



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/10634/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

**Decision and
Promulgated**

Reasons

On 17 April 2019

On 30 April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**AR
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Rahman (counsel) instructed by Edward Alam & Associates

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. To preserve the anonymity order deemed necessary by the First-tier Tribunal, I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Brewer promulgated on 04/01/2019, which dismissed the Appellant's appeal

Background

3. The Appellant was born on 15/02/1982 and is a national of Bangladesh. On 23/09/2017 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Brewer ("the Judge") dismissed the appeal against the Respondent's decision.

5. Grounds of appeal were lodged and on 18/03/2019 Upper Tribunal Judge Dr H H Storey granted permission to appeal stating

It is arguable that the Judge did not fully think through the implications of the positive findings made at para 24, 48, 49 and 55 for his assessment of risk on return. To state that there was no evidence of any political motivation arguably overlooks that the first plaintiff on the criminal charge was (said to be) the appellant's local rival Mr M Rahman.

The Hearing

6.(a) Mr Rahman, for the appellant, moved the grounds of appeal. He told me that the Judge's findings are not challenged, but this appeal is directed solely at the conclusion that the Judge reached. Mr Rahman told me that the Judge accepted that there are extant criminal charges against the appellant in Bangladesh, but concluded that those criminal charges are not political in nature. He told me that that conclusion is unsafe and that the Judge's findings of fact should have led to the conclusion that the criminal charges are politically motivated because they are brought by a specified political rival. He told me that politically motivated criminal charges in Bangladesh inevitably lead to persecution.

(b) Mr Rahman tendered two background reports - the US State Department report dated 23 March 2019 and a Human Rights Watch Report dated 22 December 2018. Neither of those reports were available to the Judge. Each of the reports has recently been prepared and speaks to the situation in Bangladesh since the elections there in September 2018. Both representatives agreed that if I find that there is a material error of law, then I should consider those documents to see if I can substitute my own decision.

(c) Mr Rahman took me to [42] of the decision. He told me that the Judge's findings there are based on assumption. In the sixth line of [42] the Judge says

There is nothing in the papers to suggest political motivation for the case, nor that the appellant is specifically targeted.

He told me that the Judge's findings indicated the contrary; that the Judge's findings were clearly that this is a politically motivated case because the political opponent is named at [24] of the decision, and at [49] the Judge finds that the appellant was injured at a political demonstration. He told me that the Judge's findings at [24] and [49] are drawn from the third paragraph of the appellant's witness statement.

(d) Mr Rahman told me that the Judge's findings of fact indicate that the Judge accepts that the appellant has a political profile; he said that the Judge should have gone on to accept that the charges which had been brought were politically motivated. He urged me to set the decision aside and to substitute my own decision allowing the appellant's appeal.

7. For the respondent Mr Walker told me that the decision does not contain errors of law. Told me that the appellant's appeal had been dismissed because the appellant was not found to be credible. He took me to [42] of the decision and told me that there the Judge makes findings which were clearly available to the Judge on the evidence presented. He urged me to dismiss the appeal and allow the decision to stand.

Analysis

8. At [24] of the decision the Judge summarises the appellant's asylum claim, saying that the appellant was the leader of the student wing of Chatra Dal, and his problems began in October 2013 when a criminal charge was filed against him.

9. The Judge makes findings of fact between [47] and [57]. At [48] the Judge finds that the appellant was the assistant general secretary of the Bangladesh Jatiyatabadi Chatra Dal in 2002. At [49] the Judge finds that the appellant suffered a minor injury in 2006 during a political demonstration, and at [55] the Judge finds that on 26 January 2016 a criminal case was created in which the appellant was named as the accused, even though the appellant has not been in Bangladesh since 2008.

10. The Judge's findings commence at [37]. Between [37] and [43] the Judge considers the evidence. The grounds of appeal, and Mr Rahman's submissions, make it clear that there is no challenge to the Judge's findings. The challenge in this case is directed solely at the Judge's conclusion.

11. In essence, the Judge finds that the appellant has been charged with a criminal offence but has an easily proved defence of alibi because he has been in the UK since 2008. At [58] the Judge finds that the criminal charge was brought in 2016 but there is no political motivation for that charge.

12. The background materials say in clear and unambiguous terms that prosecutions on fabricated charges are brought for political reasons in Bangladesh. The Judge accepts that that between 2002 and 2006 the appellant had a history of involvement in student politics. The Judge finds that the appellant has been in the UK since 2008, but that in January 2016 the appellant's former political opponent was the complainant in an FIR lodged against the appellant.

13. The Judge properly takes account of the appellant's immigration history and considers section 8 of the Asylum & Immigration (Treatment of Claimants etc) Act 2004. The Judge considers all of the evidence before finding that the appellant is not a credible witness. But on the facts as the Judge finds them to be (relying on Chiver (10758)) the Judge finds that the appellant faces prosecution in Bangladesh.

14. The appellant's appeal was heard on 14 December 2018. The Judge's decision was promulgated on 4 January 2019. General elections were held in Bangladesh on 30 December 2018 to elect members of the Jatiya Sangsad. The result was a landslide victory for the Awami League led by Sheikh Hasina. The elections were marred by violence and claims of vote rigging. Opposition leader Kamal Hossain rejected the results, calling it "farfetched" and demanding fresh elections to be held under a neutral government. The Bangladesh Election Commission said it would investigate reported vote-rigging allegations from "across the country."

