



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: PA/00442/2020 (R)**

**THE IMMIGRATION ACTS**

**Remote Hearing by Skype  
On 6<sup>th</sup> April 2021**

**Decision & Reasons Promulgated  
On 20<sup>th</sup> April 2021**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**S M H I  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Razzaq-Siddiq, Counsel

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**DECISION AND REASONS (R)**

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure  
(Upper Tribunal) Rules 2008**

*An anonymity direction was made by the First-tier Tribunal (“the FtT”). As this appeal concerns a claim for international protection, it is appropriate for me to continue that anonymity direction. 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 both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.*

1. The hearing before me on 6<sup>th</sup> April 2021 took the form of a remote hearing using skype for business. Neither party objected. The appellant did not join the hearing remotely. I was assured by Mr Razzaq-Siddiq that the appellant is aware of the hearing and has chosen not to attend remotely and is happy for the matter to be dealt with in his absence. I sat at the Birmingham Civil Justice Centre. I was addressed by the representatives in the same way as I would have been if the parties had attended the hearing together. I was satisfied: that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. Neither party appeared to have any technical issues during the course of the hearing and at the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

### **The Background**

2. The appellant is a national of Bangladesh. He arrived in the UK in September 2010 with leave to enter as a student valid until 30<sup>th</sup> November 2012. In February 2013, he was granted further leave to remain as a student until 24<sup>th</sup> January 2016. That leave to remain was curtailed on 26<sup>th</sup> March 2013 such that it expired on 25<sup>th</sup> May 2015 because the appellant failed to attend his course and his sponsorship was withdrawn. In October 2016 the appellant applied for leave to remain on private life grounds. That application was refused for reasons set out in a decision dated 30<sup>th</sup> August 2017. In November 2017 the appellant claimed asylum. His claim was refused for reasons set out in a decision dated 14<sup>th</sup> May 2018. His appeal against that decision was dismissed by First-tier Tribunal Judge Knowles for reasons set out in a

decision promulgated on 16<sup>th</sup> August 2018. In February 2019, the appellant made further submissions to the respondent in support of his claim for international protection. His claim was refused by the respondent for reasons set out in a decision dated 3 December 2019.

3. The appellants appeal was dismissed by First-tier Tribunal Judge Herwald (“Judge Herwald”) for reasons set out in a decision promulgated on 9<sup>th</sup> October 2020. The appellant now claims the decision of Judge Herwald is vitiated by material errors of law. The appellant advances three grounds of appeal. First, the appellant claims that when considering the documents relied upon by the appellant, Judge Herwald erroneously found that the appellant has not provided translations of the documents “by a recognised interpreter in the United Kingdom”, when there is no such requirement. The appellant refers to the Practice Directions of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (as amended) that sets out the best practice for the preparation of bundles and what is required when a document is not in the English language. Second, the appellant claims Judge Herwald failed to consider the background material, and in particular, what is said in the ‘Report of a Home Office Fact-Finding Mission (Bangladesh) that was published in September 2017, which states, at [4.6.1], that *“One anonymous source noted that forged or fraudulent police or court documents are not easily obtainable, because of counter signature processes and the fact that all documents can be checked against the database”*. Third, and linked to the second ground of appeal, the appellant claims Judge Herwald failed to adequately address the conflicting background material regarding the prevalence of forged documents in Bangladesh.
4. Permission to appeal was granted by Upper Tribunal Judge Blundell on 30<sup>th</sup> November 2020. The three grounds of appeal are all linked and concern the judge’s consideration of the documents that were relied upon by the appellant. I shall address the first ground of appeal and then address the second and third grounds of appeal together. In readiness for the hearing of the appeal, Mr Razzaq-Siddiq provided a skeleton argument dated 5<sup>th</sup> April 2021 that he adopted at the hearing

before me. I have read and considered the matters set out in that skeleton argument in reaching my decision.

