



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04406/2017

THE IMMIGRATION ACTS

Heard at Field House
On 27 November 2018

Decision & Reasons Promulgated
On 16 May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

A S R
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Berry of Counsel instructed by Irvine Thanvi Nata Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This case comes back before the Tribunal to remake the decision in the appeal pursuant to the 'error of law' decision made after a hearing on 1 May 2018.
2. The text of the 'error of law' decision is set out below as an Annex to this Decision and should be read as an integral part of this document. The Appellant's immigration history is set out therein, as is the background to his protection claim. In this context it should be also noted that the primary findings of the First-tier Tribunal in respect of events in Bangladesh prior to the Appellant's entry to the UK were preserved, as were findings in respect of the Appellant's attendance at demonstrations in the UK. The focus for remaking the decision was to be the

Appellant's *sur place* activities, his political conscience, and risk in the event of return to Bangladesh.

3. Further to the 'error of law' decision Directions were issued by the Tribunal for the future conduct of the appeal, including in respect of the filing of further evidence. (The Directions are also reproduced in the Annex as part of the 'error of law' decision.)
4. Pursuant to the Directions the Appellant has filed a further supplementary bundle (including a further witness statement – "*second supplementary witness statement*" – dated 19 October 2018), to accompany the supplementary bundle filed at the time of the 'error of law' hearing, which in turn supplements the bundle that was before the First-tier Tribunal. The Respondent relies upon the First-tier Tribunal Respondent's bundle together with three Country Policy and Information Notes. All such documents are a matter of record on file and I refer to them as is incidental for the purposes of this Decision.
5. I heard evidence from the Appellant, who participated in the hearing with the assistance of an interpreter – I ensured mutual understanding at the outset and no language difficulties became apparent during the course of the hearing. I also heard evidence from Mr Gulam Robbani Ahmed (who provided a witness statement dated 8 July 2018 (latest bundle at pages 482-484)). I then heard submissions from the representatives. A careful note of the evidence and submissions was made in the record of proceedings; I have had regard to all that was said at the hearing in reaching my decision.
6. The First-tier Tribunal accepted that the Appellant had been involved in *sur place* activities by way of attending demonstrations in the UK – characterised as "*blatant protesting by him in public places where he has made himself very conspicuous by standing at the front whilst waving banners*" (paragraph 21). The First-tier Tribunal found that such matters put the Appellant at risk in the event of return to Bangladesh. However, what significantly informed the 'error of law' decision was the apparent lack of careful analysis as to why such activities as accepted by the First-tier Tribunal Judge would have resulted in the Appellant 'coming to the attention of the authorities', and moreover why mere attendance at a rally or demonstration in the UK would reasonably likely put him at risk in circumstances where such rallies and demonstrations were permitted in Bangladesh.
7. The Appellant now puts his case primarily on the basis that his further activities take his participation in protest against the government of Bangladesh beyond mere

attendance at demonstrations, and moreover that he now has evidence that indicates he has come to the attention of the authorities in Bangladesh.

8. Over and above the relatively low level activity with no particular political profile or organisational influence – as essentially identified by the First-tier Tribunal – the Appellant now places particular emphasis on his involvement in two incidents:
 - (i) An alleged attack on the Bangladesh High Commission on 8 February 2018.
 - (ii) An alleged attack on a Deputy Minister visiting the UK, on 19 April 2018 near the Queen Elizabeth II Conference Centre in Westminster during protests outside a Commonwealth Heads of Government Meeting attended by the Bangladesh Prime Minister.
9. I pause to note that in the Appellant's supplementary witness statement dated 16 March 2018 he gave details of further activism in addition to the two incidents listed above. However it seems to me that these latter incidents that are of particular significance in the overall evaluation of the Appellant's protection claim.
10. For completeness and context I should also add that the Appellant has produced a very significant body of evidence showing his participation in various activities with the BNP. He also gave oral evidence in response to cross-examination as to his regular attendance at committee meetings. In my judgement such evidence does indicate that the Appellant is more involved in the BNP than simply turning up at demonstrations.
11. In this context I also note that Mr Avery cross-examined him as to his political beliefs and any distinction that he might make between the policies and objectives of the BNP compared with the policies and objectives of the Awami League. I accept that to a certain extent his answers were general in nature making aspirational references to serving the Bangladeshi people, championing human rights and democracy, and building a better Bangladesh. It seems to me that there is some substance to Mr Avery's suggestion in cross-examination that a supporter of the Awami League might make just such observations. However, whilst I accept that the Appellant does not present as a deep political thinker, and may not be able to articulate in sophisticated terms the basis of his political beliefs, I do not accept that that necessarily undermines his subjective enthusiasm and commitment to the party to which he has – as I find – closely aligned himself. Indeed, when asked about specific policy matters, the Appellant spoke as to agricultural initiatives at a village level.

