



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

Appeal Number: PA/05329/2017

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 27 February 2018**

**Decision & Reasons promulgated  
On 05 April 2018**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**MEHBOOB MUSTAFA  
(anonymity direction not made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss Warren instructed by Duncan Lewis & Co Solicitors

For the Respondent: Mr McVeety Senior Home Office Presenting Officer

**ERROR OF LAW FINDING AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Swinnerton promulgated on 18 August 2017 in which the Judge dismissed the appellant's appeal.

**Background**

2. The appellant is a national of Bangladesh born on 20 February 1967 who claims that if returned to Bangladesh he will face persecution on the basis of his political opinion as a member of the Bangladesh National Party (BNP) and due to having been forced to give false evidence in a murder case.
3. The appellant entered the United Kingdom lawfully with a Tier 4 (General) Student Migrant Visa on 12 October 2009. On 3 March 2017 the appellant was arrested by the West Midlands Home Office Enforcement team when he was discovered hiding under a bed in his wife's bedroom. On 4 March 2017 the appellant's wife and children were returned to Bangladesh by the UK authorities. The appellant claimed asylum on 22 March 2017. He was interviewed on 5 May 2017. The protection claim was refused in a refusal letter dated 25 May 2017.
4. The Secretary of State accepted the appellant is a national of Bangladesh and his personal identity but not that he was a member of the BNP or that he experienced problems in Bangladesh due to his involvement with the BNP.
5. Having considered the evidence, the Judge sets out findings of fact from [21] of the decision under challenge. The Judge draws together his thoughts at [29 - 31] in the following terms:
  29. I must now draw together the various points in the case to arrive at a decision. On the one hand, I have highlighted several aspects of the Appellant's case which troubled me and which have caused me to exercise caution before arriving at a decision such as the inconsistencies in his account as to his role in the BNP, the lack of consistency and credibility relating to his account that he had been politically engaged for the 8 or 9 years before coming to the UK whilst also being in hiding and not living in any fixed abode, the lack of any further threats having been made against him from about 2004 or 2005 until he left Bangladesh, the lack of plausibility of the continued outstanding nature of the criminal case relating to the murder of Tipu and Imran which occurred 18 years ago, and the claimed outstanding cases against the Appellant stemming from the years 1991 to 1995 which is more than twenty years ago. On the other hand, I have referred to some documentation provided by the Appellant in support of his claim such as the report from Dr Obuaya and the Rule 35 report.
  30. In conclusion, applying the low standard of proof applicable to an appeal of this nature, I am not satisfied that the Appellant has given a truthful and accurate account and I do not find that he would be at real risk if returned to Bangladesh. Taking all the available evidence into account, I do not accept the core account of the Appellant.
  31. The Appellant has been in the UK for a few months less than 8 years. He has no family in the UK. His wife and two children aged 11 and 13 were removed to Bangladesh in March 2017 and are living there. The Appellant qualified as a medical doctor in Bangladesh and pursued unrelated studies

in the UK. Prior to leaving Bangladesh, he had lived all his life in Bangladesh. I have not accepted his account and I see no reason why the Appellant cannot return to Bangladesh and continue his life there with the assistance of his family. I do not find that there are any exceptional compelling circumstances and, applying **SS (Congo) [2015] EWCA Civ 387**, the Tribunal has no need to consider Article 8 of the ECHR outside the Immigration Rules.

6. Permission to appeal was granted by another judge of the First-tier Tribunal on 16 November 2017; the operative part of the grant being in the following terms:

“The grounds assert that the judge failed to deal with highly material evidence. At [11] the Judge noted that it is the Respondent’s case that the Appellant was not named in any of the newspaper articles that he relied upon. However, at page C69 and C71 of the respondent’s bundle the Appellant is named in two separate articles in the Daily Juger Alo; the Judge does not deal with this highly material evidence at all. Additionally the Judge states at [25] that the Appellant stated that he did not experience any problems in Bangladesh for the last four or five years before he left the country. In fact the Appellant stated at question 116 of the asylum interview that he was contacted and threatened in 2008 and 2009. The Judge therefore left out of account three important pieces of evidence. That amounts to an error of law in the assessment of the Appellant’s credibility.

