Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09025/2016

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On Thursday 16 March 2017	**On Thursday 11 May 2017**

Before
UPPER TRIBUNAL JUDGE SMITH

Between

M A M
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E Rutherford, Counsel instructed by Cartwright King solicitors
For the Respondent: Mr S Staunton, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. It is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION

Background

1. The Appellant is a national of Bangladesh. He appeals against the Respondent's decision dated 18 August 2016 refusing his protection and human rights claim.

2. His appeal against the Respondent's decision was dismissed by First-tier Tribunal Judge N M Paul by a decision promulgated on 14 October 2016. The Appellant appealed that decision in relation to the protection claim only. The dismissal of the Appellant's human rights claim in relation to his private life is not therefore under challenge before me.

3. By a decision promulgated on 4 January 2017, I found an error of law in the First-tier Tribunal's decision. I therefore set aside that decision insofar as it related to the protection grounds save in relation to one factual finding to which I refer in my own findings below. My error of law decision is annexed to this decision for ease of reference. The factual background is set out at [2] of my error of law decision.

Evidence

4. The documents before the Tribunal for consideration in this appeal are:
   (a) The Respondent's bundle of documents including two reasons for refusal letters dated 18 and 19 August 2016;
   (b) Appellant's bundle prepared for the First-tier Tribunal hearing running to 580 pages and including the asylum interview record, the Appellant's witness statements dated 2 February 2015 and 12 September 2016, a statement from [Mr A] dated 13 September 2016 as well as the Tribunal decision in relation to [Mr A] allowing his appeal on protection grounds, a number of documents said to emanate from the Courts in Bangladesh, newspaper reports, a medical report of Mr Andrew Mason and background information pertaining to Bangladesh;
   (c) A further bundle of documents adduced by the Appellant with permission for the hearing before me comprising a video clip with still photographs extracted from that and an extract from the Code of Criminal Procedure, Bangladesh dated 22 March 1898.
   I refer below to those documents so far as relevant to my findings. I confirm though that I have had regard to all the documents when reaching my decision save that Ms Rutherford confirmed that she did not ask me to view the video clip which was in DVD format and that the Appellant would deal in oral evidence with what the still photographs are intended to show.

5. I received oral evidence from the Appellant himself and [Mr A]. Both gave evidence via an interpreter. They and the interpreter confirmed that they understood each other. A full record of the oral evidence is contained in the Record of Proceedings. I refer to it below so far as

relevant to my findings. Again, I have though had regard to all the evidence when reaching my decision.

Legal Framework

6. In order to be recognised as a refugee an appellant must show that he has a well-founded fear of persecution for one of five reasons set out in Article 1(A) of the 1951 Refugee Convention ie for reasons of race, religion, nationality, membership of a particular social group or political opinion. The 1951 Convention is interpreted in European law through Council Directive 2004/84/EC ("the Qualification Directive"). The Qualification Directive is incorporated in UK law through The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 and the Immigration Rules.

7. Article 3 of the 1950 European Convention on Human Rights prohibits torture, inhuman or degrading treatment. It is an absolute right from which there can be no derogation. An appellant must show that there are substantial grounds for believing that there is a real risk that the consequence of removal would violate his rights under Article 3.

8. The burden of proof is on the Appellant to establish his claim and that there is a real risk that he will be subjected to persecution or serious harm. The assessment of risk must be considered at the date of the hearing before me.

The Appellant's protection claim

9. The Appellant claims that he is at real risk on return to Bangladesh due to his political opinion. He says that he joined the student wing of the BNP in 1999. He says that he was a member and attended meetings and demonstrations whilst in Bangladesh.

10. Whilst in Bangladesh, the Appellant claims to have been the subject of false charges laid against him in 2001, 2003 and 2004 but those charges were dropped as it was accepted that he was not involved. He was suspended from the BNP in August 2005 as a result of the charges in that year on which he relies (see below) but the suspension was lifted once the party realised that he was not involved.

11. The Appellant claims to have been charged with a robbery and an offence involving a violent assault in 2005. He claims that he was convicted and sentenced in January 2006 to two years' imprisonment in absentia (as he had at that time absconded). He says that he was then detained in June 2006 following the issue of a warrant. He claims that he was ill-treated in detention. However, he says that he was then released in December 2006 for six months following payment of money by his family. Following a short period thereafter, the Appellant left

Bangladesh using a work permit visa which was issued to him in December 2006.

12. The Appellant has produced a number of documents which he says emanate from the Courts in Bangladesh and support his claim to have been charged, convicted and sentenced for these offences. The Respondent has apparently lost the originals of the documents and therefore no point is taken about those documents being only in copy form.

13. The first document in time is a First Information Report ("the FIR") dated 22 August 2005 made by one [IA] accusing (inter alia) a person by the name of "[J] s/o late [FA] [address given]" of a robbery of his brothers' shop and fight involving an assault on his brothers which is said to have occurred at 9pm on 21 August 2005 (although the FIR refers to it being signed on 20 August 2005).

14. There is then a charge sheet dated 30 August 2005 relating to those offences and referring to "[AM] alias [J]" with father's and address details as before and noting that he was included in the charge but had absconded. The charge sheet refers to the offence having occurred on 20 August 2005 and the complaint being lodged on 22 August by "[IA]" but the spelling of the second name is different from that which appears in the FIR.

15. The Court judgment relating to the case is dated 18 January 2006 and again refers to the offence occurring at 9pm on 21 August 2005 although the first names of the complainant's brothers are different in the FIR and charge sheet on the one hand and the judgment on the other. "J" is also spelt in a slightly different way in some places in the judgment. The outcome of the judgment appears to be that the allegation of robbery (or "hijacking" as expressed in the translation) is dismissed, no person was convicted of breaking and entering but in relation to the violence and assault, although certain of those charged were acquitted, "[AM] alias [J]" is convicted.

16. An order sheet dated 20 June 2006 confirms the arrest of "[AM] alias [J]". There then appears an appeal petition dated 17 August 2006 filed by a person named "[AM]" who is said to be the Appellant's brother coupled with a request to extend time for the appeal and a bail plea dated 20 August 2006 for release of the Appellant pending the outcome of the appeal. An order of the Sylhet Court of Session dated 21 August 2006 lists the appeal and application for extension of time for a hearing on 18 September 2006. There is a record dated 11 September 2006 granting bail with a bail bond of "Tk 30,000/-". The appeal was dismissed by the Criminal Court, Sylhet by a judgment dated 25 September 2006.

