



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

Appeal Number: UI-2022-001805
[PA/52148/2020]; IA/01556/2021

THE IMMIGRATION ACTS

**Heard at Field House, London
On Thursday 3 November 2022**

**Decision & Reasons Promulgated
On Friday 9 December 2022**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

**E H
[ANONYMITY DIRECTION MADE]**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Although an anonymity order was not made by the First-tier Tribunal, as this is an appeal on protection grounds, it is appropriate for me to make that order. Unless and until a Tribunal or court directs otherwise, the Appellant [EH] is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

Representation:

For the Appellant: Mr P Jorro, Counsel instructed by Waterstone Legal
For the Respondent: Mrs A Nolan, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge L Nolan dated 15 February 2022 (“the Decision”). By the Decision, the Judge dismissed the Appellant’s appeal against the Respondent’s decision dated 20 July 2020 refusing his protection and human rights claims. The Appellant’s challenge is limited to the protection claim and Article 3 ECHR so far as concerns that claim.
2. The Appellant is a national of Bangladesh. He arrived in the UK on 18 January 2010 as a Tier 4 student with leave until 28 March 2015. Having sought further leave as a student and then on human rights grounds, on 19 October 2019, he claimed asylum. He claims to be at risk because of his political activities in Bangladesh and whilst in the UK. He says that his father was a senior member of the Bangladeshi Jamaat-e-Islami (BJEI). He himself became a member of the Bangladeshi Islami Chhatra Shibir group (the student wing of BJEI). He says that his role involved arranging meetings, demonstrations and protests.
3. The Appellant claims to have been the target of two vicious attacks by Awami League supporters whilst still in Bangladesh in January and July 2009. He says that he complained to the police, but they refused to do anything about these attacks as they would not register a complaint against the Awami League.
4. Since coming to the UK, and from 2017 onwards, the Appellant claims to have been vocal in his opposition to the Awami League. He has posted criticisms on social media, and has attended political meetings, demonstrations and protests including against the Bangladeshi Prime Minister during her visit to the UK in 2019. He claims to have received threats on Facebook.
5. The Respondent refused the claim as not credible. However, the Judge believed the Appellant. She accepted the Appellant’s “account of his past and current activities” ([28] of the Decision). However, she then went on to consider whether the Appellant would be at risk of persecution or serious harm if he returned to Bangladesh now. She concluded at [36] of the Decision that he would not.
6. The Appellant appeals the Decision on two grounds as follows:
 - Ground 1: Failure to take account of the significance of past persecution when assessing current risk and failure to make a finding whether the treatment which the Appellant suffered in 2009 amounted to persecution.
 - Ground 2: Failure to take account of background evidence in relation to the Appellant’s sur place activities.
7. Permission to appeal was refused by First-tier Tribunal Judge Parkes on 17 April 2022 in the following terms so far as relevant:

“... 3. Having accepted the credibility of the Appellant’s account of events before he came to the UK the Judge then addressed the present risk. Having regard to Upper Tribunal guidance on the assessment of social media evidence the Judge also noted the limited nature of the evidence and that of his attending some demonstrations. The Judge found that his profile is limited and that he would not be identified by the authorities on return. The Judge rejected the claim that the Appellant would be in danger on return. The grounds do not address the Judge’s reasons in which the Appellant’s past and more recent activities were considered at length. As drafted they amount to a disagreement with a decision that was open to the Judge for the reasons given.

4. The grounds disclose no arguable errors of law and permission to appeal is refused.”

8. Following renewal of the application to this Tribunal, permission to appeal was granted by Upper Tribunal Judge Rintoul on 26 July 2022 in the following terms:

“It is arguable that, having found the appellant’s account of prior persecution, that the judge erred in concluding the appellant would not be at risk on return to Bangladesh, given that his previous political profile was sufficient for him to have been persecuted. All the grounds are arguable.”

9. The matter comes before me to determine whether there is an error of law in the Decision and if I so conclude whether I should set it aside. If I set it aside, I then need to determine whether the appeal should be remitted for the purpose of re-making or whether the decision can be re-made in this Tribunal.
10. I had before me a core bundle of documents relating to the appeal to this Tribunal as well as the Respondent’s bundle before the First-tier Tribunal and the Appellant’s bundle also before the First-tier Tribunal. As the grounds turn on purely legal issues, I do not need to refer to the documents. I also had a skeleton argument from Mr Jorro filed for the hearing before me.

DISCUSSION AND CONCLUSIONS

11. I take the grounds together as both focus on the same part of the Decision.
12. Having accepted the Appellant’s account as credible, the Judge said the following concerning the risk on return to Bangladesh:

“30. There is no credible evidence before me as to whether the Bangladeshi authorities are currently aware of the appellant’s online activities, and if he were to delete his account prior to returning to Bangladesh, there would be no way for the authorities to know of his online activities provided there had been no prior monitoring. The material actually posted by the appellant does not appear to have been particularly widely liked or commented upon, and the appellant has been

sharing and posting material of this nature from at least 2017, two years before he claimed asylum, with some material from 2013. I agree with Mr Jorro that whether or not the appellant can delete his Facebook account is not the issue here. The issue before me is whether the appellant would be at risk of persecution or serious harm on return due to his claimed political activism against the Bangladeshi government.