5. Mr Razzaq-Siddiq accepts, quite properly, that First-tier Tribunal Judge Knowles had previously considered the appellant's claim to be at risk upon return to Bangladesh on account of his political opinion in the decision promulgated on 16<sup>th</sup> August 2018. He accepts Judge Knowles found that the appellant is not a credible witness and the account he has given as to the core of his claim, is not reasonably likely to be true. Mr Razzaq-Siddiq submits that in support of the further submissions made to the respondent in February 2019, the appellant had relied upon a number of documents that are crucial to his claim for international protection, and were capable of undermining the findings previously made, and establish that the appellant will be at risk upon return.

*Ground 1; The translation of the documents relied upon by the appellant*

6. Mr Razzaq-Siddiq refers to various paragraphs of his decision (*11(l), 12(c), 16(a), 16(f) and 16(g)*) in which Judge Herwald refers to the documents but notes that the translation has not been produced by a translator recognised in Britain or considers the translation to be unreliable. Mr Razzaq-Siddiq submits there is no requirement for the documents to be translated in the UK, either in primary or secondary legislation and the best practice is set out in the Practice Directions of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, as most recently amended by Sir Ernest Ryder, Senior President of Tribunals on 18<sup>th</sup> December 2018. The Practice Direction states:

“8.2 The best practice for the preparation of bundles is as follows:

..

(b) where the document is not in the English language, a typed translation of the document signed by the translator, and certifying that the translation is accurate, must be inserted in the bundle next to the copy of the original document, together with details of the identity and qualifications of the translator;

...”

Mr Razzaq-Siddiq submits the other relevant guidance regarding translation of documents is set out in an instruction by the UK Border Agency regarding Foreign Language documents submitted in support of asylum applications (Version 2.0 GL 5/11/08) which indicates that any foreign language document on which an applicant wishes to rely, must be accompanied by an English translation of reliable quality.

7. Mr Razzaq-Siddiq referred to the documents that were before the First-tier Tribunal at pages 48 to 72 of the appellant's bundle. The documents comprise of a 'First Information Report' ("FIR") (pages 48 to 51), a Complaint (pages 52 to 55), a 'Court Record' of the proceedings against the appellant (pages 56 to 61), a Charge Sheet (pages 62 to 67), an Arrest Warrant (pages 68 to 69) and a letter from A K M Rezaul Karim, an Advocate in Bangladesh (pages 70 to 71). Each of the documents written in Bengali, was accompanied by an English translation, in which the identity of the translator is disclosed and each of the copies has been attested by an Advocate and Notary Public. Mr Razzaq-Siddiq submits there were several documents in the appellant's bundle, but Judge Herwald only refers to the FIR and the letter from the Advocate, Mr Rezaul Karim. He submits the documents are all interconnected, support each other and cannot be looked at in isolation. He submits Judge Herwald failed to give anxious scrutiny to the claim made by the appellant and to have proper regard to the documents that were at the heart of the appellant's claim.
8. Mr Razzaq-Siddiq accepts that the translations are not certified by the translator as being accurate and although the name of the translator is provided, the qualifications of the translator are not set out either in the translations, or in any other document. He submits that although the translations are not entirely in accordance with the best practice set out in the Practice Direction, the translations substantially comply with the Practice Direction, and the translations are of reliable quality. Mr Razzaq-Siddiq submits Judge Herwald rejected the documents simply because they were not translated in the UK. If the Judge had not considered an irrelevant factor, it is likely that the documents establish that a false case has been instigated by the authorities against the appellant, and that he is at risk upon return as he claims. Mr Razzaq-