17. Finally, there is an order dated 14 December 2006 of the Supreme Court of Bangladesh releasing "[J] @ [AM]@[MAM]" on interim bail for a period of six months including what also appears to be a previous order of a Judge in Sylhet dated 15 October 2006 refusing bail.

18. In support of his claim to have been detained and ill-treated in Bangladesh, the Appellant relies on the witness evidence of [Mr A]. [Mr A] is a person who the Appellant claims to know from his membership of the BNP in Bangladesh. [Mr A] has been granted refugee status in the UK following an allowed appeal based on his claim to be at risk because of his activities for the BNP in Bangladesh and particularly in the UK where he appeared on televised debates openly criticising the Bangladeshi authorities. [Mr A] says that he became aware of the Appellant's arrest in June 2006 and visited him whilst he (the Appellant) was in detention.

19. The Appellant left Bangladesh in 2006. However, he claims that he will still be at risk on return due to his unserved sentence. In that regard, Ms Rutherford referred to the extract from The Code of Criminal Procedure 1898 which states as follows:-

> "[396(1)] When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and, if of imprisonment, or transportation, shall take effect according to the following rules, that is to say –
> (2) If the new sentence is severer in its kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.
> (3) When the new sentence is not severer in its kind than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence."

20. Ms Rutherford produced this extract only at the hearing but without objection from Mr Staunton. No evidence was produced from a lawyer in Bangladesh to confirm that this is and remains the law in these circumstances or whether there is any other relevant legal provision.

21. The Appellant also relies on a newspaper report dated 20 June 2006 confirming his arrest and a letter from a Councillor of of the Sylhet City Corporation (undated) which states that:-

> "My office came to know from local source also from Mr [JA]. Who is younger brother of [MAM] that he left Bangladesh. However the police still looking for him actively and quite often they raided his family house to search for him and harassed his family members, even though they knew that he doesn't live in Bangladesh any more."

There is no written evidence from any of the Appellant's family members confirming what is there said. Contrary to what is suggested in the index to the bundle (and as Ms Rutherford confirmed at the earlier hearing before me), that letter does not confirm the existing of

an extant arrest warrant nor is any arrest warrant produced in evidence.

22. The Appellant claims that if he is detained, he will once again be ill-treated. In support of his claim to have been ill-treated whilst detained in the past, the Appellant relies upon a report of Mr Andrew Mason, FRCS, FCEM who is a specialist in accident and emergency medicine. That report is dated 8 July 2015. Mr Mason comments on the Appellant having two missing teeth, and a number of scars on his forearms and lower legs. He also says that the Appellant demonstrates possible signs of post-traumatic stress disorder.

23. The Appellant also claims that he will be at risk on return due to his activities in the UK. He says that the Bangladesh authorities will be aware of his involvement with and support for the BNP in the UK. He is not a member of the BNP in the UK. However, he claims that the authorities will be aware of his activities, in particular a speech which he gave for [Mr A] at a meeting in 2014 which is the subject of the video clip before me. He claims that the meeting was broadcast on Bengali TV which appears in both the UK and Bangladesh and that it had also come to the attention of a newspaper in Bangladesh.

24. The Appellant travelled to the UK on 11 January 2007 as a work permit holder. He made an application for leave to remain in December 2007 which was refused. He claimed asylum in December 2014.

The Respondent's Reasons for Refusal

25. The Respondent has issued two refusal letters in this case dated 18 and 19 August 2016. She accepts that the Appellant is Bangladeshi but rejects the core of his claim. It is not disputed that the Appellant was a member of the student wing of the BNP but it is not accepted that he was suspended from the party as a result of the events which he says occurred in 2005. The Respondent did not accept that charges had been brought against the Appellant either in 2001, 2003, 2004 or 2005. She therefore did not believe that the Appellant would be at risk from the authorities on return. In his oral submissions, Mr Staunton also made the point that even if the Appellant's claim were true, that does not show that he is at risk now – some ten years after he left Bangladesh.

26. The documents relied upon as supporting the core of the Appellant's claim are rejected for reasons set out in the letter dated 19 August 2016 and it is not accepted that those lend credence to the claim. Some of the documents are not accepted as genuine having regard to the background evidence which confirms the ease with which false documents can be procured. Others are found not to lend further weight to the Appellant's account.

27. The Respondent also relies upon section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 ("section 8"). She asserts that the Appellant's delay in claiming asylum for almost nine years is potentially damaging to his credibility.

Findings of fact

28. I have considered whether the Appellant has made a genuine effort to substantiate his claim and whether his account is credible, coherent and plausible and does not run counter to available specific or general information relevant to his case (see paragraph 339L immigration rules).

29. I deal first with the Appellant's background as a member of BNP in Bangladesh. Although I set aside the decision of First-tier Tribunal Paul, I preserved his finding at [31] of the decision which states as follows:-

> "I am quite satisfied that the appellant has been involved with the BNP and also that, at some stage during that time, he was subjected to violence – whether it was by the RAB or fellow members of his own party, or indeed other parties. It is unclear. The background evidence shows that it was established, as in the previous decision of [Mr A], that there was a huge amount of violence in Bangladesh associated with political activities. This violence was not limited to inter-party disputes, but also intra-party disputes, as demonstrated by the appellant's own account of his experience of being the subject of false charges"

I preserved that finding as the Respondent has not disputed that the Appellant has been involved with the BNP. That he was the subject of violence due to his political opinion at the time in question is consistent with the background information pertaining to that period.

30. The Appellant says that he has been the subject of false charges in the past. There is nothing inherently implausible in that claim based on the background material as to the situation in Bangladesh in 2001 to 2004. The Judge was prepared to accept the Appellant's claim that those charges were brought.

31. Whilst, based on the previous finding, I accept that the Appellant was a member of the BNP and suffered violence and false accusations in 2001, 2003 and 2004 as a result of either inter-party or intra-party disputes, I find that this would not of itself give rise to a real risk on return some ten years later. The Appellant is no longer a member of the BNP although he continues to support them. The background evidence in relation to Bangladesh shows a significant amount of violence associated with political activities at that time and false claims being brought for reasons of political enmity. The Appellant's claim is therefore consistent with the background evidence at that time. However, the issue for me is whether there is a real risk now. Further, it is not clear whether the violence previously suffered was at the hands of political opponents or fellow activists. The Appellant claims for

example that the first of the false charges was brought by a fellow activist. Those false charges were in any event dropped and there is no evidence from the Appellant to show that he is still being pursued in relation to those charges.

