Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06915/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 November 2019	**On 6 February 2020**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

A C
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr B Danial, S K Lloyds Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Although an anonymity order was not made by the First-tier Tribunal, as this is an appeal on protection grounds, it is appropriate to make that order. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

BACKGROUND

The Appellant appeals against the decision of First-tier Tribunal Judge Rowlands promulgated on 23 September 2019 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 2 July 2019, refusing the Appellant's protection and human rights claims.

The Appellant is a national of Bangladesh. He claims to be at risk on return to Bangladesh as a BNP supporter and the brother of a prominent BNP supporter. He also claims that he faces two murder charges relating to a land dispute which were motivated by political animosity and that he will face prison conditions which amount to a breach of Article 3 ECHR.

The Appellant challenges the Decision on three grounds. First, he says that the Judge has adopted the wrong standard of proof, namely a balance of probabilities. Second, he says that the Judge has erred in his consideration of the documentary evidence produced in support of his case. Third, he says that the Judge has erred when looking at his case in the context of the background evidence concerning Bangladesh.

Permission to appeal was refused by First-tier Tribunal Judge Keane on 9 October 2019 in the following terms:

> "Notwithstanding their length the grounds amounted to no more than a disagreement with the findings of the judge, an attempt to re-argue the appeal and they did not disclose an arguable error or errors of law but for which the outcome of the appeal might have been different. For reasons open to the judge on the evidence the judge found that the appellant did not give a credible account to have been party to a land dispute or to have been arrested on a false charge. The application for permission is refused."

The Appellant renewed his application for permission to appeal, out of time. By a decision dated 31 October 2019, Upper Tribunal Judge Pickup admitted the application and granted permission to appeal in the following terms, so far as relevant:

> "... 3. The renewed grounds are identical to those accompanying the application made to the First-tier Tribunal. It is argued that the judge failed to take account of material evidence, failed to adequately reason the decision, and failed to apply the correct standard of proof. Most of these grounds are not made out on a reading of the decision of the First-tier Tribunal. The grounds are confused and in parts difficult to follow. For example, it is not clear where it is suggested that the judge applied a balance of probabilities approach. The factual basis of the claim was rejected. The judge also considered the alternative of prosecution rather than persecution and reached the conclusion for cogent reasons given in the decision that conditions would not amount to inhumane conditions. Article 8 was not pursued at the appeal.
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> 4. However, it is arguable that the judge's dismissal of the supporting documentation was inadequately reasoned at [29] of the decision and that this may undermine the overall credibility findings. In the circumstances of a relatively short delay and at least one

> arguable ground of appeal, I consider it in the public interest to admit the application and grant permission. I do so on all grounds, though most are weak and unlikely to succeed."

The Respondent contends that the Decision does not contain any material error of law. In response to ground one, she points to [13] of the Decision where the standard of proof is correctly stated. In relation to the Judge's treatment of the documentation, the Respondent directs the Tribunal's attention to [19], and [26] to [28] of the Decision. The Respondent points out that the Judge's primary finding is that the Appellant's claim is not credible. He was not required to consider the claim in the alternative that the Appellant had been convicted in Bangladesh as he claimed. However, the Judge having done so, the Respondent refers to [32] of the Decision where the Judge considered the claim in the alternative that it was true and reached findings about the impact of that on the case. The Respondent submits that the Judge has reached findings open to him on the evidence that prison conditions in Bangladesh do not breach human rights and that the Appellant is not subject to any politically motivated proceedings.

The matter comes before me to assess whether the Decision does disclose an error of law and to re-make the Decision or remit to the First-tier Tribunal for re-hearing.

DISCUSSION AND CONCLUSIONS

As a preliminary matter, I note that the Appellant who was not legally represented at the time sought to submit further documents by e-mail late on 11 December 2019. He indicated that he wished to rely on those further documents at the hearing. As I pointed out to Mr Danial who represented the Appellant at the hearing before me, I cannot look at documents which were not before the First-tier Tribunal Judge when considering whether there is an error of law in the Decision. I can do so only once an error of law is identified. The e-mail sent by the Appellant does not comply with rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and therefore does not for example identify any reason why the documents were not produced earlier. However, as the hearing progressed, it became clear that I did not have before me all the documents which were before the First-tier Tribunal Judge. Accordingly, I allowed the Appellant's representatives to produce a copy of the bundle before the First-tier Tribunal after the hearing so that it was clear which documents were and were not before the previous Judge.

