



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07169/2019

THE IMMIGRATION ACTS

Heard at Field House
On 7th January 2020

Decision & Reasons Promulgated
On 7th April 2020

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

FA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Islam, Taj Solicitors

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. An anonymity direction was not made by the First-tier Tribunal (“FtT”). As this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, FA 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 all parties. Failure to comply with this direction could lead to contempt of court proceedings.

2. The appellant is a Bangladeshi national. On 14th June 2012 he was granted a visit visa and he arrived in the UK in July 2012. He remained in the UK unlawfully when the visit visa expired and some years later, on 21st October 2018, he claimed asylum. His claim was refused by the respondent for reasons set out in a decision dated 19th July 2019. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Skehan for reasons set out in a decision promulgated on 23rd September 2019.
3. The First-tier Tribunal Judge heard evidence from the appellant and summarises the appellant's evidence at paragraph [9] of her decision. The judge's findings and conclusions are set out at paragraphs [12] to [29] of the decision.
4. The judge noted, at [11], that one of the issues is the appellant's credibility. Taking the evidence as a whole, the Judge found the appellant has shown it reasonably likely that his father and family were BNP supporters. The judge found it is likely that the appellant was a supporter of the BNP and its student arm. She found his activities were 'low level' in that he accompanied his father or friends rather than taking a direct active political role.
5. The judge also found the appellant has established that there was a land dispute between the appellant and his uncle. The judge accepted the appellant's uncle was a supporter of the Awami League, and that he was the chairperson within the local area. However, the judge was not satisfied that the political influence of the appellant's uncle extended beyond his local area.
6. The judge accepted that the two sides to the land dispute come from different political persuasions. The appellant claimed that the land dispute led to a fight between the families. The appellant's uncle blamed the appellant of injuring him during the fight and a complaint was raised with the police in 2011. The police attended the appellant's home to arrest the appellant and his father, but they were not there. No further action was taken by the police. The appellant's evidence was that his family tried to raise a complaint against his uncle, but the police refused to act. The judge found, at [16], that the appellant has established that the police refused to follow up complaints made against the appellant's uncle. She also found that the police do not have any continuing interest in the appellant.
7. The judge noted, at [17], that the appellants evidence as to what has happened since he left Bangladesh, was contradictory and confused. Taking the appellant's evidence

as a whole, the judge concluded that the appellant has not established that any of his family have suffered any adverse or detrimental treatment as a result of their political opinion since the appellant left Bangladesh. As to the appellant's political activities in the UK, the judge found the appellant has failed to establish that he has a political profile within the UK or would be recognised in any way in Bangladesh as a leader or activist for the BNP.

8. In her assessment of the risk upon return, the judge stated at [19].

"... Although it is accepted that [the appellant's uncle] is a local chairman within the AL, I have been provided with no information that could lead me to conclude that he has the capacity or connections to locate the appellant through his political position."

9. The judge found, at [20], that neither the appellant nor his family are of continued adverse interest, and the appellant has not established that he would be targeted for reasons of his political opinion upon return. The judge found at [21], the appellant has established that he may be targeted by his uncle on return to his home area, and a potential reluctance on the part of the police in that area to take action against the appellant's uncle linked to the political position of the appellant's uncle as the local chairman of the Awami League. At paragraph [22], the judge said:

"in light of the above, taking the appellant's claim at its absolute highest, he has shown a reasonable degree of likelihood that the appellant may have a well-founded fear of being persecuted for reasons of his political opinion in his home area and would be unable to avail himself of the protection of the police within that area."

10. The judge went on to consider internal relocation, noting the appellant has not established that his uncle has connections that would allow him to find the appellant elsewhere in Bangladesh. The judge noted the appellant had lived for six months with his grandparents prior to his departure from Bangladesh, and although his uncle had known of his whereabouts, his uncle had taken no action against the appellant. The judge was not satisfied the appellant's uncle is actively looking for the appellant. At paragraph [24], the judge went on to say:

"... It is accepted that the appellant does not want to return to Bangladesh. The appellant is a single male who is familiar with the culture of the country. I have considered the appellant's evidence that should he return to Bangladesh he will be obliged to care and accommodate his mother and sister (sic). I acknowledged the cultural obligations that the claimant may face, however this is not in my view a sufficient reason to make relocation inappropriate. Bangladesh is a large

country with a large population and many urban areas. The appellant, and his family should they so wish, may choose to live in any urban area away from their home place. I have taken the appellant's health conditions into account."

