IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004573
First-tier Tribunal No:
PA/50720/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 17th of December 2024

Before

UPPER TRIBUNAL JUDGE RUDDICK

Between

SZ
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J.U. Shah, instructed by Taj Solicitors Limited
For the Respondent: Mrs J. Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 6 December 2024

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 him. 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 RA Singer dismissing his protection and human rights appeal.

2. An anonymity order was made by the First-tier Tribunal. I have considered whether it is appropriate to continue that order, taking into account Guidance Note 2022 No.2: Anonymity Orders and Hearings in Private. I am satisfied that it is, because the appellant has made an application for international protection. His application has been refused by the respondent and his appeal against that refusal has been dismissed by the First-tier Tribunal. However, until his appeal is finally determined, he remains an applicant for international protection. I consider that the UK's obligations towards applicants for international protection and the need to protect the confidentiality of the asylum process outweigh the public interest in open justice at this stage in the proceedings.

Background

3. The appellant is a citizen of Bangladesh, born in 1990. He entered the UK lawfully on 12 April 2011, with leave to enter as a Tier 4 (General) Student valid through 13 January 2013. On 11 June 2012, the respondent curtailed the appellant's leave, effective 10 August 2012, because his sponsor's license had been revoked. He has not held valid leave since 10 August 2012.

4. On 2 May 2013, the appellant applied for leave to remain on Article 8 grounds, but the respondent refused that application without a right of appeal on 18 June 2013. On 10 June 2016, the appellant claimed asylum on the basis that he would be at risk of persecution on return to Bangladesh for reasons of his political opinion. He said that he had been a member of the student wing of Jamaat-e-Islami (JEI) since 2006 and had held a local leadership position from 2010-2011. In 2010, he was abducted and beaten by the police, who were working together with members of the student wing of the ruling Awami League. After his father secured his release by paying a bribe, he fled to the UK. Politically motivated false charges were then brought against him in Bangladesh.

5. The respondent refused the appellant's asylum claim and in a decision promulgated on 22 November 2018, First-tier Tribunal Judge (as he then was) O'Callaghan dismissed the appellant's appeal. Judge O'Callaghan made a series of findings relevant to this appeal:

   (i) The appellant had "deliberately relied upon documents that he knows to be false," namely a First Information Report (FIR) and arrest warrant from Bangladesh [63];
   (ii) The appellant was "not a witness of truth" with regard to events in Bangladesh. He had not been a member of either JEI or its student wing while in Bangladesh, and he had not been kidnapped or mistreated in Bangladesh because of his political activism [76]. His

claim to have been politically active in Bangladesh was "lacking all plausibility" [77].

(iii) The appellant had been "politically active" in the UK "at a very low level" [79]. His political activity was "opportunistic, seeking to bolster a false asylum claim." [78]

(iv) The appellant's limited political activity in the UK had not brought him to the attention of the Bangladeshi authorities and "if the authorities were to become aware, upon initial consideration they would be satisfied that such actions are solely designed to manufacture an asylum claim in this country." [80]

(v) Because the appellant's motivation for participating in political activity was to secure status in the UK, he would not continue his "limited political activity if returned to Bangladesh" [80].

6. The appellant's applications for permission to appeal were refused by both the First-tier and the Upper Tribunal.

7. On 8 February 2021, the appellant made the further submissions that are the subject of this appeal. On 16 September 2022, the respondent rejected them as not constituting a fresh claim, but following pre-action correspondence, the respondent issued a second refusal decision on 26 January 2023. The appellant appealed, and on 18 April 2024, his appeal came before First-tier Tribunal Judge Singer. In a decision dated 25 April 2024, Judge Singer dismissed the appeal on all grounds.