12. Irrespective of any question over his initial motivations, and irrespective of the evidence and findings of the First-tier Tribunal indicating no previous political engagement whilst living in Bangladesh, I accept that the Appellant's involvement with the BNP in the UK has resulted in a genuine commitment to the interests and objectives of the party.
13. In reaching such a conclusion I have had regard to the supporting testimony of Mr Gulam Ahmed. Mr Ahmed explained his own position within the UK BNP, and the current hiatus whereby the ruling committee had been dissolved and not yet reconvened. He was frank in acknowledging that the Appellant did not have an official position within the party, but nonetheless characterised him as "*a full-time activist*". He confirmed the Appellant's regular attendance at meetings of the party, as well as his participation in demonstrations.
14. Although Mr Ahmed was cross-examined as to detail, it seems to me that the veracity of his testimony was not directly challenged. I accept him to have been a witness of truth, and thereby to have provided corroborative evidence of the nature and extent of the Appellant's political activism.
15. Looking at all of the available evidence 'in the round' I am satisfied that the level and extent of the Appellant activism is consistent with a genuine interest and commitment to the politics of the BNP, and goes significantly beyond that which might be expected from a cynical manipulator anxious only to garner material to support a protection claim.
16. In his witness statement of 16 March 2018 the Appellant related his involvement in a protest at the Bangladesh High Commission on 8 February 2018 in relation to the arrest of Khalida Zia. The Appellant states that he and his fellow protesters wanted to deliver a memorandum to the government highlighting their grievance, but that the officials at the High Commission refused to take the letter, and claims that they "*treated us in a heavy-handed way*" (witness statement at paragraph 7).
17. Notwithstanding the Appellant's version of events, he has produced a report from a Bangladesh publication 'Manab Zamin' dated 2 March 2018 (supplementary bundle at pages 5-6) which refers to this incident having been discussed between representatives of the Bangladesh government and the British Foreign Secretary. It is reported that the Bangladesh authorities have made a formal complaint to the British police, and wish to bring "*London BNP activists under the law for the attack on the High Commission*". It is also reported that names and photographs ("*List and Fotez*" in the sometimes difficult to read translation) of both leaders and workers active in London

are in the hands of the government: the Appellant's name appears in the list of workers.

18. This incident is also referenced in the expert report of Dr Ashraf-Ul Hoque (Appellant's latest bundle pages 3-62, page 43), and a report from a different news source – bdnews24 – is quoted. This latter report refers to the protesters entering the High Commission and vandalising photographs of the Prime Minister and "*Father of the Nation Bangabandhu Sheikh Mujibur Rahman*".
19. It is convenient to note at this juncture that Dr Hoque makes reference to the "*particularly pronounced*" level of protest and activism against the Awami League in the UK, and the significance of the UK as "*an important arena for Bangladesh politics since it houses the largest Bangladeshi diaspora in the world*" (page 45).
20. The Appellant has produced a number of reports of an incident on 19 April 2018 near the Queen Elizabeth II Conference Centre: see latest bundle at pages 424 *et seq.*). I bear in mind that for present purposes the exact truth of what might have happened is perhaps less important than the way in which it has been reported and/or is perceived. The reports produced are from a number of different publications: I have been provided with Internet print outs and it is not clear to me which if any of these publications also have a physical existence. Be that as it may, the common theme is that a visiting Deputy Minister, Arif Khan Joy was attacked by, variously, "*BNP men*", "*some BNP activists*", "*UK BNP leaders and workers*". The Deputy Minister was apparently accompanying the Bangladesh Prime Minister to a Commonwealth Heads of Government Meeting. The reports suggest that some BNP members sheltered the Minister from his assailants.
21. The Appellant features prominently in photographs of the incident – although his role in the incident is not apparent from such photographs. Nor is he directly named in such reports.
22. However in other reports of protests outside the Commonwealth Heads of Government Meeting – which appear to run over the whole period of the conference (e.g. see page 464), the Appellant is both photographed and named (e.g. see page 468).
23. I am satisfied that the Appellant attended and was involved in both incidents. His evidence has been consistent in this regard, and is supported by the various reports on file. Such involvement places him in a relatively small group of supporters of the BNP who are significantly more active than others who might merely attend

