliability of the documents that were said to emanate from Bangladesh. Highlighting the possibility of authentication, as had been done in another case, would have made no material difference when Professor Aguilar had not been instructed to verify the authenticity of the documents.

16. The original grounds of appeal argued that the judge failed to take into account other material evidence from Bangladesh including newspaper articles bearing the appellant's details, print outs of Facebook posts, Whatsapp messages, and evidence of UK activities.

17. The judge listed the most important aspects of the evidence in detail at [13] of the decision and made reference to documents in the appellant's bundle. It is clear that she noted the evidence carefully. It included news articles and a number of social media posts. However, the key documents were those purporting to be official documents issued by the police and

courts relating to two cases that the appellant claims were brought on false charges and were politically motivated. Any mention of the appellant in the news articles was reliant on a case genuinely being brought albeit the evidence would need to be considered in the round.

18. The first case arose from an alleged incident on 19 December 2014, a few weeks after the appellant had returned to the UK (no: 62/2014). The evidence included a First Information Report (FIR) (21/12/14), charge sheet (21/12/14), and a court judgment (10/07/2017). The appellant's bundle also contained a copy of a newspaper report from the a local newspaper dated 20 December 2014 although the translation wrongly states the date of the article as 06 December 2014 (pg.300-305). The newspaper article cites the case number 62/2014 but the FIR and charge sheet are dated the day after the article is said to have been published. I note that various dates are given on the translation of the FIR, but the earliest is 20 December 2014, which is same date as the article. It is difficult to see how a newspaper could report a case reference that had not yet been created or at highest was created the same day as the article was published.

19. Two other newspaper articles mentioned this case reference and appear to be presented as photocopies of a photocopy of the original newspaper in the bundle prepared for the First-tier Tribunal hearing. The first, a notice issued in a local newspaper on 09 October 2019, over two years after the court judgment, listing 21 people who were wanted in respect of the case. The second is a 'wanted' notice said to be published in another local newspaper on 17 February 2020, which contained a photograph of the appellant and stated that he was the subject of an arrest warrant and offered a reward of 20,000 Taka. There was no evidence of any other wanted notices being issued in the two year period after the court judgment in 2017. Both pieces of evidence were translated by the same company on 19 December 2020. They appear to have been produced not long before the appeal hearing in March 2021. There is no evidence to indicate whether the original newspapers were ever submitted to the Home Office or brought to the First-tier Tribunal hearing. On the face of the evidence, it appears that only photocopies of the newspapers were before the judge.

20. The second case related to an alleged incident in January 2015, again, at a time when the appellant was in the UK (no: 03/2015). The evidence included an FIR (07/01/15), a charge sheet (23/06/15), and what purports to be an arrest warrant (24/06/15). The appellant's bundle does not appear to contain any newspaper reports relating to that case.

21. I accept that the judge did not make specific findings relating to the newspaper articles. At [60] she made clear that she would refer to 'all of the documents from Bangladesh provided by the appellant as "the Documents".' The judge went on to give the series of reasons outlined above at [5] for placing little weight on those documents, including a lack of detail about the provenance and the fact that there were only copies before the First-tier Tribunal. It is understandable that she might concentrate on the reliability of the official documents that purported to be

issued by the police and courts. The evidence shows that a suite of certified copies of documents relating to both cases was obtained in October 2018, a month after the appellant claimed asylum in September 2018. I accept that evidence needs to be considered in the round, but if the crucial documents relating to police and court proceedings were not reliable it is difficult to see how photocopies of newspaper reports, which could have been altered in the process of copying could be found to be reliable. Nothing in the newspaper reports relating to the first case brought against the appellant took the information beyond that contained in the police and court documents. It is not incumbent on a judge to make findings in relation to each and every piece of evidence. Having given sustainable reasons for rejecting the reliability of the key documents purportedly issued by the police and courts, the newspaper reports could not have made any material difference to the outcome of the appeal.