Siddiq submits that even if it was open to the Judge to reject the appellant's account of events in relation to other matters, if the appellant can establish that there is false case against him in Bangladesh that was filed in March 2018 and in respect of which an arrest warrant was issued in November 2018, after the previous decision of First-tier Tribunal Judge Knowles in August 2018, the present appeal could still succeed. Mr Razzaq-Siddiq referred me to the background material that was before the First-tier Tribunal that confirms that *"..student activists, particularly members of the opposition were most likely to be the targets of politically motivated violence and legal charges.."* and *".. Numerous cases have come to light which accuse people that are either dead, were abroad, or hospitalised at the time the alleged offence took place..."* (CPIN, Bangladesh: Opposition to the government (paragraph 6.1.11) and the Human Rights Watch report "Creating Panic, Bangladesh Election Crackdown on Political Opponents and Critics). The background material supports the appellant's claim that false charges are instigated by the authorities against members of the opposition. That however is not to say that the Judge was bound to accept that false charges had been instigated against the appellant. Whether or not the appellant has established that false charges have been instigated against him, depended upon the assessment of the documents relied upon by the appellant.

9. The first ground of appeal does not in my judgement disclose a material error of law in the decision of First-tier Tribunal Judge Herwald. I accept the submission made by Mr Whitwell that at paragraph [9] of the decision, Judge Herwald properly directed himself that it is for the appellant to show that the documents relied upon, are reliable. In Tanveer Ahmed v SSHD [2002] UKIAT 00439 Mr Justice Collins confirmed that in asylum and human rights cases it is for an individual claimant to show that a document on which he or she seeks to rely can be relied on, and the 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.
10. At paragraphs [11(k)] to [11(m)] of his decision Judge Herwald referred to the appellant's case that a politically motivated case had been filed

against him in March 2018, leading to an arrest warrant being issued on 6<sup>th</sup> November 2018. It is in my judgement clear from what is said in paragraph [11(l)] that Judge Herwald was aware of the various documents relied upon by the appellant in support of his claim. He noted the appellant has now produced translations of a FIR and importantly “..*supporting documentation, and certified translations of court appearances, and an arrest warrant in his name..*”. In setting out his findings, at paragraph [16(d)], Judge Herwald refers to the submissions made on behalf on the appellant that related primarily to the FIR “..*and supporting documents..*”, that were in the appellant’s bundle before the Tribunal. At paragraph [16(f)] Judge Herwald concluded that he was not persuaded that he could place reliance on the “..*lawyers letter, nor the information purporting to come from the police and courts in Bangladesh*”. In considering the documents it is clear that Judge Herwald had in mind all the documents, relied upon by the appellant and I reject the submission made by Mr Razzaq-Siddiq that Judge Herwald failed to have regard to all the documents and failed to give anxious scrutiny to the documents.

11. Mr Whitwell properly accepts that a UK based translation of the relevant documents is not required. Although it is correct that there are various references in the decision to the documents not having been translated in the UK, I reject the submission made by Mr Razzaq-Siddiq that Judge Herwald rejected the documents simply because they had not been translated in the UK. At paragraph [11(l)], Judge Herwald noted the appellant now relies upon the translation of various documents. He noted that the translations had not been produced by a recognised translator in Britain, but also noted that there were uncertified translations of court appearances and an arrest warrant in the appellant’s name. At paragraph [12(c)], he noted the respondent’s claim in the refusal letter that documents can be procured by corruption and fraud in Bangladesh, and the respondent’s conclusion that the documents relied upon by the appellant are unreliable and are not the product of a reliable translation. I accept that at paragraph [16(a)] of his decision, Judge Herwald noted the reliance placed by the appellant on the documents, “.. *albeit translated in the appellant’s homeland, and not by a recognised interpreter in the United Kingdom..*”. That was in

my judgement an observation made by Judge Herwald, but his reasons for concluding that he could not place reliance on the documents are to be found at paragraphs [16(d)] to [16(i)] of the decision. The observation made by Judge Herwald must be considered in the context of what was said by the respondent in her decision dated 3<sup>rd</sup> December 2019. The respondent had stated:

“.. You have not provided any evidence relating to the translation of the documents, that it was completed by a certified and accredited translator. The document is marked that it was completed by Md Zakir Hossain in Bangladesh, you have not shown that the translated documents are an accurate translation of the original document used for the translation therefore it is considered that the contents of the translation cannot be relied on in the absence of such evidence.”