occasional demonstrations. Indeed many of the photographs of the Appellant attending party meetings and events, appear to place him in a relatively small cohort. In my judgement this is consistent with the notion of him being a full-time activist as described by Mr Ahmed, and not a mere 'hanger on'.

24. I am also satisfied that the evidence shows that the Appellant has been named in numerous reports as a 'worker' for the BNP, and that this includes his identification as possibly having been involved in the incident at the High Commission in February 2018. I also find that I cannot rule out the possibility that he has been identified from his photograph as being involved in the incident outside the Commonwealth Heads of Government Meeting in April 2018.
25. Such matters occur in the milieu of the UK being perceived by the ruling party in Bangladesh as a centre of BNP activism. The concern as to the nature and extent of such activism is manifest in the nature of the reports in relation to the attack on the High Commission.
26. Whilst I do not consider that the Appellant could be characterised as a leader, mobiliser, or organiser of political activities (cf. **BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC)**), his more recent activities take him beyond being simply 'a member of the crowd'. Moreover the nature of these recent activities are such that I do not consider it likely that the authorities in Bangladesh would seek to make any distinction between the Appellant and any other activist pursuing such conduct, on the basis of a nuanced exploration as to motive. The First-tier Tribunal's findings establish that the Appellant was a regular participant in anti-regime demonstrations; in my judgement his more recent activities - which are of sufficient profile to have attracted a degree of media coverage including identification of the Appellant by name - put him at risk in the event of return Bangladesh.
27. For the avoidance of any doubt I find nothing in any of the further evidence that has been filed that would justify a different conclusion from that of the First-tier Tribunal in respect of the Appellant's engagement in political activities in Bangladesh prior to his entry to the UK, or a different conclusion in respect of the Judge's rejection of the Appellant's claim to have been the subject of false charges by reason of such activities. Necessarily implicit in this is that the Appellant has only become engaged in the politics of Bangladesh since his arrival in the UK. The extent to which this was initially motivated by a genuine interest in the politics of his home country, and the extent to which it may have been motivated by no more than a wish to have material to support an asylum application is ultimately a moot point. Irrespective of motivation, I accept that the evidence adequately demonstrates (to the **Sivakumaran**

standard) the Appellant's involvement in activities at a level which is likely to put him at risk in the event of his return to Bangladesh at the present time.

28. Whilst Mr Avery did not seek to deny the principal that *sur place* political activities can establish an entitlement to protection even if motivated by bad faith, the nature of his cross-examination of the Appellant, and much of his closing submissions, were directed to the argument that the Appellant was not genuine in his political commitment and therefore would not be politically active if returned to Bangladesh.
29. As indicated above I have found that the Appellant has developed a genuine political commitment to the BNP, and it seems to me reasonably likely that he would continue such activism if returned to Bangladesh. Whilst I am not persuaded that the sort of activism identified by the First-tier Tribunal - attendance at demonstrations - would likely give rise to a real risk of persecution, for the reasons explored above it seems to me that the Appellant's involvement in activism has now been shown to go beyond mere attendance at demonstrations. In any event, and more particularly, I find that the evidence indicates that it is reasonably likely that the authorities in Bangladesh will have an adverse interest in the Appellant upon his return arising from the incidents in February and April 2018, and that such adverse interest carries with it a risk of persecutory treatment.
30. In this latter context I did not understand the Respondent - whether through the Country Policy and Information Note 'Bangladesh: Opposition to the government' (version 2.0, January 2018), or through Mr Avery - to deny that the government in Bangladesh uses state power to suppress political opposition, and opposition leaders and activists face harassment and intimidation perpetrated by both the law enforcement agencies and activist of the Awami League (e.g. see CPIN at 2.2.4).
31. Again for the avoidance of any doubt, I acknowledge that inherent in the rejection of the Appellant's account of events prior to his arrival in the UK is a finding that the knowingly employed documents which were not reliable evidence of the truth of their contents. Necessarily I have factored such a matter into my overall evaluation of the credibility of the Appellant's claim.

