



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

Appeal Numbers: IA/00532/2021
[PA/50185/2021]

THE IMMIGRATION ACTS

**Heard at Cardiff CJC
Hybrid appeal by Microsoft Teams
On 10 December 2021**

**Decision & Reasons
Promulgated
On 25 January 2022**

Before

UPPER TRIBUNAL JUDGE OWENS

Between

**RA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Spurling, Counsel instructed by Hunter Stone Law
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh born on 27 March 1974. He appeals with permission against the decision of First-tier Tribunal Judge

Roblin dismissing his appeal against a decision dated 6 January 2021 refusing his protection claim.

2. This was a hybrid appeal. The Presenting Officer attended in person and Counsel attended remotely. Counsel confirmed that he could see and hear the proceedings although the sound quality was not ideal. Neither party objected the hearing being held in this manner and there was no complaint of any unfairness.

Appellant's Background

3. The appellant entered the United Kingdom on a work permit visa on 18 June 2006. On 21 May 2009 he applied for leave to remain as a Tier 2 (General) Migrant. His application was refused and his appeal was subsequently dismissed. An application for permission to appeal to the Court of Appeal was refused. He made a human rights application on 18 July 2011. That application was refused and the ensuing application for judicial review was dismissed. A further human rights application made in 2015 was refused. On 22 February 2019 the appellant was found working at the Taste of Bengal Restaurant, was arrested as an overstayer and detained. He claimed asylum on 14 March 2019. The claim for asylum was withdrawn for non-compliance but reinstated. His claim for asylum was ultimately refused on 6 January 2021.
4. The appellant's case is that he is a longstanding political activist who supports the main opposition party in Bangladesh, the BNP, which puts him at risk of persecution if returned there. Further, he has posted messages critical of the government on his Facebook account. One post made on 5 November 2018 was reported to the authorities, who have charged him with an offence under the Bangladeshi Digital Security Act. A warrant has been issued for his arrest. The appellant submits that the Bangladeshi government considers him sufficiently significant as an opposition activist to be of adverse interest and at risk of persecution.
5. The position of the Secretary of State is that the appellant's account is not credible. The appellant has given inconsistent accounts in relation to being attacked by Awami League members. Supporting letters from BNP members are considered to be self-serving as they were written after the appellant claimed asylum. The respondent takes issue with the First Information Report dated 5 November 2018, the Facebook posts, the police charge sheet, the arrest warrant as well as a letter from the President of the BNP in Sylhet District. Further, the respondent relies on Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 because the appellant claimed asylum after he was arrested and detained.

First-tier Tribunal Decision

6. The judge considered the expert evidence before her and the country background materials on Bangladesh. The judge acknowledged that there

are reports of attacks on BNP members and activists as well as reports of false criminal cases being filed by the police against opposition party members and supporters. The judge identified that the issue before her was that of credibility. She gave weight to the fact that the appellant did not claim asylum until 2019. She considered the issue of the arrest warrant and placed considerable weight on the fact that the appellant did not mention the arrest warrant at his initial screening interview. She found that the evidence from the Bangladeshi National Party in the United Kingdom was unreliable. She considered a letter from the BNP Party in Bangladesh, which she found did not impact on the appellant's credibility. She found the appellant's account of his attack to be inconsistent and unreliable. She found the evidence from the hospital to be implausible. She also addressed the concerns of the respondent in relation to the charge sheet and found that the credibility of the charge sheet was not undermined. Having assessed the evidence as a whole and in the round, she accepted that there was some support for the appellant's account in the background information and the expert report but that the appellant had not demonstrated on the lower standard that he was at risk on return.

7. The judge dismissed the asylum, humanitarian protection and human rights appeals.

Grounds of Appeal

1. Material Mistake of Fact

8. The judge erred in her consideration of the arrest warrant. She gave weight to the fact that the appellant failed to mention the arrest warrant in his initial screening interview when in fact the arrest warrant was not issued until almost a year later on 24 March 2020.

2. Failure to Make Findings of Fact

9. The judge failed to consider the risk of persecution posed by the arrest warrant as a separate head of risk, in addition to and distinct from, the appellant's general political activity. The judge failed to make a clear finding as to whether she accepted that the arrest warrant was a genuine document and the implications for that for the appellant.
10. At the outset of the appeal, Mr Bates for the respondent also accepted that the judge had failed to take into consideration or make findings on the rationale in HJ(Iran) [2010] UKSC 31.

