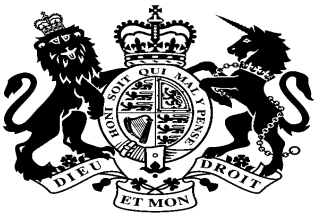


Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02130/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 June 2018	**On 19 June 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

[S I]
~~**(ANONYMITY ORDER NOT MADE)**~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: No appearance
For the Respondent: Ms A Everett (Home Office Senior Presenting Officer)

DECISION AND REASONS

1. This is the appeal of [SI], a citizen of Bangladesh, to the Upper Tribunal, against the decision of the First-tier Tribunal of 21 March 2018 dismissing his appeal against the refusal of his asylum claim (of 29 January 2018).

2. The Appellant arrived in the UK on 15 September 2009, apparently as a student. He was granted leave in that capacity up to 28 August 2015; an application on compassionate grounds was refused with no right of appeal on 13 November 2015, and one on EEA *Zambrano* grounds was refused on 27 January 2016; on 14 March 2016 he was arrested and detained as an overstayer, and held until 6 May 2016.

3. The Appellant's asylum claim was based on his membership of the BNP in his country of origin, an organisation in whose student wing Chattradal he gained some prominence, becoming local General Secretary in 2004 and being the subject of sufficient animus from the Awami League that he had nine false charges registered against him for political reasons between 2008 and 2016. These cases involved allegations of extortion, murder and fighting, and involvement in land disputes. In the course of 2013, and between 24 March to 7 May 2015, the Appellant returned to Bangladesh.

4. His claim was rejected by the Secretary of State because of perceived discrepancies and implausibilities arising within it.

5. The First-tier Tribunal considered his evidence, noting that the information he had given about the BNP and Chattradal was in the public domain. It identified material concerns regarding his credibility

   (a) It was notable he was unable to state the 19 points of principle central to the BNP cause, which was implausible had he been as close involved with the Party as he claimed.

   (b) He had given different dates for joining the Chattradal, variously 2001 and 2007-2008 and as to the office he had originally held with them; he had given misleading evidence in suggesting he had joined the BNP soon after his arrival here, when in fact he had joined only in 2016. The letters supposedly supporting his involvement gave different titles for his role, and there was no explanation for why, whilst written in Bangladesh and dated March 2004, they were nevertheless written in English, or of how it was that he had been able to obtain such old documents only recently.

   (c) He had variously stated his problems began in Bangladesh in 2015 but also that FIRs had been issued against him since 2008.

   (d) The Document Verification Report from the Respondent, from an Immigration Liaison Assistant who could reasonably be assumed to be familiar with their task and the importance of its faithful performance, counted against the genuineness of the FIR that had been checked under reference number 06/168. That DVR recorded that the Officer in Charge at the relevant police station returned to physically locate the register and manually search the records, and confirmed that the record matching that reference number was for a different matter altogether. The Tribunal acknowledged that there might be scope for confusion given the number of dates involved, and noted that the statement's maker, being based abroad, was inevitably not available for cross examination. However there were nevertheless other concerns regarding the documents, for example the mistakes as to the Appellant's age, that undermined the proposition that it was part of a genuinely sustained animus against him: those details would have been carefully checked by anyone genuinely wishing him to be successfully prosecuted. Overall the FIRs were considered unreliable.

(e) No original version of the Bengali document from February 2004 had been provided; a letter from the President of the District Chhatraleague Pirojpur was not signed or dated, and a further letter written in a threatening tone it was not addressed to anybody and thus received little evidential weight; other supporting evidence was surprisingly brief.

(f) It was not credible that the Appellant would claim asylum so late in the day if he had so many genuinely serious charges issued against him, and indeed the date of his signing up to the BNP in this country was more consistent with seeking to document an adventitious asylum claim than with any genuine history of political involvement.

(g) An email from Gazi Imran of 3 August was not translated and the address was not identifiable; the articles in the Daily Matrijagat and Weekly Desh containing photographs of the Appellant were untranslated and so did not confirm his identity.

6. Having regard to those considerations, the First-tier Tribunal found that the Appellant was not a credible witness regarding his claims of historic involvement with the Chattradal in Bangladesh. Moving on to his claim of involvement in UK activities for the BNP, one photograph published in the Daily Matrijagat in August 2016 appeared to have been photoshopped, and was also suspiciously close to the date of his asylum claim.

7. A newspaper published in Bengali relating to a meeting in Whitechapel in February 2018, and in relation to false cases against Khaleda Zia at London Metropolitan JASAS, identified the Appellant as "assistant organising secretary". It was surprising that the listed attendees did not include Bodrul Islam, the President of the London Mohanagar JASAS who had written in support of the Appellant's claim, given his status in the organisation. None of this material was sufficient to place the Appellant as a person of influence with a sufficiently significant role in the organisation to be at real risk of political persecution on a return to Bangladesh.

