



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/07675/2018**

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On July 18, 2019**

**Decision & Reasons Promulgated
On August 07, 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR ABDUL AZIZ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Azmi, Counsel, instructed by Samad & Co Immigration
For the Respondent: Ms Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a Bangladeshi national, entered the United Kingdom with his parents and sister, as a visitor, on 25 August 2012 when he was almost 20 years of age. His parents returned to Bangladesh in November 2012 leaving the appellant and his sister in the United Kingdom.
2. On 21 December 2012 the appellant applied for leave to remain arguing that returning him to Bangladesh would breach his article 3 and 8 ECHR human rights. The respondent refused this application on 15 March 2018.

3. The appellant appealed the decision on 27 March 2018 under section 82(1) of the Nationality, Immigration and Asylum Act 2002 and his appeal came before Judge of the First-tier Tribunal Nixon (hereinafter referred to as the "FTT Judge") on 25 October 2018 who in a decision, promulgated on 2 November 2018, dismissed the appellant's appeal on all grounds.
4. The appellant appealed this decision on 15 November 2018 arguing the FTT Judge had erred:
 - (a) In the approach to the appellant's role within the Bangladeshi National Party and the fact there was an arrest warrant outstanding in Bangladesh, and he remained of interest to the Bangladeshi authorities; and
 - (b) The FTT Judge's approach to article 3 ECHR was flawed.
5. Permission to appeal was granted by Judge of the First-tier Tribunal Scott Baker on 31 December 2018 who, in granting permission, found it was arguable that having accepted the appellant was an opposition activist with an outstanding arrest warrant, the FTT Judge erred by finding he would not be at risk on return.
6. The respondent was unrepresented when the appeal came before the FTT Judge who not only accepted the documents, presented by the appellant, at face value and further found that it was reasonably likely there was an arrest warrant outstanding for the appellant, the appellant did not hold a significant post within the BNP and the prison conditions did not breach the article 3 threshold. The FTT Judge rejected the appellant's claim that he would be at risk because his father, who had links to the BNP, had returned to Bangladesh and had not experienced any such problems.
7. In deciding whether there was an error in law, the central question to consider was whether the FTT Judge was wrong to conclude the arrest warrant was not politically motivated.
8. No anonymity direction is made.

SUBMISSIONS

9. Mr Azmi relied on the grounds of appeal and some of the findings made by the FTT Judge. There was ample evidence before the FTT Judge of the appellant's connection to politics and that his involvement would be well known were he to be questioned on return. He referred the Tribunal to evidence the FTT Judge had accepted namely three letters at pages 17, 27, 29, two arrest warrants at pages 21 and 77 and documents at pages 31-76 list the appellant as one of those suspected of offences. The FTT Judge erred by finding the authorities were not interested in the appellant. The FTT Judge also erred by accepting prison conditions could reach the article 3 threshold but not in the case of this appellant as such a finding was contrary to the evidence in the bundle of prison conditions.

10. Ms Aboni submitted the FTT Judge had directed himself appropriately and made findings open on the evidence. The FTT Judge had accepted the appellant's evidence at face value and found they supported his claim but concluded the appellant did not have a significant profile on return and placed weight on fact father had not been arrested. Ms Aboni further submitted it was significant the appellant had never claimed asylum and this undermined his claim to face persecution.
11. Mr Azmi submitted the issue for this appeal was whether the prison conditions breached article 3 ECHR and the FTT Judge erred by failing to detail the factors that led to the finding made there had been and no real consideration of the bundle of papers submitted.

FINDINGS ON ERROR IN LAW

12. The appellant had applied for leave to remain on human rights grounds and in particular that returning him to Bangladesh would breach his Article 3 rights. The respondent was unrepresented at the hearing before the FTT Judge and after hearing evidence from the appellant and his sister the FTT Judge made a number of findings about the appellant's claim.
13. Those findings are relied on by Mr Azmi as the basis for there being an error in law and in his submissions to me he argued the key issue was whether prison conditions would breach the appellant's article 3 rights.
14. The FTT Judge considered prison conditions based on the following findings:
 - (a) The appellant did not hold a significant post within the BNP despite being an organising secretary between January 2011 and December 2015. There was no documentary evidence to show what he actually did for the party.
 - (b) There was a warrant for his arrest and the proceedings were outstanding.
 - (c) The appellant's father, who was said to be a prominent member and supporter of the BNP, was living in Bangladesh without any difficulties although it should be recognised that he never claimed to have been as active as the appellant. The appellant's claim that he and his family had experienced problems prior to coming to the United Kingdom was inconsistent with the fact the father returned and experienced no problems.
 - (d) Accepting there was an arrest warrant outstanding there was no evidence that he would face treatment contrary to article 3 ECHR even if prison conditions could be harsh. Reliance was placed on SH (prison conditions) Bangladesh CG [2008] UKAIT 00076 in which the Tribunal said that

- (i) Prison conditions in Bangladesh, at least for ordinary prisoners, do not violate Article 3 ECHR; and
 - (ii) This 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
15. Mr Azmi submitted that based on the information known about the appellant then he would face a risk of serious harm that would breach article 3 ECHR.
16. In considering this claim it is important to remember the FTT Judge was not dealing with a fear of persecution but was concerned whether prison conditions for this appellant would breach article 3 ECHR. The FTT Judge took the documents on face value and had to therefore assess the appellant's claim on the basis there was an arrest warrant for him and that he was suspected of political activity against the government.
17. The fact the arrest warrant made reference to political issues was a factor the FTT Judge had to consider because the Tribunal in SH made it clear detainees of this kind may face treatment different from that meted out to ordinary prisoners. Taking into account that the FTT Judge accepted he was linked to the BNP and there was an arrest warrant for his arrest the FTT Judge was required to consider whether it was detention awaiting trial or detention in service of a sentence, the likely length of detention, the likely type of detention facility, and the individual's age and state of health. His findings at paragraph [19] of the decision do not engage with these factors and the finding article 3 would not be breached failed to engage with these factors and accordingly there is an error in law.
18. The findings on the documents and appellant's role were made without any submissions from the respondent. Mr Azmi conceded that if there was an error in law then those earlier findings could not stand. A full finding of fact is required, and I therefore remit this matter back to the First-tier Tribunal under Section 12 of the Tribunals, Courts and Enforcement Act 2007.

NOTICE OF DECISION

19. There was an error in law and I set aside the decision and I remit the matter back to the First-tier Tribunal for a de novo hearing before a Judge other than FTT Judge Nixon.

Signed

Date 23/07/2019

A handwritten signature in black ink, appearing to read "SP Alis". The signature is written in a cursive style with a long horizontal stroke at the bottom.

Deputy Upper Tribunal Judge Alis