



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/09040/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 12th October 2017**

**Decision & Reasons
Promulgated
On 09th November 2017**

Before

**THE HON. LORD BURNS
UPPER TRIBUNAL JUDGE JACKSON**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**[M M]
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Miss P Yong of Counsel

For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge McIntosh promulgated on 24 January 2017, in which [MM]'s appeal against the decision to refuse his asylum claim and human rights claim dated 10 August 2016 was allowed. For ease we continue to refer to the parties as they were before the First-tier Tribunal, with [MM] as the Appellant and the Secretary of State as the Respondent.

2. The Appellant is a national of Bangladesh, born on [] 1984, who was first issued with a visa to study in United Kingdom on 28 August 2008, entering on 14 September 2008 with leave to remain until 31 December 2009. He subsequently made applications for leave to remain as a Tier 4 (General) student for which further periods of leave to remain were granted to 30 May 2015. The Applicant then made an application for leave to remain on the basis of private and family life on 29 April 2015 which was refused and most recently he claimed asylum on 17 August 2015. His claim was on the basis that he feared a real risk on return to Bangladesh because of his political beliefs, namely that he was a member of the Bangladeshi Islami Chhatra Shibir party, the student wing of the Jamaat-e-Islami party. Further, he claimed to be at risk on return to Bangladesh on the basis of sur place activities campaigning against the current government in Bangladesh whilst in the United Kingdom.
3. The Respondent refused the application on 10 August 2016 on the basis that the Appellant's claim to political activity was at a low level such that he would not be at real risk on return, and even if he was, it would be a localised problem from which he could internally relocate to another area of Bangladesh.
4. Judge McIntosh allowed the appeal in a decision promulgated on 24 January 2017 on asylum, humanitarian protection and human rights grounds. The Appellant's evidence was found to be credible and consistent by the First-tier Tribunal and he was found to be a member of the Bangladesh Islami Chhatro Shibir Party. Judge McIntosh found that the Appellant had established there was a real risk of persecution by the police and/or the ruling party in Bangladesh and that regardless of his profile within the party, he had been actively involved in opposing the current regime such that there was a risk of identification, apprehension and detention on return.
5. This appeal first came before Upper Tribunal Judge Storey for the error of law hearing on 26 May 2017. In a decision promulgated on 6 June 2017 (a full copy of the error of law decision is attached as an annex to this decision), he found that Judge McIntosh materially erred in law by failing to make any findings about whether the Appellant had been subjected to past persecution and whether he was a high-profile opponent of the government nor was there sufficient evidence on which to assert such a wide risk category to all opponents regardless of their profile. The appeal was adjourned and relisted before us on 12 October 2017 to remake the decision.

Findings and reasons

6. The following findings of fact are preserved from the decision of Judge McIntosh and are taken into account as part of our reasoning as set out below. The Appellant was initially a supporter of the Bangladesh Islami Chhatro Shibir Party rather than as a principal member and had had involvement with the party over a long period of time in Bangladesh and in

the United Kingdom. The Appellant is identifiable as a participant in demonstrations opposing the current ruling party in Bangladesh and has been actively involved in opposing the current regime throughout his time in the United Kingdom.

The Law in Relation to the Appellant's Claim under the Refugee Convention

7. The Appellant claims under Section 82(2) of the Nationality, Immigration and Asylum Act 2002 that a return to home territory would be a breach of the United Kingdom's obligations under the 1951 United Nations Convention relating to the Status of Refugees and the later Protocol ("the Refugee Convention").
8. It is for an Appellant to show that he is a refugee. By Article 1A(2) of the Refugee Convention, a refugee is a person who is out of the country of his or her nationality and who, owing to a well-founded fear of persecution for reasons of race, religion, nationality or membership of a particular social group or political opinion, is unable or unwilling to avail him or herself of the protection of the country of origin.
9. The degree of likelihood of persecution needed to establish an entitlement to asylum is decided on a basis lower than the civil standard of the balance of probabilities. This was expressed as a "reasonable chance", "a serious possibility" or "substantial grounds for thinking" in the various authorities. That basis of probability not only applies to the history of the matter and to the situation at the date of decision, but also to the question of persecution in the future if the Appellant were to be returned.
10. Under the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, a person is to be regarded as a refugee if they fall within the definition set out in Article 1A of the Refugee Convention (see above) and are not excluded by Articles 1D, 1E or 1F of the Refugee Convention (Regulation 7 of the Qualification Regulations).