Notice of Decision

32. The appeal is allowed.

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 their 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: **13 May 2019**

Deputy Upper Tribunal Judge I A Lewis

To the Respondent

Fee Award (*This is not part of the determination*)

Although I have allowed the appeal I have done so primarily on the basis of events and evidence that post-date the Appellant's application for protection, and post-date the Respondent's decision. In the circumstances I do not consider that a fee award is appropriate, and accordingly do not make one.

Signed:

Date: **13 May 2019**

Deputy Upper Tribunal Judge I A Lewis
(*qua* a Judge of the First-tier Tribunal)

ANNEX

TEXT OF ERROR OF LAW DECISION
(promulgated on 12 June 2018)

1. This is an appeal against a decision of First-tier Tribunal Judge Clarke promulgated on 17 January 2018 in which she allowed the appeal of ASR against a decision of the Secretary of State for the Home Department dated 2 May 2017 to refuse protection.
2. Although before me ASR is the respondent and the Secretary of State for the Home Department is the appellant, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to the Secretary of State as the Respondent and ASR as the Appellant.
3. The Appellant is a national of Bangladesh born on 13 February 1984. He entered the United Kingdom on 25 June 2009 with leave to enter as a visitor which in the ordinary course of events would have conferred six months' leave. He did not leave the United Kingdom at the end of this period of time, and nor did he seek to regularise his immigration status. He became an overstayer. He made an application for asylum on 18 November 2016. His application was based upon his political involvement in Bangladesh. The application was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 2 May 2017.
4. The Appellant appealed to the IAC.
5. The appeal was allowed on protection grounds for reasons set out in the decision of First-tier Tribunal Judge Clarke.
6. The Respondent applied for permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Lever on 8 February 2016.
7. The Appellant has filed a Rule 24 response dated 16 March 2018 resisting the Respondent's challenge. I have also been provided with a 'Note' similarly resisting the Respondent's challenge by Mr Berry today.

8. The issue in the appeal is now a narrow one. The appeal was allowed on the basis of the Appellant's *sur place* activities, that is to say his political activities in the United Kingdom. Necessarily the Respondent's challenge focusses on this aspect.
9. Nonetheless it is helpful to set out something of the background to the claim which included a narrative account of activity in Bangladesh initially with the Jamiat-e Islami Party and subsequently with the BNP. The Appellant's narrative account included a claim that he had had false charges made against him on two separate occasions, and that in respect of one such set of charges he had been convicted and sentenced to imprisonment in his absence. In support of his claim he produced amongst other things documents purportedly chronicling the course of the respective charges against him. Those documents, and indeed the substance of the Appellant's claim were rejected for reasons set out in the Respondent's RFRL. The RFRL includes detailed analysis of those documents and finds them not to be reliable.
10. The First-tier Tribunal Judge also rejected the Appellant's narrative account of events in Bangladesh. Inherent in that is that she rejected the Appellant's claim to have been the subject of accusations and charges, and to have been convicted in his absence. Necessarily also inherent is a finding to the effect that the Appellant knowingly employed documents which were not reliable evidence of the truth of their contents.
11. I pause to note that in this context I brought to the attention of the parties' representatives a further matter in respect of these documents which did not appear to have been identified or commented upon either by the Respondent in the RFRL or by the First-tier Tribunal Judge. The document that appears at F3 of the Respondent's bundle purports to be an 'Order Sheet' and has the case heading 'The State v Kohinoor Miah and Others'. However, Kohinoor Miah's name does not appear in any of the other documents as an accused individual. The case title on the Order Sheet is on its face inconsistent with other documents produced purportedly in relation to the same proceedings. I have not heard any evidence, and I do not make any finding in this regard. The apparent discrepancy may have arisen for some innocent reason such as mistranslation or misuse of templates by the translator; on the other hand this apparent error may reveal that some of the documents have been altered, or otherwise fabricated. For the moment I merely flag up this additional issue with the documents lest at some future point the documents require to be revisited in the context of considering the Appellant's claim in wider or different circumstances.
12. Be that as it may, and in any event, as I have already observed the Appellant's entire account of the matters in respect of political activism in Bangladesh that he claimed had caused him to flee abroad was rejected by the First-tier Tribunal. In my

