



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

Appeal Number: PA/05264/2017

THE IMMIGRATION ACTS

**Heard at Birmingham Employment
Tribunal
on 8 February 2018**

**Decision &
promulgated
on 26 March 2018**

Reasons

Before

UPPER TRIBUNAL JUDGE HANSON

Between

DILU MIAH

(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Masood instructed by Law Dale Solicitors

For the Respondent: Mr D Mills Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Rowlands promulgated on 19 July 2017 in which the Judge dismissed the appellant's appeal on both protection and human rights grounds.

Background

2. The appellant, a citizen of Bangladesh, was born on 15 April 1981. On 26 May 2017 an application for international protection was refused against which the appellant appealed.
3. The appellant's immigration history is not in issue. This shows the appellant entered the United Kingdom lawfully on 9 March 2004 with a work permit valid until 23 February 2005. On 1 February 2005 the appellant was allowed to remain as a visitor until the 8 September 2005. The appellant overstayed only making his next application on 28 December 2012 when he applied for leave to remain on the basis removal would interfere unlawfully with his human rights. This was refused on 15 April 2013 with no right of appeal. A subsequent family/private life application was rejected in 2013 and on 4 November 2015 the appellant was encountered working illegally in an Indian takeaway and served with notice of intended removal. On 29 January 2016 the appellant made a further application relating to human rights which was refused on 23 February 2016. On 8 March 2017 the appellant was encountered in Cardiff claiming asylum three days later.
4. Notwithstanding the appellant being legally represented the Judge notes at [5] that there was no witness statement from him in the bundle. A document purporting to be a witness statement was not signed and the copy in the Judges papers has been struck through which Ms Masood confirmed was as a result of the appellant not seeking to rely upon what was said in that statement before the Judge. The appellant was, however, able to set out his case as the Judge permitted that to be provided by way of oral evidence.
5. The Judge found the appellant not to be a credible witness.
6. At [31] the Judge finds "*I am satisfied that the Appellant has told the truth about his nationality and identity, there is no issue over his immigration history either. However I am not satisfied that he has ever been a member of Chatra Shibier nor that he has ever faced any difficulties as a result.*"
7. The Judge found the appellant had difficulties in answering questions about how the party hierarchy was formed. In relation to the appellants title in the party the Judge records that he had claimed first of all to be an ordinary member but later claimed to be different kinds of president depending on which letter was read about him. The Judge notes the appellant then claims that unite and ward presidents mean the same thing whereas it was found they do not. The Judge records "*this indecision damages his credibility*" [32].
8. The Judge noted the appellant claims to have been physically attacked because of his political involvement in 2002 but that it took him two years thereafter to leave the country. The Judge noted the appellants evidence on his own admission was that he applied for a visa to the UK intending to return to Bangladesh and not overstay [33].

9. The Judge deals with documentary evidence provided concluding that little weight could be attached to the same for the reasons stated. At [38] the Judge writes:
- “There is then another letter from Bangladesh Islami Chatra Shibir claiming that he was a member and activist but not saying for how long and also claiming that he was a Unite President from 2001 to 2002, which flies in the face of his 2003 statement in which he claims to be a member of the BNP during that time. Again, this document is wholly unreliable.”
10. The Judge concludes by finding the appellant had not shown there was a real risk of harm on return demonstrating an entitlement to be recognised as a refugee or a person entitled to a grant of humanitarian protection. The claim was dismissed on the same grounds pursuant to articles 2 and 3 ECHR.
11. In relation to article 8 ECHR the Judge found the appellant had not established he had any or private life in the United Kingdom that would engage article 8 outside the immigration rules and that the appellant could not meet any of the requirements of the Rules; making the only possible option being for the appellant to demonstrate there were insurmountable obstacles to his return which, in view of the conclusions reached in relation to the protection claim, and the fact the appellant is a person who is fit and able to work and fend for himself in Bangladesh, the same were not made out.
12. The appellant applied for permission to appeal which was granted by another judge of the First-tier Tribunal. Although the wording of the grant is slightly ambiguous in terms of whether it is a full or partial grant it was accepted before the Upper Tribunal that there is no indication it is a limited grant and accordingly Ms Masood was permitted to argue all the points she sought to rely upon.