Rule 24 Response

11. The respondent did not submit a Rule 24 response.

Submissions

12. Mr Spurling took me through the decision. He pointed to the judge's acknowledgement that the background evidence was consistent with the

appellant's account and then took me to those paragraphs in which the judge specifically referred to the arrest warrant not being mentioned in the screening interview. He submitted that the judge misdirected herself and took into account immaterial matters because she was mistaken in her belief that the arrest warrant had been issued at an earlier time. This amounts to a material misdirection on a question of fact.

13. The judge confirms that the Digital Security Act is used commonly as a tactic by the Bangladeshi government against political opponents. The judge was aware of the importance of the arrest warrant which was said to have been issued after the appellant's Facebook post. At [93] the judge says that the arrest warrant is "key" to the case. Mr Spurling's submission was that if the arrest warrant is "key", even if the other aspects of the account are rejected, then the background evidence quoted by the judge at [88] and [90] is capable of creating a risk to the appellant. At [96] the judge analyses the letter from the BNP. This letter explains that the appellant is the subject of a fake charge for politically motivated and illegal reasons. The judge accepts this submission and does not state that the BNP letter is unreliable. At [101] the judge accepts that the inconsistent dates on the charge sheet do not undermine the credibility of that document and at [102] the judge appears to accept that the appellant posted entries on his Facebook account in November 2018.
14. Mr Spurling's main submission is that despite having accepted much of the supporting evidence the main reason the judge makes negative credibility findings is because of the appellant's apparent failure to mention the arrest warrant in the screening interview. Mr Spurling submitted that the respondent's position that this was a mistake on the part of the judge, is not sufficient because the judge uses the word 'arrest warrant' on two occasions in [93] and acknowledges that the arrest warrant is "key" to the case. Further, the judge has failed to make a concrete finding as to whether she accepts that the arrest warrant is genuine, instead referring only to the appellant's credibility.
15. Mr Bates for the respondent submitted that the judge has made a mistake. When the judge used the words 'arrest warrant', in reality the judge was referring to the 'charge sheet' which had been issued in sufficient time for the appellant to be aware of its existence by the date of the screening interview. The charge sheet was issued on 16 November 2018, some time before the appellant's screening interview. The appellant did not mention the existence of the charge sheet at the screening interview. The judge was entitled to rely on this failure to raise relevant matters at the screening interview when making findings in respect of the appellant's credibility. Read as a whole, this is an obvious mistake, and the judge was entitled to rely on the appellant's failure to mention the charge sheet when assessing credibility.
16. Mr Bates acknowledged that the judge did not make a concrete finding as to whether the arrest warrant is genuine, and the judge did not deal with

the risk to the appellant as a separate heading because of the existence of the arrest warrant.

Analysis and Discussion

17. The appellant's account is that he posted material critical of the Bangladeshi government on his Facebook page on 5 November 2018. The post was replicated in the appellant's bundle. It is his case that this was discovered by the Bangladeshi government on 12 November 2018 and that a charge sheet was issued on 15 December 2018. The appellant's screening interview in respect of his claim for asylum took place on 28 March 2019. The arrest warrant was issued on 11 October 2020. The appellant's substantive interview took place on 8 October 2020.
18. In fact, having looked at the arrest warrant, it is not entirely clear when the document was issued as the original stamp appears to have been on 24 March 2020, whereas the court seal is dated 11 October 2020. Either way, the arrest warrant was issued a year after the screening interview.
19. In the decision refusing the protection claim, the respondent did not rely on the failure of the appellant to mention the arrest warrant as a reason for doubting his credibility. This issue appears to have been raised at the first time during the hearing.
20. From [53] to [66] the judge records the submissions on behalf of the respondent. At [54] the judge states:

"In his screening interview the appellant made no mention of the attack in 2006 and no mention of the arrest warrant until the end of March 2019. The screening interview was on 28 March 2019. The appellant did not explain at 4.1 the arrest warrant nor at the end of the screening interview (sic) when he could have made further submissions."
21. I am satisfied that there is a clear reference here to the arrest warrant.
22. At [93] the judge goes on to deal with the evidence. The judge states:

