



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002571

First-tier Tribunal No: PA/01055/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 7 November 2023**

Before

**UPPER TRIBUNAL JUDGE STEPHEN SMITH
DEPUTY UPPER TRIBUNAL JUDGE HARIA
Between**

**A.R.A
(Also known as Md AA)
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Maqsood Direct Access Counsel
For the Respondent: Mr Parvar Home Office Presenting Officer

Heard at Field House on 16 October 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. By a decision promulgated on 5 September 2023, we set aside the decision of First-tier Tribunal Judge P J S White (“the Judge”) promulgated on 2 February 2022 dismissing the appellant’s appeal against a decision of the respondent dated 11 June 2021, to refuse his application made on 2 December 2019 for asylum and humanitarian protection. The Judge heard

the appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002.

Background and preserved finding

2. In this decision we are remaking the appeal acting under section 12(2)(b) (ii) of the Tribunals, Courts and Enforcement Act 2007. The context of this remaking decision is our error of law decision annexed to these reasons, which sets out the background to the appellant's appeal and also importantly, the narrowness of the issues before us. Without rehearsing the error of law decision in full, the appellant's claim had involved the following issues: whether the appellant, a Bangladeshi national, had a well-founded fear of persecution in Bangladesh on account of his claimed arrests and other problems due to his political activity and membership of the Bangladesh Nationalist Party (BNP); and whether the appellant has a well-founded fear of persecution in Bangladesh due to his activities as a high level and active member of the BNP in the UK.
3. In our error of law decision, we concluded that the First-tier Tribunal had erred in law in one narrow but material respect and that the First-tier Tribunal's reasons were otherwise well structured, clear and methodical. As we set out at §60 "The question for the Judge was whether, if the appellant were to engage in similar "low level" activities on behalf of the BNP upon his return to Bangladesh, he would be at real risk of being persecuted. Or, if he would be unlikely to engage in such activities, why he would not do so." We concluded that the First-tier Tribunal erred in the assessment of the risk on return to the appellant on the basis that the First-tier Tribunal failed to consider:
 - a. The risk on return to the appellant if he were to engage in activities commensurate with those which he engaged in whilst in the UK, such as hosting the BNP at premises, or otherwise engage in any equivalent activity upon his return,
 - b. How the appellant would conduct himself on return to Bangladesh, and
 - c. That the appellant cannot be expected to conceal his involvement with the BNP.
4. For ease of reference, we set out below the First-tier Tribunal findings which we had preserved at §63:
 - a. The appellant is from Bangladesh where he was a low level member of the BNP in Bangladesh and he played some role within the party in Bangladesh including attending demonstrations (§19 and §28),
 - b. The appellant held 6 different roles between 1992 and late 2010 in Bangladesh although the precise nature of his roles is not clear (§20),

- c. The appellant's account that he came to adverse attention, was arrested or the subject of a false case due to his activities in Bangladesh lacked credibility (§21 - §24 and §28),
- d. The appellant came to the UK on false documents in 2010 and remained here in a false identity and does not wish to return (§28),
- e. The appellant has taken some limited role in the BNP or affiliated organisations whilst in the UK including renting a room which is used by the BNP who pay the business rates (§25 and §28),
- f. The appellant's witnesses, Mr Malque and Mr Mamun hold more prominent roles at the head of the main party in the UK as the President and General Secretary respectively of the BNP(UK) than the appellant's claimed roles in subsidiary or affiliated organisations (§26),
- g. The credibility findings under S.8 of the Asylum & Immigration (Treatment of Claimants, etc) Act 2004 (§27 and §28),
- h. The findings in relation to the appellant's Facebook posts and other publications (§11 and §25).

The hearing

5. The remaking hearing took place on 16 October 2023. The appellant relied on an Upper Tribunal bundle (UTB) in two parts comprising a total of 271 pages, including an Appellant's Skeleton Argument and an updated witness statement (at pages [1] to [5]). The appellant also gave oral evidence through a Bengali interpreter, and we also heard evidence from two witnesses, Mr M Rahman Secretary for International Affairs, National Executive Committee of the BNP who gave his evidence in English and Mr Mamun the Executive Member and former Joint Secretary of BNP(UK), who gave his evidence through a Bengali interpreter.
6. Both representatives agreed at the start of the hearing that the remaking decision will be confined to the following issues identified at §60 of our error of law decision:
 - a. The risk to the appellant due to his *sur place* activities in the United Kingdom, and
 - b. How the appellant would conduct himself upon return.
7. At the end of the hearing, we reserved our decision.
8. We do not recite the evidence in full or the parties' respective submissions, except where it is necessary to resolve disputed findings of fact and explain our conclusions. We have considered all of the evidence to which we were referred, whether we make reference to it or not.

Decision and reasons

9. The appellant's account of his *sur place* activities is supported by documentary evidence and the evidence of his witnesses.

10. The Judge's findings in respect of his claimed political activity on behalf of the BNP in Bangladesh and his claim to have been arrested and come to adverse interest of the authorities in Bangladesh were made for cogent reasons and have been preserved. Although the appellant was found by the Judge to have played a role in the BNP in Bangladesh, his claims to have been arrested and have received adverse attention from the authorities were found to lack credibility. The focus, therefore, as the advocates agreed, is on the appellant's *sur place* activity.
11. We begin with our conclusions about the appellant's oral evidence. The appellant was asked several question by way of cross examination, his answers to straightforward questions were evasive and vague. He was asked about his claim in his latest witness statement (§6) that his continuous political activities in the UK are well publicised.
12. At the start of the hearing, the appellant played two videos. The first was of an interview of the appellant and the second was of a video the appellant said he had received from his daughter in Bangladesh. A screenshot of the first video appears at [UTB:7] with a transcript at [UTB: 37-42] and the screenshot of the second video appears at [UT:261]. The appellant in response to questions in cross examination explained the first video was taken from an online platform but he was unable to explain why the screenshot of the video includes writing identifying him and an overlay, but the video played at the hearing did not include any details to identify him or include an overlay. He explained the video related to an interview he gave on 2 October 2023, at a demonstration in Hyde Park during the recent visit to the UK of Prime Minister Sheikh Hasina. He stated he has many such videos, however he had not provided them as he had not been instructed to provide them and had thought it was not necessary as the videos are available online. He stated that these videos are available on an online platform and pointed to the name of the online platform on the screen shot but he did not give a clear response to a question as to how popular this platform is in Bangladesh. We give little weight to this video evidence as there was no evidence of the platform on which it was said the video had been published or the audience and reach of this platform.
13. In his latest witness statement (§24.c) the appellant claims there have been numerous occasions when his family members have been harassed by police. He refers to a WhatsApp message said to be from his daughter dated 8 July 2022 written in English. The second video played to us at the hearing was a video from his daughter described on the screen shot as, "Police came our home. They are asking about you." The video was quite blurred, and it was difficult to make out any detail. The appellant in response to questions stated it was sent by his daughter about 6-7 months ago even though the date and time at the top of the screen shot stated 28 September, 18:35 (i.e., less than a month before the resumed hearing). When asked about this discrepancy, he explained that the video was sent several times, and the 28 September date was the date he took the screen shot as opposed to the date the video was sent. This cannot be correct as the time the screen shot was taken is shown at the top left corner of the