As will become clear from what follows, one of the further documents on which the Appellant now seeks to rely is a re-translation of a document which did appear in the previous bundle (at [AB/22]) purporting to be a letter from the Appellant's Attorney in Bangladesh and the other is also a letter from the lawyer who apparently was responsible for the previous translation explaining that he had made a mistake in the previous translation in relation to the sentence claimed to be imposed by the Bangladeshi Courts in relation to the Appellant. The lawyer says that he wrongly translated the sentence in relation to one of the two court cases of "imprisonment for life and 6 (Six) more months

of imprisonment for the unpaid penalty money of 50,000/- (Fifty thousand) taka", whereas he should have translated it as "five years imprisonment and 6 (six) more months of imprisonment for the unpaid penalty money of 50,000 taka". He also says that he has made the same error when translating the court documents in relation to the sentence. I observe that he does not explain how the error came about. More importantly, he does not provide any evidence as to his qualifications as a translator and his expertise in that regard is seriously undermined by the errors which he accepts he made. As such, it is difficult to see how any weight could be given to these further documents. In any event, the point remains that an error of law cannot be established by documents which were not before the Judge. I will come back to the point to which this relates below.

In relation to ground one, Mr Danial relied on the ground as pleaded. He pointed out that he had not drafted the grounds. The paragraph on which the pleaded ground relies is [29] of the Decision where the Judge said that he could not rely on the documents which the Appellant provided. It is suggested that the expression of this view in the negative offends the principle set out in ME (Sri Lanka) v Secretary of State for the Home Department [2018] EWCA Civ 1486 where the Court of Appeal said that it was unsatisfactory to express findings of fact in the negative when the question is whether there is a real risk of something occurring; to do otherwise suggests the adoption of a binary question which in turn indicates the adoption of a balance of probabilities test. However, that judgment has no bearing on this case. First, what is said at [18] of the Court of Appeal's judgment is nuanced and has to be read in the context of what is said in particular at [17] of the judgment. Second, the finding made here is not of the same nature. What the Judge was dealing with at [29] of the Decision is whether the documents produced could be accepted as genuine having regard to the test set out in Tanveer Ahmed and not whether the Appellant was at real risk. As the Respondent points out and Judge Pickup accepted when granting permission, the Judge here has identified the correct test at [13] of the Decision and applied that test thereafter at [32] and [33].

Ground two formed the main focus of the submissions before me. That concerns the Judge's treatment of the court documents. However, Mr Danial began his submissions with ground three and therefore I deal with that point first. That ground concerns the applicability of the background evidence to the Appellant's claim. Mr Danial said that the Judge had failed to deal with the Appellant's case that the prosecutions which he alleged had been brought against him were politically motivated. He said that the Judge had failed to consider that the Appellant would face ill-treatment based on prison conditions because he was subject to a sentence of imprisonment. Ground three as pleaded also asserts that the Judge has failed to consider that there would be no State protection from the risk from non-State actors due to the Appellant's support of the BNP and no possibility of internal relocation to avoid that risk.

Turning first to prison conditions in Bangladesh, Mr Danial relied on the case of SH (Prison Conditions) Bangladesh [2008] UKAIT 00076. I begin by noting that it is not at all clear that the Judge's attention was drawn to that case as having any relevance. In any event, however, Mr Danial relied on [54] of the decision

which is reflected in the guidance given in the headnote and does not assist the Appellant. That reads as follows:

> "1. Prison conditions in Bangladesh, at least for ordinary prisoners, do not violate Article 3 ECHR.
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> 2. This conclusion does not mean that an individual who faces prison on return to Bangladesh can never succeed in showing a violation of Article 3 in the particular circumstances of his case. The individual facts of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3."

When referring to "the particular circumstances" at [54] of the decision, the Tribunal makes clear that it is considering the likely length of detention, type of detention facility and age and state of health of the prospective detainee.

The Judge dealt with this argument at [32] of the Decision as follows:

> "I was addressed in the alternative about the prospect of him simply facing prosecution and not persecution. The Appellant tried to argue that prison conditions in Bangladesh are so poor that it would amount effectively to inhumane treatment should he be returned. I have considered the country policy information report on the prison conditions as especially outlined in the letter of support from his solicitors and do not consider that they show that that would be the case. So far as corruption in the Court is concerned it is clear that there is some evidence that there may be unfair prosecution of political opponents but having reached the conclusion that I have i.e. that this is not a politically motivated incident then I do not find that that would be the case.."

