



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04894/2019

THE IMMIGRATION ACTS

Heard at Field House
on 27 January 2020

Decision & Reasons Promulgated
on 24 February 2020

Before

UPPER TRIBUNAL JUDGE HANSON

Between

JA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ogunbusola instructed by Winston Rose Solicitors.

For the Respondent: Ms R Bassi Senior Home Office Presenting Officer.

DECISION AND REASONS

1. On 16 September 2019 the Upper Tribunal found a judge of the First-Tier Tribunal had erred in law in a manner material to the decision to dismiss the appellant's appeal on protection and human rights grounds. The matter comes back before the Upper Tribunal for it to substitute a decision to either allow or dismiss the appeal.

Background

2. The appellant is a national of Bangladesh born on the 18 August 1986 who arrived in the United Kingdom by air on 16 May 2011, but who did not claim asylum until 9 October 2017.
3. The findings of the First-Tier Tribunal relating to the appellant's immigration status and immigration history are preserved findings, as follows:
 17. The appellant told me that he had entered the UK on a spouse Visa sponsored by his ex-wife on 16 May 2011. When he gave evidence, he told me that about 4 months after his arrival his relationship broke down, that is to say in about September 2011 he was no longer in a relationship, although he spouses Visa [sic] until July 2013.
 18. This witness said that he had no contact with his ex-wife since the breakup. He had been granted a spouse Visa it is worth noting from 19 April 2011 to 19 July 2013.
 19. The appellant did not claim asylum after the relationship broke down but on 2 May 2013 shortly before his Visa expired on 19 July 2013, he applied for outside the rules compassionate grounds leave to remain but on 5 July 2013 the application was refused with no right of appeal.
 20. On 7 December 2015 the appellant was served with Red 0001 as an overstayer.
 21. Even at this stage the appellant did not claim asylum. On 4 January 2016 he applied for family/private life leave to remain on human rights grounds and on 17 March 2016 this application was refused.
 22. The appellant still did not do anything about his case, knowing that he was here unlawfully, and it was not until one year and 6 months after the said refusal on human rights grounds, that he decided to make an asylum claim.

The appellants claim

4. The appellant sets out his case in his witness statements. In that dated 17 June 2019, filed for the hearing before the First-tier Tribunal, he states he cannot return to Bangladesh as a result of a fear will be persecuted by the Awami League, the current ruling party in Bangladesh.
5. The appellant claims he was beaten up by supporters of this group who burnt his feet and legs and who have lodged a false claim against him. The appellant states he believes that it is the intention of this group to kill him if he is returned to Bangladesh.
6. The appellant claims he became the General Secretary of the BNP on 15 January 2006 for his area and later the Vice President of his area in 2009. His responsibilities were to invite and encourage people to attend meetings. On 25 February 2010, in Bangladesh, the appellant claimed to have come under attack in an area called Somuna by Awami League members whilst he was making his way to Sylhet. The appellant claims he was in a car with another individual when Awami League members approached the front of the vehicle and stopped

- them. When the appellant got out of the car they began to beat the back of his head which caused him to fall to the ground. The appellant claims that when he fell to the ground they beat him on his knees and stood him up and used a hammer to strike his toe with a nail. The appellant claimed his ankles were also injured which is the reason for his health conditions and why is unable to stand for a long period now. The appellant claims they poured petrol on him and burned him with a matchstick burning the back of his thighs from top to the bottom as well as on his feet.
7. The appellant claims local people who heard his screams came to the scene and used sacks to put the fire out and took him to a nearby hospital although, a result of the fact they had difficulties feeding him, they took him to Sylhet hospital where he was kept for approximately one year.
 8. The appellant claims he sent two close friends to file a case about the attack on 3 March 2010 as he was too ill to do so as he had been admitted to hospital for the year. The appellant believes the Awami League chose to file a false claim against him because he attempted to file accounts against them to the police by sending his friends to the police station.
 9. The appellant claims he learned of the false case when a letter was received at his home address in Bangladesh outlining a warrant of arrest in his name which he claims to have been issued on 8 June 2011.
 10. The appellant claimed his role within the BNP is still developing as he attends meetings and demonstrations the most recent of which was 24 March 2018 at London Bridge and in the early hours of 26 March 2018. The appellant claims he also attended independence commemoration events on 26 March 2019 and regularly attends weekly meetings and similar events.
 11. The appellant was supported by a witness, Mr Rahman, who claimed to be the International Affairs Secretary of the BNP who confirmed the appellant has been politically active in the UK, that he is aware of the positions held by the appellant in Bangladesh including the titles of General Secretary in 2006 and Vice President in 2009, and that in the opinion of the witness if the appellant were to return to Bangladesh to live freely and support the BNP he will face real risk of persecution and that his life will be in danger.