screen shot is shown as 00:38 and this is the time the screen shot was taken from the phone. We give little weight to this evidence, the appellant claims his family have been harassed on numerous occasions, yet he has provided only two items of evidence in support, there are no witness statements from any of the appellant's family members giving the background and more information about the threats. The evidence produced is of limited evidential value as it could easily have been contrived for the purpose of the appeal, and it was reasonable to expect the appellant to provide either additional supporting evidence, or cogent reasons as to why he was unable to obtain any such evidence.

14. The appellant in support of his claim in his latest witness statement (§10.vi) that his political activities have been published online and broadcast on social media and viewed by the authorities in Bangladesh, relies on two news articles, one dated 30 August 2022 in the Daily Sokaler Somoy [UTB: 90-91] and the other and article in the online publication Daily English Times [UTB:93]. The appellant in response to a question as to how he came across these articles stated they had been sent to him by his family and colleagues from Bangladesh. When asked why he had not explained that in his witness statement, he simply stated that he didn't think it was necessary to provide a statement about them as he had produced the articles. Both articles refer to the appellant as the Convenor of United Kingdom Krishak Dal Jaima Library (UK BNP office) owner which is consistent with the roles the appellant claims he holds. The appellant was asked why he had given no explanation as to the reach of these publications and how popular they are in Bangladesh. The appellant simply stated that the publications had been sent to him as his family and colleagues had come across them but there are many publications in Bangladesh. Despite there being no evidence as to the reach of these publications, they do identify the appellant, his role in the BNP (UK) and name him as the owner of the library. This indicates a close association with the BNP (UK) and on the lower standard gives rise to a risk of persecution in the event that the publications come to the attention of the authorities in Bangladesh.
15. The appellant's evidence (§7 latest witness statement) is that he plays a major role in the BNP (UK), holding the main office of BNP (UK). He claims the acting chairman of the party, Mr Tarique Rahman, often visits his office. The appellant's role in the BNP (UK) and that he rents the premises used by the BNP (UK) as their headquarters were confirmed by both of his witnesses. Although we have no objective evidence as to the hierarchy of the various roles within the BNP, we accept the oral evidence of both witnesses which is consistent with their letters dated 9 September 2021 [AB:16-19], that the appellant is an Executive member of the BNP (UK), he also holds the position of Convenor of an affiliate organisation Bangladesh Jatiotabadi Krishokdal UK and he hosts a library which is used as the main offices of the BNP (UK) in a building which he rents.
16. We turn to assess the appellant's Facebook activity. We have not been provided with his full Facebook activity profile by way of the Download Your

Information (“DYI”) function in Facebook. The importance of full disclosure was highlighted by the Upper Tribunal at [96] of XX (PJAK – sur place activities – Facebook) Iran CG [2022] UKUT 23 (IAC):

“We make the observation that in terms of evidence produced by those seeking protection, to the respondent or a Tribunal, social media evidence is often limited to production of printed photographs, without full disclosure in electronic format. In view of what we have found, as a general matter, production of a small part of a Facebook or social media account, for example, photocopied photographs, may be of very limited evidential value in a protection claim, when such a wealth of wider information, including a person’s locations of access to Facebook and full timeline of social media activities, readily available on the “Download Your Information” function of Facebook in a matter of moments, has not been disclosed. It is easy for an apparent printout or electronic excerpt of an internet page to be manipulated by changing the page source data. Where a decision maker does not have access to an actual account, purported printouts from such an account may also have very limited evidential value.”

17. The appellant was asked why the screenshots of his Facebook posts do not show the year, since the manner in which the apparent dates on each post were presented omitted the year, suggesting that the screenshots were taken in the same year the posts were made. The appellant was evasive in his response, stating that he has had a Facebook account for 6-7 years, he has two Facebook accounts which are live and active and can provide the links.
18. We have nothing more than a snapshot of the appellant’s Facebook activity in this case. In the absence of full DYI disclosure, the inference which might be drawn is that the appellant was active on Facebook in order to supplement his asylum claim and that he has continued with those activities as and when he wished to enhance his sur place claim before the First-tier Tribunal and the Upper Tribunal. Mr Parvan accepted that the appellant has posted on Facebook. However, the Facebook material produced in evidence does not show that the appellant has been using the platform to air his views constantly, as a committed political activist, as opposed to the more sporadic use which might be expected of a person acting in bad faith.
19. We appreciate that the Facebook evidence cannot be considered in isolation and has to be assessed in the round with the other evidence. There is other evidence before us of the appellant’s activities in the UK, such as photographs, news articles, statements in support and video evidence. The majority of the photographs are not date stamped, some are annotated and there is no schedule to identify the nature of the event and the date on which it occurred. It is said the photographs speak for themselves. The appellant on being asked about the photographs, admitted that some photographs had been taken by himself and other by his political colleagues, but he also said that others had taken photographs and that he

had heard and witnessed the photographs published on Facebook and social media. In response to a question as to why if he had truly seen Awami League supporters take photos he failed to mention that in his witness statement, he simply stated that he didn't have proof so he didn't mention it in his witness statement. The appellant claimed that he had many more photographs taken throughout his time in the UK but that he had only produced a selection as he tried to keep things simple.