Although I accept that the documents before the Judge indicated that the Appellant might face life imprisonment (for murder) (if that claim were accepted as genuine), the Judge was entitled to take into account in this regard his finding that the prosecution (if indeed there was a prosecution) was not politically motivated and that the Appellant would not face any unfairness in the prosecution of what would be a serious offence and would not therefore face persecution (as opposed to prosecution). As Mr Lindsay pointed out, there was no evidence that the Appellant would be anything other than an ordinary prisoner. The fact that detention would be for a long period (justified by the seriousness of the offence if true) did not amount to an Article 3 breach. There was no evidence as to the type of facility where the Appellant would be held. Although there was some very limited evidence as to the Appellant's state of health, the Judge dealt with that (see below).

That then brings into play ground three as pleaded in relation to the Appellant's asserted involvement in the BNP. It is asserted in the pleaded grounds that the Judge did not reject the Appellant's claim to have been politically active within the BNP when in Bangladesh and has failed to consider whether he would be at risk in that regard from non-State actors and has wrongly assumed that State protection would be available in that regard.

I can deal with this aspect of the grounds shortly. The Judge did not accept that the Appellant had been politically active in the past. At its highest, the Judge accepted only that he was the brother of a supporter. What is said about that aspect of the case is to be found in the record of the submissions at [17] of the Decision and the Judge's findings at [24] to [25] of the Decision as follows:

> "17. It was part of his claim that he had been a BNP supporter but this was rejected by the Respondent. His knowledge of the party was scant and he knew little of their current programme. He had failed to explain why he wanted to join the party. Although he said that he supported his brother it was noted that he had not taken any part in any BNP activities in the six years he had been in the United Kingdom. He has no political profile according to the Respondent. Next, the Respondent considered whether he had shown there to be a land dispute between him, as part of one group of people, and others who had formed the rival group. His claim is that he owned some land that had been rented to others, for their use, between 2008 and 2011, this was a simple business deal. At the end of the contract the other group wanted to remain in possession and an argument broke out between them. Initially he said nothing about the political leanings of the group, it was only later that he claimed it was a significant fact. He couldn't name any of the group and this undermined his claim. He claims that the land belongs to him in his letter to the Respondent of 12th June 2009. There is no credible evidence to support this.
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> …
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> 24. … So far as his BNP membership is concerned I am satisfied that, even if he had some involvement in the past in Bangladesh, it is an irrelevance to his claim. He was no more than a relative of a BNP supporter i.e. his brother. If true, his claim has more to do with a land dispute than anything else.
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> 25. The next question is that of the nature of the land dispute, if any. The Appellant has claimed that he let his land legitimately to a group of people between 2008 and 2011. At the end of the lease the other group wanted to stay on the land with their crops but the Appellant said no and the dispute began. At first there was no mention of the political parties but then he changed his explanation. This undermines his credibility and, in any event, I find it highly unlikely that he would lease his land to hostile political opponents in the first place. I don't accept that politics has anything to do with the dispute, if it exists at all."

Contrary to the suggestion in the grounds, the Judge did not accept that the Appellant had been politically active in Bangladesh in support of the BNP (and there was no suggestion that he had supported the party in the UK). Nor did the Judge accept that the prosecutions (if genuine) were politically motivated. As such, there would be no reason why the Judge needed to consider matters such as State protection or internal relocation. If the Appellant were genuinely wanted for having committed two murders, he would be dealt with by the State in the usual manner by the courts. In other words, the Judge accepted that if the Appellant were genuinely involved in two murders (which he did not deny) then he was fleeing prosecution and not persecution.