Discussion

12. The appellant was cross-examined extensively by Miss Bassi who focused in particular upon the core aspects the appellant's claim. The appellant had maintained the truth of the evidence in his statements which stood as his evidence in chief.
13. The appellant stated he was attacked at 1 PM in reply to a specific question. It was pointed out to him that was different from an earlier statement in which he had claimed the attack occurred at 12 PM.
14. The appellant confirmed that after the attack he was taken to a local hospital and then to Sylhet where he remained for one year before being discharged on 24 February 2011. The appellant was referred at this stage to an application that he made to the British High Commission in Dhaka for a Visa to the United

- Kingdom. This showed an application dated 10 May 2010, which fell within the time the appellant had claimed he had to remain in the hospital, which was only 4 ½ months from the date he claimed he had been attacked.
15. The appellant was asked how he was able to make the Visa application if he was in hospital as he claimed to which he replied that his wife had obtained all the documents to make an application with the help of a relative. When it was pointed out to the appellant that it is clearly recorded that on 10 May 2010 his biometrics had been taken and received in the UK the appellant then claimed that he took time out of the hospital to go and give the fingerprints and photographs required.
 16. The appellant was asked how long it was before he was able to walk after sustaining burns to his legs which he stated was some 8-10 months.
 17. A further discrepancy was pointed out to the appellant in that he had claimed in his statement that at the relevant time he worked in his father's shop whereas according to the Visa application the appellant had stated he worked in private service. I do not accept the submission made on the appellant's behalf that it was not clear what is meant by private service and that this could be the same as working in his father's shop. There is a clear discrepancy between these claims.
 18. A further issue arising from the evidence is the material difference between the appellant's claim recorded in his witness statement above that he was taken to hospital and the two friends filed a complaint with the police on his behalf and his reply to question 131 and 132 of his asylum interview in which the appellant claimed he himself had filed the case with the police. When asked how he did it he stated he had the medical papers that he took to file the case and that he had some witnesses and was dependent upon those. The appellant was asked at question 134 how, if he was in hospital for a year, he was able to file a case at the police station a week after the attack, to which he claimed he was ill and that there was another person and that he was ill and did not file the case. The contradictory nature of this was indicated to the appellant who then claimed that he was wrong and what he said was wrong before.
 19. In his oral evidence the appellant was asked by Miss Bassi when he went to the police station which he now claimed it was on 25 February the day of the attack. When asked whether it was after the attack he claimed that that was when it happened. When it was pointed out his original account was that he was taken to the hospital after the attack the appellant claims he went to the police station on the way to the hospital. When the appellant was asked to clarify whether what he was claiming was that he had been attacked and burned after which he went to the police station and then to the hospital, he stated he came to the police station as it was on his way to the hospital, and that it was not a minute from the main road to the police station. This is a material discrepancy in the appellant's evidence regarding an important aspect of the case as the appellant claims that it was as a result of his making a complaint that the Awami League that they made a complaint against him.
 20. The appellant claims the police would not accept his claim but also that when he was in hospital two friends took documents to the police for him.