20. Although we accept the appellant is a BNP activist and he holds the roles within the BNP(UK) he claims and we accept he rents the premises used by the BNP(UK) as their main office, our overall assessment of the appellant is of someone who has not been entirely genuine, he lacks credibility, is evasive and has sought to bolster his claim.
21. In assessing the appellant's claim for protection, we are required by Article 4(3)(d) of the Qualification Directive to consider whether the appellant's sur place activities were "engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection". Assessing the evidence as a whole, we find that the one of the reasons that the appellant has engaged in activity on behalf of the BNP in the UK is to create or continue with his claim for international protection but that this is not the sole or main reason.
22. The appellant's skeleton argument before the First-tier Tribunal refers to the Digital Security Act 2018 (DSA) and contends that the Bangladeshi regime has under s.4 of this Act sought to legislate against the use of digital media to undermine the Bangladeshi authorities. The appellant's bundle prepared for the First-tier Tribunal features extracts from the Country Policy and Information Note Bangladesh: Journalists, the press and social media Version 2.0 January 2021; this is relevant as it refers to the DSA and we note that it indicates that the authorities in Bangladesh are sensitive to criticism of the state, particularly where the official narrative as to the country's origins are challenged. This CPIN states as follows:

§2.4.2 states:

"The authorities sometimes use legal provisions, such as the Information and Communication Technology (ICT) Act or Digital Security Act (DSA), to harass, arrest, detain or prosecute persons who have published material that is deemed to be critical of the state, the Constitution or the ruling party, and thus considered seditious or defamatory. It is also a criminal offence to publish material that is deemed to hurt religious sentiment or values or that may spread hatred or hostility that threatens public order, decency or morality. The DSA also provides for extra-territorial application of the law, that is, comments made or articles published outside of Bangladesh which contravene the law may be punishable under this legislation."

§2.4.7 states:

"Whether a person is at risk of persecution or serious harm from the state will depend on particular factors specific to them, for

example: the subject matter and legality of the material published and the publicity attracted of said material. Each case must be considered on its facts with the onus on the person to show that they would be at real risk of serious harm or persecution on account of their actual or perceived political opinion or religion.”

§4.3.2 states:

“Freedom House noted in its 2020 Freedom on the Net report:

‘While Section 57 of the ICT Act was repealed by the legislation, the [DSA] imposes similarly restrictive provisions. Section 21 provides for sentences of up to 14 years in prison for anyone who uses digital devices to spread negative propaganda regarding the Liberation War or the “father of the nation.” Section 25 introduces sentences of up to three years in prison for deliberately publishing intimidating or distorted information against an individual online. Section 28 mandates up to 10 years in prison for harming someone’s religious sentiments. Section 29 provides for up to three years in prison for publishing information intended to defame someone. Section 31 provides for sentences of up to seven years in prison for deliberately publishing information that can spread hatred among communities. Section 32 has been criticized by rights groups for potentially stifling investigative journalism by imposing sentences of up to 14 years for recording or accessing information digitally without prior consent.

‘Under the DSA, no warrant is required before making ICT-related arrests, and some crimes are “nonbailable,” meaning suspects must apply for bail at a court.

‘In January 2020, a group of professors, journalists, and lawyers from Dhaka Supreme Court filed a writ petition with the High Court requesting that it declares certain sections of DSA illegal for being too broad and infringing on free expression. In February 2020, the High Court asked the government to explain why sections 25 and 31 of DSA are constitutional, and should not be repealed. There were no reports on the petition by the end of the coverage period.”

23. In §2.4.7 of the CPIN it is stated that the risk of harm from a publication can depend on factors such as the subject matter and publicity attracted.
24. The background evidence also shows that there has been a longstanding conflict between the governing Awami League Party led by Prime Minister Sheikh Hasina and the opposition, Bangladesh National Party (BNP) led by Khalida Zia.
25. Mr Maqsood referred us to §2.4.6 and §2.4.7 of the CPIN Bangladesh: Political parties and affiliation Version 3.0 September 2020, which states that “...Although the law provides for freedom of assembly, such rights are sometimes curtailed or restricted for opposition parties ... Street-level

informers are employed and digital technology is used to monitor and surveil opposition leaders and activists both domestically and abroad... Opposition party activists, particularly those whose position and activities challenge and threaten the government and raises their profile may be subject to treatment, including harassment, arrest and politically motivated charges by the police or non- state actors, which amounts to persecution.”

26. We find that, while the appellant has sought to bolster his case before us, he nevertheless is a genuine BNP supporter with a risk profile that places him at a real risk of being persecuted in Bangladesh. We find that the appellant has been involved with the BNP prior to his arrival in the UK, since 1984 and he has continued his involvement in the BNP having participated in protests, written articles, engaged in social media campaigns and public speeches as well as hosted the BNP (UK) head office and run a library from the same building. We accept on the basis of the preserved findings and the evidence that the appellant has a close working relationship with the senior leadership within the BNP. We find that the appellant’s sur place activity is reasonably likely to be viewed as seditious and threatening to the current regime, and that it has attracted some publicity as well as interest from senior figures in the BNP. We are satisfied that there is a reasonable degree of likelihood that the appellant, on return to Bangladesh, would be persecuted on account of the political opinions expressed by him, in light of how they were manifested by the appellant in the United Kingdom. There is a real risk that even a low level of digital surveillance or investigation into the appellant by the authorities in Bangladesh would reveal sufficient information about his past activities for him to be perceived as more than a mere low-level supporter.
27. As to how the appellant would conduct himself on return to Bangladesh, in his witness statement (paragraph 10.iii) and in his oral evidence he confirmed he intends to run for parliamentary elections in his constituency and so he would not hide his views. The appellant states in his witness statement (paragraph 11) that he is committed to speaking and protesting against the Awami League whether it is in the UK or in Bangladesh. Although we have found the appellant to lack credibility in some respects on the basis of his activities in Bangladesh before his arrival in the UK, and his attempts to bolster his case before us, it seems to us to be reasonably likely that he would continue his activism within the BNP and we accept this aspect of his evidence. That being so, he would be regarded as more than a low level activist on that account also.
28. On the lower standard of proof, we find the appellant would be at risk on return to Bangladesh and that he is entitled to protection as a refugee.
29. The appellant’s appeal was advanced on protection grounds only. No separate case under the ECHR was advanced.