The Law in Relation to the Appellant's Claim for Humanitarian Protection

11. Paragraph 339C of the Immigration Rules provide for a grant of humanitarian protection in circumstances where a person does not qualify as a refugee but can show substantial grounds for believing that they would, if returned to their country of return, face a real risk of suffering serious harm. The applicant must be unable or owing to such risk unwilling to avail himself of the protection of that country.

The Law in Relation to the Appellant's Claim under the Human Rights Convention

12. This appeal is also brought under the 2002 Act because the Appellant alleges that the Respondent has in making her decision acted in breach of the Appellant's human rights. The Appellant relies upon Articles 2 (Right to Life); 3 (Prohibition of Torture) and 8 (Right to respect for private and

family life). In respect of Articles 2 and 3, the burden of proof of demonstration that the Appellant's removal would breach this country's obligations under the Convention rests upon the Appellant and the standard of proof is the lower standard, that there is a reasonable chance or likelihood that harm will come to the Appellant if removed and in respect of Article 8, the standard of proof is the balance of probabilities.

The Appellant's evidence

13. In his written statement signed and dated 5 January 2017, which was prepared for the hearing before the First-tier Tribunal, the Appellant sets out his immigration history and time spent studying in the United Kingdom. He described being a member of the Bangladesh Islami Chhatro Shibir Party, which he joined in 2000 and became secretary of the Iqbal Memorial College branch in 2002. The Appellant claimed that because of this he was attacked in his college campus in Bangladesh in 2003. The Applicant had not come to the attention of the police in Bangladesh nor had he ever been arrested, but claimed that since 2009 the situation has worsened, and opposition party members are at risk of torture and persecution.
14. The Appellant has attended demonstrations in United Kingdom against the current regime in Bangladesh and provided some pictures and Facebook posts about these demonstrations. In May 2013, the Appellant was questioned by the London Metropolitan Police about one of his tweets about the Prime Minister and on the situation in Bangladesh. He was advised by the police to be careful about wording of tweets in the future. The Appellant does not know how the police knew about his tweet but considered that it could be someone from the ruling party living in the United Kingdom.
15. The remainder of the Appellant's written statement deals with background country evidence as to the situation in Bangladesh, of which various material was included in the original appeal bundle.
16. In his written statement signed and dated 20 December 2016, which was before the First-tier Tribunal, the Appellant provided further information in relation to his claim. He referred to a copy of the case filed against him in 2005 (a First Information Report "FIR"), which referred to his nickname 'Palash' and set out his other family details. The Appellant states that the case was filed against him because he was a member of the Bangladesh Islami Chhatro Shibir party. It was filed by a member of the Jatiotabadi Chhatro Dal, a student wing of the Bangladesh Nationalist Party but was subsequently withdrawn when the two main parties reached an agreement.
17. In his written statement signed and dated 18 May 2017, the Appellant claimed that he would be identified by the current regime on return to Bangladesh, believing that it was an agent of the current government who had reported his tweets to the Metropolitan Police in London and it was not

unexpected or unusual to have records of meetings and rallies held in London. The Appellant has during his time in United Kingdom, exercised his freedom of expression and publication, writing on Facebook and tweeting about the current oppression in Bangladesh and fears imprisonment on return for expressing his political views, which is an offence under section 57 of the Information Communication Technology Act 2006.

