



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

Appeal Number: PA/08355/2016

THE IMMIGRATION ACTS

Heard at Field House

On 31st May 2017

**Decision &
Promulgated
On 13th June 2017**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**M M K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Razzaq-Siddiq (Counsel)

For the Respondent: Mr T Melvin (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Malone, promulgated on 27th March 2017, following a hearing at Taylor House on 7th March 2017. In the determination, the judge dismissed the

appeal of the Appellant, who subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Bangladesh, who was born on [] 1986. He appealed against a decision of the Respondent dated 27th July 2016, refusing his application for asylum and for humanitarian protection.

The Appellant's Claim

3. The Appellant's claim is that he came to the UK as a student from Bangladesh, after having applied for entry clearance on 30th September 2009, obtained an extension of his student visa, and after his subsequent application to remain in this country was refused, he claimed asylum on 4th January 2016. The basis of his claim is that he has been involved in student activities with the Bangladeshi Islami Chattrashibir ("BIC"), the student wing of the Bangladesh Jamaat-e-Islami ("BJI"). This was in March 2000. In December 2008 a general election took place in Bangladesh. When it became apparent that the BJI would lose, the scene turned ugly and the student wing of BAL attacked supporters of the BIC, and the Appellant was assaulted.

The Judge's Findings

4. The judge accepted that the Appellant held the position of the president of the BIC for Madaripur Town Unit (paragraph 35). He accepted that on 29th December 2008, the election night, the Appellant was assaulted by representatives of the student wing of BAL, who had become overexcited at witnessing their party in the process of achieving a landslide victory. The judge concluded that, "I found the assault he experienced on election night arose from nothing other than over exuberance and ill judgment" (paragraph 38). He went on to consider the Appellant's wider circumstances whereby when he was notified on 7th December 2014, that his leave to remain had been curtailed, due to his educational institution losing its licence, he on 7th February 2014 made a human rights application under Article 8, relying on his private life in the United Kingdom, and this was refused on 1st April 2015 (see paragraph 40). When the Respondent refused the application on human rights grounds, it was stated that if the Appellant had a fear of returning to Bangladesh he should claim asylum and it was at that stage that the Appellant claimed asylum on 4th January 2016 (paragraph 40). The judge also observed the Appellant's claimed fear that his younger brother had also been arrested on a false case and that false cases had been lodged against the Appellant.
5. The appeal was dismissed.

Grounds of Application

6. The grounds of application state that the judge had accepted that the Appellant's presence in social media was such that, "the material purportedly posted is inflammatory and would antagonise BAL and the authorities in Bangladesh" (paragraph 72). He had also accepted that, "the government is becoming less tolerant of the criticism" (paragraph 75). In these circumstances, it was against the weight of the background material to conclude that there would be no risk of persecution. The grounds also state that the judge wrongly expressed his conclusion about the openness of the Appellant's Facebook account (at paragraph 71) which had never been disputed by the Respondent. He also was wrong to say that only one conviction had occurred in Bangladesh for Facebook postings since June 2013. On 21st April 2017, permission to appeal was granted.

Submissions

7. At the hearing before me on 31st May 2017, Mr Razzaq-Siddiq, took me to the grounds of application and emphasised these. He then said that, given what the judge had found to be the case, as stated in the grounds of application, it was simply not tenable for the judge to conclude, in the light of the objective evidence that was available, that the Appellant would not face a real risk of persecution on the lower standard. He drew to my attention page 336 of the Appellant's bundle which refers to the COIR Report at paragraphs 2.1.4 to 2.1.5 that journalists and other human rights activists are being targeted by the Information and Communication Technology Act 2006. Lecturers have been targeted. The grant of permission also recognises (at paragraph 2) that if the Appellant's Facebook account was an open one then other people would have access to it and this would place him at risk if he returned to Bangladesh. The acting editor of the Daily Amar Desh has been in jail for twenty months. Meetings and assemblies had been prohibited. Mr Razzaq-Siddiq expressly took me to page 419, 456, 526 and 546, and given that the Appellant's Facebook account had referred to the prime minister of Bangladesh as acting as a "lady Hitler", he would definitely be at risk upon return. The consequences for people who criticise the government are set out at page 546 of the bundle. Even a former army officer was arrested for making provocative statements (at page 547). In addition, the supplementary bundle (at page 7) shows how Bangladeshi practices do not sit well with Article 19 of the ICCPR.
8. Second, if one has regard to the "policy summary" of the COIR (at paragraph 1.4), it is clear that it is unnecessary to be a member of an organisation in order to attract the government's wrath the risk is widespread. Third, the judge was wrong (at paragraph 80) to conclude that, given that the atmosphere in Bangladesh "is politically charged, is volatile, and is unpleasant" and given that "the Appellant may well experience harassment on return there" that this would not amount to his being "persecuted or subjected to inhuman or degrading treatment" (paragraph 80). This is because such a conclusion ran against the weight of the objective evidence that Mr Razzaq-Siddiq had drawn to this Tribunal's attention.