22. At the hearing, Mr Malik argued that the judge erred in failing to consider the social media and other evidence relating to the appellant's activities in the UK. He did not particularise the submission beyond that fairly general assertion nor explain why the evidence might have made any material difference to the outcome of the appeal. The judge itemised various pieces of this evidence at [13(xi)]. Having identified the date of each item it is reasonable to infer that she considered each piece of evidence contained in that part of the respondent's bundle. These included what appear to be:

    (i) an untranslated Facebook post from May 2013;

    (ii) a copy of his Facebook profile page;

    (iii) Facebook posts from September and October 2014 that do not appear to relate to anything political;

    (iv) a copy of a Facebook 'memory' dated October 2017 referring back to photos the appellant posted of a conference at the House of Commons on 19 October 2016 organised by the Voice of Bangladesh;

    (v) an unidentified Facebook page;

    (vi) an unidentified and untranslated social media entry in another name dated '29 March' (no year).

23. The appellant's bundle also contained some of the same documents and a scattering of general posts or 'shared' articles from social media. Although some touch on issues that could be seen as political they appear to be general in nature and the posts are sporadic over a long period of time.

24. It is unclear whether the appellant attended all of the events. The nature of the organisations, such as the Voice of Bangladesh, the Barlekha Ideal Society UK (Welfare Relief Handout) and the Online Activist Forum is also unclear. The appellant's witness statement did not explain the nature or extent of his activities in the UK in any detail save to mention an article said to be from the Weekly Desh dated 19-25 July 2019 reporting a meeting of the Online Activist Forum UK to protest against a killing in Bangladesh. Again, the article is presented as a photocopy of the original newspaper. Although some of this evidence might indicate a general

interest in political issues, and sporadic activity in the Bangladeshi community in the UK (some of which appears to be welfare related), as a body of evidence, it does not present a coherent picture of organised political activities of a kind that were likely to bring the appellant to the attention of the authorities in Bangladesh. Having rejected the appellant's core claim relating to the court cases he claims were brought against him, it has not been shown that the judge's failure to make specific findings in relation to this evidence would have made any material difference to the outcome of the appeal.

25. Within the scattering of points made in the grounds and at the hearing, it was also argued that the judge erred in her assessment of the medical report prepared by Dr Harris. The report related to injuries received in an incident in 2002 when he claims that a large meeting turned to violence. The appellant did not mention the incident in interview. The judge noted that he only mentioned it for the first time in the witness statement prepared for the hearing. When pressed as to why he did not mention it before, he is recorded to have said that it was 'not the "main reason" for his claim' [30]. It was open to the judge to take those matters into account. Even if this incident was taken at its highest the appellant did not claim that he was specifically targeted nor that it was a main reason for fearing to return to Bangladesh now. In the circumstances, it is difficult to see how any error, even if there was one in relation to the judge's findings, could have made any material difference to the outcome of the appeal.

26. The final point was a general assertion that the judge failed to give adequate reasons for her finding that the appellant was an evasive witness [81]. The judge gave a specific example of this at [25]. She concluded that the appellant presented as evasive when answering questions about his role in the ICS and went on to say: 'He was asked six questions under cross examination in an attempt to get a clear picture. He was only consistent in agreeing that he had "no responsibility" when he stopped being a student.' At [81] she described the fact that questions had to be repeated a number of times and his answers were often vague. The judge considered whether this might be because of his level of English but observed that 'he appeared to understand all questions correctly and spoke fluently.' The judge gave other reasons to explain why she considered the appellant's credibility was damaged. It is not incumbent on a judge to describe each and every answer given by a witness in order to explain why she assessed them to be vague or evasive. The judge had the benefit of hearing from the appellant and gave examples of why she considered him to be a vague and evasive witness. I conclude that her reasons were adequate and there is no error of law.

27. For the reasons given above, I conclude that the First-tier Tribunal decision did not involve the making of an error on a point of law.

DECISION

The First-tier Tribunal decision did not involve the making of an error on a point of law

The decision shall stand

Signed M. Canavan Date 11 January 2022
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email