31. The appellant does not just seek only to rely upon the Facebook material - he claims to have also attended demonstrations and events against the Awami League in the UK in person. While I accept that the appellant has attended some demonstrations and events in the UK, there is no credible evidence before me to indicate that the Bangladeshi authorities would be able to identify him personally from these events. Even if the appellant could be identified, although he is involved to some degree with the BJEI in the UK, he does not have any type of high profile or high rank, and as such would not be of interest to the Bangladeshi authorities. The totality of the appellant's sur place activities evidence is not sufficient, even to the lower standard, to establish that he would be at risk on return from those activities alone. I have accepted that the appellant was active with Chhatra Shibir while he was in Bangladesh, but he left Bangladesh in 2010 and has not returned since then. His family remain in Bangladesh, including his father who by the appellant's own evidence was a high-ranking member of BJEI. In his letter, the appellant's father does not mention any issues he himself has had previously or is now facing due to his known support and high-level membership of an opposition group beyond a vague mention of having been 'subject to attack', but no details are given to the nature or times of any 'attack'. In his oral evidence the appellant said firstly that his father had never been attacked or injured. Also, in the substantive interview the appellant claims that about a year previously some people had visited his parents' home looking for him. If that were true then it would be reasonable to expect his father to have mentioned that in the letter as being information very pertinent to the appellant's claim, but the appellant's father does not make any mention that the authorities have fairly recently been actively seeking the appellant. Additionally, the appellant says in interview that his brother was threatened, but again his father makes no mention of that. As such, I do not accept that the authorities have been actively looking for the appellant in recent years, and I do not accept that the appellant's brother was threatened as claimed.

32. I have accepted that the appellant was physically attacked by opposing political supporter on two occasions in 2009. He claims also to have received a threat via Facebook six months before his substantive interview, although the date indication on that post is that it was actually posted five days prior to being submitted to the respondent, and it is not possible to see what it was posted in response to, nor to whom it was specifically aimed. For those reasons I give little weight to that claimed threat.

33. The objective background evidence shows that Bangladesh has become more politically repressed since the last election of the Awami League in 2018. The most recent CPIN on Bangladesh: Political parties and affiliation from September 2020 refers to a Human Rights Watch report from 2018 which states that supporters of BJEI and Islami Chhatra

Shibir are at severe risk of abuse when in police custody (7.3.7). However, the CPIN also says that in general, low-level members of opposition groups are unlikely to be of ongoing interest to the authorities and are unlikely to be subject to treatment that is sufficiently serious, by its nature or repetition, to amount to persecution, but opposition party activists with a higher profile may be subject to treatment, including harassment, arrest and politically motivated charges by the police or non-state actors which amounts to persecution (2.4.7). The CPIN states that there have been instances where high-ranking anti-government activists who attended demonstrations in the UK and who were critical online of the Bangladeshi government have been arrested when they returned to Bangladesh on allegedly spurious criminal charges. The issue is then whether the appellant's political profile is sufficiently high so as to put him at risk of persecution or serious harm upon return.

34. I have accepted above that that appellant has also been politically active to some extent in the UK both online and in person, but I have found that his sur place activities overall are not sufficient to raise his profile so as to bring him to the attention of the Bangladeshi authorities. The letter from Bangladeshi BJEI UK says only that the appellant has been 'participating' in activities and that he is active on social media. The appellant holds no official position or rank within BJEI UK, and by his own evidence he has been participating in low-level activities such as attending demonstrations. His profile in Bangladesh before he left was fairly low-ranking as a local student leader and he has had no political profile in Bangladesh for twelve years, and although I have accepted that in 2009 he was involved in two local incidents with supporters of a different political party, I do not find on the evidence overall that he would now be at risk of persecution or serious harm if returned to Bangladesh now as his activities in the UK are not of such a level that would make him of interest to the authorities, and if he continued those activities on return, then as a low-level member of an opposition group and even to the lower standard he is unlikely to be of ongoing interest to the authorities and is unlikely to be subject to treatment that is sufficiently serious, by its nature or repetition, to amount to persecution.

35. I find that the appellant's claim that he will be arrested and possibly killed on return is purely speculative as he was previously only a low-ranking member of an opposition group twelve years ago and there is no reason why he would be of particular interest to the Bangladeshi authorities now. I conclude that the appellant will not be of ongoing interest to the Bangladeshi authorities if returned.

36. It follows that I do not accept that the appellant would be at risk of persecution or serious harm due to his political opinion if returned to Bangladesh, and as such he does not qualify for a grant of refugee status. For those same reasons the appellant does not qualify for HP, and nor is Article 3 engaged here. The appellant's protection claim is refused on all grounds."