Grounds

13. The appellant challenges the protection claim on the basis set out at [5 (a-c)] of the grounds which read:
- (a) Paragraph 32 of his determination the FTTJ states *‘he [the Appellant] now claims that unite and ward president mean the same thing, clearly they do not.’* The basis on which the FTTJ was able to say that unite and ward president did not mean the same thing is unclear. There was no evidential basis for that conclusion. It is an impermissible supposition.
- (b) At paragraph 33 of his determination the Fttj observed that it took the Appellant two years to leave the country and at paragraph 34 the FTTJ concluded: *‘the fact that he was able to apply for and obtain a Visa without any problems and leave the country using his own passport and, more importantly, live at home for most of these two years totally negates any claim that he was wanted by either the Awami League or anyone else.’* In so finding:
- i. The FTTJ failed to have regard to the Appellant’s explanation, at interview, about why he was able to leave

Bangladesh without difficulty: *'there wasn't any fingerprints there. You could escape from authorities. Unless you are a murder case wanted or something like this'* (AIR 116): when it was put to him at interview that the police/AL were not able to find him when he was in Bangladesh and were not able to stop him at the airport, he responded *'that time our situation wasn't that bad now it is worse. Now majority of president and secretary are inside jail or members. Or they hide them.'* At the time (in 2002 - 2004) the AL were not to the ruling party. They are now the ruling party, and have been in power since 2009. Indeed, the FTT was expressly invited to bear this in mind when considering the Appellant's ability to leave Bangladesh without difficulty. It failed to do so.

- ii. It was wrong to say that it took two years for the Appellant to leave the country after his attack, and that the Appellant was able to live at home for most of these two years. The Appellant was attacked at the end of 2002 and he came to the UK in March 2004 (less than two years). It is, in any case, wrong to say that the Appellant was able to live at home for most of this time. At interview, the Appellant explained, in terms, that he had not lived over most of this period. At interview the Appellant explained that *'We lived in hiding. We never slept in our house'* (AIR 111-113). He went to explain in detail that after the attack, he stayed at home for around one month and then went to live in his maternal uncle's house in Sylhet where he was for six months, after which he was in hiding for around 3-4 months in Jagonatpur (AIR 182-187). When asked whether he had problems in the places he relocated to, he stated that: *'they used to find out somehow and I had to move one place to another. I didn't want to given problems with my family so I moved'* (AIR 192).
- (c) Paragraph 35 of the FTTJ's determination is difficult to follow and, with respect, is confused, and in some respects the conclusions expressed therein are perverse:
- i. The FTTJ states *'I am not sure how much link there is between Chattra League and Chattra Shibir....'* yet the FTTJ was referred to a passage in the CIG report, *Bangladesh opposition to the government* (February 2015) indicating, clearly, that the Chattra League was the student wing of the Awami League, and Chattra Shibir was the student wing of the Jamaat-e-Islami party.
 - ii. The FTTJ fails to take into account the correction made by the Appellant, in his oral evidence, to the dates in his statement submitted in support of his human rights claim in 2013 (see the FTTJ's determination at paragraphs 5 and 12).
 - iii. The fact that someone might support different parties over time is not inherently plausible/incredible and the FTTJ's conclusion to the contrary is wholly perverse.

- iv. The penultimate sentence of paragraph 35 of the determination is, with respect, confused in that it appears to conflate the Appellants evidence about his political activities in Bangladesh and the UK.
14. The appellant also challenges the Judges consideration of the human rights claim stating the appellant had by the time of the appeal hearing been in the United Kingdom for around thirteen years and had given evidence that he had friends and relatives and claimed removal would amount to a disproportionate interference with his private (not family) life.
 15. The appellant asserts the reference by the Judge to the insurmountable obstacles test is not relevant to the claim which was a private life claim and in relation to the claim outside the Rules, bearing in mind the length of the appellant's residence in the United Kingdom his evidence he had friends and family here, the Judges conclusion that article 8 was not even engaged is said to be wholly perverse or in the alternatively that the Judge erred in that he gave no reasons for his finding that article 8 outside the rules was not engaged.

