



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

Appeal Number: HU/12478/2019

THE IMMIGRATION ACTS

Heard at Field House Remotely

On 16 November 2020

**Decision & Reasons
Promulgated**

On 4 February 2021

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

MOHAMMAD MOSHIUR RAHMAN

(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Youssefian, Counsel instructed by D J Webb & Co Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by a citizen of Bangladesh against a decision of the First-tier Tribunal dismissing his appeal against the decision of the respondent refusing him indefinite leave to remain in the United Kingdom on 4 July 2019.
2. The Reasons for Refusal Letter shows that the appellant entered the United Kingdom with leave in December 2010. It followed that by the time the application leading to this appeal was made he had resided in the United Kingdom for eight years and six months and so clearly did not satisfy the requirement of ten years continuous lawful residence. The respondent then considered the application outside the Immigration Rules but found nothing that warranted a decision in the appellant's favour. In particular the respondent found that the appellant was an educated man with family connections in Bangladesh and that he could re-establish himself there. The

appellant has a wife and child in Bangladesh and had returned to Bangladesh for a time to support his wife after the birth of their daughter.

3. The appellant had said that he feared returning to Bangladesh because he and his family had been attacked there and had received death threats. This claim was acknowledged. It was suggested that the appellant should consider making a protection claim but no further investigation was made on those points.
4. Included in the grounds of appeal to the First-tier Tribunal there is a letter dated 16 April 2018. It appears to come from solicitors representing the appellant but the title is copied so badly that this is not entirely clear. It refers to being instructed to make representations on behalf of the appellant and purports to rely on human rights grounds as a variation of the claim.
5. The claim then sets out the background history of the applicant. This asserts that he came to the United Kingdom in December 2010 to study for a postgraduate diploma in business management and that he successfully completed a Master's degree from the University of Gloucestershire and that he was given leave to remain in 2012 as a post-study worker.
6. The appellant made an in-time application for further leave that was unsuccessful but he appealed and the appeal was allowed on the basis of "exceptional circumstances". He was then given permission to study for an MBA at the American International University in London. He completed that course and then wanted to pursue a PhD.
7. In November 2017 he applied for further leave to remain. He relied on exceptional circumstances. The letter then set out details of his family life. He married in February 2017. His wife joined him with permission for a short time before returning to Bangladesh. Their son was born in December 2014 and a daughter in January 2017. The applicant said that he had a strong family unit with his cousin a British national in the United Kingdom and described himself an indispensable part of the cousin's family and he wanted to vary application to remain on the basis of his private and family life.
8. Some details are given but they amount to little more than an expression of a deep desire to study for a PhD and being of good character and supportive of his cousin. The appellant asserted at paragraph 34 of the letter that he "has a fear of being killed or abducted and cannot return to Bangladesh". As far as I can see he did little to flesh out this claim.
9. There is a statement from the appellant dated 5 November 2017. This says much the same as the submissions but he did refer to an incident in January 2017 when a group of people approached him outside the house in Dhaka and beat him and he fainted. Somebody described as "my other" (sic) went to the police station to make a complaint but the police refused to get involved and rather threatened the appellant's mother. The people who attacked him he said were aligned to the government. He then referred to a "reliable source" that Bangladesh was not safe for him.
10. There is a further statement dated 16 July 2018. This does not appear to add anything.

11. The grounds of appeal to the First-tier Tribunal again set out the immigration history and say, tellingly, that the “appellant has passed almost ten years in the UK lawfully” which is another way of saying he has not had ten years lawful residence in the United Kingdom.
12. At paragraph 9 there is reference to the respondent being informed that the appellant “has a serious threat in Bangladesh and his application should have been considered under Article 2 and 3 of the ECHR.”
13. The appeal came before the First-tier Tribunal on 17 December 2019. The appellant did not attend and the Secretary of State was represented by a Presenting Officer.
14. The First-tier Tribunal Judge noted a letter from the earlier representative saying that they were no longer instructed and the judge proceeded to determine the appeal.
15. At paragraph 14, having summarised the immigration history and points that were made in submissions he turned to the threat against the appellant and said:

“Alternatively, the appellant claimed that there was a threat to his life in Bangladesh and that he could not visit his wife and this was a significant obstacle, or exceptional circumstances preventing his return to Bangladesh. By reference to a letter dated 22 May 2019 from solicitors the appellant claimed that his house in Bangladesh had been attacked on 19 January 2019 by a group of people and his family members had been brutally assaulted. The solicitors stated that on 10 April 2018 they were sent newspaper reports and a translation of that report was provided. The appellant claimed that his mother had to pay a huge amount of Awami League leaders to save her life, and the appellant was going to receive more evidence in the future in relation to the threat to his mother and would provide this evidence to the Respondent.”

