



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2021-000250
(PA/51202/2020); IA/00723/2020**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 23 March 2023**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**ZA
(Anonymity Order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Lams, instructed by TNA Solicitors

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 13 January 2023

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh, born on 7 October 1985. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing his asylum and human rights claim.

Background

2. The appellant arrived in the UK on 18 May 2011, with leave to enter as a Tier 4 student until 31 January 2012. On 14 September 2017 he was encountered during an enforcement visit and was served with a liability to removal notice as an overstayer and he was detained. He claimed asylum on 29 September 2017 and was released from detention but failed to report to the immigration services. His claim was refused on 29 March 2018. He did not appeal against that decision.

3. The appellant was subsequently encountered working illegally during an enforcement visit on 23 May 2019 and was served with another liability to removal notice and was again detained. He informed the immigration services that he was an alcohol. He started an alcohol detox programme at the immigration removal centre on 29 May 2019. He then made several further submissions on 19 June 2019 which were refused on 27 June 2019. Those were followed by further submissions made on 1 July 2019 which were refused on 30 July 2019, and submissions made on 31 July 2019 which were refused on 10 August 2019 and reconsidered on 13 December 2019.

4. The appellant then sent further evidence to the respondent under cover of a letter from his solicitors on 2 March 2020 which led to a refusal decision of 18 March 2020, which in turn was updated to address the subsequent caselaw in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17 in relation to the appellant's Article 3 claim in a subsequent decision of 11 August 2020, giving rise to this appeal.

5. The main basis of the appellant's claim is that he fears the Awami League in Bangladesh as a result of events arising from his involvement in the BNP. The appellant claims to have been involved with the BNP from 2006 and to have become a member in 2008 and then subsequently been elected as assistant general secretary and assistant secretary of Jatiyata Badi Jubo Dal, a party within the BNP, for his area. He claims that he became aware that local members of the Awami League were planning to steal half of the money the government was to give to the village so that only half would be left to help the poor and he organised a meeting of local BNP members to discuss the situation. After the meeting he was attacked by Awami League members who stabbed him with knives. He managed to escape when people came to help and he passed out and was taken to his uncle's house where he woke up two days later and saw a doctor who stitched his wound and gave him medication. He remained in hiding in his uncle's house for several months and his uncle arranged a student visa for him to come to the UK. He travelled to the UK in May 2011 and started studying but then had to stop because he was unwell. Since he came to the UK his uncle had received threatening calls from the Awami League and had to change his telephone number.

6. The respondent, in refusing the appellant's initial claim, noted that he displayed limited knowledge about the BNP and did not accept that he was a member of that organisation in Bangladesh. The respondent noted inconsistencies in the appellant's claim and considered it relevant that he

managed to stay in his uncle's house for nearly a year without any problems. The respondent also noted that the appellant did not claim asylum until seven years after his arrival in the UK, when removal directions were in place, and did not find his claim credible or accept that he was at any risk on return to Bangladesh.

7. In refusing the appellant's further submissions on 27 June 2019, the respondent noted his claim to suffer from a number of medical problems such as alcohol addiction, memory loss and depression and that he had been put on an alcohol detox programme when detained, but considered there to be no evidence to show that he would be unable to obtain medical treatment in Bangladesh. The respondent found that the appellant's further submissions contained no new independent evidence about his claim and found it relevant that he had not pursued his previous claim until detained and faced with removal.

8. With regard to the submissions of 1 July 2019 the respondent noted, in her refusal of 30 July 2019, that he was relying on a City News report of 3 June 2010, photographs of him with bandages and a letter from a Dr Howlader who had treated him in Bangladesh, and a letter from the President of the Jatiyata Badi Jubo Dal party in Bangladesh. The respondent gave little weight to those documents for reasons given in the refusal decision. In the decision of 13 August 2019 rejecting the appellant's further submissions of 31 July 2019, the respondent noted that the appellant was relying on further evidence including a newspaper cutting which he said his mother found in 2018 and which was emailed to him by his uncle and which was evidence that the Awami League had set fire to his family home, and further letters from the doctor who treated him in Bangladesh after the attack. As previously, the respondent gave little weight to those documents for reasons given in the refusal decision and considered that the submissions added nothing to his previous claim.

