Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10988/2017

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Decision & Reasons Promulgated**
On 12 February 2018	**On 06 March 2018**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

[M R]
~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Otchie, Counsel instructed by MQ Hassan Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh born on [ ] 1988 and he appealed against the decision of the Secretary of State dated 17th October 2017 to refuse his claim for asylum, humanitarian protection and human rights grounds. The appellant claimed that in 2007 he joined the student wing of the BNP and was an active campaigner for the BNP. A local gangster who was a member of the Awami League was trying to extort money from his family which was building a new home. Having joined the BNP in 2007 in 2008 he went to a political seminar in Dhaka where he was attacked by the police and members of the Awami League. He was beaten

unconscious. In December 2009 he travelled to the UK to study and in 2013 he returned to Bangladesh for approximately one and a half months and was again attacked by the Awami League and he subsequently returned to the United Kingdom. On his return he feared his Awami League political rivals would kill him because of his BNP activity.

2. First-tier Tribunal Judge Housego considered the matter and dismissed the appellant's appeal on 29th November 2017. I will refer to his key findings later in my decision.

3. An application for permission to appeal to the Tribunal was made on the following grounds:

(i) At paragraph 44 the Immigration Judge stated that the appellant had a wife and children at home in Bangladesh that was incorrect. His immediate family in Bangladesh were his parents.

(ii) The judge at paragraphs 45 and 46 failed to fully consider the Bangladesh approach to the BNP Party activists. The appellant was an active member of the BNP since 2007 and had suffered persecution and had been attacked several times. The appellant claimed he was a known figure for the BNP and was at risk from the Awami League.

(iii) The judge at paragraph 55 identified the appellant had delayed in claiming asylum but the appellant claimed that he had had leave in the UK and therefore did not feel it was necessary to claim asylum.

(iv) The appellant was now suffering from medical problems at the threat of return to Bangladesh his mental state was very weak and the judge failed to consider the appellant's case as complicated and the judge had not considered the real risk of being killed or executed on return or indeed his Article 8 rights. The appellant's political opinion would mark him out for ill-treatment and his mental health had not been given due consideration. He suffered from panic attacks. He had an appointment with the consultant inside the detention facility but had not been given any medicine.

(v) The judge had failed to consider at paragraph 54 that the appellant explained he was trying to collect evidence and felt depressed.

(vi) The judge at paragraph 59 failed to take into consideration the appellant's Article 8 claims. The judge had failed to give adequate consideration to a private life claim. The appellant had lived in the UK for eight years and it was submitted that permission to appeal to the Upper Tribunal should be granted to consider a private life claim.

(vii) The judge erred as he dismissed the appellant's asylum Article 3 claim principally because he did not believe the appellant but failed to give anxious scrutiny whilst rejecting almost every assertion. It was submitted that the judge did not evaluate the evidence with care and gave undue weight to the apparent inconsistencies in the evidence. The judge should have given anxious scrutiny. The appellant was entitled to a detailed explanation of why his appeal failed and should

have in effect identified what evidence he accepted, what was rejected and whether evidence is irrelevant. The strictures were not followed by the judge.

4. Permission to appeal was granted by Designated Judge Shaerf noting at paragraph 44 that the appellant referred to the wife and children although there was no evidence to that effect and secondly the judge erred arguably in not giving sufficient reasons to support his finding at paragraph 46 that the appellant had never been at risk from the Awami League.

5. The grant of permission refused to grant permission in relation to the documentary and medical evidence and therefore the grounds in relation to paragraphs 57 and 58 did not disclose any arguable error of law.

6. Further there was no error of law in relation to paragraphs 51 and 52 whereby the judge applied the Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

7. The 'grant' also refused to grant permission in relation to the appellant's claim based on his private life which did not identify anything other than the appellant had been in the United Kingdom for a number of years. Further the judge's treatment of the Article 3 claim may have been brief but given the lack of evidence and the jurisprudence in **Agyarko & Ors v SSHD [2017] UKSC 11** the decision disclosed no arguable error of law.

8. In sum permission to appeal was granted in respect of the challenge to paragraphs 44 to 46 of the judge's decision that is Grounds (i) and (ii) but not further or otherwise.

9. At the appeal before Mr Otchie confirmed that contrary to the judge's finding at paragraph 44, there was no wife and child in Bangladesh and he referred to the recent country background evidence which showed that the political situation was fluid in Bangladesh and it was a fact of political life that there were difficulties and attacks. In effect the reasoning was insufficient to justify conclusion that the appellant was not at risk from the Awami League. The appellant did not know about claiming asylum and further there was medical evidence in the form of a Rule 35 Report although that was the only evidence. There was no anxious scrutiny to the case. The appellant had given comprehensive evidence and answers in his account and the judge did not grapple with his evidence. The appellant may not be of high standing with the BNP but that did not mean that he was not at risk.