32. I turn then to consider the core of the Appellant's claim namely that he remains wanted by the authorities in Bangladesh for having absconded whilst on bail in December 2006/ January 2007 following a false charge brought in 2005 and a conviction in 2006.

33. I have accepted that the Appellant was the subject of false charges in 2001, 2003 and 2004. It is therefore plausible that further false charges might be brought in 2005. That claim is consistent with background evidence as to the situation at that time.

34. The Appellant has produced a number of documents which he says have been obtained from Bangladesh relating to the Court proceedings. Those documents are broadly consistent with the chronology in the Appellant's evidence. They show a charge being brought in August 2005 leading to a judgment in January 2006 in the absence of the person named as "J", detention of that person in June 2006 and release by the Supreme Court on bail for a period of six months in December 2006.

35. I have set out the detail of those documents at [13] to [17] above and I have there noted some minor inconsistencies between dates and names. However, I am conscious that some of those may be due to errors by the issuing authorities, those recording the evidence or even the Judges when giving judgments. They may also be errors in translation. They are not of such magnitude as to cause me to doubt the genuineness of the documents.

36. I do not have the originals of those documents but that is due to the Respondent losing those originals. Although I have not been provided with evidence as to the form of police or Court documents in Bangladesh, on the face of it, the documents have the appearance of official documents and bear stamps consistent with issue by the relevant authorities and consistent with the production of certified copies of the documents. However, I have a number of concerns about the documents which lead me to conclude that I can give those documents only limited weight.

37. First, there is an inconsistency between the document which records the order of the Sylhet Court when dealing with the appeal lodged by the Appellant's brother and the Appellant's evidence. The fact of that appeal and the dismissal of it by the Sylhet Court is consistent with the Appellant's case. He said in evidence when dealing with his release in December 2006, that he had been previously refused bail by the Sylhet Court. That is consistent with the order of the Sylhet

Court refusing bail in October 2006. However, he failed to mention that, as is indicated by the document at [AB/235-237], his release on bail was ordered during the currency of his earlier appeal in September 2006. I accept that this inconsistency may be explained by the Appellant being unaware of what was happening in his appeal at the time if he was detained and was not in fact released then. There is no document confirming that he was in fact released at that time. On its own that inconsistency would not cause me not to accept the documents as genuine.

38. However, I also give limited weight to the documents because I do not find plausible that a Court dealing with something as serious as a conviction and sentence would consistently refer to the Appellant by a name which is said to be his nickname ("J"). That this nickname is misspelt on occasion is not something to which I give weight. As I have already noted, the misspelling could be due to errors in the production of the documents or even their translation. However, the Appellant in his evidence does not explain how he comes by this nickname or who knew him by that name. I find it implausible that a police authority and Court in what are on their face formal documents would continually refer to him by a nickname rather than his full name particularly given the seriousness of the allegations and implication of those documents. That implausibility coupled with the inconsistency to which I refer above gives me cause to doubt that the documents are authentic.

39. The Appellant's evidence about how these documents came into his hands also causes me to doubt that those documents have been procured as he says from official records in Bangladesh. The Appellant said that his uncle obtained the documents from his brother who still lives in Bangladesh. He said that his uncle visits Bangladesh regularly and obtained the documents during one such visit. However, he confirmed that his uncle lived in the UK and was in the UK at the date of the hearing before me. The Appellant said that his uncle was unable to attend the hearing because he worked but that failed to explain why his uncle has not provided a witness statement to confirm that he obtained the documents, when, how and from where.

40. Further, the Appellant's evidence as to how his brother acquired the documents was confused. He first said that his brother obtained them from a person who is the secretary to the solicitor who writes everything down, he then said that both this person and the solicitor had a copy and he then said that his brother obtained them from the solicitor. There is no statement from the Appellant's brother explaining how, when and from whom he obtained the documents nor how that person obtained the documents if it was not the solicitor who provided them.

41. I note the background evidence concerning the ease with which forged and fraudulent documents can be obtained and the prevalence

of such forgeries (see [2.11] Home Office Country Information and Guidance report dated November 2014). I recognise that simply because false documents can be easily procured does not mean that all such documents are false. However, for the reasons stated above, and applying the guidance in Tanveer Ahmed v SSHD [2002] UKIAT 00439, I give limited weight to those documents.

42. I turn then to consider the evidence of [Mr A] who says that he visited the Appellant whilst the Appellant was in detention in 2006. I accept as credible that [Mr A] knew the Appellant because he was a member of the BNP as was the Appellant. I accept also as credible that he would therefore come to know of the Appellant's detention through newspaper reports or from other associates. I note from the Tribunal decision in his own case that [Mr A] was, around this time, of adverse interest to the authorities in Bangladesh. Nonetheless, I accept as plausible that he might still decide to visit the Appellant in detention as his friend. The evidence of [Mr A] and the Appellant as to the number of visits is broadly consistent. I do not accept as damaging to the credibility of this aspect of the claim that [Mr A] and the Appellant said slightly different things in answer to what [Mr A] had taken to the Appellant during the visits. One said fruit; the other fruit juice. That is a minor inconsistency and does not undermine the credibility of the evidence of either.

43. However, I find as damaging to [Mr A]'s credibility his answers about the physical state of the Appellant during the visits. The Appellant said in oral evidence that he had been "hit a lot" by the RAB, that he could not feed himself at the time and that "one of his legs had gone" and that he was in a wheelchair. [Mr A] was asked whether he noticed anything unusual about the Appellant during his visits. He replied that "he was not like a normal person. His face was big. His hand was swollen. He had bruises. It was like when you see someone who is ill". Mr Staunton then asked whether the Appellant had bruises on his legs. [Mr A] answered that he did not know; he could not see as the Appellant was wearing trousers. When asked if there was anything else, [Mr A] again confirmed that the Appellant had injuries to his head and hands. It was only at the point when Mr Staunton asked who had come into the room first that, having initially said that he Appellant was "standing behind bars", [Mr A] gave evidence that the Appellant was in a wheelchair.