12. At paragraph [15(d)], Judge Herwald referred to the background material that was before him and in particular, the respondent's 'Country Information Note, Bangladesh: Documentation' published in January 2020. He referred to paragraph 5.2.4 of that report that refers to a Lifos report (*i.e. a Report by the Swedish Migration Agency's centre for country-of-origin information*) in which it is noted that “..*Translations of documents from Bangladesh were not always reliable as it is possible to bribe an authorised translator to change or omit information in the translated document.*”. Against such background material, the need for a translation that properly complies with the best practice referred to in the Practice Direction that is relied upon by the appellant, is readily apparent. Here, as Mr Razzaq-Siddiq accepts, the translations are not certified as accurate, and fail to disclose the qualifications of the translator.
13. The assessment of the weight to be attached to the documents is always a highly fact sensitive task. Judge Herwald considered whether he could attach any weight to the documents having considered the evidence before him in the round, including the background material, and the failure of the appellant to refer to the false claim he now alleges has been issued against him previously despite his evidence that he was aware of the claim since March 2018, and looking at the documents together.



Grounds 2 and 3; The background material regarding the availability of forged or fraudulent documents

14. In reaching his decision as to the weight to be attached to the documents relied upon by the appellant, Judge Herwald noted, at [16(d)], that the background material confirms that court and police documents in Bangladesh may be fraudulently obtained and that corruption is widespread in the courts and in the police.
15. The appellant claims that in reaching his decision, Judge Herwald failed to have regard to other background material that was before the Tribunal that states that “.. *Forged or fraudulent police or court documents are not easily obtainable, because of counter signature processes and the fact that all documents can be checked against a database...*”. The appellant claims Judge Herwald failed to resolve the conflict in the background material as to the availability of forged or fraudulent documents. The appellant claims the FIR relied upon by the appellant had been signed by the complainant and the court documents relied upon by the appellant, did indeed have the required counter signatures.
16. The second and third grounds of appeal are without merit. At paragraph [15] of his decision, Judge Herwald carefully referred to the background material relied upon by the parties.
17. Mr Razzaq-Siddiq submits that at paragraph [15(d)] Judge Herwald refers to an extract from a ‘Country Information Note, Bangladesh: Documentation’ published in January 2020, which, at 5.2.1, refers to information from The Research Directorate of the Immigration and Refugee Board of Canada (“Canadian IRB report”), that states that there is a significant prevalence of fraudulent documents in Bangladesh including passports, birth certificates, bank statements, taxation documents, business documents, school documents and marriage certificates. He submits that the report identifies the types of documents that are readily available, but they do not include documents from the police or courts of the type now relied upon by the appellant. At paragraph 5.2.3 of the Country Information Note, there is

reference to a fact-finding mission completed by UK Home Office officials in May 2017. In its subsequent report published in September 2017, it was recorded that “... *One anonymous source noted that forged or fraudulent police or court documents are not easily obtainable, because of counter signature processes and the fact that all documents can be checked against a database..*”.

18. Mr Razzaq-Siddiq submits Judge Herwald made no attempt to resolve whether fraudulent documents such as those relied upon by the appellant can easily be obtained. He submits there is a distinction as to the types of documents that are readily available that was not addressed by the Judge. He submits it appears Judge Herwald relied upon the information provided by the Canadian IRB, but (i) that is information from a foreign body; (ii) the information in that report is now somewhat dated (*the response is dated 20<sup>th</sup> September 2010*) whereas the Home Office Fact finding mission took place in May 2017 and its report was published in September 2017; (iii) the Canadian IRB refers to documents in general only and does not refer to police and court documents, and finally, (iv), the information in the Home Office fact finding mission report published in September 2017 makes a distinction between Court documents and other documents.
19. In my judgement, the difficulty with the submission made by Mr Razzaq-Siddiq is that he overlooks entirely, the fact that in reaching his decision Judge Herwald refers, at paragraph [15(d)], to the objective material set out in paragraph 5.3.6 of the respondent’s Country Information Note. That draws upon a report on Bangladesh prepared by the Australian Government’s Department of Foreign Affairs and Trade (“DFAT”) dated August 2019. Paragraph 5.3.6 of the respondent’s Country Information Note states:

“... Court and police documents may be fraudulently obtained, for example by bribing police for minor offences to be removed from record. Corruption is widespread in the courts and the police and it is possible that genuine documents are fraudulently obtained as part of this process. (my emphasis) Local media often report on cases where fake court documents are created for personal gain. The court system and police systems are heavily bureaucratic and often paper-based, which can limit the ability to detect fake documents. Official

documents, including identity, nationality and court documents, can often be difficult to verify through formal channels. (my emphasis) This is for a variety of reasons, including expectations by some officials of facilitation payments, or genuine lack of adequate records and capacity. DFAT assesses that fraudulent court documents, or court documents that were obtained fraudulently, are relatively common in Bangladesh. (my emphasis)”

20. It is in my judgement clear that the background material that Judge Herwald had in mind, was not material that related to documents in general but was concerned with the availability of documents from the courts and police. It was undoubtedly open to Judge Herwald, who clearly considered all the available background material, to conclude that he could not place reliance on the information purporting to come from the police and courts in Bangladesh for the reasons given. I am quite satisfied that in reaching his decision Judge Herwald carefully considered all the background material that was before the Tribunal, and insofar as Judge Herwald failed to expressly state that he preferred the DFAT report (*which was the most recent report chronologically*), his decision discloses no material error of law capable of affecting the outcome of the appeal. The reference in the report of the fact-finding mission completed by UK Home Office that was published in September 2017, to a single anonymous source suggesting that forged or fraudulent police or court documents are not easily obtainable because of counter signature processes and the fact that all documents can be checked against a database, was not on any view, capable of undermining the other background material that was before the Tribunal and carefully considered by Judge Herwald.
21. I reject the submission made by Mr Razzaq-Siddiq that Judge Herwald erred in his analysis of the FIR relied upon by the appellant at paragraph [16(e)] of his decision. Judge Herwald noted that the FIR submitted by the appellant may not meet all the requirements as set out. Paragraph 3.1.1 of the respondent’s ‘Country Information Note, Bangladesh: Documentation’, sets out the information that a FIR should contain. All the information identified is not set out in the FIR relied upon by the appellant that is to be found at pages [48] and [49] of the appellant’s bundle. Mr Razzaq-Siddiq submits that the complaint that is to be found at pages [52] and [53] forms part of the FIR and provides the required

information regarding the facts of the incident, but even if that is correct, the two documents read together do not list the names of witnesses. The names and addresses of witnesses are set out on the 'Charge Sheet' that is to be found at pages [62] to [64] the appellant's bundle, and that is plainly a separate document.

22. I accept the submission made by Mr Whitwell that the decision of Judge Herwald that he could not place reliance on the documents relied upon by the appellant was reached after considering the evidence before the Tribunal in the round and having proper regard to the background material. In my judgment, in reaching his decision, Judge Herwald clearly applied the correct test to his analysis of the claim made by the appellant and the documents relied upon. As the Court of Appeal said at [18] of Herrera v SSHD [2018] EWCA Civ 412, it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. The assessment of such a claim is always a highly fact sensitive task. The FtT judge was required to consider the evidence as a whole and he plainly did so, giving adequate reasons for his decision. The findings and conclusions reached by the judge are neither irrational nor unreasonable. The decision was one that was open to the judge on the evidence before him and the findings made.

23. It follows that I dismiss the appeal.

### **Notice of Decision**

24. The appeal is dismissed and the decision of First-tier Tribunal Judge Herwald promulgated on 9<sup>th</sup> October 2020 shall stand.

Signed  
2021

**V. Mandalia**

Upper Tribunal Judge Mandalia

Date 8<sup>th</sup> April