Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02979/2019

THE IMMIGRATION ACTS

Heard at Field House, London	**Decision & Reasons Promulgated**
On Monday 9 December 2019	**Wednesday 18 December 2019**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

M R
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Hasim, Counsel instructed by East London Law Chambers
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
An anonymity order was made by the First-tier Tribunal. As this is an appeal on protection grounds, it is appropriate to continue that order. 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, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

BACKGROUND

The Appellant appeals against the decision of First-tier Tribunal Judge Malone promulgated on 10 September 2019 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 7 December 2018, refusing the Appellant's protection and human rights claims.

The Appellant is a national of Bangladesh. He claims to be at risk from the authorities there as a result of his support for the BNP in Bangladesh and in the UK. He also claims to have a brother who is politically active who also has problems with the Bangladeshi authorities. The Appellant claims that he was detained and mistreated by the authorities in 2009. He also claims that false charges have been laid against him by the Bangladeshi authorities. The Judge disbelieved the entirety of the Appellant's claim.

The Appellant challenges the Decision on four grounds. First, he draws attention to errors made by the Judge in referring at [74] and [85] of the Decision to the wrong country (Pakistan instead of Bangladesh). Second, the Appellant says that the Judge has failed to consider material evidence and/or give adequate reasons for rejecting evidence. This complaint concerns the medical evidence, the Appellant's own evidence including the explanation given by the Appellant for failing to claim asylum earlier, the background evidence, the First Information Reports ("FIRs") relating to the charges which the Appellant says have been raised against him and Facebook posts of activities in the UK. The failure to have regard to background evidence is also separately raised in ground three. Ground four concerns the Appellant's Article 8 claim; it is said that there are very significant obstacles to the Appellant's return to Bangladesh.

Permission to appeal was refused by First-tier Tribunal Judge Bristow on 23 October 2019 in the following terms so far as relevant:

> "…3. The reference to Pakistan twice is unfortunate but it is clear that the Judge considered the appeal on the basis that the Appellant would be removed to Bangladesh: [79] and [84]. The Judge's conclusions must be viewed as a whole and not in a compartmentalised fashion which risks taking certain aspects out of the overall context. When the Judge's decision is examined as a whole it is not arguable that he has failed to consider relevant evidence or objective evidence. The Judge correctly recognises that the Appellant's immigration status has always been precarious in the sense that he has never had indefinite leave to remain and that little weight can attach to it by operation of statute [81].
> 4. The decision and reasons do not contain an arguable material error of law. Permission to appeal is refused for that reason."

Following renewal to the Upper Tribunal, Judge Norton-Taylor granted permission to appeal on 5 November 2019 in the following terms (again so far as relevant):

> "..2. There is nothing in ground 1. It is clear enough from reading the decision as a whole that the judge had concerned himself with Bangladesh,

> not Pakistan. References to the latter in paragraphs 74 and 85 are nothing more than unfortunate slips.
> 3. Ground 4 is unarguable. On the facts of this case, the judge dealt adequately with Article 8.
> 4. However, grounds 2 and 3 are arguable. In particular, it is arguable that the judge has erred in respect of the head injury, the 2013 incident, the FIR, and the Facebook posts.
> 5. It will of course be for the Appellant to show that any errors established were material to the outcome of the appeal before the Judge."

The Respondent opposes the Appellant's challenge to the Decision. The relevant part of her Rule 24 statement reads as follows:

> "..3. The Judge has given valid and sustainable reasons for finding the Appellant not to be a credible witness. Contrary to the grounds it is always open for a FTTJ to find an Appellant's account not to be credible when that Appellant has travelled back to his home country at a time when he claimed the government wanted to harm him.
> 4. At paragraph 67 the FTTJ has provided strong reasons why no weight is based on the lawyer's report from Bangladesh, notably that the report allegedly produced to prove a FIR had been lodged, commented at length about Bangladeshi political history.."

The Appellant has produced a supplementary bundle of documents which he asks the Tribunal to allow to be adduced. There is no application pursuant to Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Such an application would require the Appellant to explain why the documents could not have been adduced earlier. There is no such explanation. In any event, I am presently dealing with whether there is an error of law in the Decision. The Decision cannot be impugned based on evidence which was not before the First-tier Tribunal Judge. I therefore leave those documents out of account.

The matter comes before me to assess whether the Decision does disclose an error of law and to re-make the Decision or remit to the First-tier Tribunal for re-hearing if I find an error.