"It was put to the appellant that during his initial screening interview, which took place on 28 March 2021, he failed to mention the existence of the arrest warrant which was taken out in November 2018 after a Facebook entry was posted on 5 November 2018. The appellant confirmed he only answered the questions that were put to him. I accept the appellant was in detention before he was interviewed and I accept a diagnosis was made and that the appellant was as he described suffering from depression. However the arrest warrant was **key to the appellant's case** and I find this is important information to his case that the appellant omitted to volunteer."
23. Mr Bates did not attempt to argue that the judge had not made a mistake of fact in this paragraph. I am satisfied that the judge placed significant reliance on the failure of the appellant to mention the arrest warrant at the screening when making negative credibility findings on the basis that that piece of evidence was key to the appellant's case. I am satisfied that this

demonstrates a lack of anxious scrutiny. I am not persuaded that this was a mistake. The judge refers to the arrest warrant on two occasions in this paragraph and speaks of it being central to the appellant's case. If the arrest warrant is central to the appellant's case, it is incumbent on the judge to demonstrate that he has understood the chronology of events in the appellant's asylum claim.

24. The judge considered a supporting letter from the BNP in Bangladesh dated 18 September 2020. This was evidence in support of the fact that a false case had been made against the appellant and that an arrest warrant had been issued. In relation to this evidence the judge states:

"However it is the appellant's position that this would not be a proper charge in a democratic society and in that respect it is a false charge. I do not accept that the reference to false charges undermined the reliability of the letter. I accept it is the appellant's perception and this does not impact on the appellant's credibility."

25. Turning to the charge sheet, the judge accepts that an inconsistency in dates is an error and states therefore it does not undermine the credibility of the document provided. At [102] the judge questions whether the appellant has been an active member of the BNP during the fourteen years he has lived in the United Kingdom. Having found that the evidence in relation to the charge sheet and BNP is not unreliable, the main reason that the judge appears to have rejected the existence of the arrest warrant is on the basis of the appellant's failure to mention it in his screening interview. Had the judge appreciated that this document had not come into existence until a year later and not placed reliance on this mistake of fact, the judge may well have come to a different view of the appellant's credibility. I find that this error is material to the outcome of the appeal.

26. I also find that it is contrary to the principle of anxious scrutiny. The appellant has claimed asylum in the United Kingdom. This is a matter of great importance to him and it is trite law that the claim must be examined with the highest level of care. I am satisfied that on a reading of this decision, the appellant would not understand why the judge did not accept that there was an arrest warrant in existence against him. I am further satisfied that in any event there is no specific finding at [103] that no warrant is in existence. The paragraph is worded in vaguely in the following terms:

"I have assessed the evidence as a whole and in the round, I accept there is some support for the appellant's account in (sic) background information and the expert's report. However, the appellant's account contains elements that are inconsistent with the risk the appellant claims to face and are implausible in their detail the accumulative effect of which is to undermine the credibility of the appellant's account and voracity (sic) of the appellant's claim. Accordingly, notwithstanding the support I find the appellant has failed to demonstrate to the lower standard of proof that he is at risk on return in the manner that he claims or at all."

27. There is a lack of findings in this paragraph. I am satisfied that it is not tolerably clear from reading the decision as a whole whether the judge accepts the existence and genuineness of the arrest warrant or not. If the judge does not accept that it is a genuine document, her reasons for doing so are primarily on the basis of a mistake of fact.
28. Mr Spurling attempted to persuade me that the positive findings in respect of the weight to be given to the charge sheet and the BNP letter from Bangladesh should be retained. However, I find that these are not findings of fact but the judge's reasons for giving weight to those documents.
29. The decision is vitiated by error to the extent that the appellant has not had a fair hearing of his appeal and I remit the appeal to be re-heard in its entirety. I further note that the judge has not dealt with many of the points raised by the respondent in refusing the appeal and for rejecting supporting documentation including comments for instance by the respondent on the Facebook posts. The judge who hears this appeal will need to consider all of the evidence for themselves de novo.

Notice of Decision

30. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
31. The decision of the First-tier Tribunal is set aside in its entirety with no findings preserved.
32. The appeal is remitted to the First-tier Tribunal for a de novo hearing in front of a judge other than First-tier Tribunal Judge Roblin.

Anonymity Direction

33. I am mindful of Guidance Note 2013, No 1. concerned with anonymity orders and I observe that the starting point for consideration of anonymity orders in this Chamber of the Upper Tribunal is open justice. However, I note paragraph 13 of the Guidance Note where it is confirmed that it is the present practice of both the First tier Tribunal and this Tribunal that an anonymity direction is made in all appeals raising asylum or other international protection claims. Pursuant to Rule 14 of the 2008 Procedure rules I make an anonymity direction.

“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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Signed R J Owens

Date 10 January 2022

Upper Tribunal Judge Owens