15. The background materials that have been prepared since that election were not available to the Judge. The background materials indicate that fabricated charges for criminal prosecutions are used by the Awami League against the BNP in an attempt to reduce the number of political opponents. The US State Department report says that there had been 330,000 cases issued against BNP members, including charges brought against people who are out with Bangladesh, and even charges brought against people who have died.

16. The central question for the Judge was whether or not the prosecution of the appellant is politically motivated. The Judge gives inadequate reasons for finding that there is no political motivation. Having considered the appellant's overall credibility (a finding which is not subject to challenge) the Judge concludes at [56]

"There is no evidence of any political motivation for the criminal charge"

17. The finding at [56] is not properly reasoned. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was

axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

18. The Judge's decision does not contain adequate reasoning. That is a material error of law. I set the decision aside. I am asked to substitute my own decision

The Facts

19. I am asked to preserve the Judge's findings of fact. The central findings of fact is that the appellant was involved in politics from 2002 to 2006. The appellant has been in the UK consistently since 2008, and in January 2016 an FIR was lodged against the appellant by his main political adversary. The appellant's main political adversary is a member of the Awami league, who were returned to power in elections in December 2018. The Awami league have sought to consolidate their power by bringing false prosecutions against political opponents and have raise fabricated criminal proceedings against known BNP activists who are outwith Bangladesh.

Asylum

20. If the appellant faces non-politically motivated prosecution his asylum appeal cannot succeed. If the prosecution is politically motivated the background materials indicate that he would be entitled to asylum. Between the date of hearing and the date the decision was promulgated there has been a change in circumstances; the determinative question is probably easier for me than was for the First-tier Tribunal.

21. The background materials indicate that politically motivated prosecutions are a weapon used by the Awami league to reduce the numbers of BNP members and supporters. The prosecution that the appellant faces alleges a crime committed in 2013, yet the appellant had been in the UK since 2008. The US State Department report and the Human Rights Watch report produced earlier this year both say that since returning to power in December 2018 the Awami league has brought 330,000 prosecutions against BNP members, including several members who have not been in Bangladesh for years.

22. The appellant's account is supported by the background materials. On arrival in the Bangladesh the appellant faces arrest on a complaint

brought by a political adversary. The nature of the complaint must be considered in the knowledge and it is not only brought by a political activist there, but that the gravamen of the charge labels criminal activity in Bangladesh when it was obvious that the appellant was in the UK. The realistic conclusion to draw is that the prosecution is politically motivated.

23. The current situation in Bangladesh must lead me to the conclusion that the appellant faces a politically motivated prosecution, where the complainant is an Awami league member bringing a complaint against a significant BNP member who has been out of the country for years; there is a real risk that the appellant's arrest will lead to treatment which crosses the threshold and becomes persecution.

24. Given these conclusions, I find that the Appellant has discharged the burden of proof to establish that he is a refugee. **I come to the conclusion that the Appellant's removal would cause the United Kingdom to be in breach of its obligations under the 2006 Regulations.**

Humanitarian protection

25. As I have found the appellant is a refugee, I cannot consider whether he qualifies for humanitarian protection.

26. Therefore, I find the appellant is not eligible for humanitarian protection.

Human rights

Article 3

27. As I have found the appellant has established a well-founded fear of persecution, by analogy his claim engages article 3 of the Human Rights Convention because he would face a real risk of torture, inhuman or degrading treatment if he were returned to his country of origin.

Article 8

28. Section 117B of the 2002 Act tells me that immigration control is in the public interest. In AM (S 117B) Malawi [2015] UKUT 260 (IAC) the Tribunal held that an appellant can obtain no positive right to a grant of leave to remain from either s117B (2) or (3), whatever the degree of his fluency in English, or the strength of his financial resources. In Forman (ss 117A-C considerations) [2015] UKUT 00412 (IAC) it was held that the public interest in firm immigration control is not diluted by the consideration that a person pursuing a claim under Article 8 ECHR has at no time been a financial burden on the state or is self-sufficient or is likely to remain so indefinitely. The significance of these factors is that where they are not present the public interest is fortified.

29. The appellant is single and has no dependents. The appellant cannot meet the requirements of appendix FM of the immigration rules. Because of a combination of his age and the length of time the appellant has been in the UK the appellant cannot meet the requirements of paragraph 276 ADE(1)(i) to (v). To meet the requirements of paragraph 276 ADE(1)(vi), the appellant has to establish that there are very significant obstacles to his re-integration into Bangladeshi society.

30. I have found that the appellant cannot return to Bangladesh because he establishes a well-founded fear of persecution for a convention reason. I have found that removal from the UK and return to Bangladesh will breach the appellant's rights on article 3 ECHR grounds. No submissions were made about article 8 ECHR, but as I find the appellant is a refugee it is only logical that I must find that there are very significant obstacles to the appellant's reintegration into Bangladeshi society. The appellant therefore meets the requirements of paragraph 276 ADE(1)(vi) of the rules.

31. The appellant does not claim that any other articles of the 1950 Convention are engaged.

Decision

The decision of the First-tier Tribunal promulgated on 4 January 2019 is tainted by material errors of law. I set it aside

I substitute my own decision

The appeal is allowed on asylum grounds

The appeal is dismissed on Humanitarian Protection grounds

The appeal is allowed on article 3 & 8 ECHR grounds.



Signed
2019
Deputy Upper Tribunal Judge Doyle

Date: 24 April