judgement the reasoning of the First-tier Tribunal in this regard, whilst brief, is sustainable. Moreover the conclusion is far from surprising given the difficulty that the Appellant appeared to be under in presenting a coherent narrative account during the course of his asylum interview.

13. However, the Appellant succeeded on his appeal before the First-tier Tribunal on the basis of his activities in the United Kingdom. The Appellant placed before the First-tier Tribunal a number of photographs of him attending various demonstrations together with a membership card for the UK BNP. He also provided testimony as to the nature of his activities by way of his witness statement, and a letter purportedly from the 'Bangladesh National Party (BNP) UK' dated 4 October 2017 signed by the UK president (page 10 of the Appellant's bundle before the First-tier Tribunal).
14. It may be observed that there are two elements to the letter of 4 October 2017: the Appellant's supposed activism in Bangladesh, and his supposed activism in the UK.
15. In the former regard the references are thin. Nonetheless the letter states in general terms that it is written to confirm that the Appellant is an activist, and comments that the Appellant is a *"very dedicated politician and committed to the belief in Bangladeshi Nationalist Party's ideology. He was a former student leader whilst he was in Bangladesh."* The First-tier Tribunal Judge made the following observation in this regard:

"[The letter] reads that the Appellant was a former student leader while he was in Bangladesh but it has never been the Appellant's claim that he was a student leader and I place little weight upon this aspect of the letter which describes the Appellant being politically active in Bangladesh" (paragraph 16).
16. However, the Judge did not thereafter address any other aspect of the letter, notwithstanding that it also spoke of the Appellant's activities in the United Kingdom.
17. The nature of the Appellant's activities in the UK described in the letter appear relatively limited: *"He has been attending demonstrations and meetings in the UK against the violation of human rights, torture, extrajudicial killing, forcefully disappearance in Bangladesh."* It is additionally stated in general terms that the Appellant has *"expressed his views against the present dictator Sheikh Hasina and her illegitimate government"*. The letter otherwise makes general observations and offers opinions about the political scene in Bangladesh.

18. The reference to the Appellant's attendance at demonstrations and meetings in the letter does not seem to take the case meaningfully any further than the photographs showing the Appellant's attendance at demonstrations. The author of the letter does not identify the Appellant to be active in any other specific way in the UK, for example as a party worker. Perhaps it was for this reason – and bearing in mind that the Judge had in substance found the author of the letter to be unreliable in respect of the Appellant's activities in Bangladesh – that the Judge did not return to the letter in the context of evaluating the Appellant's *sur place* activism.
19. Be that as it may the Judge had sight of the various photographs. The Judge made the following finding:

“The Appellant has provided a lot of photographic evidence showing his sur place activities in the UK. I find that the Appellant has drawn attention to himself in so doing, by standing at the front of demonstrations, by waving banners challenging the regime, and the objective evidence states at” (paragraph 18).

The paragraph ends with word 'at', and to that extent is incomplete. However, it seems to me that this may be no more than a slip of drafting and editing because the following two paragraphs in the Decision make reference to the objective evidence.

20. Paragraphs 19 and 20 are in these terms:

“19. The COIR describes the situation in Bangladesh and little has changed since the writing of it. Paragraph 1.3.6 reads that harassment, arbitrary arrests, detention, enforced disappearances, extra-judicial killings and torture of opposition activists, occurred throughout 2013/2014 and early 2015. Paragraph 1.3.9 reads that membership or support of groups opposed to the current government does not of itself give rise to a well founded fear of persecution, and paragraph 1.3.11 reads that perceived political opponents whose fear is of serious harms at the hands of the state on account of their political opinion or activities and who have come to the attention of the authorities would be unable to avail themselves of protection from the authorities.