In any event, the Judge's primary finding is that the court documents could not be relied upon and therefore that the Appellant would not face any prosecution or serve any prison sentence. This brings me therefore to ground two concerning the Judge's treatment of the court documents. His reasons for rejecting the documents are set out by reference to the submissions at [18] to [20] and in his findings at [26] to [29] of the Decision as follows:

> "18. The Appellant claims that the two opposing groups have been involved in two separate incidents, one in 2011 and the other in 2012. On both occasions one of the opposing sides has been killed. He claims that he was arrested in 2011 and detained for a month before being released on bail in April of that year. He claims that during this time in custody he was beaten by the Police at the paid for request of the opposing group. There is no medical evidence to support this taking place and none to support his claim that it was at the paid request of the others even if it did. The Respondent does not accept that he was arrested as claimed and then released on bail. The documents were not to be relied upon.
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> 19. He then claimed to have been involved in a second fight in February 2012 while on bail for the first murder. He has admitted involvement and participation in the fight but his claim is that he was acting in self-defence. He claims to have been the subject of a FIR submitted on 29th February 2012, again ten months before his departure. Looking at the documents in the round the Respondent does not accept that he has been charged, let alone convicted of two murders. In reaching this conclusion the Respondent has taken into account the immigration history of the Appellant and his failure to properly explain the reasons for not claiming a lot earlier than he did.
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> 20. The documents have also cast doubt on his claim by the fact that they are inconsistent. He told me that he had been convicted of two offences one for which he got life and one for which he got five years imprisonment. The letter supposedly from his Advocate says that he has been given two life sentences and there is another document suggesting that or some other argument suggesting that for one of the cases he was ordered to be hung. He has been totally inconsistent.
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> …
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> 26. His claim is that it was his land but I have noted the land documents in his bundle which clearly show the land belongs to [P K H C] who is not the Appellant. This undermines the claim and I am not satisfied that his ownership of the land was a significant factor at all.
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> 27. The Appellant has claimed that he was arrested in April 2011 following an FIR submitted in January of that year. There has been no explanation for the three-month delay in his arrest especially as he claims that the other side were politically powerful. He made no attempt to avoid arrest according to him. There is no independent evidence to support his claim of having been beaten up and I have noted that, despite his claim that he was bailed in April 2011 he remained in Bangladesh for twenty months before leaving, this is inconsistent with his claim to have been arrested on a false charge.
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> 28. He then claims to have got himself involved in another fight which led to the unlawful killing of a second man. He does not suggest that

> he wasn't involved and indeed actually claims that he took part in the killing but that he was acting in self-defence. It is part of his claim that he could not have received a fair trial in Bangladesh but he admits that he avoided arrest and did not go to Court to put forward his defence. Clearly the criminal Court has been faced with some evidence that he was involved in a killing but no evidence from him to raise self-defence and it is hardly surprising that he was convicted seemingly properly of that crime. In any event the simple fact that an FIR was raised some time before he left Bangladesh raises an issue which the Appellant has not dealt with. He says that he went on the run and the Police were looking for him and yet he seems to have left Bangladesh having applied for a visit visas to the United Kingdom and left on his own passport through a main airport without any problems whatsoever. I do not accept that somebody wanted not just for one but two murders would be able to leave the country so easily and not have to resort to some kind of deception to leave. The fact that he managed to leave the country without any problem totally undermines his claim to have been wanted for the two murders.
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> 29. In support of his appeal the Appellant has provided a number of documents and I have to say that some if not all of them have been provided after he made his asylum claim and dated after he made his asylum claim. There is no evidence that they are fraudulent but I must still consider whether or not they can be relied upon and I have considered the principle in the case of Tanveer Ahmed and reach the decision that they cannot."

As I have already pointed out, the documents in relation to one of the prosecutions alleged are now said to have been incorrectly translated and it is now said that the Appellant would face only five years' imprisonment rather than life in relation to one of the charges (although life in relation to the second). If that translation error were accepted, then it may deal with one aspect of the inconsistencies identified by the Judge at [20] of the Decision. However, as I have already observed, the fact that the documents were all translated by the person who accepts that he wrongly translated some of those documents (and who is a lawyer and not a translator on the face of it) further undermines the reliance which could be placed on any of those documents. Of course, Judge Rowlands could not make that point as the further documents were not before him. Those cannot establish any error of law. However, as Mr Lindsay submits and I accept, the further documents undermine rather than support the Appellant's case and reinforce the Judge's findings about the documents.

Moreover, as Mr Lindsay submitted, the Judge's approach is consistent with the guidance given in Tanveer Ahmed, in particular at [38(ii)] that "[t]he decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round."

The Judge correctly self-directed himself in accordance with the guidance as set out at [38] of the starred decision of Tanveer Ahmed at [29] of the Decision. There is no error of law in relation to the Judge's findings about the documents surrounding the court documents.