44. I do not find as plausible that [Mr A] would remember injuries such as bruising before something as fundamental as him being confined to a wheelchair. I reject the submission made by Ms Rutherford that, just because [Mr A] was found credible in relation to his own claim, he must also be telling the truth about the Appellant's case. [Mr A] was found to be in need of protection principally due to his activities in the UK which were well documented. That does not mean that he must be believed

in relation to everything he says. For the foregoing reason, I do not accept [Mr A]'s evidence as reliable.

45. The Appellant also relies upon Mr Mason's report. I have set out the content of that report at [22]. Since that report comes nearly ten years after the injuries which the Appellant claims to have suffered, Mr Mason is unable to state with any certainty what caused the injuries observed or when those occurred. In relation to the loss of teeth, Mr Mason says that this occurred more than nine to twelve months ago and the cause of the loss cannot be discerned. He says that accidental trauma or disease might have resulted in the loss. He goes on to say though that the absence of those teeth is consistent with the Appellant having lost them by being struck in the mouth.

46. In relation to the scarring, Mr Mason says that this occurred more than twelve months ago and that whilst the scars on the right forearm are highly consistent with being caused deliberately because of the parallel disposition of two scars, the possibility that they occurred accidentally cannot be ruled out. In relation to the other scarring, Mr Mason describes those scars as non-specific and of a type which might result from accidental contact but he says that he cannot rule out deliberate infliction.

47. Finally, Mr Mason, having noted that he is not qualified to provide an expert opinion on the Appellant's psychological state, goes on to conclude at [6.5] of the report that the Appellant "shows signs of post-traumatic stress such as might be expected in the aftermath of being tortured".

48. As Mr Mason himself fairly recognises, the value of his evidence as to the causes of the Appellant's physical injuries is limited, particularly in light of the passage of time. Whilst Mr Mason's terminology of the consistency of the injuries with the Appellant's account may not accord precisely with the Istanbul protocol (as Mr Staunton pointed out), that is of little significance. In the end, the most that Mr Mason can say is that the physical injuries might have been caused in the way in which the Appellant describes. Even if the evidence suggests that they may have been deliberately inflicted, Mr Mason cannot add to the Appellant's own evidence as to who inflicted them. As I note at [29] above, it is accepted that the Appellant has suffered violence in the past. He may have suffered these injuries at that time since, as Mr Mason points out, it is impossible to date the scars.

49. Mr Mason is a specialist in accident and emergency medicine. Whilst therefore he is not an expert in relation to mental health, as a doctor, he could be expected to know something about a person's psychological state. For that reason, I give some limited weight to Dr Mason's report as showing that the Appellant may be suffering from symptoms of post-traumatic stress disorder. However, there is no other medical evidence which shows that the Appellant has been diagnosed

with or treated for PTSD during the nine years since leaving Bangladesh. There is a form referring the Appellant to the Medical Foundation but no further information from that source and no medical records showing that the Appellant has seen a mental health specialist or been treated for mental health problems. He refers in his statement to having continuing physical pain and mental effects as a result of his detention. He suggests that he was unable to obtain treatment in the UK because of his status. I do not accept that explanation as plausible. If he were really in need of medical treatment, he could seek it.

50. For those reasons, I give limited weight to Mr Mason's report so far as it provides an opinion on the Appellant's mental health. I give weight to Mr Mason's opinions on the Appellant's physical injuries but for the reasons I give above, those opinions provide limited support for the Appellant's claim to have suffered those injuries by deliberate infliction at the hands of another person and, so far as they do, they provide even more limited support as to who inflicted the injuries or when.

51. The major difficulty with the Appellant's account of what occurred in 2005 and 2006 is the implausibility of a Court in Bangladesh releasing on bail someone who was serving a sentence imposed by a Court following a criminal conviction.

52. Mr Staunton cross-examined the Appellant at some length on this topic. The Appellant said at first that this was because RAB had "hit him a lot" and he was not well. There then followed a lengthy exchange regarding the time when the Appellant said that the RAB had mistreated him and been released because of the need for medical treatment and whether that was before, during or after the prison sentence. Mr Staunton pointed out that this still did not explain why the Court would have released the Appellant whilst he was serving a prison sentence of two years after he had served only six months.

53. There then followed a lengthy exchange about the Appellant's family having paid money to have him released. The Appellant said they had paid seven lakhs. However, it was entirely unclear from the Appellant's evidence whether it was his case that this was a bribe or surety for bail. He appeared to suggest that someone within the RAB had told his family that they should offer money to have him released and that they should not tell anyone about it. That did not sit comfortably though with the Appellant's evidence that he had been refused bail by the Sylhet court and he was released only due to the intervention of a High Court Judge. Although the Appellant's evidence was that his family were told not to say that they had paid money for his release (ie that it was a bribe), he also gave evidence that he was granted bail officially and the documents on which he relies accord with that version of events.

54. The Appellant was asked a number of questions by Mr Staunton about his bail conditions. At first, he did not appear to understand what was meant by bail conditions – he continued to refer to the RAB having "hit me a lot". Once that was clarified, he suggested that he did not know what conditions had been set. He said he had not read them. He was frustrated and he just wanted to get out. When asked whether the Judge had not told him what the conditions were, he suggested that the Judge had read them out in English and he didn't understand. He said that the usher had told him a bit. He said that he had a legal representative who spoke English who "told me a little bit". It was though his evidence that he had not had the opportunity to speak to his legal representative a great deal after the hearing because that person needed a signature from a commissioner to complete the bail formalities.

55. The Appellant's evidence that he was granted bail with such formality is inconsistent with his claim that his family had paid a bribe to secure his release. When the Appellant was asked to clarify his evidence about whether this was a bribe or a payment for bail, he initially said that his family had been told that if they went this way he would get bail. When he was asked to clarify why if his family had been told to tell no-one about the payment, his release on bail had been completed via what appeared to be a formal application and court hearing, he said simply "the system is like that in Bangladesh". He was also asked about his evidence that formalities had been completed using a commissioner. In response, he could say only that if a person was released from a prison sentence, a local commissioner had to sign in case the person runs away. That evidence still did not explain the fundamental question why the Court would have released the Appellant on bail part way through his sentence for no apparent reason or, if this was a bribe, why the Appellant would have been released in such a formal manner.

