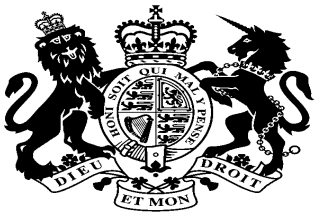


Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2022-003240
PA/00953/2021

THE IMMIGRATION ACTS

Heard at Bradford IAC
On the 1st November 2022

Decision & Reasons Promulgated
On the 28 November 2022

Before

UPPER TRIBUNAL JUDGE LINDSLEY
DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

MMR
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Jorro, of Counsel, instructed by Lawmatic Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Bangladesh born in March 1983. He arrived in the UK on and claimed asylum on 18th May 2018. His application was refused on 30th October 2020. His appeal against the decision was dismissed by First-tier Tribunal Judge Abebrese in a determination promulgated on the 20th April 2022.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Hatton on 20th May 2020 on the basis that it was arguable that the First-tier judge had erred in law in failing to rationally consider material evidence before the First-tier Tribunal in arriving at its conclusion and in failing to determine the sur place claim with reference to the country of origin materials.

3. The matter came before us to determine whether the First-tier Tribunal had erred in law, and if so whether any error was material and the decision should be set aside and remade.

Submissions- Error of Law

4. Mr Jorro's grounds of appeal first assault the First-tier Tribunal's reasoning as to the Appellant's history of political activities and consequent problems, alleging that the Tribunal:

   (a) Failed to have any adequate regard to the specific expert and supporting evidence and the country of origin evidence which supported the credibility of the appellant's claim, and thus found the claim not to be credible on a basis which errs in law

   (b) Failed (at paragraphs 29 to 31), when concluding the appellant was not truly involved with the BICS due to his claimed age at the time of his involvement, to have regard to the BICS constitution and the expert evidence of Mr Mahdi

   (c) Made an irrational finding (at paragraph 30) that the answers given by the appellant in interview with regard to his political activities are not consistent, when in fact they clearly described his political progress through various organisations

   (d) In finding (at paragraph 31) that the appellant's asserted political progress in the JEI between 2005 and 2009 not to be credible, failed to have regard to the witness statement and expert evidence which provided relevant explanations

   (e) In rejecting the appellant's claim to have been finance secretary for the local JEI ward branch, overlooking evidence in the asylum interview record, the appellant's own witness statement, the letter of Zubair Ameer branch secretary of the Sylhet City Branch JEI and the expert evidence of Mr Mahdi.

   (f) In rejecting the appellant's claimed political activities in Bangladesh generally, failing to have regard to the newspaper articles about demonstrations between 1998 and 2009 in which the appellant appears, and also the witness evidence of Mr Abu Sabur

(g) In rejecting the medical report of Dr Lingam because it post-dates the claimed attacks the appellant experienced and was thus ostensibly designed to bolster his claim, made an irrational decision not to give this evidence weight

(h) Made other findings that were insufficiently reasoned, overlooked the expert evidence of Mr Mahdi that attacks by police and AL activists on those with the appellant's claimed political profile are common, and failed to take account of the verification by Mr Mahdi of the court documents/newspaper article about the criminal proceedings in the Daily Jalalabad in November 2010; and overlooked background evidence (not least the respondent's CPIN) about the use of false criminal charges against political opponents

5. The grounds of appeal then move on to address the First-tier Tribunal's failure to properly consider the sur place activities in the UK and make a reasoned decision referring to the expert and other evidence on this issue. In particular it is argued that there was a failure to have regard to the transcript of the Kolkota TV desk dated 2nd October 2021, the article in the Daily Jugabheri dated 30th November 2021 in which the appellant is said to be a spreader of anti-state propaganda from the UK, combined with his Facebook posts in which he criticises the prime minister, Sheikh Hasina, and the country of origin evidence that the regime monitors and is particularly sensitive to such criticism.

6. With welcome efficiency, Mr Clarke shortened the proceedings before us by confirming that the respondent accepted the errors of law adumbrated above. For the respondent Mr Clarke argued that the matter should be re-heard. For the appellant Mr Jorro argued that there were sufficiently clear findings on the sur place element of the Appellant's claim for the Upper Tribunal to finally determine matters in his client's favour. If we were against him in that submission, he accepted that a re-hearing was the appropriate way forwards.

Conclusions – Error of Law

7. Given Mr Clarke's realistic concession, we can be brief.

8. The First-tier Tribunal makes its findings and delivers its conclusions at paragraphs 28 to 36 of its decision. Paragraph 28 simply sets out that the claim is not found to be credible, and sets out a part of why the respondent found it not to be credible so does not set out any reasoning of the Tribunal. Paragraph 29 sets out that the appellant is not consistent in his political history but does not specify why, and then goes on to assert that it is not believable that an 11 year old would be politically active, but gives no tenable reasons given the evidence ostensibly supporting the appellant's claims.

9. At paragraph 30 the reasoning why the joining process is found to be inconsistent between the interview record and the witness statement is, we find, unclear and insufficient, as is the further reference to the appellant being unable to read

newspapers and understand the concept of economic freedom at the age of 11 years.