That then brings me on to a further point made about those documents which Mr Danial raised in his submissions, but which was not prefaced in the grounds. Mr Danial drew my attention to an application made by the Appellant's previous solicitors for an adjournment in order to obtain an expert report about the potential treatment of the Appellant in light of the court proceedings. Mr Danial's point in this regard appeared to be that, although this request did not involve the instruction of an expert to verify the court documents, that was because the Respondent had made a concession that the Appellant had in fact been prosecuted. That is pleaded at [9] of the grounds of appeal as follows:

> "An additional ground seeking an adjournment was to obtain expert evidence to confirm the authenticity and veracity of the cases registered against the Appellant in Bangladesh. In response the Respondent's position was that it did not dispute the authenticity of the cases."

That paragraph forms part of the preliminary comments about the background to the case and there is no allegation of procedural unfairness made about the Judge's treatment of the court documents or of the refusal to adjourn. The adjournment request at [AB/8-9] was not put forward based on any intention to verify the court documents. Mr Danial said that there was a concession by the Respondent that the documents were genuine (he represented the Appellant before Judge Rowlands) but could not produce any evidence of what occurred at the hearing. There is no record in the Decision of any concession being made by the Respondent. Mr Danial's submission is completely at odds with what is recorded by the Judge about the submissions at [18] and [19] of the Decision as set out above. Mr Lindsay checked the file minute of the hearing which did not record any concession. The Respondent clearly takes issue with the documents in the reasons for refusal letter (see in particular [65] of that letter). It would be odd indeed if the Appellant did not raise procedural unfairness as an issue if there was indeed a concession as Mr Danial says is the case. Given the concerns raised in the Respondent's decision, the submissions recorded in the Decision and that no concession was recorded in the Home Office's note of the hearing, I cannot accept that any such concession was made before the Judge.

Mr Danial also asserted that the Judge had acted in a "heavy handed" manner given the Appellant's asserted vulnerability. Again, as a potential claim of procedural unfairness, I would expect this to have been raised as a ground of appeal if the Judge were considered to have behaved improperly. There is no such allegation pleaded. Moreover, Mr Danial who was the representative at the hearing raised no objection then or thereafter. There is no witness statement from him and if he intended to give evidence as to the conduct of the previous hearing, he could not also have acted as representative before me. The most that Mr Danial could point to was what is said by the Judge at [31] of the Decision as follows:

> "At the beginning of the hearing I was invited to ensure that the Appellant was dealt with as a vulnerable witness. He was quite strong in his evidence and showed no vulnerability whatsoever. What he did show was a clear intention to try and avoid answering direct questions. He seemed more concerned with the fact that he wasn't sleeping or eating well than the genuineness of his claim."

Mr Danial said that there was medical evidence in support of the Appellant's vulnerability which may well have explained the inconsistency. However, the medical report of Dr Das whilst indicating that the Appellant was suffering from depression indicates that there is "no evidence of any significant Cognitive decline".

The Judge makes mention of the medical report at [36] of the Decision in the context of the Appellant's human rights as follows:

> "… There has been a medical report provided as regards his mental health but that seems to simply show that he is depressed and showed some symptoms of it which I suspect is not uncommon in people who are kept in detention prior to their removal from the United Kingdom. I do not see for one moment that the medical report assists him in showing that he has a claim to remain in the United Kingdom under Article 3."

I accept that the Judge does not refer to this when dealing with the assertion that the Appellant was vulnerable. However, that does not constitute any error of law. The report records, as the Judge notes, that the cause of the mental health issues is the Appellant's current circumstances in detention. It does not have any relevance to events in Bangladesh and therefore the risk on return. Mr Danial confirmed that what the Judge said about the Appellant's evidence at [4] to [8] of the Decision was not inaccurate. The Judge heard the Appellant giving evidence and was in a position to assess whether he was vulnerable. The medical report did not suggest that the Appellant was in any way unfit to give evidence, that any adjustments were required in that regard or that his mental health affected the consistency or reliability of the evidence he could give.

For those reasons, the Appellant has failed to establish that there is any material error of law in the Decision.

CONCLUSION

For the above reasons, the grounds do not disclose any material error of law. I therefore uphold the Decision.

Notice of Decision

I am satisfied that there is no material error of law in the decision of First-tier Tribunal Judge Rowlands promulgated on 23 September 2019. I therefore uphold that decision with the consequence that the Appellant's appeal remains dismissed.

Signed  Date: 6 January 2020

Upper Tribunal Judge Smith