DISCUSSION AND CONCLUSIONS

Although Judge Norton-Taylor did not limit the grounds on which permission is granted, he did indicate that two were unarguable. Mr Hasim sensibly did not pursue those grounds. He was right to take that course. In relation to ground one, the errors are, as Judge Norton-Taylor observed "unfortunate slips". Read as a whole, it is clear from the Decision that the Judge understood that the claim related to a return to Bangladesh. The recitation of the substance would make no sense in relation to Pakistan. As to ground four, if the Judge was entitled to find the Appellant's claim not to be credible, the assertion of "very significant obstacles to integration" in his home country could not possibly succeed on any other basis. If the Judge was not so entitled, the Article 8 claim adds nothing. As Judge Norton-Taylor pointed out, there can be no other Article 8 claim on the facts here.

Turning then to ground two, as the Respondent points out, in order to consider the Judge's adverse credibility findings, it is necessary to put the Appellant's claim in context. The Appellant came to the UK as a student in October 2009 with leave to 2012 which was subsequently extended to 2015. He was thereafter refused leave to remain on compassionate grounds and then based on his private life. He did not claim asylum until June 2018. Meanwhile, he returned to Bangladesh in 2010 and 2013. Those visits were after the events which he said first gave rise to his protection claim.

The Judge set out his findings at [44] to [77] of the Decision. His conclusion at [77] is that "the Appellant has not been threatened, assaulted, detained or tortured while in Bangladesh".

I take the Appellant's challenge to the findings in the order it appears in the grounds. The first issue is the Appellant's claim to have suffered a head injury arising he says from his ill-treatment in police custody in 2009 following a protest meeting which he attended with many other people. As such, it is appropriate to consider what the Judge says about the medical evidence in the context in which that appears, beginning with what the Judge says about the arrest:

> "48. The Appellant claims he was beaten up and tortured whilst in police custody in August 2009. He claims he attended a protest meeting at which he spoke. There were many other speakers. The meeting was attended by about 50 or 60 people. When trouble broke out, all the other speakers ran off. He was the only one who the police were able to capture. He was so tired after making his speech that he was unable to run off.
> 49. I had a hospital discharge letter relating to the Appellant from the Osmani Medical College in Sylhet dated 27 August 2009. The letter recorded the Appellant had been an in-patient from 24 August 2009 to 28 August 2009. He received treatment. The letter states:
> 'He was sick due to injury on forehead'
> 50. I accept the Appellant suffered an injury to his head. In his evidence to me, he pointed to his left temple saying that that was the injury he suffered. The temple might more accurately be referred to as on the side of the head, but I accept the Appellant suffered an injury to the forehead/temple area of his head.
> 51. I also accept that the Appellant did say he had been tortured by police when detained in 2009. It was pointed out to him that, in Answer 113 of his interview record, he stated: 'BGD police they didn't do anything nasty and they behaved okay'.
> 52. He said he never made that statement. I accept that statement. That answer has to be read against answers 103 and 117. He stated the police apprehended him and assaulted him. He stated he had a mark on his forehead. He further stated that he went to the Osmani Medical Hospital and was detained there for two to three days.
> 53. However, there was no medical evidence to show how it was the injury to the Appellant's forehead was sustained. It could have been sustained in any manner of ways. I am not prepared to conclude it was caused as a result of the Appellant being tortured by the police."

The Appellant says that there would be no point in obtaining a medical report of the injury as the most that a medical expert could say is that the injury was consistent (which would equate to the Judge's finding that the injury could have been caused in any number of ways). That submission however misses the point. The question is what weight the Judge should give to the contemporaneous medical evidence. That is the point being made by the Judge concerning the lack of any attribution for the injury. As such, the weight which could be given to the discharge letter was very little. The Judge accepted that there was no inconsistency in the answers given by the Appellant at interview about the ill-treatment. However, that there was no inconsistency on this aspect was part of the Judge's consideration of the overall claim as I will come to.

In relation to the Appellant's sur place activities and his BNP support activities in Bangladesh, the Judge said this at [46] of the Decision:

> "I accept the Appellant was a low-level member of the BNP in Bangladesh and is one here. I also accept that he holds the BNP post in the Newham branch. However, I do not regard that as a lofty position. I further accept he has attended numerous demonstrations against the Bangladeshi government in this country."

The Appellant says that the evidence at the hearing about his activities in the UK should have been accepted by the Judge to be of more prominence. That evidence is recorded at [37] as follows:

> "Since the Appellant has been in the United Kingdom, he has become a member of the BNP (UK) and has attended numerous protests in this country. Mr [SM] gave evidence before me. He is the General Secretary of the BNP Newham branch. He stated that the Appellant is the Assistant Organising Secretary of BNP Newham. [SM] stated that he and the Appellant have attended various demonstrations together. He believes the Appellant would be in real danger, if he was removed to Bangladesh."