16. Dealing with the alleged fear on return the judge noted the claim and said at paragraph 21 of the Decision and Reasons:

“The appellant has relied on representations from his solicitors together with a copy of a newspaper report. Regarding this issue, the original newspaper report has not been provided. The report appears to be dated Tuesday 19 February 2019. It is asserted by the legal representative that the appellant’s mother had to pay a huge amount of money to Awami League leaders to save her life and the appellant would provide further evidence in relation to the life threat of his mother as soon as he received it; no further evidence has been provided and I do not have the original newspaper report. I have no credible or reliable evidence as to any threat to the appellant’s mother or payment to the Awami League or that his mother’s life is at real risk, and indeed, the only evidence I have are assertions in a solicitor’s letter and a copy of what is apparently a newspaper report dated 19 February 2019. There is no asylum claim being made by the appellant for protection and I make no further comment on this issue in those circumstances.”

17. The judge then purported to dismiss the appeal under the Immigration Rules.
18. The newspaper report is reproduced in the appellant’s bundle in three ways. At page 15 there is a translation of the newspaper article; at page 16 there is a photocopy of the newspaper article and at page 17 there is a photocopy of the relevant page in the newspaper. The newspaper appears to show a total of

five columns of different widths and the article relied on appears in the right-hand column approximately halfway down the page and I estimate the article to be no more than a fifth of the column long. It is short enough to set out in its entirety and I set out the translation below:

Attack on London-ex pat's house.

Staff correspondent

Land grabbers all of a sudden attacked on UK ex pat Mohammad Moshiur Rahman's house at Dhanmondi. During the attack they tortured the family members and gave death threat. On 19 January at around 10-11 o'clock at night a group of eleven-twelve miscreants forcibly entered into the house of UK-ex pat Moshiur and vandalised furniture of the house. At that time they attacked the family members. According to the locals, Moshiur Rahman has been living in the UK for the last few years. Moshiur came in February 2017 and had signed an agreement with a building construction agency on the land and that the land-grabbers were in attempts of taking possession of this land. Since then the land-grabbers have been after Moshiur and his family members. At one stage they took forcible possession of Moshiur's shop. When Moshiur protested they had heightened level of torture over the family members. They started to give continuous death threat to Moshiur and his family members. When contacted, the local Police Station declined to extend any help. Under this circumstance, Moshiur and his family have been passing an insecure and uncertain life."

19. The grounds of appeal to the Upper Tribunal are dated 16 June 2020 and are prepared by the present solicitors, D J Webb & Co.
20. The grounds can be summarised as a failure to make proper findings on material points.
21. This is particularised. The newspaper was identified as the Daily Nabochetona. The grounds contend that the matters set out there were highly pertinent to difficulties amounting to significant obstacles to reintegration in Bangladesh.
22. The grounds complain that the judge should have made a finding on this evidence. The absence of an asylum claim did not excuse him from his obligations to make a decision. In any event it was not an asylum claim. The claimant did not claim to be part of a particular social group just somebody who was at risk in Bangladesh and the point was not addressed. The judge did not explain why he objected to not having the original newspaper. There was a copy before him. The report had been sent to the Secretary of State who did not appear to challenge it.
23. The appellant's solicitors had prepared a skeleton argument dated 8 October 2020.
24. In summary it reminded me that the appellant claimed that his mother had been threatened by unidentified persons in July 2019 and also that in January 2019 he heard that there had been an attack on the family home and that was reported in the Bangladeshi press on 19 February 2019. It is his case that he was not safe to return and there were very significant obstacles to his integration in Bangladesh. He repeated the claim that the Secretary of State had not done anything to say it was unreliable.
25. There was a Rule 24 response. Had the judge accepted the evidence he may well have been impacted on his findings on the returnability of the appellant.