8. Judge Singer took into account Judge O'Callaghan's findings, in line with Devaseelan, but also carefully considered the new oral and documentary evidence before him. He summarised his findings at [22] and [24] and set out his reasons for those findings in detail at [23(a)-(t)]. He dismissed the appellant's account of his political activity and persecution in Bangladesh on credibility grounds. With regard to his sur place activity, Judge Singer found that it was "low level" and cynical and opportunistic, rather than a reflection of any genuinely held "anti-regime views". If any information about this activity were to reach the Bangladeshi authorities, "it is likely to be that SZ is no more than a hanger-on with no real commitment to the oppositionist cause." If he returned to Bangladesh, "he would not want to be politically active […] because he does not genuinely hold the political convictions he claims to hold."

The appellant's grounds of appeal

9. The appellant appealed to the Upper Tribunal on six grounds:

(i) The Judge should have taken a "fresh approach" to the negative credibility findings of Judge O'Callaghan, because the respondent had "accepted [the appellant's] political profile and sur place political activities" in this appeal;

(ii) The Judge's consideration of the appellant's explanation for a negative Document Verification Report concerning the FIR and arrest warrant was flawed (although it is not explained in what way);

(iii) The Judge's conclusion that the appellant's low profile meant that he would not be at risk was based on outdated evidence; specifically, the Judge relied on the respondent's 2020 CPIN and failed to take into account the "2023 CPIN", the Odikhar Annual Human Rights Report for 2023, and the US Department of State Human Rights Report 2024;
(iv) The respondent did not question the reliability of any of the appellant's documents in the RFRL or at the hearing, and it was an error of law for the Judge to go behind this;
(v) The Judge's conclusions regarding the appellant's sur place activities went beyond the RFRL, was "speculative" and ignored the country evidence; and
(vi) In conducting the Article 8 balancing test, the Judge failed to take into account the appellant's work in a shortage occupation.

10. In a decision dated 4 October 2024, First-tier Tribunal Judge Turner found ground three arguable and granted permission to appeal without limitation.

11. The respondent filed a Section 24 response. She pointed out that none of the documents mentioned at ground three had been in the appellant's First-tier Tribunal bundle, or relied on in his skeleton argument or mentioned in submissions. She argued that it could not be an error for the First-tier Tribunal Judge to have failed to take into account evidence that was not before him.

12. The appellant's representatives filed a skeleton argument the day before the hearing. They pursued only ground three, with regard to the Judge's consideration of the country evidence. They specifically declined to pursue any of the other grounds.

13. The appellant's representatives acknowledged in the skeleton argument that the country evidence referred to in ground three was not before the First-tier Tribunal, but argued that it was an error of law for the Judge not to have sought it out for himself, relying on Lata (FtT: principal controversial issues) [2023] UKUT 00163 (IAC) and AAA (Syria) & Ors, R (on the application of) v The Secretary of State for the Home Department (Rev1) [2023] EWCA Civ 745.

14. It was also argued that the Judge had failed to consider the country evidence that was before him, which appears to refer to ground five (albeit that the skeleton said only ground three was being pursued). In this regard, the skeleton included multiple short excerpts from that evidence and from the post-appeal updating evidence, but with little or no explanation of its relevance to the grounds. The excerpts form the evidence that was before Judge Singer touched briefly on various problems in Bangladesh, including political interference with the judiciary, police inefficiency and corruption, the filing of politically motivated false charges and the possibility of checking police and court documents against relevant databases. The only excerpt that appears relevant to the ground

of appeal was that "People who are perceived as being supporters of JI have reported being followed and intimidated when abroad [...]". This is taken from the 2020 CPIN.

Discussion

15. The appellant's grounds of appeal are entirely without merit.

16. In deciding whether the Judge's decision involved the making of a material error of law, I have reminded myself of the principles set out in Ullah v Secretary of State for the Home Department [2024] EWCA Civ 201 [26] and Volpi & Anor v Volpi [2022] EWCA Civ 464 [2-4] and of the danger of "island-hopping", rather than looking at the evidence, and the reasoning, as a whole. See Fage UK Ltd & Anor v Chobani UK Ltd & Anor [2014] EWCA Civ 5 [114]. I have also taken into account the submissions made by both representatives at the hearing, although I do not rehearse them in their entirety here. I refer to them where relevant below.