10. The reasoning at paragraph 31 is opaque to the point of inscrutability, and gives no examples of failure to be able to give detail by the appellant at interview and of why it is said what he does know is available on the internet. The reasoning once again seems orientated around the appellant's age yet in the time brackets mentioned in the paragraph the appellant would have been in his twenties. This leads to the appellant being found not credible in relation to his claim to have been politically persecuted at paragraph 32 of the decision. In this section of the decision no reference is made to the expert evidence of Mr Mahdi or the medical evidence, and the evidence with respect to the court documents is not looked at until the following paragraph (paragraph 33). The decision touches only very briefly on the medical evidence at paragraph 36 of the decision which is rejected for irrational reasons relating to the timing of it being acquired as has been argued by the appellant. The decision fails to properly engage sufficiently with the evidence supporting the appellant's asylum claim (particularly the expert and medical evidence) based on his past activities, and to consider it in the round, and thus errs materially in law.

11. The sur place claim is dealt with in two sentences at paragraph 36 of the decision. It is concluded that given the gap between the appellant's arrival in the UK and his claim for asylum, it would be unlikely that his social media profile would cause him difficulties. We find this conclusion to be irrational: whilst a time lapse following an asylum seeker's arrival in the UK *might* diminish their interest to the authorities abroad, the timing of the appellant's asylum claim is not something of which the Bangladeshi authorities could foreseeably be aware.

12. Furthermore the documentary evidence, such as the report "Creating Panic" from Human Rights Watch into Bangladesh's *Election Crackdown on Political Opponents and Critics* of December 22, 2018, at the heading "Internet Surveillance", does not suggest any diminution of interest with the passage of time. Rather, the dominant consideration appears to be whether it is reasonably likely that relevant social media activities have come to the attention of one of the many departments of the security forces charged with online surveillance. That same report notes that a hundred Cyber-Crimes police teams as well as the Rapid Action Battalion (RAB), a paramilitary force implicated in serious human rights violations including extra-judicial killings and enforced disappearances, have been tasked with monitoring social media for "anti-state propaganda, rumours, fake news, and provocations."

13. Accordingly the First-tier Tribunal's disposition of the matters before it, both as to its assessment of historical facts and its prognosis of future risks, is materially flawed.

Re-making or remittal

14. Mr Jorro argued that there were sufficient positive findings, read with the country evidence, for the appeal to be finally determined by the Upper Tribunal. His

argument was that the finding at paragraph 36 "I note that he has developed a profile on social media" could carry the day for the Appellant. We were unable to accept this submission, because, whilst the material we have just cited strongly suggests significant state interest in social media profiles:

(a) The inference to be drawn from the country evidence is not uncontested: for example, there was no concession by the Secretary of State below to the effect that social media profile alone creates a well-founded fear of persecution for political reasons, and the respondent's published CPIN on Bangladesh does not in terms go that far.

(b) The presentation of the social media evidence does not fully accord with the expectations of the Upper Tribunal summarised at (7)-(8) of *XX (PJAK - sur place activities - Facebook) Iran CG* [2022] UKUT 23 (IAC) (a matter to which the appellant's solicitors should have regard at any future hearing).

15. The re-determination of the Appellant's appeal will need to have regard to both his historic activities and his present profile, representing a scale of fact-finding that makes remittal to the First-tier Tribunal appropriate.

16. The First-tier Tribunal re-hearing this appeal will need to have careful regard to the country evidence in the light of the observation of Sedley LJ in *YB (Eritrea)* [2008] EWCA Civ 360 at §18:

> "Where, as here, the tribunal has objective evidence which "paints a bleak picture of the suppression of political opponents" by a named government, it requires little or no evidence or speculation to arrive at a strong possibility – and perhaps more – that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among expatriate oppositionist organisations who can name the people who are filmed or photographed. Similarly it does not require affirmative evidence to establish a probability that the intelligence services of such states monitor the internet for information about oppositionist groups. The real question in most cases will be what follows for the individual claimant."

17. Similar observations continue to fall from the courts. As Lord Ericht in the Court of Session, Outer House recently observed in *HHP (FE/LA) against Secretary of State for the Home Department* [2022] ScotCS CSOH_48, one possible inference from a person's participation in demonstrations outside their national Embassy was that this matter had come to the attention of the authorities whether or not a person was recognisable from published photographs said to show such participation.

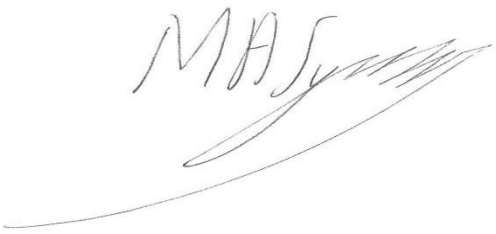
Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. We set aside the decision and remit the matter to the First-tier Tribunal.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. We do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Signed:



Deputy Upper Tribunal Judge Symes Date: 15th November 2022