10. Mr Tufan made submissions to the effect that paragraph 44 was wrong but that was a slip. The judge was referring to his parents and sister. That could not undermine the remainder of the decision. The judge did not have to give reasons for every single piece of evidence as long as it was clear why the appellant had lost. It was simply not accepted by the judge that the appellant who was a student would not be aware of asylum and

formerly had used a proxy in an ETS test. The judge clearly considered the Rule 35 Report. Simply the appellant was not targeted as an individual. The judge did not accept the credibility of the appellant and found that it was damaged and that was open to him with respect to Section 8. There was no evidence that he had been to any demonstrations or any evidence from the BNP either in the UK or from Bangladesh. The judge makes clear what documents he requested at paragraph 53 and makes clear at paragraph 54 that if there were documents they could reasonably have been produced but were not. The judge also made the observation at paragraph 56 that the appellant had passed through the airport using his own passport. Save for that one slip the judge had given sustainable reasons for refusing to accept that the appellant was at risk on return because of his membership of the BNP which comprised 30% of the support in Bangladesh.

11. Mr Otchie rejoined that anxious scrutiny was required and he would expect to see a reference to the country background material.

Conclusions

12. With regard ground (i), I noted Mr Tufan conceded that the judge had referred, at paragraph 44 to the appellant having a wife and children back home in Bangladesh and they lived in the family home that was built in 2006. I do consider that to be a slip but not to undermine the key findings of the judge in relation to this appellant. At paragraph 56 the judge stated

> *"a subsidiary (an academic) findings even if his account is wholly true (and it is not reasonably likely to be so), the fact that he is not of interest to the authorities means that there is no difficulty in him going to some other part of Bangladesh. The authorities are able to protect his parents and family (who have come to no harm since 2006), finishing and then living in the house they built and there would be sufficiency of protection also".*

13. The judge was clearly aware of the evidence and that, in fact, it was the parents and family, rather than wife and child, who lived in the house and his comments at paragraph 44 were corrected by his finding at paragraph 56. His findings do not, on an overall reading, reveal a lack of scrutiny. At paragraph 3.1 the judge recorded that it was the appellant's 'family' (with reference to his father) who were building the new home from 2006 onwards and they managed to complete the project. Essentially those who were said to be interested in the appellant and the person whom the appellant claimed targeted his immediate family, when building the home, had known it was the appellant's own family and yet the family had continued to build and live in their house and home area since 2006 without being harmed. This also underlined that the appellant was not at risk from the authorities per se.

14. It is quite clear that the grant of permission did not extend to the submissions that Mr Otchie made reference to, not least in relation to the medical evidence and the application of Section 8 of the Asylum and

Immigration (Treatment of Claimants etc) Act 2004 which I note below. The judge specifically addressed the Rule 35 Report and permission was not granted in evidence of that. The judge rejected that evidence noting that the Rule 35 Report was informed by the appellant himself and the doctor did not offer any conclusion, however tentative, save that the case needed to be investigated. The judge directed himself appropriately in terms of the medical reports including in line with **JL (medical reports-credibility) China [2013] UKUT 00145** and once again no permission was granted in that respect of the medical evidence and there was no attempt (sensibly in my view) to seek to renew the grounds of appeal. I agree those grounds were not, as Judge Shaerf found, arguable.

15. With reference to ground (ii), the judge gave sufficient reasons to support his finding at paragraph 46 that the appellant had never been at risk from the Awami League. The judge was fully aware of the claimed previous attacks and set out in detail the history of said attacks and specifically noted at paragraph 30.5 that the appellant claimed that the family had been targeted in 2006 when the Awami League tried to stop them from building their home. As I have referred to above the appellant's family were able to live and remain in the family house since 2006 albeit that the appellant claimed that he was an active member of the BNP from 2007 and received attacks from 2008 onwards. That significantly undermines the appellant's claim.

16. The reference at paragraph 49 in fact refers to the appellant's account of his last claimed attack immediately before his last entry into the United Kingdom in 2013 having returned to Bangladesh after the said previous. This reference does not ignore the other attacks (which were recorded in the decision) but in view of the immigration history it was open to the judge to focus on this attack The judge rejected this account, partly because the appellant described being attacked in 2013 by a knife through the left arm but "without giving any indication of how he was located, who attacked him, where it happened, how he escaped and so-on". The conclusion at paragraph 50 is not just a rhetorical question but implicitly expresses that it was simply not credible that the Awami League would attack him immediately on his return in 2013, when he had been away for four years and not been politically active, but, when they had had ample opportunity prior to his departure in December 2009, some eighteen months after the supposed attack in summer 2008 and yet had done nothing to him. The judge clearly did not find that credible. He was entitled to make those findings.

17. What significantly undermines this claim, (including the claimed attacks) and on which no permission was granted to argue any challenge was the application of Section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004.

18. The appellant's immigration history was as follows. Having entered the United Kingdom in 2009 as a student he applied to extend his leave on 17th February 2011 and this was granted but curtailed on 14th April 2012.