9. For his part, Mr Melvin referred to his Rule 24 response. He submitted that the judge had taken all these matters into account, and that the issue here was that, even if the Facebook account was an open one, it was simply not credible that the Bangladesh authorities would trawl through millions of Facebook entries, in order to seek out the Appellant, because if this was the case then any returnee from the UK, who had criticised the Bangladesh government, however mildly, could claim asylum in this country. Second, the fact here was, as found by the judge, that the Appellant was making a last ditch attempt to stay in this country after all his previous applications to remain here as a student had failed. Simply to compare the prime minister of Bangladesh as a “lady Hitler” was not to suggest that the Appellant would be at risk of ill-treatment. The plain fact was that he was not an activist. He could not even remember the venue where he attended demonstrations in the UK, apart from one such venue. He was not a blogger. There would be absolutely no risk to him upon return to Bangladesh.
10. In reply, Mr Razzaq-Siddiq submitted that the judge had accepted that the Appellant had held the position of president of the BIC in his town unit (paragraph 35). Second, the objective evidence was clear that if one was a supporter of such an organisation one was at risk of ill-treatment.

No Error of Law

11. I am satisfied that the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set the decision aside. My reasons are as follows.
12. First, the judge applies the correct standard of proof (at paragraph 49).
13. Second, the refusal letter recognises that the Appellant is a “low level supporter of BIC before leaving Bangladesh” and that he had “attended some anti-Bangladesh government demonstrations in London” (paragraph 25). However, the refusal letter observed that “there was no evidence that the Appellant’s low level support for the organisations he identified in this country had or would come to the attention of the Bangladesh authorities” (paragraph 30).
14. Third, the circumstances of the Appellant’s application are that he only applied for asylum, after licence was withdrawn from his college, and his human rights application was withdrawn, with his expressly being then alerted to the fact that he should make a claim for asylum if he felt that there was a risk of ill-treatment to him, and the judge’s conclusion on this matter was that the Appellant was not credible. Indeed, the judge concluded that “the Appellant’s narrative to have been carefully crafted invention”. In this case, the Judge observed the Appellant. He saw him give evidence. He saw the weaknesses in that evidence. He was not prepared to accept the Appellant’s contention that he was not even in touch with his family because “there is no reason for him not to be in touch and every reason why he should be” (paragraph 78). Indeed, the

Appellant came in 2009 and “he intended to return when things in Bangladesh had reverted to normal, and that his credibility had been damaged by his failure to claim asylum earlier” (paragraph 79).

15. Fourth, the judge is not oblivious to the wider situation in Bangladesh. Indeed, he expressly refers to the Information and Communication Technology Act 2006, which prescribed harsh sentences for ill-defined categories of online anti-government expression, and exactly that which Mr Razzaq-Siddiq read out to me in his oral submissions, is set out by the judge at paragraph 72 of the determination. It is in no way the case that the judge has overlooked any aspect of the objective evidence. He even recognises that at its lowest the Appellant has been “disrespectful to the Bangladesh government” (paragraph 74). It remained the case, nevertheless, that “no action has been taken against the Appellant, in absentia, in respect of” his posts of 2012 and 2013, and this is even in circumstances where the government is becoming less tolerant of criticism (paragraph 75).
16. As for the Appellant having been subjected to attack on election night, the judge deals with this by stating that this arose “from nothing other than over exuberance and ill judgment” (paragraph 38). It was a conclusion which, on the facts of the case before him, the judge was entitled to come to.
17. All in all, therefore, on the lower standard, the judge was correct to conclude that the Appellant would not be at risk of ill-treatment and the claim for asylum and protection properly failed for the reasons that are comprehensively and carefully set out in this determination.

Notice of Decision

18. There is no material error of law in the original judge’s decision. The determination shall stand.
19. An anonymity direction is made.

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

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.

Signed

Date

Deputy Upper Tribunal Judge Juss

10th June 2017