30. We maintain the anonymity order made by the First-tier Tribunal. Although we do not consider that the order is required in order to protect the appellant in the UK, we have kept the order in place for the time being in case a different view of our findings is taken in any onward appeal.

Notice of Decision

The FtT's decision to dismiss the appellant's appeal was set aside.

We remake the decision on the appeal by allowing the appeal on protection grounds.

There is an order for anonymity.

N Haria
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 October 2023

ANNEX



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-002571

First-tier Tribunal No: PA/01055/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

**UPPER TRIBUNAL JUDGE STEPHEN SMITH
DEPUTY UPPER TRIBUNAL JUDGE HARIA**

Between

**A R A
(Also known as Md AA)
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A. Syed- Ali Direct Access Counsel
For the Respondent: Mr C Avery Senior Home Office Presenting Officer

Heard at Field House on 18 May 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 appeals with permission against the decision of First-tier Tribunal Judge P J S White (“the Judge”), promulgated on 2 February 2022 dismissing his appeal against a decision of the respondent dated 11 June 2021, to refuse his application made on 2 December 2019 for asylum and humanitarian protection.

Background

2. The appellant is a national of Bangladesh born on 15 February 1971. He entered the United Kingdom (“UK”) as a Tier 4 Student on 4th December 2010. His leave to enter in that capacity was issued in the alias Md AA with a Bangladeshi passport valid until 31 December 2013 and a date of birth of 25 December 1971. The appellant used that name and passport in several subsequent unsuccessful applications for leave and also for a derivative residence card under Zambrano principles. On 2nd December 2019 the appellant claimed asylum initially in the name Md. AA but then admitted his name was ARA. His asylum claim was refused on 11 June 2021.
3. In essence, the appellant’s protection claim involves the following issues:
 - a. Whether the appellant has a well-founded fear of persecution in Bangladesh on account of his claimed arrests and other problems due to his political activity and membership of the BNP.
 - b. Whether the appellant has a well-founded fear of persecution in Bangladesh due to sur place activities as a high level and active member of the BNP in the UK.
4. The respondent accepts the appellant’s nationality, and that he was a low-level member of BNP in Bangladesh.
5. The respondent does not accept the appellant’s claim to be a high level member of the BNP and therefore does not accept that the appellant would be persecuted upon return to Bangladesh.

The First-tier Tribunal Decision (“the Decision”)

6. The Judge accepted the appellant held various roles within the BNP in Bangladesh although the precise nature of his roles was not clear. The Judge also accepted that the appellant attended demonstrations in Bangladesh.
7. The Judge found the appellant’s account of problems in Bangladesh such as a false case against him being issued and arrests lacked credibility.
8. In relation to his time in the UK the Judge found there to be some support from his witnesses for him having taken some role in the BNP but found the details of and evidence for actual significant activity to be rather thin. The Judge found that the appellant’s witnesses whom he accepted had been targeted in Bangladesh had more prominent roles at the head of the

party in the UK than the appellant's claimed roles in subsidiary or affiliated organisations. It was accepted by Mr Badar, the respondent's counsel that the appellant rents a room where he runs a library which is used by the BNP in the UK and the BNP pay the business rates.

9. Mr Syed-Ali the appellant's counsel, accepted there was no evidence in support of the appellant's claim that he receives instructions from Bangladesh and passes them on.
10. The Judge noted that there was also no evidence of the appellant receiving threats not to return to Bangladesh because of his Facebook posts.
11. The Judge found the appellant's "*...repeated dishonesty and prolonged delay in making his claim, until no other resort was open to him...*" to be conduct that seriously damages his credibility.
12. The Judge dismissed the appellant's asylum, humanitarian protection and human rights claims. The appellant appealed to the Upper Tribunal.

Permission to appeal

13. The appellant relies on two main grounds of appeal as follows:
 - a. Ground 1: The first ground makes several assertions which can be summarised as follows:
 - i. The ground asserts the application to play the video was not pursued before the Judge on the basis of a clear agreement between the representatives that the significance of the contents of video clips of the appellant's *sur place* activities was "agreed" and showed the appellant taking a leadership role. Against this background, it is asserted that the Judge erred in finding the respondent had accepted that the appellant was not a high level member of the BNP in the UK.
 - ii. It is asserted that the Judge failed in assessing the appellant's activities to make any reference to the appellant's Facebook posts, photographs and other publications which were included in the appellant's main bundle and additional bundle.
 - iii. The grounds assert the Judge erred in his decision not to permit an unreported decision of Upper Tribunal Judge Hanson to be relied upon by the appellant.
 - iv. It is asserted that the Judge's findings as to the witnesses holding a more significant role in the UK BNP are factually incorrect.
 - v. The grounds assert the Judge erred in assessing credibility "*....through the prism of S.8 of the Asylum & Immigration (Treatment of Claimants, etc) Act 2004 alone*".
 - b. Ground 2: asserts the Judge failed to consider the *sur place* claim as an independent head in the asylum claim and gave no

consideration to the guidance in HJ(Iran) [2010] UKSC 31. The grounds assert that the Judge failed to consider the background evidence when considering the appellant's subjective fear emanating from his sur place activities.

14. Permission was granted on 3 May 2022 on all grounds by First-tier Tribunal Judge Chowdhury, who reformulated the grounds as procedural challenges on the basis:
- a. *"..... that there was an agreement between the respondent and appellant's counsel that a video showed the appellant taking a leadership role, presumably in demonstrations in the UK. The Judge states only that the video contents were accepted by the respondent with no further reference in the Judges Findings and Reasons. If the assertion is correct it is arguable that the sur place risk was incorrectly assessed by the Judge".*
 - b. *".....that evidence of the appellant's Facebook activity was provided in the bundle however the Judge made no reference to it. The findings as to any risk emanating from the appellant's sur place activity in the UK may be arguably flawed and not safely relied upon."*

Rule 24 Response

15. The respondent in the Rule 24 response, opposed the appellant's appeal on the basis that the Judge directed himself appropriately and the Decision shows the Judge carefully considered the evidence and it was open to him to find the appellant not credible.
16. In relation to the concession, the respondent does not accept that there was a concession made by the Home Office Presenting Officer in the First - tier Tribunal that the video showed the appellant in a leadership role in the UK. The respondent points out that there is no record of any such concession in the Decision nor in the Home Office Presenting Officer's notes.
17. In respect of the Facebook posts, the respondent refers to paragraph 11 of the Decision which shows the Judge did take them into account.