56. A further difficulty is that, even if I accepted the Court documents as genuine, those show a functioning judicial system which permitted the Appellant to appeal his conviction and apply for bail. However, the documents which the Appellant has produced on their face suggest that the Appellant exercised his right to appeal but that the appeal failed. Nonetheless, I am asked to accept that, his route of appeal having failed, the Court would then, without reason, release him on bail for a period of six months, part way through a legitimately imposed sentence (as the Courts would see it). I do not accept that to be plausible.

57. Neither was the Appellant's evidence as to how that release came about credible. As I note above, there was confusion in the Appellant's evidence as to whether his family paid a bribe for his release or had merely paid a surety for bail. The fact that the Appellant was released in the course of what was apparently a formal process suggests the latter. Indeed, the document which the Appellant has produced refers

to a bail bond. However, that again begs the question of why the Courts would have released the Appellant. If the payment was a bribe, it is not plausible that the release would have proceeded via an openly recorded, formal process.

58. I also do not accept that the Appellant would not have been made aware of the conditions of his release. If he was still subject to return to detention as he contends, then it is not credible that he would not have been made the subject of some form of reporting to ensure that he did not abscond. It is not plausible that a Judge in Bangladesh would give judgment in English and not explain to the person to be released the terms of that release. Nor is it credible that those representing the Appellant would not have ensured that he was aware of those terms to avoid him breaching the terms of his bail (if release on bail it was).

59. I also do not find plausible that the timing of the Appellant's release would coincide exactly with the issue of his work permit on which the Appellant travelled to the UK. The Appellant said that he applied for his work permit in 2004/5. He could not remember exactly when. He said it was only granted on appeal. He said that the appeal was in 2006 but did not say whether that was at the time prior to his detention following his conviction or when he claims to have been in detention. He said he could not remember exactly when the appeal took place. The date of the order for the Appellant's release is given in the Court document as 14 December 2006. The work permit was granted on the same date. I accept that coincidences do happen and, if I accepted the Appellant's other evidence, I would not find this implausibility alone sufficient to cast doubt on his credibility. However, coupled with the concerns I have already set out, however, I do not accept as plausible that the Appellant happened to be released from detention at precisely the same time as his work permit was issued allowing him to come to the UK.

60. Mr Staunton sought to cast doubt on the Appellant's evidence also on account of the delay between his release and him leaving Bangladesh on 11 January 2007. I accept as plausible that the Appellant may not have left Bangladesh immediately after his release on bail if he thought, as the order records, that he was being released for six months and was not therefore subject to immediate recall to detention. However, his reasons for delaying (that he had to collect his work permit visa and have his teeth fixed) are not sufficiently important matters to delay the departure of a person who genuinely fears persecution by the authorities whatever the Court had ordered. The Appellant's case rests on the RAB being above the law. If that were his perception, even though the Court had ordered his release for six months, I do not find it credible that he would delay leaving Bangladesh for that period.

61. The Appellant also appears to have experienced no difficulty leaving Bangladesh on his own passport at a time when, according to his evidence, he was released only temporarily on bail. The Appellant says that the controls at the airport are sufficiently sophisticated to pick that up. There is however no background evidence relied upon in support of that assertion. The authorities may not have had cause to check given that the Appellant was leaving with a work permit visa. If this had been the only reason for doubting the Appellant's account, I would not have found this a sufficient reason to doubt his credibility. However, coupled with the other reasons I have given, it is an additional reason why I do not believe his account of being detained and released on bail prior to leaving Bangladesh.

62. Even if the Appellant were charged, convicted and detained as he claims, Mr Staunton submitted that this did not mean that he would still be wanted by the authorities some ten years later. The issue for me is whether there is a real risk on return as at the date of the hearing before me.

63. I have already referred at [21] above to the document on which the Appellant relies from the Councillor of the Sylhet City Corporation. That letter does not say how the Councillor knows that the authorities have continued to visit the family other than that the Appellant's family have told him that the authorities are still looking for the Appellant. However, there is no statement from any family member as to when and with what frequency the authorities have visited the family nor when they last contacted the family. The letter itself provides no detail in that regard. The letter is undated and so it is not clear when the authorities were said to be showing this interest. It does not refer to there being any extant arrest warrant against the Appellant in spite of his escape on bail (in contradistinction to what the Appellant himself says was the position when he had absconded following sentence before his detention in June 2006). For those reasons, I give little weight to the letter.

64. The Appellant was cross-examined about when the authorities last contacted his family. Initially, he said it was "in 2008, end of 2007, beginning of 2008". He said that the Court had contacted the family because he (the Appellant) had come to the UK and his bail had expired. That would of course be some six months after his bail had expired but I do not disbelieve the Appellant for that reason. There may have been a delay in the authorities realising that the Appellant had not surrendered to bail. The Appellant then said that the police had come since. He said that the intelligence services had come. When asked when they had last come, he said "2015. End of 2015. Before they come. They come all the time. The officers change. New officers will come.". When asked to be more precise, he continued to repeat that it would be when officers changed as they "get worried". He did not answer the question as to how often they came.

65. I find the Appellant's evidence in this regard vague and lacking in detail. He was also inconsistent as to when the visits last occurred. There is a lack of any direct evidence from his family who informed the Councillor of the continuing interest. The Councillor does not profess to have any direct knowledge of any continuing interest.

66. Ms Rutherford says it follows from the extract of the Criminal Code to which she referred, that the Appellant would be at real risk of detention and therefore ill-treatment because he absconded whilst on bail some ten years ago and part way through his sentence. Notwithstanding the lack of evidence from a lawyer with knowledge of Bangladeshi law that these legal provisions are still in force and that there is nothing else which applies, I accept as plausible that, if the authorities continued to be interested in the Appellant because he was still wanted because he escaped bail, he is likely to be detained.

67. However, I note the lack of any arrest warrant or document from the Court showing that the Appellant is still wanted by them because he escaped bail. The lack of corroboration does not mean that the Appellant's account is not true. However, I do not accept that the authorities are still interested in the Appellant even if the events of 2005 and 2006 are as the Appellant claims for the following reasons.

68. First, I note that the Appellant has been the subject of false charges in the past which have been subsequently dropped. If the charges brought on this occasion were similarly false, it is not clear why those would be pursued some ten years later.