18. In his written statement signed and dated 26 September 2017, the Appellant gave some details of the problems that he experienced from 2003 until he departed Bangladesh in September 2008, which included being beaten up in 2003 by political opponents and that his name been put on the list in 2005. He stated that due to the nature of his work as an activist and member of the Bangladesh Islami Chhatro Shibir party, there was a sense of danger and problems, albeit on a lower scale than at present. This period covered the time when the Appellant's party was in government in alliance with the Bangladeshi National Party, who were in power until 2006. After this time the military were in power until elections were held in December 2008 when the Awami League came to power. This was after the Appellant had left the country. Those that the Appellant fears are now in power and can act with impunity.
19. The Appellant claims that it is not only those with a high profile who face a risk from the current regime, all activists and people like the Appellant who are involved with the opposition parties are being targeted, abused and killed. The Appellant was initially a secretary of his ward and area, then the secretary of his college and at university he was assistant secretary.
20. The Appellant confirmed that he had attended numerous demonstrations in the United Kingdom, some of which were held outside the Bangladesh Embassy, some outside Downing Street and some in Parliament Square. Evidence of his attendance at some of these has been submitted. The Appellant is certain that his activities in the United Kingdom, via social media and attendance at demonstrations will have been monitored by the authorities in Bangladesh which will place him at risk.
21. The Appellant did not give oral evidence at the hearing before us.

The expert evidence

22. The Appellant relies on a report by Dr Morten Koch Andersen, which at the hearing before us was undated and unsigned, although a signed and dated document with the date of 16 October 2017 was subsequently provided. Dr Andersen states in the report that he had available to him instructions from the Appellant's solicitors; the Respondent's refusal letter dated 10 August 2016; the decision of Judge McIntosh promulgated on 14 January 2017 and what is described as an adjournment letter from the Upper Tribunal dated 6 June 2017.

23. Dr Andersen's report summarises the Appellant's account as one in which he felt persecuted in Bangladesh based on his political association with the Bangladesh Islami Chhatra Shibir and a fear that he will face persecution upon return to Bangladesh. He considered that the claim was consistent with his own knowledge of events in Bangladesh, involving harassment of the political opposition, violent abuse and torture against them and false criminal cases being lodged against individuals. He describes widespread violence and harassment of the political opposition in the aftermath of the 2014 election of both prominent politicians and in consequence local grassroots activists being forced into hiding or stopping their political activities.
24. In terms of the Appellant's position within the party, Dr Anderson considers that the Appellant's description of his political career is consistent with him being a member at secretary level and as such he would be considered part of the leadership team in local and rural areas. Consequently the government or law enforcement could plausibly consider him as a threat along with other activists and members of the opposition.
25. Dr Anderson was specifically asked whether there was any evidence to suggest that the Bangladeshi authorities monitored activities of opponents in the United Kingdom such that surveillance activities may place an individual at risk. In response he stated that it was an established fact that the government of Bangladesh have the capacity to monitor social media and have used this information against opposition politicians with the Information Technology Act 2006 curtailing freedom of expression by those who hold dissenting views. The offence now carries with it a jail term of between 7 and 14 years and warrants are no longer required to make an arrest under the Act. Dr Anderson does not specifically answer the question about monitoring of activities in the United Kingdom.
26. Dr Anderson stated that active activists and politicians of the opposition parties are currently at risk of arbitrary arrest and detention in Bangladesh. High and low profile activists are targeted in an arbitrary way, often with connections to local politics and conflicts. He considered that individuals with the profile of the Appellant, as an opposition activist, would be considered a potential threat to the government and that there is no fair or due process within the justice system to deal with this.
27. The Appellant's solicitors specifically asked Dr Anderson 'What are the present risk implications to the Applicant resulting from having his name recorded on a list in 2005?' To which Dr Anderson responded as follows:

"The so-called 'lists' are a special feature of policing and politics in Bangladesh. The lists are compiled by police officers at the local police stations as a registry of known political activists, mainly of the opposition but also supporters of left-wing leaning parties, tend to be unofficially registered. The lists are used to arrest political activists and local leaders in times of heightening tension between the major

political parties and/or in connection with local riots, attacks or public disturbances such as demonstrations or strikes etc. To be on the list means you can be arrested at any time on suspicion of crimes or events that have taken place in the local community. The lists usually name locally known political activists and leaders but also include unknown assailants or persons taking part in criminal activities such as demonstrations, rallies or riots. This gives the police and law enforcement agencies almost free hands to arrest people, whether they were present or not. To be named on a list puts the person in severe risk of arrest and detention and violation of his/her rights.”