In an otherwise careful decision and reasons, it is nonetheless arguable that the Judge erred in failing to take into account the Appellant’s reply to question 116 of the asylum interview. In that reply the Appellant stated that Joseph had contacted him in 2008 and 2009 just before he left Bangladesh to come to the UK. That is arguably pertinent to the issue of credibility and in failing to refer to it the Judge arguably erred in law.

7. The application is opposed by the Secretary of State.

### **Error of law**

8. It is submitted on the appellant’s behalf that the Judge erred in failing to have regard to a particular piece of evidence, namely the newspaper article. It was submitted on the appellant’s behalf that the last paragraph of the newspaper article names the appellant and that he also gave evidence that the article relates to him. At C71 is a further translation of the same newspaper said to be dated 24 December 1994 which is said to be consistent with the appellants involvement with the party and the fact he was an activist. It was argued the article supported the appellant’s account that had been given. At [11] of the decision under challenge it is written:

11. With respect to the problems of the Appellant in Bangladesh, reference is made to a different name to that of the Appellant being stated in the FIR of the incident in September 1991 and to none of the newspaper article

submitted in relation to the incident in September 1991 mentioning the Appellant. It is stated that the Appellant has provided self-serving documents without UK certified translations of them and, applying the principles in the Tanveer Ahmed case, no weight has been placed upon those documents.

9. Although it is submitted on the appellants that the Judge should have considered the same and the evidence as part of the claim and that if the articles are accepted this will be highly convincing evidence of the veracity of the appellant's claim, the first issue to note is that [11] of the decision under challenge is not the Judge setting out findings of fact based upon an assessment of the evidence. It falls within the section of the decision in which the Judge was setting out the respondent's case. So far as [11] records the respondent's case no arguable legal error can be said to arise. Asserting it is anything more is the first of two material errors in the three pleaded grounds.
10. The Judge set out what occurred at the hearing before setting out his findings of fact and reasons between [21 - 31] of the decision under challenge.
11. Miss Warren on behalf of the appellant submitted that the Judge sets out at [24] the reasons why the appellant's account was not accepted relying on a number of further forms of evidence; although it is submitted this evidence shows that the appellant is a leader and activist and that the Judge needed to take the newspaper article into account in relation to this aspect. It was submitted the evidence was a material part of the account.
12. There is no evidence made out, or credible submissions made, that all the Judge did in this case was to accept the respondent's position and go no further. The Judge's findings are in the following terms:
  24. There are several aspects of this case which troubled me. One of those aspects relates to the role of the Appellant within the BNP. The Appellant claims to have become involved with the BNP in January 1986 when he would have been aged 18. At the asylum interview, the Appellant stated that he was a normal activist when he joined and then from January 1993, some 7 years later, he was elected to be the General Secretary of Chattra Dal of Rangur Medical. A little later in the asylum interview, the Appellant gives a different answer and states that, from the very beginning, he was the leader of the Chattra Dal wing. When asked to explain this inconsistency at the asylum, the Appellant answered that a leader is also an activist. I do not accept that explanation and find the Appellant has given inconsistent answers as to his role within the BNP. At the hearing, the Appellant was asked about the comment in his witness statement that, for the last 8 or 9 years in Bangladesh, he had lived at the same address whereas in his witness statement he states that his nightly sleeping routine during that period was not permanent, nobody knew where he lived and he only gave the address in the asylum interview as a postal address. At the hearing, when asked about this, the Appellant gave

evidence that he had been working on policy matters for political leaders during that period and would sleep in their accommodation. I do not accept that evidence because I found the Appellant to be entirely unconvincing in the evidence he that he gave in this respect. No credible explanation was given as to why the Appellant would change his account so significantly in respect of where he had lived for a period of 8 or 9 years before he left Bangladesh. I was also unconvinced by the evidence given by the Appellant as to exactly what were his political activities during that period of time. I found his answers to be evasive and to lack detail and I do not believe that he was engaged in policy work for senior political leaders and, at the same time, remaining in hiding. In respect of where the Appellant lived during his last 8 to 9 years in Bangladesh which, by his account, is directly connected to the role that he was undertaking for the BNP during this period of time, I found his evidence to be far-fetched and not credible and I reject it for the reasons stated above. I reach that conclusion having reminded myself again of the danger of rejecting evidence because it does not appear to be inherently plausible from a 'Westernised' perspective.