11. The judge also considered the possibility that the appellant will face persecution by reference to his political opinions even when unconnected to his uncle. The judge noted the appellant has no political profile to speak of, and cannot be described as having even the profile of a grassroots level leader or local committee member. The judge noted the appellant is a member of the BNP, a main opposition party, with, according to the background information, millions of members. The judge noted that although the political situation in Bangladesh remains unsettled, the background material suggests that those with a higher profile may face potential risks depending on the particular circumstances. The judge found the appellant has not established that he faces a real risk should he return to an area in Bangladesh, other than his home area.

The appeal before me

12. The appellant claims the judge erred in her assessment of the risk upon return by failing to have regard to the background material relied upon by the appellant which establishes that all members and activists of the opposition parties face persecution despite their position within the party. It is said the judge accepted the appellant's family were involved in the BNP and the appellant was inspired by their involvement. That demonstrates the appellant historically came from a family with a political background at least at a local level. The appellant claims that the judge's conclusion that the appellant can internally relocate contradicts her own findings that the appellant has been detrimentally treated in Bangladesh for reasons connected to his BNP political opinion and the police did not follow up his complaint. It is said that in concluding that the appellant's uncle would not be able to harm him outside his local area, the judge failed to consider the vital change in the circumstances of the appellant. That is, the appellant is now an adult and has been continuing his political activities in the UK. The appellant claims the judge failed to appreciate that the Awami League is the main political party and current ruling party, with a presence all over the country. The appellant's uncle is a local chairperson of the Awami League and as such, is part of the government, and could trace the appellant anywhere in the country using his political influence. The appellant claims the most important point missed by the judge is that the appellant is not only of interest to his

uncle, but he is also a target of the Awami League government due to his historic and *sur place* activities in the UK.

13. Permission to appeal was granted by Upper Tribunal Judge Rimington on 27th November 2019. The matter comes before me to determine whether the decision of the First-tier Tribunal judge is tainted by a material error of law, and if so, to remake the decision.
14. Mr Islam submits there were a number of positive findings that were made by the judge and based on those findings, it was not open to the judge to conclude that the appellant can internally relocate. The judge found the appellant's uncle is a member of the Awami League and the judge accepted the appellant's uncle was the chairperson within their local area. The judge stated at [14] that the appellant has not shown any reasonable degree of likelihood that his uncle's political influence extended beyond his local area, but the CPIN - 'Bangladesh; Opposition to the government - version 2.0, January 2018', that was relied upon by the respondent confirms that where the person's fear is of persecution and/or serious harm by the state, they will not be able to avail themselves of the protection of the authorities. The report confirms at section 2.3, that law enforcement agencies at a senior level tend to be aligned with the ruling party and political affiliation at times, is a motive for the arrest and prosecution of people on criminal charges.
15. Mr Islam submits that at paragraph [25] of the judge's decision, the judge refers to the background material suggesting that those with a higher profile may face potential risks depending on their particular circumstances. Mr Islam refers to the 'Odhikar Human Rights Monitoring Report on Bangladesh released on 2nd November 2018' regarding the suppression on opposition political parties ahead of the upcoming national elections. The report states that a "*list of BNP-Jamaat Alliance leaders and activists has been prepared and new cases are being lodged, in addition to reactivating investigations in old cases against them. Many cases were filed against grassroots level leader-activists, the BNP General Secretary and Standing Committee Members..*". the report confirms that most of the cases are allegedly fabricated and made to harass. Mr Islam accepts that no false charges have been laid against the appellant.
16. Mr Islam also drew my attention to the 'Odhikar Human Rights Monitoring Report on Bangladesh released on 17th April 2019, which confirms that many dissenters, opposition activists and ordinary citizens were sued under the newly passed Digital