20. Paragraph 1.3.12 reads that in cases on fear of ill-treatment by members of opposing political parties or in fear of opposing factions within their own party, it is unlikely that effective protection would be available from the governing authorities. The summary at 1.4 reads that mere membership of a group opposed to the current government does not of itself give rise to a well-founded fear of persecution, and internal relocation may be an option depending upon whether the fear is of opposing factions within their own party or opposing party, where the localised threat does not exist and it is not unduly harsh to relocate.”

(The Judge does not identify the COIR by date but it is common ground before me that she was referring to the Respondent's Country Information and Guidance 'Bangladesh: Opposition to the government' of February 2015.)

21. It may be seen that in broad terms these two paragraphs envisage slightly different scenarios. Paragraph 19 refers to risk at the hands of the state on account of political opinion: such risk may arise to those who "*have come to the attention of the authorities*". Paragraph 20 addresses the risk from members of opposing political parties as distinct from the state itself. Both paragraphs identify that mere membership of a group opposed to the government would not in itself put an individual at risk.
22. Having set out her finding in respect of the Appellant's *sur place* activities (paragraph 18), and summarised aspects of the country information (paragraphs 19 and 20), the Judge states her conclusion at paragraph 21:

"Therefore, whilst I do not find the Appellant was politically active for the BNP in his country, I find that he has built up a sur place claim because of the blatant protesting by him in public places where he has made himself very conspicuous by standing at the front whilst waving banners, and the surveillance used, and regardless of his intentions and whether he has a genuine interest in the BNP or not, I must allow his appeal."

23. The Judge is silent as to the Appellant's genuine political opinions. Such silence is in the context of having disbelieved him as to his claimed political activism in Bangladesh. It might be thought that the language used in paragraphs 18 and 21 – "*drawn attention to himself*", "*has built up... a claim*", "*blatant protesting*", "*has made himself very conspicuous*" – carries with a tone of cynicism as to the Appellant's motives in attending demonstrations.
24. If the Appellant had developed a genuine interest in Bangladesh politics since his arrival in the UK – notwithstanding no previous interest – then this may have been relevant in evaluating risk on return irrespective of any risk by reason of *sur place* activities. A genuine commitment to the ideology of the BNP, and a consequent motivation to activism as a matter of political conscience, would require consideration of an **HJ (Iran)** type argument as to future risk in Bangladesh. Of course if the Appellant has no interest in engaging in further political activism, then it becomes irrelevant that there might be a risk to political activists either from opposing factions or from the state in Bangladesh. The fact that the Judge did not consider risk on return by reference to continuing activism in Bangladesh underscores the notion that she did not accept that the Appellant was genuinely politically motivated in attending demonstrations but was 'blatantly' 'building' a *sur place* claim.

25. The Judge has in substance determined that the Appellant is at risk for no reason other than the fact that he blatantly protested in public places and made himself very conspicuous in so doing.
26. Bearing in mind what is set out at paragraph 19 of the Decision, a key element in the Judge's conclusion must have been that it was reasonably likely that the Appellant had 'come to the attention of the authorities'.
27. In my judgement there is a lack of exploration as to what the guidance in the COIR at paragraph 1.3.11 (cited by the Judge at paragraph 19) means by "*have come to the attention of the authorities*", and a lack of exploration as to the means by which a demonstrator in the UK might come to attention. The analysis of the First-tier Tribunal is too brief to allow the reader to understand fully the basis upon which such marginal activity as conducted by the Appellant is considered to put the Appellant at risk upon return. I find that the decision is insufficiently reasoned.
28. In this context I make the following observations:
 - (i) The Judge acknowledged in terms that membership or support of groups opposed to the current government was not in itself something that would put an individual at risk from the state.
 - (ii) Whilst it may be that attendance at demonstrations in Bangladesh will put somebody at risk of being caught up in violence when such demonstrations are put down by the police or attacked by opponents, the same risk does not apply to *sur place* demonstrations. The Judge did not otherwise conclude that the Appellant would be at risk consequent upon possible continuing activism on return.
 - (iii) Paragraph 1.3.4 of the COIR states "*Rallies and demonstrations are permitted by the government and occur regularly...*", although these may be "*prevented... during periods of political protest and unrest*", and may be disrupted by political opponents and/or law enforcement agencies. In context, it is to be recalled that Bangladesh is not a one party state. It is a democracy. Albeit, as Mr Berry puts it, there may have been a 'stiffening of the arteries' of democracy, there remains a vigorous political scene with activists of numerous hues and colours advancing their particular causes and opinions. The country information is clear that the holding and voicing of opposition views is permitted, and mere membership or support of opposition groups does not give rise to risk.
 - (iv) Given the foregoing it is difficult to see why visible attendance – even if accompanied by the blatant drawing of attention to oneself – at a demonstration in