[SM] provided a statement which is at [AB/114-115]. Concerning the Appellant's role, he says merely that "as an Assistant Organising Secretary, [the Appellant] actively supports me to organise these [protest meetings]". Nothing more is said about the Appellant's outward facing profile in that role. The Judge also found inconsistencies between the Appellant's evidence and that of [SM] at [71] of the Decision. He was also unpersuaded that the photographs produced of the two men attending demonstrations showed anything more than that they were "low level members of the BNP" ([73] of the Decision).

Finally, on this aspect of his claim, the Appellant says that the Judge has failed properly to deal with the Facebook photographs. The Judge rejects those as evidence supporting the sur place claim at [74] where he says that there is "no credible evidence" that those photographs would come to the attention of the authorities (the reference to Pakistan there being irrelevant as I have already pointed out). The Appellant's grounds refer to no evidence, background or otherwise, showing that the Bangladeshi authorities would take interest in a

low-level BNP member attending a demonstration who was otherwise of no interest to them. The reference to the raising with a MP by a Channel Four journalist of a case of an abduction of a British trained barrister which, it is said, led to threats against the barrister's family bears no similarity to the Appellant's situation (even if it was raised with the Judge as to which there is no evidence). I also observe that it is not clear on what evidence this assertion (at [17] of the grounds) is based.

The Judge was for those reasons, entitled to reach the overall conclusion that he did that the Appellant would not be at risk based on sur place activities. As to any risk as a low-level supporter of the BNP without more, although the Judge accepted that "violent skirmishes between, in particular, the student wings of the BNP and the Awami League have been taking place [in Bangladesh] from, at the latest, 2009" he noted there ([47]) that "[t]he violence peaked in about 2012". I observe in passing that the Judge's finding in this regard is clearly based on background evidence, thereby undermining the Appellant's ground challenging the Judge's failure to consider such evidence. In any event, the acceptance of that background evidence and the consistency of the Appellant's claim as to inter-party violence with such evidence is only one part of the Judge's task in assessing credibility.

That then brings me on to what is termed in the grounds and the Decision as "the second landmark incident". The Judge deals with this at [55] to [58] of the Decision as follows:

> "55. Further, I am unable to accept the second landmark incident the Appellant relates which took place in August 2013.
> 56. He claims he attended a reception at his old secondary school. It was to mark the retirement of two masters there. He knew the head of the local Awami League would be in attendance. He was in attendance with supporters from the Chhatra League.
> 57. The Appellant made an inflammatory speech, accusing the government of neglecting education and of causing a drop in the educational standards of the school he had attended. He told me the Awami League official and his supporters sought to attack him. He was 'slightly punched – nothing major'. He managed to escape. Those attending the meeting who were not Awami League supporters stood in the way of the Appellant's attackers and enabled him to leave.
> 58. I find this part of the Appellant's narrative incredible. Had the Awami League official and his Chhatra League supporters wished to apprehend or further assault the Appellant, they would have been able to do so. The background material refers to the Chhatra League as the 'sword arm' of the BNP. This part of the account does not stand up. I further reject the Appellant's claim that the police went round to his house looking for him. There was no reason for them to do so. The incident was trivial. As I say, his attackers made no attempts to follow the Appellant. I find that, had they been intent on harming him, they would have achieved their aim."

Once again, I observe that the Judge there has regard to background material, contrary to the Appellant's assertion in the grounds. However, the issue which the Appellant takes with what is said in these paragraphs is that it was "wrong" for the Judge to regard the incident as incredible. Reliance is placed on [25] of

the judgment in Y v Secretary of State for the Home Department [2006] EWCA Civ 1223 but the only point there made is that caution should be exercising when reaching a finding that something is incredible because views of what is or is not plausible may be coloured by a Judge's own perceptions in the context of what would occur in the UK. Here though not only is the Judge's finding based on background evidence as to the reach of the opposing political party and its supporters and that the Appellant would not have escaped that reach if they were genuinely pursuing him but also, as the Appellant fairly accepts, paragraphs [55] to [58] of the Decision have to be read along with [59] to [60] of the Decision as follows:

> "59. I am also unable to accept that the Appellant would return to Bangladesh when he had left in fear of his life. He returned for his brother's wedding in 2010. He stayed for about three weeks. He told me he did not leave the house while he was there to avoid any danger.
> 60. He again returned to Bangladesh in August 2013 because his mother was ill. On this occasion he took no steps at all to conceal his presence in Bangladesh and avert danger. In contrast, he paraded himself at the school reception in front of the local Awami League leader who was supported by his henchmen, members of the Chhatra League. Not only did he appear there, he delivered an inflammatory speech. Why was it that he did not remain in the family home as he had done in 2010? I find this aspect of the Appellant's narrative incredible."