Submissions and discussion

16. As noted above the Judge was faced with a situation in which for some unexplained reason there was no signed statement of evidence upon which the appellant or his representative were willing to place any reliance before the Judge who was, therefore, required to establish the appellant's case on the basis of the oral and documentary evidence before him.
17. In relation to the challenge at paragraph 5(a) of the grounds, it was accepted during the course of the hearing when this matter was explained further that the Judge has accurately recorded the evidence given by the appellant that unite and ward president means the same thing. At [5] of the decision under challenge the Judge records the appellant's evidence in response to a question asking him the reason why he could not go back to Bangladesh. The Judge writes:

".. He said it was because of his political involvement. He was asked what the relationship between Chatra Shabir was and Jamat-e-Islami and he said that Chatra was a part of JEI. He was a member of Charta from 2001. He was asked about the statement that he had submitted in 2013 and he confirmed that it had his signature in it. It was put to him that in that statement he had claimed to have joined JEI in 2003 and he said as far as he was concerned he had mentioned 2001 but he believed the Solicitors got it wrong. He said he was a ward president and a member. Ward is much smaller than district. He was then asked about a letter dated 4 November 2013 where he was described as Unite president between 2001 and 2002 and he said that that was correct, he was going around asking people to vote for them. He said that unite and ward are exactly the same person. He was then asked about questions in his interview to which he had answered about not being a president and not being a Unite president and he said he didn't understand the question is clearly at the time".

18. The grounds challenge one part of the findings in [32] which has to be read in full both in terms of the content of this paragraph but also the rest of the decision. At [32] the Judge writes:

“The Appellant had some difficulties in answering questions about how the party hierarchy was whilst I accept that he may have considered corrected himself rather quickly, it still damages his credibility. So far as his title in the parties concerned he had claimed first of all to be an ordinary member but later claimed to be different kinds of president depending on which letter was read about him. He now claims that unite ward president mean the same thing, clearly they do not. This indecision damages his credibility.”

19. The appellant asserts there was no evidential basis for concluding that united and ward president do not mean the same thing but this is only one line of paragraph 32 which records difficulties in answering questions regarding matters of which the appellant should have had knowledge and conflicting claims in relation to any role the appellant had in the parties.
20. Ground 5(b) challenges the finding by the Judge that it took two years for the appellant to leave the country and that he was able to apply for and obtain a Visa without any problems. It is submitted the alleged two-year period was wrong although on the applicant’s own chronology at interview he remained in Bangladesh for at least eighteen months if not two years without evidence of anything adverse happening to him.
21. The applicant asserts the Judge did not address the appellant’s explanation as to his passport but these are matters considered by the Judge within the evidence as a whole. The statement by the Judge the appellant remained in his home address for all the time he was in Bangladesh arguably does contradict the appellants claim that he was moving around after having remained at home for only one month and that he moved around for periods of six months and four months not remaining at home for the period the Judge believed. It was accepted that on its own this point was not determinative but Ms Masood submitted that it could be material combined with the other aspects.
22. The appellant claims the Judge was wrong to state there was no evidence to support his claim that after nearly nine years a warrant had been issued for his arrest. The applicant had provided a FIR and the applicant said it was a false claim in any event. The charge sheet was dated October 2006 and judgment given in February 2010 it was submitted it was not clear what the Judge meant by a warrant. It was argued there was other evidence supporting the appellants contention that the Judge failed to consider.
23. It is accepted the appellant was asked in his oral evidence to address the inconsistencies and that the Judge did address these issues in the decision. It was argued, however, that the Judge failed to mention corrections made by the appellant in relation to parts of the evidence and has not given reasons why the earlier evidence was rejected. It was argued a statement dated September 2013 had been provided by the respondent on the day of the hearing. The appellant challenges the Judge’s failure to accept that the appellant would “flip-flop” between allegedly conflicting political parties arguing it was not implausible or incredible. The appellant could be a member of both the BNP and Awami League.