On 13th June 2012 he applied for leave to remain outside the immigration rules. On 17th October 2012 he made a further application to remain as a student. The former application was treated as void on 5th March 2013 but his application to remain as a student was granted on the same date and the leave granted was valid to 28th February 2015. On 22nd September 2013 the appellant returned to the United Kingdom from a visit in Bangladesh and was detained at Heathrow Airport pending examination. He was interviewed by Immigration Officers and maintained he was a returning student. He was admitted on his existing leave. On 27th February 2015, one day before his leave was due to expire, he made a further application for leave to remain outside the Rules which was refused on 5th October 2015. Since that date in 2015 he has had no leave to remain. On 23rd December 2016 his application for judicial review was struck out. On 16th August 2017 he was arrested during an enforcement operation and on 17th August 2017 he claimed asylum.

19. From paragraph 51 onwards the judge made clear he was aware in the light of **JT (Cameroon) v Secretary of State for the Home Department [2008] EWCA Civ 878** that he needed to take a holistic approach but reasoned that the appellant had already made several applications including judicial review and in none of them had he claimed asylum even though he had the benefit of legal advice. Only when all avenues were exhausted on 5th February 2016 when his judicial review application was struck out and he was encountered and detained did he claim asylum. Simply the appellant's answer that he had leave therefore he did not need to concern himself with claiming asylum is clearly untenable. I refer to the immigration history which the judge also set out in full at paragraph 10 onwards and to which the judge referred in his conclusions.

20. I would stress that contrary to the grounds for permission to appeal, it is obvious the appellant has not '*always had leave to remain in the UK and therefore did not feel it necessary to claim or understand the procedure of Asylum'*. That is incorrect.

21. The grounds asserted that the judge failed to consider the evidence but there was a remarked sparsity of evidence. Indeed it was also the judge's reasoning that the appellant had given, despite his claim to have supported the BNP, no evidence from Bangladesh or indeed from the UK on his activities in the UK. As the judge stated at paragraph 53

> *"The evidence of the appellant has no particularity in its important elements. It is assertional, but gives no detail. There is no evidence from the BNP either in Bangladesh or in the UK. The appellant gives no instance of any meeting he attended in the UK. He brings no evidence from anyone who might be able to say he was at meetings in the UK (a TK (Burundi) v SSHD [2009] EWCA Civ 40 (Burundi) point). He has still not said what documents he has not been able to produce, and the reason given for vagueness in interview was that he was not sure what was needed. He has not provided the hospital report he told the Rule 35 doctor he had available to him'.*

22. As stated the judge confirmed the appellant had received legal advice but he had still provided no documents despite having stated that he was going to produce them and yet he had complained of no difficulty in getting hold of the documents. As reasoned at paragraph 53

> *"He is in contact with his family in Bangladesh, and he complains of no difficulty in getting hold of documents. He said (witness statement paragraph 19) that he returned to Bangladesh as he 'needed to deal with some urgent matters' in Bangladesh but did not say what they were. He said in his witness statement (paragraph 170 that he was 'attacked by' the Awami League, and that 'I was targeted by the Awami League and they are and were intent on pursing and killing me' but does not say exactly what this was, nor why, if so, they had not succeeded in 2013'*.

23. As such, it was open to the judge to find that he was although claiming to be attacked by the Awami League and targeted by the Awami League to be killed, the appellant had not explained why they had not been successful prior to his entry to the UK (on either occasion). The judge also found at paragraph 55 that the appellant was of no interest to the authorities. He entered and left Bangladesh in 2013 on his own passport without bribery or subterfuge and without difficulty.

24. Further to **Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC)**, the judge gave cogent and brief but adequate reasoning on the key elements of the claim. I am satisfied that reading this decision as a whole, the judge set out the evidence in detail, appropriately directed himself and did apply anxious scrutiny. The grounds are a disagreement with the findings of the judge which were pertinent and succinct. The judge found the appellant, at best, a low level supporter, and not an active supporter (paragraph 45). Reading the decision as a whole the judge clearly reasoned that finding. Further and crucially, even as a low level supporter, from the assessment of the appellant's case he was not at risk on return. His immigration history starkly contradicted that claim. It is an inescapable fact that the claim was substantially undermined by the appellant's delay in claiming asylum and that was adequately explored by the judge and which was not explained by the appellant. Even the grounds for appeal did not address that point. The appellant claimed to have been at risk of being killed from 2006 onwards yet remained in Bangladesh until 2009 and then returned in 2013. Any mistaken reference to a wife and child was, notwithstanding my findings above, were, in this particular instance, not material.

25. The appellant can be in no doubt as to the reason his appeal failed. I find no error of law and the decision shall stand.

No anonymity direction is made.

Signed Helen Rimington Date 3rd March 2018

Upper Tribunal Judge Rimington