The point there made is not only relevant to the inherent incredibility of the Appellant's account but also reveals an inconsistency about the Appellant's return to Bangladesh on two occasions, at a time after the Appellant claims to have come to the adverse attention of the authorities. That too is relevant to whether the Appellant could claim to be at real risk at the relevant time.

That then brings me on to the Judge's finding about the timing of the Appellant's claim for asylum. The Judge deals with this at [61] to [64] of the Decision as follows:

> "61. I also find the Appellant's credibility has been damaged by the matters in s.8 of the 2004 Act. In my judgment, the Appellant should have claimed asylum on 30 January 2015 at the latest, when his student visa expired. He did not. He went on to make two further applications for leave to remain.
> 62. In 2014, the BNP boycotted the elections. The Appellant told me that he didn't claim in 2015 because he thought there might be a re-run of the elections and that the BNP would win. There was no factual foundation whatsoever for this belief. I cannot accept this part of the Appellant's evidence. In the 2018 elections, the BNP was virtually annihilated. It currently has about five MPs.
> 63. When I pressed the Appellant as to why he did not claim asylum in 2015, his final word was that he thought he would go back when the BNP got in and he feared the UK authorities might not believe his asylum claim.
> 64. I find that, if he had a genuine fear on return, he would have claimed asylum at the latest by 30 January 2015. I find he did not have such a fear. After all, nothing had happened to him in Bangladesh. Even if I had been able to accept his account of what happened at the school reception, it

> amounted to nothing more than a 'scuffle'. I cannot attach any real weight to the unsigned and undated witness statement of a Mr [SA]".

The Judge there considered the Appellant's explanation but rejected it. In the context of the chronology which I have set out at [10] above, the Judge was entitled to that conclusion. Moreover, contrary to the assertion at [9] of the grounds that the Appellant's explanation was consistent in terms of timing with the background evidence, that is clearly not the case as explained at [62] of the Decision. This is yet another example of the Judge having regard to background evidence as to the political climate in Bangladesh. The Appellant's grounds make no reference to any other background evidence undermining what is there said.

That brings me finally to the evidence as to the false charges which the Appellant says have been laid against him. The evidence on which he relied is a FIR dated 18 June 2019 relating to alleged offences in 2019 ([AB/176-183]) and a charge sheet dated 31 May 2019 relating to alleged offences in 2018 ([AB/184-196]. Also relied upon by the Appellant was a Document Verification Report compiled by Md Bani Amin who is stated to be an Advocate of the Bangladesh Supreme Court ([AB/118-175]. That report also purports to verify some newspaper articles ([AB/250-264]). These documents were the main focus of Mr Hasim's submissions.

I begin with the point made by the Appellant that the Respondent ought to have authenticated the documents herself. That is obviously a not entirely straightforward process where an asylum claim is made as the Respondent is bound not to disclose the fact of that claim to the authorities of the country from which an applicant is seeking asylum. Moreover, the burden of establishing his case is on the Appellant albeit to the lower standard of proof. These are the points made by the Upper Tribunal in AHMED (Documents unreliable and forged) Pakistan * [2002] UKIAT 00439 ("Tanveer Ahmed")

As the Appellant points out, the Judge recognises at [65] of the Decision that the charges laid would have to be false as the Appellant was living in the UK at the time. That there is background evidence about false charges being laid for political motives is therefore irrelevant. The Judge did not say that the Appellant's claim in this regard was inconsistent with background evidence. He correctly self-directed himself at [66] in accordance with Tanveer Ahmed principles.

The first point made by the Judge is that the authorities would have no reason to take what would be a sudden interest in the Appellant in 2019 as the documents would suggest is the case. The Appellant's challenge to that finding at [12] of the grounds is simply a disagreement with the Judge's finding. It will be recalled that the Appellant's case is that he was of adverse interest from the authorities in 2009 as a result of BNP activities in Bangladesh and in 2013 came to the attention of political opponents following "the second landmark incident". The Judge did not accept either of those events but, even if he had, those would not explain why the authorities would suddenly take an interest to

the extent of issuing false charges some five to six years later. That is the point made by the Judge at [66] of the Decision and is a cogent one.