17. It has long been recognised that appeals in this jurisdiction are not entirely adversarial, and that the Tribunal has its own role to play in ensuring that the UK complies with its international human rights obligations (particularly with regard to the ECHR, pursuant to the Human Rights Act 1998). But in this case, both parties were represented before the First-tier Tribunal, and the appellant submitted a hearing bundle that included 26 separate items of country evidence, running to 395 pages. There is simply no basis for suggesting that that there was a legal duty on the Judge to ask himself after the hearing had concluded if perhaps there might be newer and better evidence available that might assist the appellant. Nor could Mr Shah explain how it would have been fair for him to have done so.

18. Lata, moreover, states precisely the opposite of what Mr Shah says it does. It reaffirms the duty on the parties to identify the principal controversial issues in an appeal and ensure that they are "comprehensively addressed before the FtT" [33]. With regard to AAA (Syria), all three members of the Court of Appeal agreed that when deciding whether a person will be exposed to a violation of their Article 3 rights following their removal from the UK, a court must assess the risk for itself, rather than reviewing the decision of the SSHD. They did not, however, criticise the Divisional Court for failing to have regard to relevant CPINs or failing to comply with a purported Tameside duty, as asserted in the skeleton argument. The appellant's representatives appear to have fundamentally misunderstood what the issues in AAA (Syria) were.

19. The argument that Judge Singer erred by not conducting his own updating country research is so obviously unarguable that I consider it highly unlikely that Judge Turner would have granted permission on this ground if he had understood it. I consider it far more likely that Judge Turner was misled by the grounds into thinking that the Judge Singer had "failed to consider" evidence that had been before him. The appellant's

solicitors are reminded of their duty not to attempt to mislead the Tribunal.

20. The second ground of appeal that Mr Shah pursued before me was ground five. It is equally misguided. Mr Shah argued that Judge Singer must have failed to take into account the country evidence that was before him, because he had failed to list it in his decision. He acknowledged that the Judge had said at [9], [21] and [23(k)] that he had taken all of the country evidence into account, but he insisted that it was an error of law for the Judge not to have specifically mentioned each of the various items of country evidence in his decision. This submission, too, runs contrary to clearly established law and practice in this jurisdiction. See, e.g. Ullah[26](iii) and Volpi [2-4].

21. Finally, also in support of ground five, Mr Shah argued that Judge Singer's conclusion at [23](k) that "in general, low-level members of opposition groups are unlikely to be of ongoing interest to the authorities" was not one that was open to him on the evidence. He drew my attention several times to the index to the appellant's bundle before the First-tier Tribunal and then submitted that within the bundle (which was not before the Upper Tribunal), there were multiple references to both "leaders and activists" of opposition parties having been persecuted for their political activities in Bangladesh.

22. When I asked Mr Shah to identify specific evidence that meant that Judge Singer's conclusions were not reasonably open to him, he invited me to read several reports in the appellant's First-tier Tribunal bundle in their entirety and assess the risk to low-level political activists for myself. I decline to do so. It is not the role of the Upper Tribunal to review all of the evidence before the First-tier Tribunal and come to its own view. I have reviewed the evidence cited in the skeleton argument, and as noted above, only one excerpt is relevant specifically to the risk to low level supporters of the JEI. However, Judge Singer cited the same excerpt at [23(k)] of his decision, so it cannot be said that he did not take it into account. Moreover, the treatment it describes cannot be considered, on its own, to amount to persecution.

23. Taking Mr Shah's submission at its highest, I find that even if the Judge had erred in underestimating the risk to low-level political activists at [23(k)], this would not have been material. The Judge found that the appellant was not an activist but an opportunistic "hanger-on", and that he would not engage in political activity on return to Bangladesh because his claimed political convictions are not genuinely held. There is no challenge to these findings.

CONCLUSION

24. For the foregoing reasons, I am satisfied that the appellant's grounds do not disclose any error of law.

NOTICE OF DECISION

The decision of First-tier Tribunal Judge Singer dated 25 April 2024 did not involve the making of an error of law. I therefore uphold that decision with the consequence that the appellant's appeal remains dismissed.

E. Ruddick

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 December 2024