London would excite such attention in Dhaka or elsewhere in Bangladesh, that there would be a consequent adverse interest in such an individual.

(v) The Judge has made a grammatically clumsy reference to surveillance at paragraph 21. However nothing is identified in the Decision by reference to background evidence, or country information, in respect of surveillance.

(vi) The analysis of the First-tier Tribunal Judge is devoid of any consideration of the cases of YB (Eritrea) [2008] EWCA Civ 360, KS (Burma) v Secretary of State for the Home Department [2013] EWCA Civ 67 or BA (demonstrations in Britain - risk on return) Iran CG [2011] UKUT 37 (IAC). It is unfortunate that it would appear that neither representative drew such cases to the attention of the First-tier Tribunal Judge. It would perhaps have been instructive for the Judge if they had done so.

(vii) In YB (Eritrea), at paragraph 18, Lord Justice Sedley observed that where there is evidence that a particular regime suppresses political opponents it requires little or no evidence or speculation to arrive at a strong possibility that its foreign legations film or photograph nationals who demonstrate in public against the regime and have informers amongst the expatriate oppositionist organisations who can name the people filmed or photographed. Similarly, it requires little affirmative evidence to establish a probability that the intelligence services of such regimes monitor the internet for information about oppositionist groups. However, it seems to me that it may not be such a safe and ready inference, that the same circumstances apply in a multi-party democratic state: it may require further exploration and consideration before concluding that the instruments of the security services are used by the government of a democracy to monitor the activities of diaspora communities who are doing no more in their announcements and protestations than the same party organisations are doing in Bangladesh itself.

(viii) The cases of KS and BA make reference to the concept of 'hangers-on', albeit in the context of Burma and Iran. Just as it may be naïve to suggest that authoritarian states do not monitor the activities of foreign-based activists, in my judgement in the absence of any evidence to the contrary it would be naïve to suggest that such regimes are not sophisticated enough to be able to identify those that are significant players from the 'hangers-on', or that they would seek to waste their time or resources in persecuting somebody or pursuing somebody on the basis of an essentially disinterested attendance at a demonstration or demonstrations or other meetings.

29. Had the preceding matters been more fully in the mind of the First-tier Tribunal Judge it seems to me that the outcome in this appeal might have been very different. On its face it seems a surprising conclusion that mere activity of the type described - public protesting (no matter how blatant or deliberately conspicuous) - by a person with no previous political profile or activism should trouble the regime in

Bangladesh to an extent that the Appellant would become a targeted person, or 'marked man'.