The Appeal hearing

28. On behalf of the Appellant, Counsel submitted a skeleton argument and made oral submissions. The preserved findings of fact from the First-tier Tribunal were reiterated, that the Appellant was involved with the Bangladesh Islami Chhatra Shibir as a low-level activist and has actively opposed the current regime in Bangladesh whilst in the United Kingdom. Up-to-date background evidence from 2017 which supersedes that previously filed was relied upon specifically, as was the expert report which concluded that the Appellant would be at risk even as a low-level supporter.
29. Overall, on behalf of the Appellant it was submitted that his sur place activities will bring him to the attention of the authorities in Bangladesh and would resurrect the previous interest in him evidenced by the FIR in 2005. It was further submitted that the Appellant's involvement was not at a low-level, he was a persistent and long-standing activist who would be viewed as part of the local leadership in Bangladesh which the authorities would view as significant. We were taken through the latest objective evidence submitted which was said to show that there was no distinction between high level or low-level activists and although it is accepted that most of this evidence was in a different context, it was relied upon to demonstrate that the key issue was whether a person has been critical of the government or not.
30. Counsel for the Appellant made reference to the fact that the Appellant's wife had mental health difficulties and that they had two children for the purposes of Article 8 of the European Convention on Human Rights, but no detailed submissions on Article 8 were made either in writing or orally.
31. In response, the Home Office Presenting Officer submitted that the Appellant had not established that he was persecuted between 2003 and 2008 and would not now face any real risk of serious harm on return to Bangladesh. It was submitted that the Appellant's claim was essentially based on sur place activities and that there had been a wholesale change in his circumstances since he left Bangladesh. The Appellant had distanced himself from some of the tweets previously made, he didn't advocate a violent overthrow of the regime in Bangladesh and posed no

threat to the government there. There was no outstanding arrest warrant for him and his claim amounted to having made some tweets and attended demonstrations only.

32. In terms of the background evidence, the report from Amnesty described only 20 enforced disappearances since 2012, which was on any view a very low number of people. Again, there were comparatively low numbers of extrajudicial killings which should be seen in the context of periods of heightened political violence around election times and a general volatile situation rather than profiling or targeting of all opponents. The Respondent relies on the background evidence which shows that leaders and high profile activists have been targeted and submits that there is insufficient evidence to show a general risk category all opponents and insufficient evidence to show that this Appellant would be at risk on return. Much of the most recent background evidence submitted is about general suppression of dissent, focusing on suppression of journalists, suppression because of a person's sexual orientation and religious oppression rather than of opponents of the current regime per se.
33. In terms of the expert evidence, it was submitted that it is clear that Dr Andersen had not seen the 2005 documents, nor do these of themselves create any risk on return to Bangladesh. It was noted that Dr Andersen did not expressly deal with the Appellant's sur place activity and did not answer the question about whether the authorities in Bangladesh monitored social media in the United Kingdom or whether they even have capacity to do so.