Procedural matters:

18. A few days prior to the hearing at the Upper Tribunal, the appellant had emailed the Upper Tribunal to request permission to play the video clips relied upon in the First-tier Tribunal. Upper Tribunal Judge Stephen Smith having considered the request responded in the following terms:

"Since the grounds of appeal allege unfairness based on an alleged agreement between the respondent and the appellant's counsel at the hearing before the First-tier Tribunal about the contents of the video, the judge chairing the hearing has observed that the appellant

may wish to consider whether he needs to adduce evidence to establish what the agreement was, and who was a party to it. See BW (witness statements by advocates) Afghanistan [2014] UKUT 00568 (IAC).

The final decision as to whether view the footage will be taken by the Upper Tribunal at the hearing itself, and it is unlikely that there will be time to view lengthy extracts. If any footage is played, the Upper Tribunal will most likely ask to be taken to relevant, or indicative extracts of it.

The appellant must bring a laptop or other device to the hearing to play the footage that was before the FTT at the hearing, in the event that the Upper Tribunal agrees to view it.

Any new footage cannot be relied upon in the absence of a successful application under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Such an application is only likely to be granted if the Upper Tribunal finds that the decision of the FTT involved the making of an error of law and proceeds to remake the decision by reference to up to date evidence.”

Upper Tribunal hearing

19. The hearing was attended by representatives for both parties as above. Both representatives made submissions and our conclusions below reflect those arguments and submissions where necessary.
20. We had before us a court bundle containing inter alia the core documents in the appeal, including the appellant’s bundle before the First-tier Tribunal and the respondent’s bundle. The additional bundle filed with the First - tier Tribunal was not before us, however, Mr Syed-Ali had a paper copy which he kindly provided to the panel and he ensured that a copy was emailed to Mr Avery who having received the additional bundle confirmed he was content to proceed with the hearing.
21. The respondent had filed a rule 24 response dated 15 June 2022, this was also not before the panel. Mr Syed - Ali confirmed he had received the rule 24 response. Mr Avery kindly provided the panel with a copy.

Decision on error of law

22. Before proceeding to consider the grounds in detail, we remind ourselves of the many authorities on the approach an appellate court or tribunal should take when considering findings of fact reached by a first instance judge. A recent summary of the well settled principles can be found in Volpi & Anor v Volpi [2022] EWCA Civ 464 at [2] where Lewison LJ stated:
“i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

23. We appreciate that judicial restraint should be exercised when examining the reasons given by the First-tier Tribunal Judge for his decision and that we should not assume too readily that the Judge misdirected himself just because not every step in his reasoning is fully set out. This is the guidance given by the Court of Appeal at paragraph [77] of KM v SSHD [2021] EWCA Civ 693.

Ground One:

24. Ground one raises numerous points and we shall deal with each in turn in the order in which they were raised in the application for permission.
25. **The "concession":** This ground asserts that the application to play the video was not pursued before the Judge on the basis of a clear agreement between the representatives that the contents of the video clips were agreed and showed the appellant taking a leadership role in the BNP. This ground asserts that the Judge erred in finding the respondent had not accepted the appellant was a high level member of the BNP UK. Mr Avery maintained the respondent's position as set out in the Rule 24 response that there is no record of any concession in presenting officer's notes nor the Decision.

26. Lord Justice Kennedy in SSHD v Davoodipanah [2004] EWCA Civ 106 [22], having examined the authorities where a concession had been made set out the following general principles. If a concession is made, it remains binding unless it can be withdrawn. The Tribunal has a discretion to allow withdrawal *"...if it considers that there is good reason in all the circumstances to take that course"*. Prejudice to the other parties is relevant, but not necessarily decisive. *"What the tribunal must do is to try to obtain a fair and just result. In the absence of prejudice, if a Presenting Officer has made a concession which appears in retrospect to be a concession which he or she should not have made, then probably justice will require that the Secretary of State be allowed to withdraw that concession before the Immigration Appeal Tribunal. But, as I have said, everything depends on the circumstances, and each case must be considered on its own merits."*
27. In principle, therefore where the parties make a concession, it may be an error of law on procedural fairness grounds for a judge to go behind the concession without giving the parties the opportunity to address the Tribunal on the point. The Upper Tribunal in AM (Fair hearing) Sudan [2015] UKUT 656 (IAC) at paragraph (v) of the headnote, clarified that *"Fairness may require a Tribunal to canvas an issue which has not been ventilated by the parties or their representatives, in fulfilment of each party's right to a fair hearing"*.
28. Similarly, if a judge misunderstands a concession, that may be a mistake of fact capable of amounting to an error of law, as was recently confirmed by the Upper Tribunal in Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC) at paragraph 16 applying E v SSHD [2004] EWCA Civ 49.
29. It follows therefore that if (i) the presenting officer conceded that the videos demonstrated the appellant taking a leadership role within the BNP in the UK, and (ii) the Judge misunderstood the concession and wrongly thought that it was simply an agreement that the appellant was a 'low level' supporter or activist, the Judge may have made an error of fact. If established, that would amount to a procedurally unfair failure to record a significant concession made by the respondent in the appellant's favour. In the circumstances of this case, it would mean that the Judge wrongly declined to view evidence which was accepted by the Secretary of State and which supported the appellant's case.
30. Our conclusions on the concession depend entirely, on what actually happened before the First-tier Tribunal. The Decision of the First-tier Tribunal makes no reference to any concession. The Judge at paragraph 5 of the Decision sets out the evidence before him and makes reference to *"...a witness statement, letters of support, photos and documents relating to the appellant's activities in the United Kingdom and a large quantity of background and objective evidence..."*. It is clear from the Decision that the Judge had an application to admit video evidence before him but this was not pursued and he did not view the video evidence as the Judge

notes at paragraph 15 of the Decision that the appellant “... said that he was not pursuing any application, foreshadowed in the appellant’s witness statement, to play a video to the Tribunal; this was on the basis that it showed no more than was already accepted by the respondent...”, but he had before him the translated transcripts of the video clips [55-58, 448].