8. Grounds of appeal of 3 April 2018 argued that, contrary to the perception of the First-tier Tribunal, the email from Gazi Imran and the article from Weekly Desh were indeed provided in translation. This error amounted to an improper failure to consider relevant evidence, and in thus apportioning less weight to the documents in question than might otherwise have been the case, the Tribunal had failed to consider the claim "in the round".

9. Permission to appeal was granted on 18 April 2018 on the basis that it was apparent that the First-tier Tribunal had indeed overlooked the relevant translations, which had been clearly identified in the Appellant's bundle. However, the Judge granting permission noted that the outcome of the appeal might well have been the same had they been assessed. Nevertheless, that could not be taken for granted.

10. A letter from Tower Hamlets Law Centre of 4 June 0218 requested that more time be provided for them to confirm their client's instructions. Ms Everett for the

Respondent submitted that I should determine the appeal on the material before me, given that the nature of those instructions was not particularised and as the primary issue presently before the Tribunal was the question of "error of law", as to which it was not obvious what further instructions could be necessary.

Findings and reasons

11. I accepted Ms Everett's submissions that an adjournment would not be in the interests of justice. No detail is given as to what further instructions might be appropriate from the Appellant at this juncture in proceedings, and given the fact that today's hearing would foreseeably concentrate on "error of law" issues, it is difficult to see what instructions could be pertinent. The grounds of appeal have been appropriately pleaded in writing and will of course be considered by me. This was already a case in which the Appellant's credibility has been held by both the Respondent and the First-tier Tribunal as damaged by the delay in putting forward his case. It seems to me that further delay would not serve the public interest and that there is no unfairness occasioned to the Appellant by completing the consideration of his appeal at the listed hearing.

12. No country evidence was cited in the grounds of appeal to the Upper Tribunal, but to take a relatively uncontroversial source, as it is published material from the Secretary of State often relied upon by asylum seekers from Bangladesh, from the Country Policy and Information Note *Bangladesh: Opposition to the government* (January 2018):

> "6.1.1 Amnesty International reported in May 2017:
>
> 'The years since the 2014 elections have been marked by an increasing tendency to penalize dissent. The ruling Awami League party in an apparent attempt to tighten its grip on power has arrested thousands of opposition members and supporters. Many key BNP leaders are either in prison, facing criminal charges or have been forced into exile.'"

13. That citation is typical of the flavour of the material regularly seen in this Tribunal. It demonstrates that there has been political repression in Bangladesh and that those with a distinct political profile, and perhaps not a very high one, might face arrest and perhaps worse, though the Note goes on to cite (6.1.6) that sources indicate that "Opposition party members claimed that security forces arrested approximately 2,000 of their members during mass arrests in early June [2016], although in general they were not charged or imprisoned; some were reportedly released after paying bribes." The question for the First-tier Tribunal was essentially whether the Appellant was a person of sufficient profile that he might fall into the class that could reasonably be said to be at risk.

14. In my view, the oversight of the First-tier Tribunal, whilst an error of law by way of a material error of fact for which the Appellant was not responsible, was insignificant. It was perfectly clear what the reaction of the Tribunal would have been had it had regard to the translated material, given the approach it had taken to the other documents. The governing authority is of course *Tanveer Ahmed* [2002]

UKIAT 00439, which essentially holds that material of this nature stands and falls with the assessment of the evidence as a whole. The Appellant's case, in terms of how it generally held together, the plausibility of his witness statement and oral evidence, and the cogency of the documents in its support, was generally found wanting.

15. Of course, once material evidence has been overlooked, one should be careful before concluding that the material in question would have had no difference to the appeal's outcome. As Neuberger LJ stated in *HK* [2006] EWCA Civ 1037 §45, once some findings have been identified as unlawful, a decision may only be upheld where the tribunal is "tolerably confident that the tribunal's decision would have been the same on the basis of the reasons which have survived its scrutiny". I have no hesitation in saying that one can be extremely confident that the Tribunal's fundamental thinking would not have been reversed had it had regard to the translations of the material in question.

16. The concerns expressed by the First-tier Tribunal regarding the significant volume of documents with which it expressly engaged carry over to the two items of evidence which it wrongly overlooked. The email from Gazi Imran, given the problems already identified with other documents, could not justify the conclusion that the Appellant had a political profile that would place him at risk of persecution in Bangladesh. The newspaper photograph alone does not amount to cogent evidence demonstrating that the Appellant's depiction therein would carry a real risk of some imputation of any meaningful political profile to him by the Awami League.

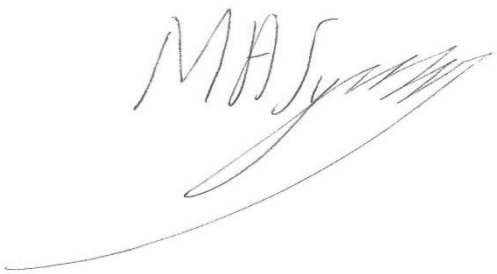
17. I accordingly find that the First-tier Tribunal made no material error of law. Its decision stands.

Decision:

The decision of the First-tier Tribunal was a lawful one.

The appeal is dismissed.

Signed: Date: 8 June 2018



Deputy Upper Tribunal Judge Symes