Findings

34. In addition to the preserved findings of fact set out above, we specifically consider three main points in relation to the Appellant's asylum claim. First, whether he was persecuted in Bangladesh prior to his departure in 2008; secondly, whether he is at risk on return to Bangladesh from the FIR in 2005 and thirdly, whether he is at risk on return to Bangladesh as an opponent of or a person critical of the current regime.
35. The Appellant relies on an incident in 2003 when he was beaten up badly at college as past persecution, claiming that he was specifically targeted in this attack because of his political views. The information about this incident comes primarily from the Appellant's substantive asylum interview in which he claimed that he was beaten up because he was secretary of his political party and following being identified helping a member of his party who himself had been attacked. There is in our view, nothing to suggest that the Appellant was specifically targeted in advance but that at worst, he was attacked by unknown assailants after helping another. We do not find that there is anything to suggest that the Appellant was targeted because of his political views, or that even if this was a factor, that it was anything other than an isolated incident which arose following events on a particular day. This isolated incident does not amount to past persecution in Bangladesh.

36. As to the FIR in 2005, we do not find that it establishes any future risk to the Appellant on return to Bangladesh. On the Appellant's own evidence, it was a false charge made against him (as one of 46 named individuals) by a member of Jatiotabadi Chhatro Dal, a student wing of the Bangladesh Nationalist Party which was withdrawn the following year, in 2006, when there was an agreement between the Bangladesh Nationalist Party and the Jamaat-e-Islami party. The Appellant had no difficulties in relation to the FIR after 2006 until he left Bangladesh (nor since) and it is difficult to see why it would now cause him any further difficulties more than ten years later with an unconnected political party, the Awami League, now in power. The Appellant has not claimed that there is any specific threat or risk arising from this FIR now, but it has been submitted on his behalf that it could somehow be resurrected against him on return because of his sur place activities. We find no basis for that submission at all.
37. We also find that the 'list' referred to by Dr Andersen in his report is not the same thing as the FIR in 2005. Dr Andersen was not provided with a copy of the FIR as part of his instructions and he does not list it as a document he has seen. His description of the 'list', as set out above, is fundamentally inconsistent with the FIR that we have been provided with and there is nothing to suggest that the Appellant appears on any such 'list' as described by Dr Andersen which would place him at risk.
38. Finally, in relation to the Appellant's asylum claim, we consider whether he would be at risk on return to Bangladesh as a critic of the current regime from his sur place activities. We do not find that the Appellant has established that he would be on the evidence before us. We do not find the evidence of Dr Andersen of any assistance in this regard given that he failed to answer the question about whether the Bangladesh authorities have the capacity to, or in fact do, monitor social media outside of Bangladesh. Although, as was found by Judge McIntosh, the Appellant is identifiable on social media for his participation in protests, that does not necessarily mean that he would be or has been identified by the authorities in Bangladesh.
39. The background country evidence which we were taken to does give examples of the Bangladesh authorities suppressing freedom of expression and using legal powers to do so, but only one example was given of this being used for a low level student activist. The material focused on examples of suppression of journalists, and suppression of those with a particular sexual orientation or religious identity and includes relatively low numbers of people involved. The material falls far short of establishing such a wide risk category as contended for by the Appellant and to some extent by Dr Andersen, of all political opponents being at risk. We find there is insufficient material before us to establish such a general risk even on the lower standard of proof.
40. Dr Andersen suggests that the Appellant would in fact be seen as a high level activist locally or rurally as he was secretary of his student party. However, that position was held in 2002 to 2003/4 with no more recent

activity for that particular party. We do not agree that in these circumstances the Appellant would be seen as a high level activist, even locally, but in any event, even if he was, there would only be a very limited geographical area of risk, if at all. On this basis, even taking the Appellant's claim at its highest, there would be the option of internal relocation and a sufficiency of protection for the Appellant in Bangladesh.