69. Second, even though, on the Appellant's case, the charges on this occasion went further and led to a conviction, the judgment in relation to that conviction shows that some of the Appellant's claimed associates were acquitted. The documents also show that the Appellant appealed against his conviction and that the Court in Sylhet was prepared to grant bail albeit subsequently dismissing the appeal. Even if the documents were in fact genuine, they do not show any continuing action by the authorities after the release on bail in December 2006. I do not find it credible that there would be no documents recording that the Appellant had escaped bail or any warrant issued against him if in fact the authorities continued to pursue him in relation to the conviction.

70. In the absence of any document showing that there is a warrant for the arrest of the Appellant for escaping whilst on bail or any direct evidence showing that the authorities continue to enquire after him and due to the lack of detail and inconsistency in the Appellant's own evidence as to continuing interest by the authorities, I do not accept that the authorities continue to be interested in him. It follows that I

find that he is not at continuing risk on this account even if he were detained and released as he says in 2006.

71. In relation to the risk which the Appellant claims due to his association with the BNP in the UK, he accepted in evidence that he is no longer a member. He said that was because he does not have legal status here. I do not accept that explanation. There is no background or other evidence which supports the suggestion that a party such as the BNP in the UK would be obliged to decline membership to one of their supporters simply due to lack of legal immigration status.

72. The Appellant also accepted in evidence that he is not on the Committee. He said he was not selected. He said though that he is involved with their programmes and attends demonstrations when those are organised. He says he attends meetings or demonstrations three times per month and when he is called, he goes. Under cross-examination, the Appellant said that he had been involved with the BNP since the end of 2008 or beginning of 2009. He said that there were a lot of big programmes but could not say how many. I accept as credible that the Appellant has continued to support the BNP in the UK at a low level and has attended meetings and demonstrations. The issue though is whether such activities have brought him to the attention of the authorities in Bangladesh.

73. The particular instance on which the Appellant relies is his speech to a meeting of the BNP in London in 2014. I accept as credible that the Appellant attended that meeting which was organised to welcome [Mr A] to the UK. I also accept as credible that there were a lot of people at the meeting. [Mr A]'s and the Appellant's evidence about the meeting was broadly consistent.

74. However, I do not accept that the speech which the Appellant gave would cause the Bangladeshi authorities to be interested in the Appellant. Even if I accept that [Mr A]'s own profile might cause the authorities to have some interest in a meeting organised to welcome him to the UK, I do not accept that this meeting would have come to their attention or that the Appellant's own involvement in it would cause the authorities to be interested in him.

75. The Appellant said in evidence that the meeting had been broadcast on Bengali TV. Although he mentions in his statement that a UK newspaper reported the meeting and that it was reported in newspapers in Bangladesh, there is no mention there of the meeting being broadcast on television. No copy of any broadcast has been produced. The evidence on which the Appellant relies is a DVD taken from a person's mobile phone footage. I find that this is an exaggeration.

76. Although the report of the meeting said to have been published in The Daily Jalalabad and The Daily Sylheter Dak includes the Appellant's name in the list of those who also spoke, it gives the Appellant no particular profile as a main speaker. Further, the evidence of both the Appellant and [Mr A] was that the Appellant's speech was short and was only to welcome [Mr A]. The evidence does not suggest that the Appellant was himself critical of the authorities in what he said. Although the Appellant claims to have been involved in meetings, demonstrations and "programmes" run by the BNP in the UK, I find that he is only a low-level supporter.

77. The background evidence in the form of the Home Office Country Information and Guidance dated February 2015 concerning opposition to the Bangladeshi government states that "membership or perceived support of groups opposed to the current government does not of itself give rise to a well-founded fear of persecution in Bangladesh, but may do so depending on the individual circumstances of the applicant." Taking into account the Appellant's prior membership of the BNP some ten years ago and based on his low-level support for the party in the UK since, I find that the Appellant is not at risk on this account now.

78. I turn finally to the impact of delay on the credibility of the Appellant's claim for asylum. This relates principally to the core of the claim as to the events in 2005 and 2006. The Appellant arrived in the UK in January 2007 and did not claim asylum until December 2014, nearly eight years later, having initially made a claim for leave to remain in December 2007 which had been rejected.

79. The Appellant's evidence about the delay was that he had been discovered by the immigration authorities whilst helping out at a wedding reception in a restaurant. He said that he had told his solicitors at the time that he was scared to return to Bangladesh. He said that his solicitors had told him not to claim asylum at that time because "everything was messy in Bangladesh and not settled".

80. In response to questions put by Mr Staunton, the Appellant said that he has a number of friends in the UK who are from Bangladesh and are involved with the BNP. He said that about ten to twelve had been granted asylum on dates ranging between 2007 and 2015.

81. I do not accept the Appellant's explanation for his failure to claim asylum earlier as credible. As Mr Staunton pointed out in his submissions, if the situation in Bangladesh were unsettled, that would be precisely the time when a solicitor would be likely to advise making a claim and not against one. Further, the Appellant cannot claim to be unaware of the procedure for making an asylum claim nor that his involvement with the BNP might be a reason for claiming if he were genuinely in fear on that account. He accepted that a number of his friends had successfully claimed asylum in the period before he made his own claim.

Decision and Summary of Reasons

82. Paragraph 339K of the Immigration Rules states that the fact that a person has already been subject to persecution or serious harm will be 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.

83. Based on the finding of the First-tier Tribunal Judge, I accept that the Appellant was a member of the BNP as he claims in Bangladesh before he came to the UK. I also accept based on that finding that the Appellant has demonstrated to the lower standard that he has been subjected to violence. The source of that violence is not clear but that this arose because of his BNP support is consistent with the background evidence about the situation at that time. I have to consider though whether, based on the Appellant's profile and the background evidence, he would remain at risk on this account some ten years later. Based on background evidence in 2015, membership or perceived support of the BNP would not of itself lead to a real risk on return. This depends though on individual circumstances of the asylum seeker.

84. The Appellant's involvement with the BNP in the UK is at a low-level. I accept that he is a low-level supporter and has attended meetings and demonstrations. He is not a member and is not on any Committee. I accept that the Appellant spoke at a meeting to welcome [Mr A] in 2014 in London. However, although I accept that the meeting was reported in newspapers in Bangladesh, those reports only show that the Appellant spoke at the meeting and the evidence as to what he said is not such as to place him at risk on return. Based on that profile and the background evidence and for the more detailed reasons set out at [71] to [77] above, I find that the Appellant would not be of interest to the authorities based on his activities in the UK.