13. As Mr Jorro submitted, and I accept, the fact of past persecution is in general terms a serious indication of a well-founded fear of persecution (see in that regard paragraph 339K of the Immigration Rules). Although there is no express finding that the treatment which the Appellant

suffered in 2009 amounted to persecution, I do not consider that the Judge needed to make a finding in that regard. There is no indication that she did not find that to be persecution. As Mr Jorro submitted and I accept the attacks were sufficiently serious. There were only two attacks, but they were in close proximity to each other. As such, they might be seen as being sufficiently systemic to amount to persecution. As Mr Jorro also accepted, however, those were not at the hands of the authorities. They were attacks by non-State agents. The fact that the authorities were unwilling to offer protection in those circumstances is, I accept, sufficient to indicate that the attacks might amount to persecution. However, it is important to note that the Appellant was not targeted by the Bangladeshi authorities as a result of his political activities. As Mrs Nolan pointed out, the attacks are referred to by the Judge at [34] of the Decision as “local incidents”.

14. The Judge refers at several points during her analysis at [30] to [36] of the Decision to the attacks. Although she does not make any express finding that the attacks at the time amounted to persecution or reference Paragraph 339K, I am not persuaded by ground one. The Judge was clearly aware that the Appellant had been attacked in the past as a result of his political activities and that the authorities were unwilling to protect him and that this was highly relevant to risk now.
15. The issue then is whether the Judge’s conclusion that the Appellant would not be at risk now were open to her in light of those findings.
16. I begin with Mr Jorro’s submission that in finding that the Bangladeshi authorities would not monitor opposition activities in the UK, the Judge has failed to take into account the evidence to which she refers at [33] of the Decision which shows that the authorities in Bangladesh do take an interest in those who oppose them, even in activities in the UK. However, the Judge’s finding at [31] of the Decision does not depend on the authorities not monitoring events in the UK but on them not being able to identify the Appellant personally. It is in this context that the Judge’s findings that the past events were at a local level and did not involve the authorities become important.
17. Mr Jorro also made the submission that, even if the Appellant were to delete his Facebook account before returning to Bangladesh, he would still be at risk because he would continue his activism against the Awami League. He said that the Judge had failed to consider this in the context of HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31 (“HJ (Iran)”). Whilst I accept that the Judge did not mention HJ (Iran), she did not need to do so as her finding at [34] of the Decision takes into account that the Appellant might wish to continue his activities on return. She finds that such would not place him at risk from the authorities because his involvement in activities would be, as it has been here and previously, at a low-level.

18. As the Judge said at [30] of the Decision, the issue was not whether the Appellant could delete his Facebook account. It was whether the authorities in Bangladesh would be interested in the Appellant. Although he has been active in the UK, and was active in Bangladesh, the Judge's findings are that both sets of activities were at a low-level. By reference to the background evidence set out at [33] of the Decision, the Judge was entitled to find that the authorities in Bangladesh did not take an interest in low-level opposition activists.
19. Although I accept that the Judge found that the Appellant suffered what may well amount to past persecution in 2009, as I have already pointed out and as Mrs Nolan submitted, the incidents did not involve targeting by the authorities. There was therefore no reason arising from those attacks for the authorities to take an interest in the Appellant now. Although the background evidence showed that the authorities take an interest in those with a "higher profile" ([33] of the Decision), the Judge was entitled to find that the Appellant was not such a person. She did not accept the Appellant's claim that the authorities in Bangladesh were taking an interest in him ([31]). She gave little weight to the threat said to have been posted on Facebook ([32]). There is no suggestion that this came from the authorities rather than from an individual.
20. For those reasons, although the Judge has accepted as credible the Appellant's account of the attacks in 2009 and although on the face of it those may well have amounted to persecution albeit at the hands of individual supporters of the Awami League, the Judge was still entitled to find that the Appellant would not be at risk on return some twelve years later. He had never been of interest to the authorities. As such, his sur place activities would not bring him to attention as a high-profile opposition activist. The Judge was well aware of the role which the Appellant played in Chhatra Shibir. However, as she pointed out, the Appellant's father who held a more senior role in BJEI itself, has been able to remain in Bangladesh without incident since 2009.
21. For all those reasons, and although I accept that past persecution is a "serious indication" of future risk, the Judge was entitled to reach the conclusion that the Appellant would not be at risk now on the facts of this case.
22. For those reasons, I do not accept that the Appellant's grounds disclose errors of law in the Decision.

CONCLUSION

23. In conclusion therefore, I find that there is no error of law disclosed by the Appellant's grounds. I therefore uphold the Decision.

DECISION

I am satisfied that the Decision does not involve the making of a material error on a point of law. I uphold the Decision of First-tier Tribunal Judge L Nolan dated 15 February 2022 with the consequence that the Appellant's appeal is dismissed.

Signed L K Smith
Upper Tribunal Judge Smith

Dated: 4 November 2022