21. The appellant's evidence was further contradictory when he claimed that he was ill, and he had not filed a claim and asked whether there was any reason he had not mentioned attempts to lodge a case on his way to hospital in his earlier evidence. The appellant claimed had not mentioned it as he had no evidence and that there are other persons who could say he went there.
22. The appellant claimed charges have been laid against him and also that he was not sure who attacked him as they wore masks. If the appellant has no means of identification of those who attacked him it is unlikely the police would have been able to take further action; although the appellant also claims others living locally were able to say who his attackers were.
23. The appellant was asked whether he was aware of the charges that have been filed against him and what they are to which his replies were vague. The appellant claimed that he knew there was a case but that he did not know what it was for and that he had heard the matter had gone to court. When asked if he was aware of the punishment handed down he claimed he had received 14 years imprisonment and a fine.
24. The appellant provided documents in support of the claim which can be found at Annex J of the respondent's bundle. This includes a Charge Sheet dated 13 November 2011 Referring to a First Information Report of 8 June 2011. The document states the plaintiff is the President of the Bangladesh Awami League for the appellant's local branch with names and addresses of accused including the appellant. It is asserted in the document that the accused members of the Awami League ambushed members of the Awami League using weapons including a firearm. There is also a document from the Honourable Chief Judicial Magistrates Court in Sylhet purportedly filed by a person with the name of the applicant referring to an incident on 25th February 2010 at 12 PM in which the appellant was beaten and had his leg set on fire. Notwithstanding the date and time of the incident on the first page being 12 PM it also appears the time of 1 PM is given later in the document as well.
25. There is also a First Information Report referring to an occurrence of 8 June 2011 at about 12 PM referring to a similar location also accusing the appellant and those mentioned earlier of the use of unlawful weaponry and inflicting injuries and attempted murder. The appellant entered the United Kingdom in May 2011 was not in Bangladesh in June of that year.
26. There is a copy of an arrest warrant containing the appellant's name dated 13 November 2011 and a copy of a judgement against a Rubel Ahmed dated 17 July 2017. The appellant's name appears in the document too in which he is described as having absconded with the arrest warrant having been issued and with the trial continuing in absence. The documents indicate conviction for breach of section 19 Arms Act 1878 and sentence of 14 years imprisonment and a fine of 50,000 Taka.
27. It is accepted there is within Bangladesh a statutory provision known as The Arms Act 1878 but section 19 of that Act deals with penalties. Those penalties are applicable if there has been a conviction of the specified offences as follows:

19. Whoever commits any of the following offences (namely):-

- (a) manufactures, converts or sells, or keeps, offers or exposes for sale, any arms, ammunition or military stores in contravention of the provisions of section 5;
- (b) fails to give notice as required by the same section;
- (c) imports or exports any arms, ammunition or military stores in contravention of the provisions of section 6;
- (d) transports any arms, ammunition or military stores in contravention of a regulation or prohibition issued under section 10;
- (e) goes armed in contravention of the provisions of section 13;
- (f) has in his possession or under his control any arms, ammunition or military stores in contravention of the provisions of section 14 or section 15;
- (g) intentionally makes any false entry in a record or account which, by a rule made under section 17, clause (c), he is required to keep;
- (h) intentionally fails to exhibit anything which, by a rule made under section 17, clause (e), he is required to exhibit; or
- (i) fails to deposit arms, ammunition or military stores, as required by section 14 or section 16;

shall be punished with ¹[imprisonment for life or any other rigorous imprisonment which shall not be less than seven years,].