The Judge deals with Mr Amin's report at [67] of the Decision as follows:

> "I have, of course, considered Mr Amin's report. Mr Hashim acknowledged Mr Amin was not an expert. He claims to be a practising advocate. The burden of his report was that he states he obtained these documents from the court. However, I cannot accept that evidence. As I say, no credible basis was put before me as to why false claims should be lodged against the Appellant in 2019. Moreover, doubt was cast on Mr Amin's competence by the lengthy disquisition he embarked on regarding the history of Bangladeshi politics which was entirely outwith his remit, as was his letter of 22 July 2019, which should have been only apparent to him. I regret that I have come to the conclusion that I can attach little weight to the FIR and charge sheet. I also attach little weight to the two newspaper articles which are couched in identical terms, but supposedly appeared in different newspapers (Appellant's bundle: pages 251-256). The papers were identified as 'Daily Jugabheri' and the 'Daily Sylheter Dak'."

The Judge's reasoning at [66] to [67] of the Decision reveals precisely the sort of consideration which is appropriate when looking at documents in accordance with the Tanveer Ahmed principles. The Judge was looking at the documents in the context of the claim as a whole and in the round with the other evidence. The Judge was entitled to reach the conclusion he did about those documents. The Judge also makes the point at [69] of the Decision that the Appellant's brother is said to be a "very well-known figure in the BNP in Bangladesh" and yet the Appellant had provided no evidence of false charges against him. Although the Appellant said there were some "he could not say how many or when they were lodged. He had not obtained copies of them" ([70 of the Decision).

Mr Hashim also focussed on what is said by the Judge at [68] of the Decision that "[i]n any event, if the FIR and charge sheet were genuine, it would appear the Appellant would have a cast iron defence to them. All he needed to do was attend court and produce his passport". Mr Hashim makes the point as pleaded in the grounds that this is no answer since the whole point is that the charges are false. The suggestion was that, even if the Appellant could prove he was elsewhere, that would not be accepted by prosecutors or the courts because the whole motivation of the case was to persecute and have detained political opponents of the government. The first point to make in this regard is that this is very much a finding in the alternative. The primary finding is that the documents are not genuine. Second, and in any event, however, if one looks at the documents themselves, they show that some of those accused were not proceeded against indicating that charges are sometimes dropped.

For the above reasons, there is no merit in the Appellant's ground two. As Ms Everett submitted and I accept, the grounds do not disclose any material error in the Decision nor indeed are they pleaded in such a way as to identify any. As Judge Bristow observed when refusing permission, the conclusions have to

be read as a whole and not in a compartmentalised way as the grounds seek to do.

Finally, in relation to the Appellant's ground three, challenging the Judge's consideration of the background evidence, I have already pointed to several places where the Judge has clearly had regard to such evidence when considering the consistency of the Appellant's claim with such material. As the grounds also recognise, the Judge has regard to the Country Policy and Information Note ("the CPIN") at [76] of the Decision. The Appellant takes issue with whether the Judge has taken that into account. However, the way in which the Appellant pleads this point is as follows:

> "19. In light of the fact that the IJ has found that the Appellant was a member of the BNP, is a now a member of the BNP in the UK, was supported in court by the General Secretary of the Newham branch of the BNP and advocate of the Bangladeshi Bar confirmed that the FIR was obtained from the court, the treatment of the objective material by the IJ was less than adequate".

Those assertions are inconsistent to some extent with the Judge's preceding findings in which I have found there to be no error. At highest, the Judge accepted that the Appellant was a low-level BNP supporter in Bangladesh and in the UK and would not have come to the adverse attention of the authorities. The CPIN appears at [AB/291-320]. The pages of the CPIN to which the Judge was referred are set out at [76] of the Decision. Those concern political clashes between the BNP and Awami League (referred to at [47] of the Decision), the description of Chhatra League as the "sword arm" of the Awami League (referred to at [58] of the Decision) and disappearances of political opponents (which has no relevance to the Appellant's case). Ground three has no merit; it discloses no failure by the Judge to have regard to the background evidence as relevant to the Appellant's case.

CONCLUSION

For the foregoing reasons, the grounds do not disclose any material error of law. I therefore uphold the Decision.

Notice of Decision

I am satisfied that there is no material error of law in the decision of First-tier Tribunal Judge Malone promulgated on 10 September 2019. I therefore uphold that decision with the consequence that the Appellant's appeal remains dismissed.

Signed  Date: 16 December 2019

Upper Tribunal Judge Smith