



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

Appeal Number: PA/11727/2016

THE IMMIGRATION ACTS

Heard at Manchester

On 8 November 2017

Decision & Reasons

Promulgated

On 9 November 2017

Before

Deputy Upper Tribunal Judge Pickup

Between

**MD YAHIA CHOWDHURY
[No anonymity direction made]**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr C Timson, instructed by Legacy Law Solicitors

For the respondent: Mr J Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Robson promulgated 8.5.17, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 11.10.16, to refuse his claim for international protection. Judge heard the appeal on 7.4.17.
2. Designated Tribunal Judge Shaerf granted permission to appeal on 4.9.17.
3. Thus the matter came before me on 8.11.17 as an appeal in the Upper Tribunal.

Error of Law

4. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the decision should be set aside.
5. In essence, the appellant's claim was that he feared persecution due to his political opinion arising from his membership of the BNP, and opposition to him for that reason by members of the Awami League. He claimed that in incidents in 2004 and 2007 he had been attacked. In the latter incident, he claimed he had been shot and wounded. After coming to the UK in 2007 he claims he was falsely accused in Bangladesh of involvement in a murder case and the police attended the family home with a warrant for his arrest. He relied on a FIR and claimed that in his absence, he has been sentenced to life imprisonment in November 2015. However, despite coming to the UK in 2007 and having had a previous immigration appeal, did not claim asylum until after his detention in April 2016.
6. At [67] Judge Robson, rejected the appellant's factual claim to have been attacked and/or abused as a result of his membership of the BNP, and also his claim to have been the subject of a malicious and false allegation against him at the instigation of the Awami League. In the circumstances, having rejected the allegation of being charged with and sentenced for murder, the judge concluded that relocation would be open to the appellant, as there was no adverse interest in him by the police.
7. In granting permission to appeal, Judge Shaerf observed that the First-tier Tribunal made no specific finding on the appellant's political involvement or membership of the BNP, described as one of the main planks of the claim, and that a finding should have been made on those matters.
8. Whilst it would clearly have been better if there had been specific findings in relation to the claimed BNP membership, I find that, as submitted by the respondent in the Rule 24 reply, the omission to make such findings was not material to the outcome of the claim.
9. The crucial issue was whether the appellant had a well-founded fear of persecution and his account alleging past persecution by members of the Awami League was the key factual dispute in the appeal. Having rejected, for the cogent reasons identified in the decision, that part of the claim, together with the claim to have been charged and sentenced in his absence for a false allegation of murder, there was no basis for the appellant to fear return to Bangladesh either from the police or members of the Awami League. I note that the grounds of appeal do not challenge in any way those findings of fact and address only the BNP material and s8.
10. The appellant's membership of the BNP was not directly material to the resolution of the key issues in the appeal. Whilst it was relevant in the sense that it was the basis for the claimed opposition to him by members

of the Awami League, the claimed attacks were not found to be credible, for cogent reasons open to the judge and unchallenged in the grounds. That part of his claim was rejected in its entirety. Thus, even if he were a member of the BNP, a finding as to whether or not he was a BNP member would not have been determinative of the outcome of the appeal. Further, even if he did fear the Awami League, for whatever reason, the judge concluded that there was no reason why he could not relocate within Bangladesh, as the judge had found he was not wanted by the authorities and thus there was no impediment to relocation.

11. Mr Timson's submission was that membership of the BNP was a main plank of the appellant's case. He also submitted that he would have been at risk on return for that reason alone. However, that was not how the case was put before the First-tier Tribunal, in the skeleton argument, in oral submissions, or in the grounds of appeal to the First-tier Tribunal. Neither was it raised as a ground in the application for permission to appeal to the Upper Tribunal. Mr Timson submitted that the country background evidence demonstrates that membership of the BNP is a risk factor in itself, but such material was not part of the appellant's bundle at the First-tier Tribunal. I note from the Home Office CIG on Bangladesh: Opposition to the Government, dated February 2015, which is with the case papers, that the BNP is listed as one of the main political parties in the parliamentary democracy. Further, at 1.3.9, it states that membership or support of groups opposed to the current government does not of itself give rise to a well-founded fear of persecution in Bangladesh. Decision makers must assess claims made on the basis of the person's actual or perceived involvement in political opposition to the current government on the facts of the case, taking account of the nature of the appellant's claimed political activity or profile, and the extent to which they may have come to the adverse attention of the authorities and the reasons for that. In cases based on fear of ill-treatment by members of opposing political parties, the threat is likely to be localised and relocation to another area of Bangladesh may be viable depending on the nature of the threat from non-state agents and the individual circumstances of the person.
12. In the light of that country background evidence, whether or not it was considered by the First-tier Tribunal, there is no basis to conclude that mere membership of the BNP would place the appellant at any real risk sufficient to entitle him to international protection. Further, as the judge considered he could relocate, any such fear cannot be well-founded. In the circumstances, there is no merit in this aspect of Mr Timson's submission, whether or not it was deployed before the First-tier Tribunal.
13. I note that Judge Shaerf found no arguable error of law in relation to s8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. This provision was not referred to at all in the decision, though the judge did rely on the delay in making the asylum claim, which he was entitled to do. The grounds mistakenly assert that the judge placed too much focus and weight on the s8 credibility issue. However, as the grounds quote, that s8 is no more than a reminder for fact-finding tribunals that conduct which

comes within the categories stated shall be taken into account in assessing credibility. In making credibility findings the judge was entitled to rely on the delay in making the protection claim and reject, for the reasons set out at [54] the appellant's explanation for that delay, finding the explanation not credible.

14. In the circumstances, I find that the grounds disclose no material error of law.

Conclusion & Decision

15. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup
Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014. Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.

A handwritten signature in black ink, appearing to be 'J. M. K.', written in a cursive style.

Signed

Deputy Upper Tribunal Judge Pickup

Dated