However the Rule 24 notice plainly opposes the appeal. The thrust of the notice is that there was no protection claim and there could have been. The appellant did not attend and presumably could have done. That the judge's findings on "very significant obstacles" were adequate. The original report had not been prepared and the judge was entitled to give less weight to the newspaper report.

26. Before me the appellant relied essentially on the skeleton argument although Mr Youssefian made the points succinctly and clearly and the Secretary of State relied on the Rule 24 notice. Ms Everett described the treatment of the newspaper evidence as "adequate".
27. With respect I cannot agree with Ms Everett. The judge did not make clear findings about the newspaper evidence and they should have been made.
28. This is material. Even if the newspaper report is found to have little or no weight there must be an evaluation.
29. It follows that I set aside the decision of the First-tier Tribunal.
30. However, I can proceed immediately to remaking the decision. No application was made to adduce further evidence. The appellant did not attend before the First-tier Tribunal. I see no reason why he should be given an opportunity to attend again.
31. I remind myself that fact relevant to an article 8 balancing exercise have to be proved on the balance of probabilities.
32. I have considered the material before me. I have considered the witness statements and all the other matters provided.
33. I accept the appellant has lived in the United Kingdom for nearly ten years lawfully and that he would very much like to remain. I accept that he has behaved himself in that time in the sense that he has not been convicted of any matters and has not been irresponsible in his dealings with the Secretary of State. These are not important points.
34. I am not persuaded that there has been an attack on the home as alleged. The newspaper report is of very limited value. It is made about a month after the event complained of. It is by a journalist who is not identified. The sources are not explained in any way. It could be no more than a repetition and slight reworking of the appellant's witness statement or something rather like it. No evidence has been given about the status and standing of the newspaper. The story is clearly not an important story in the mind of the newspaper. As I have explained it only occupies a small area of newsprint on one page. It does not trouble me particularly that the original was not served. It is clearly available somewhere else a copy could not have been made and although I do not discourage the provision of original material my concern is not that the original has not been produced but that the story itself is not particularly well explained and I certainly do not know why it took a month to get in the daily newspaper.
35. However, even if it is true, and it is my finding that it is not, this has not helped the appellant. It might be that difficulties around his home would make it harder for him to re-establish himself in that part of Bangladesh but the evidence just does not deal with relocation throughout the country. I cannot

attach weight to the unexplained reference to “reliable sources” telling him that he is in trouble in Bangladesh. It might be a sincerely held view but this does not begin to explain why any problem is nationwide.

36. Nor do I accept that the appellant could not be expected to relocate in a different part of Bangladesh. That might be harder for him than going back to his home area and living there safely if he could, but he is a national of that country and has kept in touch with that country and has family in that country. He is an educated man. The idea that he could not re-establish himself in his country of nationality does not begin to be supported by the very brief evidence where serious claims are not explained.
37. I have considered too the links that he has in the United Kingdom. These are not weighty matters in an Article 8 balancing exercise. It is wholly understandable that he has got good relations with his family here and that he enjoys living in the United Kingdom but those are not reasons to be allowed to remain. There is nothing that comes close to the weight that is given, for example, to relationships with a life partner or a minor child which occasionally make a difference.
38. Similarly his ability to speak English and apparent good character add little or nothing. They merely serve to exclude aggravating factors.
39. The very sketchy evidence here, even if true, does not outweigh the public interest in enforcing immigration control. I remind myself of Part 5A of the Nationality, Immigration and Asylum Act 2002. I do not accept there are very significant obstacles in the way of reintegration. In accordance with statute I give little weight to the private life established while the appellant is in the United Kingdom with precarious immigration status. There is simply nothing here on which the claim can succeed.
40. I make it plain that the Article 3 claim is not made out. Even applying the real risk standard, it is quite impossible to say there is a serious risk to this appellant’s safety throughout Bangladesh. I do not accept there is even a risk at his home. The story is too contrived.
41. The facts necessary to allow the appeal on “article 8 grounds” are not established but even if they are they go no further than showing a subjective fear that that is wholly unexplained of risk throughout the country. No objective evidence was provided to justify the alleged subjective fear.
42. Although the First-tier Tribunal erred in law and I set aside this decision I have remade it and I dismiss this appeal.

43. Notice of Decision

The First-tier Tribunal erred in law. I set aside its decision but I substitute a decision dismissing the appellant’s appeal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 27 January 2021

