IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000442
First-tier Tribunal No:
HU/51401/2022
IA/02518/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 01 May 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

SH
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr J Walsh, counsel, instructed by Zyba Law
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 27 April 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Stedman heard on 23 December 2022.

2. However, for ease of reference hereafter the parties will be referred to as they were before the First-tier Tribunal.

3. Permission to appeal was granted by Resident Judge Grant-Hutchison, sitting as a judge of the First-tier Tribunal, on 24 February 2023.

Anonymity

4. An anonymity direction was made previously and is maintained given that the appellant's claim raises a fear of the Bangladesh authorities.

Factual Background

5. The appellant is a national of Bangladesh who first entered the United Kingdom on 15 April 2012 on a family visit visa. When his visa expired on 15 October 2012, the appellant remained in the United Kingdom without leave. The appellant was encountered working without permission on 15 June 2017 and was detained. His asylum claim, made on 20 June 2017, was refused on 21 July 2017 and his appeal was dismissed on 7 September 2017. After exhausting his rights of appeal, the appellant submitted a series of further submissions, all of which were rejected. On 10 March 2020, the appellant made further submissions which were refused by way of a decision dated 22 February 2022, the decision which is the subject of this appeal.

6. The basis of the appellant's claim is that he fears persecution in Bangladesh owing to his membership of the Bangladesh Nationalist Party (BNP). In addition, the appellant relied on Articles 2 and 3 ECHR and claimed that there were very significant obstacles to his reintegration in Bangladesh.

7. In refusing the appellant's claims, the Secretary of State referred to the earlier determinations of the appellant's protection claim, in which his account was found to lack credibility as well as the respondent's earlier decisions to reject the evidence provided by the appellant as part of his further submissions. The respondent accepted that the appellant was merely a low-level member of the BNP but concluded that he was unlikely to be of ongoing interest to the authorities in Bangladesh. Nor was it accepted that the appellant's sur place activities would put him at risk. The respondent placed little weight on the many new documents produced by the appellant which included the report of a country expert and medical reports.

The decision of the First-tier Tribunal

8. At the hearing before the First-tier Tribunal, the appellant and a witness gave evidence. It was argued on the appellant's behalf that even low-level BNP members were at risk in Bangladesh, that the appellant experienced mental health issues owing to his experiences in Bangladesh and that there were very significant obstacles to his integration there. The appeal was allowed on protection grounds, with the judge declining to decide the Article 8 claim.

The grounds of appeal

9. The grounds of appeal are set out in full below.

1.Making a material misdirection in law on any material matter.

a) It is respectfully submitted that the First Tier Tribunal Judge (FTTJ) has materially erred in law by failing to apply the principles outlined in Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka * [2002] UKIAT 00702.

b) At [39(1)] of Devaseelan, the Tribunal state,

"The first Adjudicator's determination should always be the starting-point. It is the authoritative assessment of the Appellant's status at the time it was made. In principle issues such as whether the Appellant was properly represented, or whether he gave evidence, are irrelevant to this."

c) It is respectfully submitted that the FTTJ has made no reference at all to the previous findings of the Tribunal in 2018 which rejected the appellant claim to fear persecution on return to Bangladesh as a result of his claimed political opinion. This decision was also upheld by the Upper Tribunal.

d) As the FTTJ has failed to treat the previous findings as the starting point in assessing the new evidence, it is submitted that it is not known why the new evidence should cause a departure from the previous findings or whether this was evidence that was previously rejected by the tribunal.

e) As a result, it is submitted that the entirety of the FTTJ's findings are infected by the failure to treat the previous determination as the starting point when assessing the new evidence. It is therefore submitted that the decision should be set aside.

10. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

It is arguable that the Judge has erred in law by failing to apply the principles outlined in Devaseelan (Second Appeals-ECHR-Extra-Territorial Effect) Sri Lanka *[2002] UKIAT 00702. The Judge has made no reference to previous findings of the Tribunal in 2018 which rejected the Appellant's claim to fear persecution on return to Bangladesh as a result of his claimed political opinion. This decision was also upheld by the Upper Tribunal. By failing to do so, it is arguably not known why the new evidence which has been submitted should cause a departure from the previous decisions or whether this was evidence that was previously rejected.

11. The appellant did not file a Rule 24 response.

The error of law hearing

12. Mr Walsh confirmed that the Secretary of State's appeal was opposed. Thereafter, I heard succinct submissions from Ms Everett and Mr Walsh's submissions in response. It suffices to say that Mr Walsh accepted that the judge erred in failing to refer to the previous decision, applying *Devaseelan*. The remainder of his submissions suggested that any error by the judge was immaterial as the appeal had been allowed based on the new evidence which post-dated the previous decision of the First-tier Tribunal. At the end of the hearing, I informed the representatives that I was satisfied that the First-tier Tribunal Judge materially erred and that the decision was set aside. Neither representative had strong views on the venue for any remaking hearing.

Decision on error of law

13. As indicated above, the appellant's protection claim was considered by First-tier Tribunal Judge S Aziz and dismissed in a decision promulgated on 7 September 2017. That decision was upheld by the Upper Tribunal on 28 February 2018. Judge Aziz was prepared to accept that the appellant may have attended demonstrations and distributed leaflets in Bangladesh but found that the appellant had 'manufactured' the remainder of his claim, the judge noting that the appellant had told immigration officials that he had remained in the United Kingdom when his visa expired solely to earn money to support his children in Bangladesh. Judge Aziz was unpersuaded that the appellant was engaged in sur place activity for the BNP at a level which would lead him to come to the attention of the authorities in Bangladesh.

14. The remarkably brief decision of First-tier Tribunal Judge Stedman does not acknowledge that the appellant's previous appeal was dismissed. At [2], the judge records that the appellant entered the United Kingdom during 2012 and

that his protection claim was made during 2020. It is possible that the judge simply did not realise that there was a previous decision to be taken as the starting point, applying *Devaseelan*. Indeed, Mr Walsh informed me that the complete copy of that decision was not before the judge, albeit the findings were reproduced in the decision letter. Regardless, as Mr Walsh conceded, the judge was required to engage with the previous decision and explain why he was departing from it.

15. I have carefully considered Mr Walsh's submission that the appellant was relying on evidence which was not before the previous Tribunal. Nonetheless, given the fact that the appellant was found to be a dishonest witness in the past, the judge needed to assess the new evidence with reference to the historic findings. At [16], the judge found that the evidence 'fully supports' the appellant's activities in Bangladesh and that he is wanted by the authorities, whereas the previous judge had concluded, on broadly similar evidence, that the appellant was of no interest to anyone in Bangladesh. I also take into account the respondent's acceptance that the appellant's political activities were low-level, yet the judge went beyond that at [15] stating, 'I do not see how they can be described as low-level activities on any rational assessment.' In the same paragraph, the judge accepts that the appellant is wanted on account of a conviction in Bangladesh, evidence of which was considered and rejected by Judge Aziz.

16. For the foregoing reasons, the decision of the First-tier Tribunal is infected with material errors of law and is unsafe. I set aside that decision with no preserved findings.

17. While I was initially of the view that this matter could be remade in the Upper Tribunal, I now consider that the matter ought to be remitted as this was a particularly unsatisfactory decision and reasons and there were no preserved findings of fact. Applying *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), I carefully considered the general principle set out in statement 7 of the Senior President's Practice Statements. I also take into account the history of this case, the nature and extent of the findings to be made as well as the fact that the nature of the errors of law in this case meant that the respondent was deprived of an adequate consideration of her case. I further consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and therefore remit the appeal to the First-tier Tribunal.

Decision

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

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard any judge except First-tier Tribunal Judge A Stedman.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 April 2023