24. The appellant submitted that various errors made by the Judge relied upon did not instil confidence to show that the Judge had applied the required degree of anxious scrutiny to a protection claim. It was argued this is material as it impacted on credibility and the weight given to the documents.
25. The appellant asserted in relation to article 8 ECHR that he had only made a private life claim. He had been in the United Kingdom for thirteen years, there was evidence before the Judge of friends and family in the United Kingdom, the appellant had not been back to Bangladesh. It was argued the Judge was wrong to say that article 8 was not engaged and that a proportionality exercise should have been conducted. It was private life outside the Rules.
26. On behalf the Secretary of State Mr Mills submitted this is a challenge to the protection claim only. Discrepancies were identified by the Judge in the evidence and the Judge was right to refer to differences in the claims made in the evidence. In the appellants 2013 statement produced at the hearing a number of discrepancies arose between what the appellant now says regarding dates he joined and which party he joined and also the statement the appellant intended never to overstay and return, which was shown not to be true.
27. The fact the appellant remained in Bangladesh for two years or eighteen months is a matter of semantics as he remained in the country where he claimed his life was at risk for a long time. Even if the appellant was only at home for a month after the initial attack he obtained his passport and so could not have been in hiding.
28. Mr Mills argued the Judge dealt with the credibility points cumulatively and was entitled to find on the evidence, even with those matters that may be infected by error, that the appellant was not a credible witness.
29. The Judge dealt with the issue of delay in making the claim and Mr Mills submitted there are so many problems with the evidence that the Judge found the appellant not to be credible and it not a genuine claim. The Judge was entitled to find as he did regarding the documents and deals with the same in the decision as per *Tanveer Ahmed*. It was argued the Judge could not ignore the fact the appellant had given two different statements that he then claimed were wrong. Any errors made by the Judge are minor factual errors not material in light of the weight of the issues the Judge considered and in relation to which he found against the appellant. It was submitted nothing was put forward in relation to article 8.
30. In reply Miss Masood submitted that statement originally produced had been abandoned and not relied upon by the Judge as the Judge only makes mention of the 2013 statement. Miss Masood repeated her claim that a reading of the determination gave the sense the Judge had not paid attention to the evidence and submissions made. It was submitted the Judge approached the evidence without the required degree of care that he should have done. It was argued individually some of the matters may not be enough but cumulative they are and that error should be found.

31. This tribunal disagrees with the appellants submissions. Even if it is accepted the Judge made errors such as whether the appellant remained in Bangladesh for two years or eighteen months and whether he was at home or living elsewhere, the fact of the matter is the Judge clearly considered the evidence with the required degree of anxious scrutiny and has given adequate reasons for the findings made.
32. The core finding is that the appellant is not a credible witness. The Judge had ample reasons for coming to such a conclusion in light of the deficiencies and problems identified in the evidence. The Judge did not approach the matter in an inappropriate manner or failed to apply the required degree of anxious scrutiny.
33. It is well within the range of findings reasonably open to the Judge on the evidence that the appellant failed to make out that his claim was credible or that he had any entitlement to a grant of international protection.
34. The Judge gives ample reasons to support the conclusion the protection claim should be dismissed.
35. In relation to article 8 ECHR this is a private life claim only. It is not made out the Judge erred in concluding the appellant could not meet the requirements of the rules meaning he would have to show circumstances sufficient to warrant a grant of leave on article 8 grounds on the basis of his private life outside the rules. The Judge found no such grounds had been made out. It was not made out that the appellant could not re-establish a private life in Bangladesh. The overall conclusion the appellant could not succeed in relation to his private life outside the rules must be a conclusion that the respondent's decision is proportionate. Looking at the evidence, submissions, and findings as a whole, this conclusion is one that can be inferred and one that is fully within the range of findings reasonably open to the Judge on the evidence.
36. No arguable error of law material to the decision to dismiss the appeal is made out sufficient to warrant this Tribunal interfering with this determination.

Decision

37. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

38. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....

Judge of the Upper Tribunal Hanson

Dated the 15 March 2018