28. Section 19 only sets out the level of punishment that will be handed down to a person convicted of a breach of a specified section. The documents provided do not specify any such breach; that record being a conviction on the basis of guilt for breach of a sentencing provision. Without more this is arguably irrational.
29. Similarly the wording in the document specifying the defendants having been able to prove without a doubt the charges against them deserve punishment is also irrational. It is not for the defendant in a criminal justice system such as that in force in Bangladesh to prove their guilt.
30. Section 19 also appears to provide the punishment for conviction under any of the said sections is a substantial period of imprisonment yet the appellant claims to have been both imprisoned and fined in this document.
31. There is a letter dated 9 November 2017 purportedly from an advocate in Bangladesh addressed 'to whom it may concern' but clearly written in the first person as if addressed to the appellant. It is not clear why the letter would be written advising the appellant on 9 November 2017 of a conviction dated 17 July 2017 especially when any right of appeal against the conviction had, purportedly, to have been issued within one month of the date of the judgement.
32. Concern about forged documents emerging from Bangladesh was raised as an issue. Although the respondent was unable to verify the documents relied upon by the appellant does to resource issues, this does not mean they have to be accepted at face value. It is necessary to consider the documentary evidence in the round with all the other material in accordance with the Tanvir Ahmed principles.
33. In this appeal the appellant relies upon a course of event which, as a result of his political views, led to him being attacked and sustaining serious injury, reporting the matter to the police as a result of which he was subject to false claims by the Awami League which have led to his conviction and sentence for a

considerable period of imprisonment and substantial fine, the evidence in support of which has been found to be contradictory and unreliable.

34. It is not disputed the appellant has evidence of burning his body. It is noted from the copy medical records provided that the appellant consulted his GP on 14 June 2019 claiming to have a painful scar. The GP records the following:

Problem	painful scar (first)
History	Alleged assault by another Political group back in Bangladesh 25.02.10. He said pouring inflammable liquid & then put fire. He never mentioned before. Now having pruritus related condition around that area
Examination	Extensive scar in the inner thighs of both lower limb consistent with old burn/scald
Medication	Aqua Max cream when required 500 g

35. The appellant had claimed he was attacked with a hammer which was used to strike his toe with a nail, that his ankles were injured, and that his assailants poured petrol on him and burned him with a matchstick burning the back of his thighs from top to bottom as well as his feet. The GP does not record the presence of scarring other than the inner thighs of both lower limbs which one would have thought would have been visible and reported upon had the appellant had petrol poured over his legs and feet and had the same set alight in the regions he claims. I find the presence of scarring relating to burning made out but not the causation of the same.
36. Having considered the inconsistencies in the appellant's evidence, which I find go to the core of his claim, I do not find the appellant has established even to the lower applicable standard that his claim is credible. I find he is not a credible witness. He claims to have been attacked and to have suffered extensive burning for which he required hospitalisation for a period of one year during which he was unable to walk. Despite suffering such injuries he claimed in his oral evidence to have reported the assault to the police whilst being taken to hospital. This contradicts earlier evidence. The appellant then claims that two others reported the matter to the police due to the fact he was incapacitated. Miss Bassi adduced strong evidence in the Visa application form to show this claim is untrue. The appellant was required with his Visa application to attend in person to provide biometric details which he did. This completely undermines his claim. It is also noted the appellant's occupation and details provided in the Visa application contradicts his evidence given elsewhere. Those claims must have been verified by the ECO as the spouse visa was issued on which the appellant entered the UK.
37. The court documents are clearly false for the reasons noted above including the fact they refer to an incident on a date when the appellant was in the United Kingdom. I find they are not evidence of genuine proceedings being taken against the appellant in Bangladesh. I do not find the appellant has proved such

documents justify the weight being placed upon them the appellant asserts when applying the Tanvir Ahmed principles.

- 38. I do not accept the appellant has established any credible real risk of harm on return to Bangladesh as a result of activities in that country.
- 39. I do not find the appellant has established a credible real risk on return as a result of any activities he has undertaken in the United Kingdom. His sur place profile does not establish a credible real risk when considering the relevant country guidance case law and country information.
- 40. I find this is a disingenuous claim made by the appellant to attempt to secure permission to remain in the United Kingdom.
- 41. I do not find the appellant has established an entitlement to remain either within or outside the Immigration Rules or pursuant to ECHR on either protection or human rights grounds or on any other basis.

Decision

- 42. **I remake the decision as follows. This appeal is dismissed.**

Anonymity.

- 43. The anonymity direction made pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 shall continue until further order.

Signed.....
Upper Tribunal Judge Hanson

Dated the 17 February 2020