IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000618

First-tier Tribunal No: PA/03231/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 26 March 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

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(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr Hingora, Counsel instructed by Black Antelope Law
For the Respondent: Ms Everett, Senior Home Office Presenting Officer

Heard at Field House on 6 February 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

1. The appellant is a citizen of Bangladesh born in February 1978 who entered the UK in 2004 and applied for asylum in August 2019. He is appealing against a

decision of Judge of the First-tier Tribunal Smeaton ("the judge") dismissing his protection and human rights appeal.

2. The appellant claims to face a risk of persecution in Bangladesh because (a) of his involvement with the BNP both in Bangladesh and the UK; and (b) the authorities continue to be interested in him following a politically motivated accusation of murder made by supporters of the Awami League in 2003.

Decision of the First-tier Tribunal

3. The judge found the appellant to be a credible witness. In paragraph 39 he stated that he "had the hallmarks of a truthful witness". However, as is apparent from the findings in paragraphs 66 and 67 of the decision, as summarised below in paragraph 6, there were parts of the appellant's account that the judge did not accept.

4. The judge found that the appellant had only ever been a low-level supporter of the BNP and that on return his involvement with the BNP would not, as a matter of personal choice, go beyond voting for them and attending general meetings. The judge found that this level of involvement would not give rise to a risk of persecution. This aspect of the decision has not been challenged and therefore is not considered further.

5. The judge found that the appellant had, as claimed, been falsely accused of murder by Awami League supporters in 2003. However, whilst the judge accepted that those accusing him were politically motivated, he did not accept that the police and authorities investigating the matter in 2003 were politically motivated against the appellant. This was because the BNP were in power in 2003. The judge also rejected the appellant's contention that the authorities continue to have an adverse interest in him due to the murder allegation.

6. It was common ground before the judge that the appellant could not be removed to Bangladesh if he would face detention, as the respondent accepted that conditions of prisons in Bangladesh breach article 3 ECHR. However, the judge was satisfied that the authorities would not detain the appellant because they did not have an ongoing interest in him.

7. The judge also considered article 8 ECHR and found that the appellant's removal to Bangladesh would not be disproportionate. This part of the decision was not challenged and therefore it is not considered further.

Grounds of Appeal

8. The grounds of appeal are concerned only with the judge's assessment of whether the appellant would face a risk because of the murder accusation in 2003.

9. The first ground of appeal contains several submissions set out under the heading "the judge materially erred in finding that the appellant had not shown a well-founded fear of persecution despite finding that the appellant had a genuine fear of persecution". The submissions are as follows:

    a. In the light of the positive credibility findings, the judge erred by finding that the false allegation of murder was not politically motivated.

b. It is unclear how the judge concluded that the appellant does not remain of continuing interest to the authorities given the positive credibility findings and that his subjective fear was accepted as genuine.

c. As the appellant had already been the victim of persecution by reason of his membership of the BNP, the judge erred by not applying paragraph 339K of the Immigration Rules. (Paragraph 339K stipulates that previous persecution or serious harm is a "serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm…").

10. The second ground of appeal argues that the judge erred by failing to have regard to the objective evidence about degrading treatment in detention contrary to articles 2 and 3 ECHR. This ground was not pursued at the hearing (and in the grant of permission it was described as having no merit). The reason this ground has no merit is that the judge did not accept that the appellant would be detained and therefore the conditions a person would face in detention were immaterial. Moreover, the judge plainly accepted (in paragraph 36) that conditions in detention would breach article 3. ECHR. As this ground was not pursued, I have not considered it further.

Submissions

11. Mr Hingora developed the three arguments set out in paragraph 9 above. He submitted that having made clear findings that the appellant was credible and having accepted that he had a genuine fear, the judge erred by not recognising that there was an ongoing risk stemming from the murder charge. He also submitted that the judge failed to take into account that the appellant's brother's case was live and that the authorities were searching for the appellant in 2014.

12. I asked Mr Hingora to take me to the evidence before the First-tier Tribunal showing that there was a "live" case against the appellant's brother. The only evidence he was able to identify was paragraph 43 of the appellant's witness statement, where it is stated:

> I spoke to my brother [ ] who has recently been a witness in a court in a case which was related to the same incident advised me that he was expecting a severe punishment for the individual being charged

13. Mr Hingora reiterated the submission in the grounds that the judge failed to consider paragraph 339K of the Immigration Rules in the light of the past persecution suffered by the appellant.