31. Apart from the reference at paragraph 15 of the Decision, it is otherwise silent on the video evidence and any concession. This is the type of case referred to at paragraph (ii) of the headnote in BW where “... evidence presented to the Upper Tribunal may include a witness statement compiled by a representative involved in the hearing before the First-tier Tribunal (“FtT”). In practice, this is most likely to occur in cases where such evidence is considered necessary to demonstrate that the appellant was deprived of his right to a fair hearing at first instance.”
32. As stated above, Upper Tribunal Judge Stephen Smith in response to the appellant’s request to play video clips at the Upper Tribunal Hearing did refer to the BW and suggested that “...the appellant may wish to consider whether he needs to adduce evidence to establish what the agreement was, and who was a party to it.” Despite this suggestion there was no evidence in the form required by BW before us but rather Mr Syed- Ali who represented the appellant at the First-tier Tribunal hearing sought to explain to us what had occurred at the First-tier Tribunal.
33. Mr Syed -Ali remained the appellant’s representative before us and was not a witness. Accordingly, it was not appropriate for him to seek to explain what occurred at the First-tier Tribunal in order to establish a factual proposition going to alleged procedural unfairness, as this approach did not maintain the distinct separation of the roles of advocate and witness. Mr Justice McCloskey, the President as he then was of the Upper Tribunal reminded us of the need for such separation of roles at paragraphs 5(iii) and (iv) in BW:

“ (iii) Those compiling applications for permission to appeal must be alert to the important distinction between legal submissions and arguments (on the one hand) and evidence (on the other). This distinction must not be blurred.

“ (iv) Where it is decided that a witness statement of the kind which materialised in the present case must be made, the legal representative concerned should, as a general rule, not present the appeal before the Upper Tribunal. The roles of advocate and witness are distinct, separated by a bright luminous line. An advocate must never assume the role of witness. This conflict may be avoided if, for example, the facts bearing on the judicial aberration in question are undisputed. Otherwise, the appellate advocacy function must be relinquished to another representative.”
34. At the hearing before us, Mr Syed- Ali played the video clips and we were able to view the videos, and follow a translation of the transcripts. The

videos show the appellant speaking to a small room of approx. 12 – 15 men. Another, apparently from 2015, shows the appellant speaking through a megaphone, although the face of the speaker is concealed for most of the footage. We assume for present purposes that it was him, in order to take the evidence at its highest to analyse this aspect of the appeal.

35. Having viewed the videos, we find it would have been very surprising for the presenting officer to have conceded that the footage demonstrated that the appellant was engaged in a leadership role in the BNP UK for the following reasons:
- a. First, it does not appear to us to demonstrate that, as it shows the appellant speaking to a group of men in a small room and some shouting into a megaphone eight years ago. As the Judge noted at paragraph 19 of the Decision a person who *“goes to the trouble of joining a political party, rather than just voting for it, is reasonably likely to get involved in at least some of its activities.”* Put another way, some minor political involvement is hardly surprising for even a low level supporter. It is difficult to see how the presenting officer could rationally have conceded that the appellant was a high level member/supporter in the manner claimed, on the basis of these materials alone.
 - b. Secondly, the appellant’s profile and whether he was a low or high level supporter/member was an issue of significance in dispute before the Judge, as identified at paragraph 5 of the Appeal Skeleton Argument before the First-tier Tribunal and at paragraph 22 of the respondent’s refusal decision.
36. We therefore accept the position of the respondent as set out in the rule 24 notice. While we have every confidence that Mr Syed-Ali sought to assist us to the best of his ability concerning what took place below, we note that he has not provided a witness statement and chose to maintain his role before us as an advocate. It is well established that there is a *“bright luminous line”* between submissions and evidence, that where a question arises as to what happened in the First-tier Tribunal it is necessary to adduce evidence to that effect, and that will normally be by way of a witness statement from the advocate: BW. To the extent that Mr Syed-Ali sought to assist by explaining what took place below, we consider, with the greatest of respect, that his recollection must be mistaken concerning the concession.
37. We are, therefore, unable to accept the appellant’s submissions that there was a concession on the part of the presenting officer below. We find that the Judge did not err at paragraph 15; the footage does no more than show the appellant in a low level role, and the Judge did not err by failing to record a concession that had not been made.
38. For the reasons given, there is no merit to this ground.

39. **Failure to consider the Facebook posts and other publications:** Mr Avery pointed out that this ground was not pursued by Mr Syed-Ali in his submissions. Mr Avery submitted that in any event the Facebook posts do not take the appellant's evidence any further. Since the ground is included in the application for permission we address the ground despite the fact that it was not pursued in submissions before us.
40. The grounds assert the Judge mentions the Facebook posts but states the posts were not produced. This in our view is a misunderstanding of the Judge's findings. The Judge at paragraph 11 of the Decision noted that the appellant "...claimed to have posted images on Facebook but had not provided his Facebook account". The reference to a failure by the appellant to provide his Facebook account is a reference to the production of limited printed extracts of pages from the appellant's Facebook account as opposed to full disclosure in electronic format of his actual Facebook account. On an examination of the extracts of the Facebook posts there is little evidence of the privacy settings on the Facebook account. In addition, we note that the Facebook posts are not translated so it is not necessary for the Judge to deal expressly with the untranslated pages of evidence (Rule 12(5)(b) Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014). The social media evidence provided is not in line with the guidance of the Upper Tribunal in XX (P)AK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC) which at paragraphs 7 and 8 of the Headnote offers the following guidance in respect of social media evidence such as Facebook posts:
- "7) Social media evidence is often limited to production of printed photographs, without full disclosure in electronic format. Production of a small part of a Facebook or social media account, for example, photocopied photographs, may be of very limited evidential value in a protection claim, when such a wealth of wider information, including a person's locations of access to Facebook and full timeline of social media activities, readily available on the "Download Your Information" function of Facebook in a matter of moments, has not been disclosed.*
- 8) It is easy for an apparent printout or electronic excerpt of an internet page to be manipulated by changing the page source data. For the same reason, where a decision maker does not have access to an actual account, purported printouts from such an account may also have very limited evidential value.*
41. At paragraph 25, the Judge again referred to the Facebook posts and noted that although the appellant "...claimed to have put posts on Facebook and said these came to notice in Bangladesh because they sometimes lead to him receiving threats not to return to Bangladesh, but these are said to be only by phone, again with no record." Again the Judge found the appellant had failed to provide evidence in support of the threats he claims to have received as a consequence of the Facebook posts.