25. Another aspect of the Appellant's account that troubles me relates to the claimed incident when Tipu and Imran were murdered. The Appellant's account is that he was threatened by the brothers of Tipu, namely Lieutenant General Ahmed Aziz and Tofail Ahmed Joseph, a leading figure in the criminal underworld. The account of the Appellant is that he was pressured to give false evidence to help exonerate the perpetrators of the murders which led to the threats against him. He stated at the asylum interview that he gave evidence as a witness in 2004 and that the case is still ongoing. When asked at the asylum interview as to when was the last time that he heard from Lieutenant General Ahmed Aziz, he answered that it was in 2004 or 2005. When asked at the asylum interview whether he had experienced any other problems in Bangladesh after this, he did not specify having suffered any other problems. The last threat from the brothers of Tipu was therefore at the latest 12 years ago in 2005 and, for the 4 to 5 years that the Appellant continued to live in Bangladesh engaged in his claim to political activities prior to coming to the UK, he did not by his own account experience any problems. I find it, therefore, difficult to see how the Appellant could be in fear of his life due to the murder of Tipu and Imran given that the claimed murders took place 18 years ago, the last threat made against the Appellant in relation to the murders was 12 to 13 years ago and the Appellant was able to live in Bangladesh for 4 to 5 years after the last threat made against him without experiencing any other threats. I also find it difficult to accept that a criminal case relating to murders that took place 18 years ago has still not reached a conclusion. I find the account of the Appellant as to the murders of Tipu and Imran and his involvement in them to be far-fetched and not

credible and, even if his account is true, I do not see how the events since 2004 or 2005 demonstrates that the Appellant is at risk as a consequence of the murders. Again, I found the evidence of the Appellant at the hearing in this respect to be very unconvincing.

26. An additional element of the Appellant's account that concerns me relates to Appellants claim that there are outstanding cases against him. Those cases are referred to in the letter dated 22.7.2017 from the President of the Bangladesh Jatiatabadi Chatradal, Central Unit in which it is stated: *"Later on, he had been with the BNP Doctors Association of Bangladesh (DAB). Here in the BNP he was also a victim of the Opposition Parties several times and always under their threat. Still has got cases line with the top judicial court"*. At the hearing, the Appellant stated that the cases referred to in the letter derive from the period between 1991 and 1996 and, when asked whether his claim was that there would still be cases in the courts system pending against him from a period 21 years ago at the latest, the Appellant answered that the cases are still in the court system, have not been active since 1999 but could be reinstated at any time in order to stop the Appellant. I find that aspect of the Appellant's account difficult to believe. No detail has been provided by the Appellant in relation to any of these alleged court cases against him. Neither has any detail or information being provided in respect of these cases in the letter dated 22.7.2017 from the President of the Central Unit of the Bangladesh Jatiatabadi Chatradal. I do not accept that case allegedly filed against the Appellant in the 1990s that have, by his own account, been inactive for 18 years, would become reactivated on his return to Bangladesh.
27. The Appellant also provided other documentation in support of his claim. One of those documents is a psychiatric report from Dr Chiedu Obuaya dated 20.7.2017. Dr Obuaya is a consultant psychiatrist and his report is based upon information provided directly to him by the Appellant. The report states, among other things, that the Appellant currently fulfils the criteria for an adjustment disorder. In relation to the possible mental health consequences of a forced removal from the UK, the report states: *"From a purely psychiatric viewpoint, given the diagnosis of an Adjustment Disorder, a return to Bangladesh need not necessarily impact adversely on Mr Mehboob's mental capacity or his capacity to remain safe. He would not, in my clinical opinion, require any medication or treatment from psychiatric services if returned there"*. I do not find, based upon the conclusions in the report of Dr Obuaya, that the return of the Appellant to Bangladesh would be likely to exasperate his medical condition. In relation to the Rule 35 report dated 14.4. 2017, I note that this refers to the section entitled 'Relevant clinical observations and findings', to the Appellant having an upper lip laceration, two marks on the

left knee and healed scars, and a healed scar on the back of the left thumb. It is stated that his injuries are consistent with his narration of events and would need to be looked into further. I note, in this respect, that the injuries that occurred to the Appellant claimed to have occurred 26 years ago in 1991 and I do not find that the Rule 35 report is in anyway conclusive as to the course of the injuries of the Appellant.