Security Act 2018 and defamation cases filed and sentences passed from making comments against any high-level person in the ruling party or government. Again, Mr Islam accepts the appellant has not been sued and has not made comments against any high-level person in the ruling party. Mr Islam referred to the Human Rights Watch Report of December 2018 regarding the 'Bangladesh Election Crackdown on Political Opponents and Critics' which states that as Bangladesh prepares to vote, arrests and other repressive measures, including widespread surveillance and a crackdown on speech, have contributed to a climate of fear extending from prominent voices in society to ordinary citizens. He submits this background material that was before the FtT demonstrates that it is not only those with some political profile that will be targeted, but ordinary citizens too. He submits that is reinforced by what is said in the respondent's CPIN, at paragraph 6.1.10, that across the country, criminal activities of the leaders and activists of the ruling party affiliated organisations reportedly increased and they attacked leaders and activists of opposition political parties, women and children and ordinary citizens. Mr Islam submits that it is clear from the background material that it is not only high-profile members that are affected, but people are targeted even if they are simply activists. He submits the appellant would be at risk simply because he a member of the BNP, and the influence that the appellant's uncle may have away from his home area. Mr Islam submits the judge was aware that the appellant has family in Bangladesh, and it is entirely possible that with the family links, the appellant's uncle would be able to find the appellant and he would be at risk upon return.

17. For the respondent, Ms Isherwood submits there is no material error of law in the decision of the FtT and she invites me to dismiss the appeal. Ms Isherwood submits the appellant simply disagrees with the findings and conclusions reached by the judge that were open to her following a careful consideration of the claim made by the appellant and the background material. She submits the appellant does not challenge the findings made by the judge, at [14] and [19], that the political influence of the appellant's uncle does not extend beyond his local area and although he is a local Chairman within the Awami League, there is nothing to conclude that he has the capacity or connections to locate the appellant through his political position. Furthermore the appellant does not challenge the finding at paragraph [20], that he is of no continued adverse interest since his departure from Bangladesh as a 16-year-old, and, as someone who has developed no political profile since, for the reasons set out in paragraph [18]. Ms Isherwood referred me to paragraph [20] of the appellant's witness statement dated 3rd September 2019 that was before the FtT and considered

by the judge. In that statement the appellant confirms that he is a member of the BNP and confirms he does not have any official position or role in the party. He states that he is unable to attend all the activities of the party in the UK due to the immense mental pressure that he is under and also due to the fact that travelling to different places to attend the political activities requires money which he does not have.

18. Ms Isherwood submits that throughout her decision, the judge refers to the background material. Ms Isherwood submits the background material demonstrates that internal relocation is available and that a fact specific assessment of the risk upon return is needed. She submits that is what the judge did at paragraphs [23] to [27] of her decision, and looking at the evidence as a whole, it was open to the judge to dismiss the appeal for the reasons given.

Discussion

19. There are two strands to the appellant's claim for international protection albeit connected. First, his political profile and membership of the BNP, and second, the land dispute with his uncle. As the judge accepted at paragraph [15], the two sides to the land dispute come from different political persuasions.
20. In my judgement, upon a careful reading of the decision it is clear that the FtT judge carefully considered the claim being advanced by the appellant and the risk upon return. I reject the claim that in reaching her decision the judge failed to have regard to the background material relied upon by the appellant. The 'Odhikar Human Rights Monitoring Report on Bangladesh released on 2nd November 2018' regarding the suppression on opposition political parties does not assist the appellant because, as Mr Islam accepts, no false charges have been laid against the appellant. Similarly, the 'Odhikar Human Rights Monitoring Report on Bangladesh released on 17th April 2019, is of little assistance to the appellant because, as Mr Islam accepts, the appellant has not been sued and has not made comments against any high-level person in the ruling party. At paragraph [25] of her decision, the judge considered the possibility that the appellant will face persecution by reference to his political opinions. She noted the appellant has no political profile to speak of, and he cannot reasonably be described as having even the profile of a grassroots level leader or local committee member. She found the appellant has not shown that he could be reasonably considered to be an 'activist'. Although there is no express reference to the reports that Mr Islam drew my attention to, the matters set out at paragraph [25] are clearly directed to what is said in those reports.