42. Mr Avery pointed out that this ground was not pursued by Mr Syed-Ali in his submissions. Mr Avery submitted that in any event the Facebook posts do not take the appellant's evidence any further. We agree with Mr Avery.
43. The Judge considered the photographs and other publications relied upon by the appellant at paragraph 25. The Judge noted in relation to the photographs that they indicate the appellant's presence at demonstrations but that they are not evidence of a significant role. The appellant produced only extracts of the publications and as part of his findings the Judge notes at paragraph 25 that the appellant "*...claims to have written books and pamphlets, but again there is a lack of evidence of publication, still less of such publication as might bring him to the attention of the authorities*".
44. It is apparent from the above that the Judge did consider the Facebook posts, the publications and photographs and make appropriate findings on them. The appellant may disagree with those findings however it is our view that the Judge's analysis is part of his multifactorial analysis of the evidence before him and is correctly a matter for the Judge who heard all the evidence.
45. Mr Syed-Ali, in our view, rightly did not pursue this ground in submissions before the us. We find there is no merit in this ground.
46. **Unreported decision of the Upper Tribunal:** The grounds acknowledge the Judge correctly recorded a summary of the discussion regarding the application to rely upon an unreported decision. However, the appellant in the grounds disagrees with the Judge's view that "*.... it showed only how one Judge had addressed and resolved the factual issues in one appeal and as such could not assist ...*" and seeks permission to cite the unreported determination under paragraph 11.1 (b) of the Practice Directions of the Immigration and Asylum Chambers of the First - tier Tribunal and the Upper Tribunal and reargues the point.
47. The Judge recorded at paragraph 18 that his preliminary view was that he was not persuaded by the skeleton argument that he should take account of the unreported decision and according to the Judge, Mr Syed-Ali did not press the point and furthermore there is no suggestion by Mr Syed-Ali that the Judge had incorrectly recorded the submissions he made below. Therefore, we must treat the Judge's summary of the case management discussions below on this point as accurate. It is difficult to see how the Judge was in error since Mr Syed-Ali had not pressed the point below. Mr Syed-Ali appears to be attempting to revisit and reargue an issue he chose not to pursue below.
48. The trial Judge enjoys a broad discretion to take case management decisions. We note that the Upper Tribunal decision concerned preserved findings of fact reached by the First-tier Tribunal in those proceedings, yet there was no copy of the First-tier Tribunal decision, or the Upper Tribunal Error of Law decision. In any event, even if full details had been available, the decision is not a reported decision or a Country Guidance decision. It is

a fact-specific decision applying the background materials to the evidence of the appellant before it. We note that Upper Tribunal Judge Hanson did not reach the same crushing credibility findings as the Judge in these proceedings reached about this appellant.

49. There is no merit to this ground.
50. **The Judge's findings as to the witnesses holding a more significant role in the BNP UK:** The grounds assert that the findings of the Judge as to the appellant's witnesses appointment are factually wrong because the evidence before the tribunal was that the appellant as the head of an affiliate organisation held a higher post than a joint secretary.
51. At paragraph 25, in relation to the appellant's time in the UK the Judge noted there is some support from his witnesses for his having some role in the BNP here. At paragraph 26 the Judge found that the appellant's witnesses, Mr Malque and Mr Mamun are respectively the president and general secretary of the BNP-UK which the Judge finds to be *"more prominent roles at the head of the main party here, than the appellants claimed roles in subsidiary or affiliated organisations."*
52. In his letter, Mr Mamun states that appellant's role in the UK to be that of the Convenor of Bangladesh Nationalist Krisok Dal UK branch and the president of "Zia Sangsad" UK. Mr Mamun identifies himself in his letter as an Executive Member and former 1st Joint secretary of BNP UK. There is also a letter from Mr Rahman the Secretary for International Affairs BNP which states the appellant's position to be that of a Convenor of Bangladesh Jatiotabadi Krishokdal UK (Farmer wing of BNP) branch with is an associate wing of the BNP UK and the president of Zia Sangsad UK.
53. The Judge, at paragraph 26, accepted the appellant had some profile in the UK in subsidiary or affiliated organisations as opposed to the main party. There is no suggestion that the Judge failed to take into account any evidence as to the hierarchy of the various organisations and how they relate to each other. We accept Mr Avery's submission that the letters from Mr Mamun and Mr Rahman are not clear on the point. It is difficult in the absence of any specific evidence as to the hierarchy in the main party and its affiliate organisations to conclude that a position as president in an affiliate organisation would be of a higher rank than that of president or general secretary of the main organisation.
54. This ground discloses no material error of law.
55. **The credibility assessment:** The grounds assert that the Judge erred in the credibility assessment *"....through the prism of S.8 of the Asylum & Immigration (Treatment of Claimants, etc) Act 2004 alone.* The Judge correctly takes into account S.8 of the Asylum & Immigration (Treatment of Claimants, etc) Act 2004 at paragraph 27 of the Decision and then at paragraph 28 the Judge considers all the evidence in the round taking into account all his findings. It is a mischaracterisation of the Judge's decision

to assert that the Judge relies on the S.8 credibility findings alone to assess the appellant's claim.