28. With respect to the point in time when the Appellant claimed asylum which was in March 2017 after being arrested, the Appellant stated at the asylum interview that he did not claim asylum earlier because he thought that his political party would come to power in 2014 and he would then be able to return to his country. He also stated as a reason that, when the political situation did not and his political party did not come to power in 2014, he was concerned about the situation where those with dual nationality would be prevented from standing for election in Bangladesh which would affect him. The Appellant repeated those reasons at the hearing. I note that the Appellant claimed asylum about seven and a half years after arriving in the UK and, it appears, claimed asylum after his wife had also claimed asylum and only after he had been arrested. I do not accept the reasons which he has provided for the delay is reasonable or credible. His account is that he had been involved in BMP politics for more than 20 years before arriving in the UK and had outstanding court cases against him. I do not accept, that given his circumstances and the claimed threats made against him, that is reasonable that he would have only claimed asylum after being arrested and more than 12 to 13 years after he had last been threatened in Bangladesh. I find that the delay of the Appellant has damaged his credibility for the reasons stated.
29. I must now draw together the various points in the case to arrive at a decision. On the one hand, I have highlighted several aspects of the Appellant's case which troubled me and which have caused me to exercise caution before arriving at a decision such as the inconsistencies in his account as to his role in the BNP, lack of consistency and credibility relating to his account that he had been politically engaged for the 8 or 9 years prior to coming to the UK whilst also being in hiding and not living in any fixed abode, the lack of any further threats having been made against him from about 2004 or 2005 until he left Bangladesh, the lack of plausibility of the continued outstanding nature of the criminal case relating to the murders of Tipu and Imran which occurred 18 years ago, and the claimed outstanding cases against the Appellant stemming from the years 1991 to 1995 which is more than twenty years ago. On the other hand, I have referred to some documentation provided by the Appellant in support of his claim such as the report from Dr Obuaya and the Rule 35 report.
30. In conclusion, applying the low standard of proof applicable in an appeal of this nature, I am not satisfied that the

Appellant has given a truthful and accurate account and I do not find that he would be at real risk if returned to Bangladesh. Taking all the available evidence into account, I do not accept the core account of the Appellant.

13. In relation to documentation the Judge, having noted the identity of the applicant both in terms of name and nationality of Bangladesh is accepted by the respondent, noted at [23] that *“I have considered all the documentation provided, even if I do not refer to it specifically in my decision, including the documentation provided in the Appellants bundle for the hearing. I listened carefully to the evidence of the Appellant and to the submissions made on behalf of the Appellant and the Respondent at the hearing”*.
14. It is correct to say the Judge relied on a number of different aspects of the evidence in coming to the overall conclusion which the Judge was entitled to do. No arguable error is made out in the approach taken by the Judge in relation to considering all the material.
15. In relation to the asylum interview, question 116, this section of the interview [115 - 123] is in the following terms:

Question no.	Question	Appellants answer
115	When was the last time you heard from Joseph?	Last time?
116	Yes	Erm, before I leave my country. 2008 or 2009. But he don't know that I leave my country that time.
117	And did Aziz get in touch with you after you provided false witness?	Yes. He called me. That time, 2004, he was a Colonel that time, not major.
118	Okay. How many times did he call you and what would he say?	Aziz Ahymed called me not much more... Two three times but Joseph called me frequently from the prison.  That's why I changed my number many times but all time he knows the numbers.
119	Okay but what did Aziz Ahmed tell you?	Over phone he don't give me direct threat but in a sense it makes threat. Like a threat.
120	What exactly did he tell you?	That time told me that he gives it up on on God. Just like that, but actually he don't mean that
121	Why did you take this to be a threat?	Because I feel insecure many times in Dhaka City because I know they are Joseph people.
122	When was the	That was 2004, 4 or 5.



	last time you heard from Aziz Ahmed?	
123	Did you experience any other problems in BGD after this incident?	2009, when I get the chance I apply for student Visa I get it, and come to UK. Because of December 2008, Awami League came into power. That's why I take the chance to leave the country up to 2009, because that time Hasan was also involved with Awami League.