- 30 As it stands I find that the Judge: has not adequately reconciled and reasoned those aspects of the country information that indicate that support of an opposition group does not in itself put a person at risk with the conclusion that showing such support at a demonstration in London does give rise to risk; has not identified any evidence in relation to surveillance or other mechanism by which the Appellant's activities in the UK might be known to the authorities; has failed to have regard to relevant guidance from case law in respect of security agencies' abilities to distinguish between those that might be perceived as a concern or threat and those that are mere 'hangers-on'; and/or has otherwise not provided adequate reasons as to why the Appellant's activities in the UK would make him of adverse interest to the authorities in Bangladesh. Accordingly I find material error of law such that the decision in the appeal in respect of the risk to the Appellant on the basis of *sur place* activity is to be set aside.
31. The decision in the appeal requires to be remade.
32. The Appellant has filed further evidence in respect of his activities in the UK since the time of the decision of the First-tier Tribunal. The evidence in part consists of further photographs of his attendance at various meetings and demonstrations. There is nothing further by way of written supporting evidence from the party itself to suggest that his activities are any more involved than they were as described in the letter of 4 October 2017.
33. Be that as it may, the Appellant has also sought to introduce into evidence a newspaper report from a Bangladesh publication, the Daily Manobzamin, dated 2 March 2018 in which reference is made to him being a party worker, and in which it is suggested the authorities in Bangladesh have started an action to prevent him (along with a number of other named individuals) from being able to return to Bangladesh in consequence of alleged involvement in what is described as an attack on the Bangladesh High Commission in London. The import of this document, its provenance, and its reliability are all matters that will need to be evaluated. The Respondent has not to date had a proper opportunity to consider it.
34. In the circumstances I do not proceed to remake the decision in the appeal now. It seems to me that a further hearing is necessary, albeit that the hearing is to be confined to matters arising from the Appellant's *sur place* activities. The parties are to be afforded an opportunity to file any further evidence in respect of surveillance or monitoring of diaspora activity further to the discussion above, as well as other

country information relevant to risk on return in the particular circumstances of the Appellant's case. A finding may also need to be made as regards the development or otherwise of a genuine political ideology since the Appellant's arrival in the UK. The Appellant may wish to file further evidence from other persons - who may also wish to attend to speak on his behalf - as to the nature and extent of his political involvement, knowledge and conscience. The new hearing will require evidence to be heard from the Appellant, and possibly others, as well as consideration of the further documents.

35. I am not minded that this matter should go back to the First-tier Tribunal on what is a narrow issue. The matter will be retained in the Upper Tribunal.

Directions

1. The Appellant is to file and serve within 21 days of the date shown above as the sending date of this Decision, a paginated and indexed bundle of all evidence upon which he wishes to rely in support of his case to be at risk if returned to Bangladesh at the present time in consequence of political activities in the UK.

(i) The Appellant should seek to address the issue identified at paragraph 11 above in respect of the 'Order Sheet' and other documents previously relied upon.

(ii) In so far as the Appellant wishes to rely upon a risk arising on return to Bangladesh by reason of his genuine political conscience over and above any risk by reason of *sur place* activities, he should include within the same bundle all such material as he relies upon in this regard. In particular he should seek to provide evidence as to the development of his political conscience bearing in mind that the First-tier Tribunal Judge found that he had not been politically engaged as claimed whilst in Bangladesh and was seemingly not persuaded as to the genuineness of his motivation for involving himself in political activities in the UK.

(iii) The Appellant should include in his bundle any country information relied upon, and should seek to provide evidence in respect of monitoring and/or surveillance of diaspora political activists by the Bangladesh authorities.

(iv) The Appellant is to provide with his bundle a covering letter indicating the names of those witnesses he intends to call at the hearing, and specifying whether an interpreter is required either for himself or any of his witnesses, and if so in what language/dialect.

2. The Respondent is to file and serve within 35 days of the date shown above as the sending date of this Decision, a paginated and indexed bundle of any country information or other evidence upon which he wishes to rely. The Respondent should seek to provide evidence in respect of monitoring and/or surveillance of diaspora political activists by the Bangladesh authorities.

(i) In so far as the Respondent may dispute the authenticity or reliability of any of the evidence filed and served by the Appellant he should state in writing the basis of such dispute and provide any supporting evidence for his position.

3. The Appellant and the Respondent are to file and serve written submission at least 7 days prior to the resumed hearing.

Notice of Decision

36. The decision of the First-tier Tribunal contained a material error of law and is set aside.

37. The decision in the appeal is to be remade by the Upper Tribunal.

38. The findings of the First-tier Tribunal in respect of the events in Bangladesh prior to the Appellant's entry to the UK are preserved. The findings in respect of the Appellant's attendance at demonstration in the UK are also preserved. The Upper Tribunal will consider any further evidence in respect of the Appellant's *sur place* activities, his political conscience, and the consequent risk/s arising.

----- End of Annex -----