85. I turn then to consider whether the Appellant has established his claim to be at real risk on account of events which he says occurred in Bangladesh before he came to the UK.

86. I accept that the Appellant was the subject of false charges in 2001, 2003 and 2004. However, I do not accept that the Appellant is of interest to the authorities based on those charges now. On the Appellant's own evidence, those charges were not pursued.

87. The Appellant's claim is focussed on the events in 2005/6 when he says he was falsely charged, convicted, detained and then released on bail. He says that the authorities remain interested in him notwithstanding the passage of time because he was released on bail and left the country whilst he was on bail. He says that he will

therefore be wanted by the authorities and will be re-detained on return.

88. I start by noting that it is plausible that he would be subject to false charges in 2005/6 given the earlier false charges to which he had been subject. On this occasion, though, he claims that the charges went further and, even though he was not involved in what happened, he was convicted and sentenced in his absence and subsequently detained, ill-treated whilst in detention before being released on time limited bail.

89. I give little weight to the Court documents in relation to the Appellant's claim to have been charged, convicted, detained and released in 2005/6 for reasons I have already given. I also give little weight to the evidence of [Mr A] for the reasons I have given. I accept that corroboration of a claim for asylum is not required (paragraph 339L of the Immigration Rules).

90. However, based on the Appellant's own evidence and taking that in the round with the Court documents and other evidence produced, I do not accept as credible that the Appellant was charged, convicted, detained and released in 2005/6. My detailed reasons for so finding are given at [34] to [61] above and I do not repeat them. For that reason, I do not accept that the Appellant escaped from Bangladesh whilst on bail. I do not accept therefore that the authorities will have any continuing interest in the Appellant or that he is at risk of re-detention on return.

91. It follows that I also do not accept the Appellant's claim to have been subjected to ill-treatment by the RAB whilst in detention. The evidence of Mr Mason provides very limited support for the Appellant's claim as he cannot provide evidence of when the injuries sustained occurred or at whose hands. He also accepts that there are other possible explanations for the physical injuries observed and those could equally have been sustained during the violence to which I have been accepted that the Appellant was subjected on account of his political opinions whilst in Bangladesh. I can give only limited weight to Mr Mason's opinions on the Appellant's mental health as Mr Mason himself accepts that he is not expert in this area and his diagnosis that the Appellant has symptoms of PTSD consistent with the aftermath of being tortured is unsupported by other medical evidence showing that the Appellant suffers from PTSD or is being or has been treated for it.

92. Even if I were to accept the Appellant's account of his detention and release in 2006, I do not accept that the authorities continue to be interested in the Appellant for reasons I have given at [62] to [70] above. Again, I accept that evidence of past persecution may be a serious indicator of future risk. I also accept that the lack of corroboration of a claim does not mean that it is not true. However, the

Appellant's own evidence as to the authorities' continuing interest in him is vague and contains inconsistencies. For that reason, and coupled with the lack of documentary or other supporting evidence as to that continuing interest, I find he is no longer of any interest if he ever was.

93. Section 8 of The Asylum and Immigration (Treatment of Claimants etc) Act 2004 provides that in determining whether to believe a statement made by a person claiming asylum, an authority is entitled to take into account delay in making an asylum claim without reasonable excuse for the delay. In this case, I reject the Appellant's explanation for why he did not make the claim earlier for reasons I have given at [78] to [81] above. The Appellant's failure to claim asylum until some eight years after arrival damages his credibility.

94. For those reasons, the Appellant has not made out his claim to be at real risk on return to Bangladesh. I therefore dismiss his appeal on protection grounds (there having been no challenge to the First-tier Tribunal's dismissal of the appeal on humanitarian protection and human rights grounds). The Appellant's appeal is therefore dismissed.

DECISION

The Appellant's appeal is dismissed.

Signed Dated: 10 May 2017

Upper Tribunal Judge Smith

ANNEX: ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09025/2016

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On Wednesday 21 December 2016	.....

Before
UPPER TRIBUNAL JUDGE SMITH

Between

MR M A M
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E Rutherford, Counsel instructed by Cartwright King solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. It is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

ERROR OF LAW DECISION AND DIRECTIONS

Background

1. The Appellant appeals against a decision of First-Tier Tribunal Judge N M Paul promulgated on 14 October 2016 ("the Decision") dismissing the Appellant's appeal against the Secretary of State's decision dated 18 October 2016 refusing his protection and human rights claims. The appeal against the Decision relates only to the protection grounds.

2. The Appellant is a national of Bangladesh. In 2004 he applied for a UK work permit which application was initially refused but his appeal was allowed in 2006. He came to the UK on 11 January 2007 on a work permit visa. He made an application for leave to remain in December 2007 which was refused. He claimed asylum in December 2014.

3. The Appellant's claim for asylum is based on his political opinion as a supporter of the BNP. He joined Chattra Dal (the student wing of the BNP) in 1999. He claims that a number of false charges and cases were brought against him between 2001 and 2004 but all were dropped. He says that in May 2005, he was falsely charged with robbery and suspended from the BNP. On 18 January 2006, he claims that he was convicted in his absence. He says that he was arrested in June 2006 and subjected to ill treatment by the Rapid Action Batallion (RAB). He was granted bail by a High Court Judge in December 2006 whereupon he collected his work permit visa and came to the UK.

4. The Judge accepted that the Appellant has been involved with the BNP and that at some stage in the past he had been subjected to violence, albeit not necessarily at the hands of the RAB. However, the Judge did not accept that the Appellant's claim to presently fear return was genuine, based in large part on his failure to claim asylum at an earlier stage. The Judge did not accept as credible a late claim to be the subject of an arrest warrant ([36] of the Decision). The Judge did not accept that the Appellant would be at risk now on account of events which happened about ten years ago and did not accept that he would be at risk as a low level participant in the BNP ([37] of the Decision).

5. Permission to appeal was granted by First-tier Tribunal Judge J M Holmes on 14 November 2016 on the basis that there may be an inconsistency between [31] and [33] of the Decision. Permission was not however limited. The matter comes before me to decide whether the Decision contains a material error of law and, if so, to re-make the decision or remit the appeal for rehearing to the First-Tier Tribunal.