16. Is to be noted that the appellant's grounds of appeal are factually incorrect. The appellant's reply to the question at 116 is not that he was threatened in 2008 and 2009 as alleged in Ground 3 but that it was 2008 or 2009. This is the second material error in the pleadings. Miss Warren accepted this error and that in fact the appellant was claiming to have been threatened on one occasion not two but that the Judge did not refer to a singular event but found the appellant had not been threatened.
17. The Judge finds at [25] that the last contact from Lieutenant Aziz was in 2004 or 2005. That accurately reflects the answer to question 122, set out above. No arguable legal error is made out.
18. In relation to the finding the appellant did not specify having suffered any other problems this is in accordance with the evidence, including the section of his asylum interview set out above. The appellant only claims to have left as a result of a change in the ruling party not as a result of anything specific having happened to him. No arguable legal error is made out.
19. In relation to the newspaper articles, having had the opportunity to consider the same in detail set out in the respondent's bundle, it is factually correct to note that the name of the individual in those documents is not the same name as that used by the appellant in these proceedings. Mr McVeety submitted this is the point set out in the reasons for refusal letter; that the person named in the document is not the appellant as it is somebody with a different name. That document is not therefore material.
20. The appellant in his witness statement claimed he was mentioned in the document and his representative before the First-tier Tribunal relied on the fact the appellant claimed it was him. The appellant was aware that the respondent's position is that he was not named in the newspaper articles. The appellant claimed that he was named through the use of a nickname which is different from the name is used in these proceedings. It was asserted the Judge should have made finding and resolved the conflict in relation to the evidence and the names. I find it not made out that the person named in the newspaper articles and translation of the same has the same name as this appellant and that the key difference relates to the surname. The appellant's assertion that this can be explained by the use of a nickname has not been shown to be satisfactory in light of the

evidence as a whole. There is no further evidence to support a claim that the name used in the article is a nickname rather than the correct name of the person involved in the events. As such, even though the Judge does not make a specific finding on this point it is clear the Judge did not accept the appellant was a credible witness and no material error is made out in the Judge not devoting more time to considering the newspaper article in any greater depth than that recorded in the determination. The fact there is no specific separate finding bar a recording the respondent's position that the appellant is not named may, by implication, indicate that this is precisely the view the Judge adopted.

21. My finding of fact is that the articles did not name the appellant and his assertion it is him through the use of a nickname is an attempt to tie an unrelated article in to his claim for the purposes of enhancing a weak claim for asylum. Therefore, any failure to examine the matter further has not been shown to be arguably material.
22. In the alternative, in relation to the interview, even if the reply to question 116 suggests the appellant received further communication in either 2008 or 2009 this is not in isolation determinative even if the Judge recorded that no further contact occurred since 2004 or 2005. It is not made out on the appellant's behalf that this is sufficient to establish arguable material legal error in light of the findings made. A large number of adverse credibility findings have been made based upon substantial inconsistencies in the evidence not challenged in the application for permission to appeal. Reading the determination, even when compared with the limited scope of the application for permission, it shows that those issues not challenged, which therefore stand, are more than sufficient to support the Judge's finding the appellant has not been telling the truth and form a sufficient basis to reject his core account.
23. The Judge clearly considered the evidence with the required degree of anxious scrutiny and has given adequate reasons for the findings made. As such the weight to be given to the evidence was a matter for the Judge. The adverse findings were not made in isolation but following consideration of the evidence in the round.
24. Having considered the available material, submissions made, and appropriate legal tests, when looking at the question of whether material error of law has been made and bearing in mind the challenge is to the decision to dismiss the appeal, I do not find it made out that the Judge has materially erred in law in a manner material to the decision to dismiss the appeal. The findings of fact and overall conclusions are well within the range of those reasonably available to the Judge on the evidence.

## **Decision**

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

Anonymity.

26. 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.....  
Upper Tribunal Judge Hanson

Dated the 28 March 2018