21. The respondent's CPIN, does as Mr Islam submits, state that *"Where the person's fear is of persecution and/or serious harm by the state, they will not be able to avail themselves of the protection of the authorities"*, but the report also confirms that decision-makers must assess whether the state can provide effective protection. The report confirms that law enforcement agencies, at a senior level, tend to be aligned with the ruling party and political affiliation at times is a motive for the arrest and persecution of people on criminal charges. There is no claim by the appellant that any criminal charges have been brought against him. More importantly, at section 2.4.2 of the CPIN, insofar as internal relocation is concerned, it is said that *"If the person's fear is of persecution or serious harm from nonstate actors, such as supporters of rival political parties or factions within the same party, that threat may be localised. Middle ranking and junior party officials, in most cases would not be recognised outside their home district. Relocation to another area of Bangladesh is likely to be reasonable, depending on the facts of the case and the individual circumstances and profile of the person.."*.
22. The judge found the appellant's uncle is a member of the Awami League. Indeed, she also accepted that the appellant's uncle was the chairperson within the local area. The judge found the appellant's uncle's political influence does not extend beyond his local area. That finding is not challenged and is undoubtedly a finding that was open to the judge on the evidence. In reaching her decision the judge carefully considered the appellant's political profile both whilst he was in Bangladesh and since his arrival in the UK. The judge was entitled to conclude that in Bangladesh, the appellant was a supporter of the BNP and its student arm mainly due to his family connections. His activities were 'low level' in that he accompanied his father or friends rather than taking a direct active political role. In reaching that decision the judge noted the appellant's evidence is consistent with incidental political involvement on the part of a young teenage boy whose family supported the BNP. The judge noted the evidence provided by the appellant in respect of his political activities in the UK is sparse. The judge accepted that the appellant continues to be a member of the BNP and noted that he does not claim to hold any position within the BNP, but considers himself a supporting member. The judge was undoubtedly entitled to reach that view on the basis of the evidence as set out in the appellant's witness statement that I was referred to by Ms Isherwood.
23. It was against that background that the judge considered the question of internal relocation and the risk upon return. The judge found the appellant has not established that his uncle has connections that would allow him to find the appellant elsewhere in Bangladesh. The judge noted the appellant had lived for six months

with his grandparents prior to his departure from Bangladesh and although his uncle knew of his whereabouts, no action was taken against him. The judge noted the appellant is a single male who is familiar with the culture of the country and considered the appellant's claim that should he return to Bangladesh, he would be obliged to care for and accommodate his mother and sister. The judge noted Bangladesh is a large country with a large population and many urban areas. She noted it is open to the appellant and his family to live in any urban area away from their home place. The judge was undoubtedly entitled to reach that conclusion having carefully considered the evidence.

24. I also reject the claim that the judge failed to consider the risk upon return by reference to the appellant's profile as a member of the BNP, and his *sur place* activities in the UK. At paragraph [18], the judge referred to the appellant's political activities in the UK. It was in my judgement open to the Judge to find that the appellant has failed to show that he has any political profile within the UK or would be recognised in any way Bangladesh, as a leader or activist for the BNP, for the reasons given. The judge noted, at paragraph [25], that the appellant has no political profile to speak of and he cannot reasonably be described as having even the profile of a grassroots level leader or local committee member. In reaching her decision the judge noted that the BNP is a main opposition party with, according to the background information, millions of members. She noted that whilst the political situation in Bangladesh remains unsettled, the background evidence suggests that those with a higher profile may face potential risks depending on their particular circumstances.
25. The judge determined the appellant's international protection claim on its own merits, and it was in my judgement open to the judge, looking at all the evidence in the round, to conclude that the appellant can internally relocate for the reasons given by the judge. It is necessary to guard against the temptation to characterise as an error of law what is in truth no more than a disagreement about the weight to be given to different factors, particularly where the judge who decided the appeal has had the advantage of hearing oral evidence and considering all the evidence in the round. The decision to dismiss the appeal for the reasons set out in the decision was in my judgement, a decision that was open to the FtT judge on the evidence before the FtT. The findings and conclusions reached by the judge were neither irrational nor unreasonable in the *Wednesbury* sense, or findings and conclusions that were wholly unsupported by the evidence.

26. In my judgment, it was open to the judge to dismiss the appeal for the reasons given by her. It follows that the appeal before me, is dismissed.

Notice of Decision

27. The appeal against the decision of FtT Judge Skehan is dismissed.

Signed

Date

11th March 2020

Upper Tribunal Judge Mandalia