56. There is no error of law disclosed in this ground.

Ground Two:

57. This ground is multi faceted. It is asserted that the appellant's sur place activities would give rise to an asylum claim independently of his political activities in Bangladesh and that the Judge failed to consider the appellant's sur place claim. Furthermore, it is asserted that the Judge failed to consider the objective background evidence when considering (i) the appellant's fear emanating from his sur place activities in the UK, and (ii) the activities he was reasonably likely to engage in upon his return to Bangladesh.

58. As to point (i), it is axiomatic from our findings above that the Judge did consider and make findings on the appellant's sur place claim and did take into account all the evidence including the objective evidence. Although the Judge at paragraph 28 considers risk on return and finds that the appellant has not "*...engaged in activity here which is likely to or has made him of interest to the authorities*", we accept that the Judge fails expressly to consider the likely risk to the appellant as a consequence of the appellant permitting the BNP in the UK to use his premises as their UK headquarters. If asked by the authorities in Bangladesh, the appellant could not be expected to lie, and would have to say that his UK-based activities extended to facilitating the BNP's UK activities through the provision of premises rented in his name which were used as a base for many of the BNP's broader activities. While the appellant would also have to say that he had been found by an independent tribunal to be only a "low level" supporter, we cannot say with sufficient confidence that, had the Judge expressly considered the question of what the appellant would say about the reading room, if questioned, that it would not have made a difference.

59. As to point (ii), above, a further facet of Mr Syed-Ali's submissions under this ground is that there is no consideration of HJ (Iran) v SSHD UKSC 31. We have considered whether the Judge failed to address the prospective conduct of the appellant upon his return to Bangladesh, that is, as someone whom it is accepted is willing to accommodate or facilitate the BNP as he has in the UK, upon his return.

60. We accept that the Judge found that the appellant was merely a "low level" supporter of the BNP, and that he was entitled to reach those findings, for the reasons he gave. We have considered whether, if the appellant continued to engage in activity of that level upon his return to Bangladesh, he would not be at risk, such that the omission from the Judge's analysis was immaterial. The question for the Judge was whether, if the appellant were to engage in similar "low level" activities on behalf of the BNP upon his return to Bangladesh, he would be at real risk of being

persecuted. Or, if he would be unlikely to engage in such activities, why he would not do so. The Judge did not consider these and related questions, and we cannot say with sufficient confidence that, had he done so, it would have made no difference to his analysis. We conclude that the Judge failed to consider the risk on return to the appellant if he were to engage in activities commensurate with those which he engaged in in the UK, such as hosting the BNP at premises in Bangladesh as he did in the UK, or otherwise engage in an equivalent activity upon his return. We find the Judge failed to consider how the appellant would conduct himself on return to Bangladesh. The Judge also failed to consider that appellant cannot be expected to conceal his (potential future) involvement with the BNP. We cannot conclude with sufficient confidence that, had the Judge properly addressed that matter, the outcome would have been the same. We find that the Judge erred in the assessment of the risk to the appellant on return to Bangladesh on that basis.

Decision on error of law

61. We conclude that the Judge erred in law such that his decision in respect of the risk to the appellant on return to Bangladesh is unsafe and cannot stand.
62. We therefore set aside paragraph 28 of the Decision pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.
63. There are sustainable and therefore preserved findings made by the First-tier Tribunal which include:
 - a. The appellant is from Bangladesh where he was a low level member of the BNP in Bangladesh and he played some role within the party in Bangladesh including attending demonstrations (paragraphs 19 and 28),
 - b. The appellant held 6 different roles between 1992 and late 2010 in Bangladesh although the precise nature of his roles is not clear (paragraph 20),
 - c. The appellant's account that he came to adverse attention, was arrested or the subject of a false case due to his activities in Bangladesh lacked credibility (paragraphs 21 -24 and 28),
 - d. The appellant came to the UK on false documents in 2010 and remained here in a false identity and does not wish to return (paragraph 28),
 - e. The appellant has taken some limited role in the BNP or affiliated organisations whilst in the UK including renting a room which is used by the BNP who pay the business rates (paragraphs 25 and 28),
 - f. The appellant's witnesses, Mr Malque and Mr Mamun hold more prominent roles at the head of the main party in the UK as the president and general secretary respectively of the BNP-UK than the appellant's claimed roles in subsidiary or affiliated organisations (paragraph 26),

- g. The credibility findings under S.8 of the Asylum & Immigration (Treatment of Claimants, etc) Act 2004 (paragraphs 27 and 28),
- h. The findings in relation to the appellant's Facebook posts and other publications (paragraphs 11 and 25).

Disposal

64. The panel took into account the submissions from the representatives as to the disposal of the appeal. The usual course is for the Upper Tribunal to remake the decision even if it requires further findings to be made. The findings of fact required in order for the appeal to be remade will focus on (i) the appellant's prospective future conduct upon his return to Bangladesh, and (ii) the risk, if any, arising from such prospective future conduct. Consideration of point (i) will have to address whether it is reasonably likely that the appellant would disclose, if asked, his role in renting a room used by the BNP in the UK, as well as determining what the appellant's reasonably likely conduct upon his return will be. Point (ii) will address the appellant's risk profile, in light of those findings. Such findings are suitable to be made in the Upper Tribunal. The decision will be remade at a resumed hearing in the Upper Tribunal.

Directions

65. Should the **appellant** intend to rely on further evidence including a further witness statement he must make an application pursuant to Rule 15(2A) of the 2008 Procedure Rules **within 28 days of being sent this decision**.
66. **The parties** must prepare skeleton arguments which must be served **not later than fourteen days before the resumed hearing** dealing with any evidence submitted pursuant to Rule 15(2A) of the 2008 Procedure Rules.
67. The Upper Tribunal will decide at the resumed hearing any applications under Rule 15(2A) at the hearing. The parties should prepare for the hearing on the basis that any evidence subject to a Rule 15 (2A) application is admitted.
68. **The appellant's solicitor** shall notify the Upper Tribunal of (i) the details of any witnesses that will be called; (ii) whether they require the assistance of an interpreter; and (iii) if so, in what language **within 7 days** of the date this decision is sent.

Notice of Decision

The decision of Judge P J S White involved the making of an error of law and is set aside, with all findings of fact save for those findings which are preserved as set out above.

No anonymity direction is made.

N Haria

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 August 2023