The grounds and submissions

6. The Appellant appeals on essentially four grounds. The first concerns the Judge's reliance on the Appellant's delay in claiming asylum as reason for finding him not credible. Whilst the Appellant accepts that the delay is relevant and can be potentially damaging to credibility, the challenge is that the Judge placed too much weight on this factor and failed to consider it in the round. The Appellant relies on JT (Cameroon) v Secretary of State for the Home Department [2008] EWCA Civ 878.

7. The second ground concerns the Judge's treatment of the Appellant's evidence about the arrest warrant. Whilst the Appellant accepts that he did not produce the warrant in evidence, he relies on other evidence, in particular a letter from a Councillor of Sylhet City Corporation which he says supports his case in this regard. In the course of her submissions, Ms Rutherford accepted that the document relied upon [AB/272] did not actually support the Appellant's claim to have an arrest warrant issued against him. She relied though on that document as showing that the Bangladeshi authorities were still interested in the Appellant.

8. Ground three concerns the Judge's failure to consider whether the Appellant would be at risk as a person who was convicted and sentenced to two years' imprisonment which sentence he has not served. He relies on background evidence which he says shows that if he were detained (which he says he would be as a result of the unserved sentence) then he would be ill-treated in detention. Ms Rutherford in submissions argued that it remains the position that the Appellant is someone who has been convicted and sentenced and who has failed to serve his sentence. It was not clear therefore how the Judge reached the conclusion that the authorities would not be interested in the Appellant now simply because of the passage of time.

9. Finally, the Appellant relies on the evidence of Mr A who is also from Bangladesh and a recognised refugee. Mr A gave evidence that he knew the Appellant in Bangladesh and that the Appellant was a member of BNP there. The evidence which Mr A gave was that the Appellant was more than just a low level member and the Judge has, the Appellant says, failed to take that into account. The Appellant also says that Mr A corroborates his claim to have been imprisoned in Bangladesh and to have been produced to a Court there. Ms Rutherford drew my attention to the Home Office guidance at [AB/443] as supportive of the Appellant's claim that even low level members of the BNP may be at risk.

10. Mr Tarlow submitted that the key paragraph in the Decision is [37]. The conclusion that the authorities would no longer be interested in the Appellant ten years after the events on which the Appellant relies was a finding which was open to the Judge on the evidence. The Appellant has not produced any evidence corroborating his claim that there is an arrest warrant issued against him. The Judge had taken into account

the evidence of Mr A but found that the Appellant was in a different category to Mr A. In relation to the Home Office guidance, the Judge expressly considered that at [26] of the Decision. The Judge was entitled to find as he did though at [36] of the Decision that, given the Appellant's profile and the passage of time, the Appellant would no longer be at risk.

11. Following discussions, both parties agreed that, if I found an error of law, I could re-make the decision without remitting the appeal. Ms Rutherford invited me though to preserve the positive credibility findings in relation to what occurred in the past. She also indicated that the Appellant would wish to put forward further evidence and would wish to give oral evidence. The Appellant also intends to call Mr A to give further oral evidence. It would therefore be appropriate for a further hearing to be convened prior to the remaking.

Discussion and conclusions

12. Dealing first with ground one, I do not accept that the Judge has erred in this regard. The Appellant accepts that delay is a factor which is relevant. The Judge did not accept the Appellant's reasons for the delay in making his claim. The Judge was entitled to make that finding. Furthermore, this is not a case where the Judge disbelieved the totality of the claim because of the delay. It is clear from what is said at [31] of the Decision that the Judge accepted that the Appellant had been involved with the BNP and had been subjected to violence for that reason, although the Judge did not accept that this was at the hands of the RAB. Nor do I accept as the grant of permission suggests that there is an inconsistency between [31] and [33] of the Decision. As Mr Tarlow submitted and I accept, the core findings made by the Judge are that the Appellant suffered some problems due to his political views in the past but that he would not be at risk on that account now.

13. I do not accept either that there is any error of law in the Judge's treatment of the evidence concerning the arrest warrant. Ms Rutherford accepted that the document referred to in the grounds does not support the Appellant's claim that there is an arrest warrant against him. Whilst that document does refer to continuing interest by the authorities, the contents of the letter are very vague and do not provide any particulars of raids allegedly made or indeed how the writer of the letter comes to be aware of those matters. There is no error in the Judge failing to make express reference to that letter.

14. I am however persuaded that the Judge has erred in failing to consider the Appellant's position as someone sentenced to a term of imprisonment which he has not served. Although there is reference at [35] of the Decision to an acceptance "for the sake of this determination decision" that documents relating to ill-treatment during detention are genuine, there is no express finding whether the Appellant was convicted, detained and released on bail as the Appellant

claims and what impact that would have on the authorities' interest in him now.

15. That ground is also linked to the evidence of Mr A. The Judge records that evidence at [19] of the Decision. He there makes express reference to Mr A's evidence that he had visited the Appellant in prison after his appearance. That evidence does not find its way into the Judge's factual findings later in the Decision. Furthermore, although there is express reference to the background evidence at [26] of the Decision, I accept that the Judge has failed to take that into account when considering whether the Appellant's political profile, even if only a low level member of the BNP, would put him at risk now.

16. There is an error of law in the Decision. I set it aside. I have given directions below for further evidence to be served and for skeleton arguments to be exchanged. I have considered whether it is appropriate to preserve any findings. I have decided that it would be appropriate to preserve the findings made in [31] of the Decision as those are not affected by the errors of law which I have found to exist.

DECISION

I am satisfied that the Decision contains material errors of law. The decision of First-tier Tribunal Judge N M Paul promulgated on 14 October 2016 is set aside. I make the following directions for the resumed hearing:-

1. **The Appellant shall file with the Tribunal and serve on the Respondent no later than 28 days from the date when this decision is promulgated any further evidence on which he relies. He shall also by the same date file and serve a skeleton argument dealing with the issues in his case.**
2. **The Respondent shall file with the Tribunal and serve on the Appellant no later than 28 days from the date of service of the evidence and skeleton argument at [1] above a skeleton argument in reply to the Appellant's skeleton argument.**
3. **The resumed hearing of this appeal to deal with the subsidiary claim shall be listed on the first available date after 56 days from the date when this decision is promulgated with a time estimate of 3 hours. A Bengali interpreter with Sylheti dialect (if possible) will be required for the hearing.**

Signed Dated: 3 January 2017

Upper Tribunal Judge Smith