



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

Appeal Number: PA/00332/2019 (V)

THE IMMIGRATION ACTS

**Heard at: Field House
On: 16 July 2020**

**Decision & Reasons Promulgated
On: 27 July 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**SS
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Bayati, instructed by Chancery Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

2. The appellant, a citizen of Bangladesh born on 6 April 1981 appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 30 December 2018 to refuse his asylum claim.

3. The appellant claimed to be at risk on return to Bangladesh as a result of his political activities in Bangladesh and in the UK. He claimed to have been actively involved with the student wing of the BNP, arranging and attending meetings and demonstrations and arranging programmes to assist senior leaders. He claimed to have been attacked and threatened by Awami league supporters. Since arriving in the UK, he had continued to be a member of the BNP and had attended meetings and demonstrations from 2011 and he was the East London BNP library affairs secretary. He feared being killed by the Awami League if he returned to Bangladesh.

4. In refusing the appellant's claim, the respondent noted that his account of his involvement with the BNP was vague and lacking in detail and rejected his claim to be a member of the BNP and to have had problems in Bangladesh due to his political opinion. The respondent considered that the appellant would be at no risk on return to Bangladesh and that his removal would not breach his human rights.

5. The appellant appealed against the respondent's decision and his appeal was heard in the First-tier Tribunal on 12 July and 20 September 2019 by First-tier Tribunal Judge Sullivan. The judge was unable to view a DVD which had been produced by the appellant and upon which he was relying as evidence of his activities in the UK and she considered that it was not, in any event, necessary for her to view the DVD as she had other evidence of his sur place activities. The hearing was not concluded on the first date and was resumed on a second date. The judge noted that the appellant was also claiming to have a false case registered against him, dating back to February 2018, and an arrest warrant issued against him on 16 May 2019. The judge did not find the appellant's account credible. She accorded little weight to the supporting letters produced and found the oral evidence of the appellant's witness to be unreliable. She did not find the documents relating to a false case to be reliable and she was not satisfied that the appellant was wanted by the authorities in Bangladesh prior to his arrival in the UK. As for the appellant's activities in the UK, the judge accepted that he had been an active member of the BNP branch in the UK, that he had attended meetings and public protests, that he had participated in media interviews and that he had posted political comments opposed to the government of Bangladesh on social media. However, she noted that the appellant's involvement with BNP politics in the UK was a recent development and did not accept that his political convictions were genuine or that he would wish to be politically active on return to Bangladesh. The judge did not accept that the appellant would be at risk on return to Bangladesh and did not accept that his removal would breach his Article 8 human rights. She accordingly dismissed the appeal.

6. The appellant sought permission to appeal Judge Sullivan's decision to the Upper Tribunal on two main grounds: firstly, that there was procedural unfairness arising from the judge's decision not to view the video evidence and from her failure to prevent the respondent's representative from cross-examining him on information that was not before the Tribunal; and secondly,

that the judge had made flawed findings on material matters, including making errors of fact, failing to engage with the social media evidence and failing to engage with submissions and evidence on risk on return.

7. Permission to appeal was granted by the First-tier Tribunal and, following an adjourned hearing and various sets of directions related to the procedural unfairness point, the matter came before me.

8. Mr Clarke expressed some concern about the judge's findings on risk on return, in light of the accepted sur place activities referred to at [50] of her decision, and with reference to [26] in the appellant's second ground of appeal. In view also of my own concerns as to the matters raised in the second ground of appeal, I asked Ms Bayati to address that ground first. Having heard her submissions, and with Mr Clarke's concurrence with the matters raised, I agreed that the second ground was made out and that the judge had made material errors of law in her findings on credibility and risk on return. She had made clear errors of fact in regard to the appellant's evidence at the screening interview related to the false case lodged against him ([23] of the grounds of appeal and [32] of Ms Bayati's reply to directions), in regard to contemporaneous evidence of treatment for a head wound in 2009 ([24] of the grounds and [33] to [35] of the reply to directions) and in regard to the letters of support ([27] of the grounds and [36] to [39] of the reply to directions). She also failed to have regard to the background evidence when assessing the court documents and the allegation of a false case lodged against the appellant ([28] of the grounds and [40] to [41] of the reply to directions). Further, as Mr Clarke pointed out himself, the judge made findings at [50] about the appellant's activities in the UK and in particular his social media presence, yet failed to consider whether that would have brought him to the adverse attention of the authorities in Bangladesh and would have put him at risk on return.

9. In light of the judge's errors, as referred to in the second ground, Ms Bayati agreed that there was no need to engage with the first ground of appeal and the issue of procedural unfairness. Both parties agreed that the matter had to go back to the First-tier Tribunal for a complete rehearing.

10. Accordingly, I set aside Judge Sullivan's decision in its entirety, with no findings preserved and remit the case to the First-tier Tribunal to be heard *de novo* before a different judge. Both parties agreed that the appellant would need to make a proper application to the First-tier Tribunal for the DVD to be admitted and viewed and that a full transcript of the DVD would need to be produced for the appeal.

DECISION

11. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the

Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard afresh before any judge aside from Judge Sullivan.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 17 July

2020