14. Ms Everett argued that the judge was entitled to accept that the appellant's claim was in large part credible but nonetheless find that he would not be at risk. She submitted that it does not necessarily follows from someone being found to be broadly credible that their account must be accepted wholesale.

15. Ms Everett submitted that although those making an accusation against the appellant might have had a political motive, that did not mean that the authorities were politically motivated such that the appellant could be described as being a victim of politically motivated persecution.

16. She submitted that the judge gave multiple clear reasons explaining why he reached the conclusion that the appellant does not face an ongoing risk and

therefore the appellant could not succeed by way of a “reasons challenge” to the decision.

Analysis

17. The grounds of appeal are solely concerned with the judge’s assessment of whether the appellant faces a risk of being detained and/or persecuted in Bangladesh as a result of the false murder accusation made against him in 2003.

18. The grounds submit that it is unclear how the judge reached the conclusion that the authorities would not have an interest in the appellant when the judge accepted that the appellant told the truth about what occurred in 2003 and had a genuine fear of being detained on return. The difficulty with this argument is that the judge gave multiple reasons which make it entirely clear why he did not accept that the authorities have maintained an interest in the appellant. The reasons are set out in paragraphs 66 and 67 and in summary are as follows:

    a. The appellant claimed that the authorities searched for him in 2014. The judge did not consider it plausible that the authorities would not search for him between 2004 and 2014. The judge noted that the police search in 2014 coincided with the appellant contemplating making an asylum claim at that time.

    b. The judge considered the appellant’s wife’s witness evidence of daily threats in 2014 to be inconsistent with the appellant’s account given in his asylum interview.

    c. There was no evidence of any police interest since 2014.

    d. There was no evidence to support the appellant’s claim that his brother’s case remains live.

    e. There were no recent documents from the court to suggest an ongoing interest in the appellant

19. These are clear and unambiguous reasons which clearly explain the conclusion reached. In these circumstances, a “reasons” challenge cannot succeed.

20. Mr Hingora argued that the judge’s finding about current risk is irreconcilable with his acceptance that the appellant has a genuine fear. The difficulty with this submission is that the question of whether a person believes he would be at risk (his subjective fear) is distinct from the question of whether a person would actually face a risk (i.e. whether the subjective fear is objectively well-founded). It was open to the judge to accept that the appellant is genuinely fearful (and has been honest about this) but find that, when all of the evidence is considered together, he has not established, to the standard of a reasonable degree of likelihood, that his fear is well-founded.

21. Mr Hingora also argued that the judge’s rejection of the evidence supporting the appellant’s contention that he is currently at risk was inconsistent with finding that the appellant was a credible witness. I am not persuaded by this argument, as I agree with Ms Everett that it does not follow from finding a witness credible that the entirety of his account must be accepted wholesale. The Court of

Appeal in *Michele Terzaghi v Secretary of State for the Home Department* [2019] EWCA Civ 2017 at [45] stated:

> "…first instance judges have seen witnesses and take into account the whole "sea" of the evidence, rather than indulged in impermissible "island hopping" to parts only of the evidence…"

22. In this case, having heard oral evidence and considered "the whole sea of evidence" , it was open to the to the judge to reject certain elements of the appellant's account as implausible whilst accepting that for the most part he had been truthful.

23. Paragraph 339K of the Immigration Rules states

> 339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

24. The grounds submit that the judge erred because of a failure to apply paragraph 339K given that the appellant had already been the victim of persecution by reason of his membership of the BNP. The difficulty with this argument is that the judge gave a cogent reason for not accepting that the appellant had previously been persecuted because of his membership of the BNP, which is that the BNP were in power in 2003 when the false accusation was made against him. The grounds do not challenge this finding or advance any argument as to why the appellant would have faced persecution from the authorities in 2003 on account of being a BNP member when the BNP were in power.

25. A further argument in the grounds is that the judge erred by finding that the false allegation against the appellant was not politically motivated. This submission is misconceived. Contrary to what is stated in the grounds, the judge accepted that the accusation against the appellant was politically motivated. However, the judge went on to find that although the individuals making the allegation against the appellant may have been politically motivated, the authorities had no such political motivation given that the BNP were in power. This finding was plainly open to the judge.

26. The grounds fail to identify an error of law. The appeal is therefore dismissed.

Notice of Decision

27. The appeal is dismissed. The decision of the First-tier Tribunal did not involve the making of an error of law and stands.

D. Sheridan
Judge of the Upper Tribunal
Immigration and Asylum Chamber
9 February 2023