41. For the reasons set out above, we dismiss the Appellant's asylum claim and would also dismiss any claim for humanitarian protection or that his removal would breach Articles 2 and/or 3 of the European Convention on Human Rights on the same basis. The Appellant's claim under these alternative provisions would stand or fall with his asylum claim and there are no distinctions between the factual bases for any of the heads of claim.
42. Finally, we deal with the remainder of the Appellant's human rights appeal on the basis of Article 8 of the European Convention on Human Rights. Judge McIntosh, in a single paragraph, referred very briefly to the Appellant's family circumstances in that his wife and child were living with him in the United Kingdom and were dependent on the Appellant for emotional support. He then found that there were exceptional grounds for the appellant and his family to remain in the United Kingdom. We read that final conclusion in the context of an appeal which was being allowed on asylum and humanitarian protection grounds and note that no detailed findings were made at all either within or outside of the Immigration Rules as to family and private life.
43. The error of law decision did not specifically deal with the Article 8 part of the decision of Judge McIntosh but we find that in the absence of anything preserving those findings, it was set aside by Judge Storey in his decision. That leaves us to consider the matter afresh when remaking the decision on appeal.
44. In her skeleton argument, Counsel for the Appellant submitted that the Appellant would meet the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules in that there would be very significant obstacles to his reintegration in Bangladesh as he was been away from there for 10 years. No further detail has been given by the Appellant himself in evidence, nor has reliance been placed on any particular facts other than the length of absence from Bangladesh. We do not find that this of itself creates very significant obstacles for the Appellant to integrate on return. He has spent the majority of his life in Bangladesh, has been educated there and there is nothing before us to suggest that he has lost all ties (linguistic, cultural, familial) with Bangladesh such that he could not re-establish himself on return.
45. It is further suggested by Counsel for the Appellant that the Appellant would face serious hardship on return to Bangladesh with his family (a wife and now two children) but again, there is no evidence to support that

assertion and no reason to suggest that the Appellant would not be able to maintain and accommodate his family on return.

46. As to family life, the Appellant has not claimed that he meets the requirements of Appendix FM (he clearly can not) and he would be returning together with his wife and children who are all Bangladeshi nationals with no leave to remain in the United Kingdom.
47. For completeness and because there are children involved such that their best interests need to be taken into account, we consider the Appellant's private and family life outside of the Immigration Rules under Article 8 of the European Convention on Human Rights in accordance with the five stage approach set out in **Razgar**.
48. The Appellant's case before us on Article 8 is very limited indeed. It is said that he has established a private life in the United Kingdom since 2008, albeit no detail of any significant ties or private life which could not be continued or re-established in Bangladesh has been given. In relation to his family, his wife has, at least in the past, had mental health problems but the latest medical evidence available before us dates back to February 2016 and refers to improvements in her condition at that time.
49. The Appellant and his wife have two children, both under school age, and neither of whom have yet established any private life of their own outside of the family. The Respondent gave detailed consideration to the eldest child's best interests (the younger child was born earlier this year after the decision) in the reasons for refusal letter which we have no basis to disagree with given the lack of evidence from the Appellant or his wife submitted in the course of his appeal about the children. Similarly, we have no reason to consider that the position would be any different for the younger child. We find that it is in the children's best interests to remain with their parents and there is nothing before us to indicate that that should be in the United Kingdom rather than in Bangladesh.
50. The Appellant, his wife and children enjoy family life together but would be returning together to Bangladesh such that there would be no interference with their family life which could continue to be enjoyed on return. As to private life, although we accept that it is likely that the Appellant (and probably his wife) would have built up some private life in the United Kingdom, there is nothing to suggest that this is significant or could not be recreated on return to Bangladesh. The Appellant's removal to Bangladesh would, at worst, be a very limited interference with his right to respect for private life but would be in accordance with the law and in pursuit of a legitimate aim, namely the economic well-being of the country through the maintenance of effective immigration control.
51. We find that the Appellant's removal would not be a disproportionate interference with his right to respect for private life, taking into account the very limited evidence of any significant private life established in the United Kingdom, the Appellant's connections with his home country and

the factors in section 117B of the Nationality, Immigration and Asylum Act 2006.

Notice of Decision

The Appellant's appeal is dismissed on asylum grounds.

The Appellant's appeal is dismissed on humanitarian protection grounds.

The Appellant's appeal is dismissed on human rights grounds.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 their 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.

Signed 
2017

Date 8th November

Upper Tribunal Judge Jackson