9. The respondent, in her most recent refusal decision giving rise to this appeal, noted that the appellant was relying on further evidence to support his claim to hold a significant political profile. The respondent again considered it significant that the appellant had not pursued his asylum claim when refused on 29 March 2018 and rejected the reason given, namely that he was unable to obtain legal advice for an appeal due to his alcohol dependency. The respondent gave little weight to the newspaper article from City News featuring a report of the appellant being attacked by the Awami League, rejecting the explanation given for it having been produced nine years after it was published. The respondent considered that the medical letters from the appellant's doctor in Bangladesh gave rise to discrepancies in the appellant's account of the attack and his injuries and gave little weight to the letters. The respondent considered that the photographs the appellant relied upon in regard to his injuries and the medical report confirming the injuries did not provide evidence of how the injuries were caused. The respondent considered that the letters from the President of Jatiyata Badi Jubo Dal failed to shed light on the activities with which the appellant was involved or whether he was a high profile member. The respondent did not accept that the appellant was a high profile activist and considered that little weight could be given to the

documents. The respondent also considered the appellant's claim to have been involved in sur place activities for the BNP in the UK but again found no evidence that he held any profile which would put him at risk on return to Bangladesh. It was not accepted that he was at any risk on return to Bangladesh. The respondent accepted, from the medical reports, that the appellant suffered from mental health problems including PTSD and depression but considered that he was not at risk of suicide and that he could access treatment in Bangladesh. The respondent concluded that the appellant's removal would not breach his human rights in that regard.

Appeal in First-tier Tribunal

10. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Athwal on 8 June 2021. The appellant did not give oral evidence before the Tribunal, in view of his mental health, and did not provide a witness statement. The judge was, however, provided with an appeal bundle which included a medico-legal report from Dr Moser dated 22 January 2020, a psychiatric report from Dr Galappathie dated 15 February 2021, a letter from Dr Cohen of Freedom from Torture dated 26 April 2021, a Rule 35 report from 2017 and other medical evidence including the reports from Dr Howlader, as well as newspaper articles from the Bangladesh Observer dated 5 June 2010 and 3 June 2010 and photographs of the appellant's injuries. The judge also had the letters dated 4 August 2019 and 16 October 2014 from Jatiyata Badi Jubo Dal in the respondent's appeal bundle. In addition, she was shown a video of the appellant at a BNP meeting in the UK.

11. Judge Athwal noted that the appellant accepted that there were various inconsistencies between his accounts and she went on to consider whether the discrepancies in his accounts were due to his mental health issues as he was claiming. She considered the reports of Dr Moser and Dr Galappathie. She noted that Dr Moser's report of January 2020 referred to the appellant's memory problems relating to alcohol at that time, that he had been diagnosed as suffering from alcohol dependence syndrome on 25 May 2019 and that it was concluded that the delayed detoxification programme had caused significant impairments to his memory. She also noted similar conclusions from Dr Galappathie. The judge was satisfied, from the evidence, that the appellant had alcohol related problems when detained in 2019 which may have caused his current memory problems but she noted a lack of evidence for the period when he was detained in 2017. She found there to be no evidence to support the appellant's claim to have been dependent upon alcohol in 2017 and 2018 and to have been suffering from such severe alcohol related memory issues at that time which would have impacted upon the reliability of his recollection of events during that time and she rejected the explanation given by the appellant for not having appealed the refusal of his asylum claim in March 2018.

12. On the basis of Dr Moser's report on the appellant's scars, the judge accepted that he had been assaulted with a knife in the past. However she noted inconsistencies between the accounts and details of the claimed attack by the Awami League provided by the appellant and in the letters from Dr

Howlader and the Bangladesh Observer newspaper article and gave little weight to the documents which she considered were not reliable evidence. The judge also noted inconsistencies in the second newspaper report which referred to the appellant's house being burned down and in the letters from Jatiyata Badi Jubo Dal and found those documents also to be unreliable. The judge did not accept that the appellant's physical and mental condition was a satisfactory explanation for the discrepancies in the evidence and she did not accept that he had been the assistant secretary of Jatiyata Badi Jubo Dal or that he had been targeted and attacked by members of the Awami League. She found, in any event, that even if he had held that position and had been attacked as claimed, he would not be at risk on return to Bangladesh as he had had no problems from the Awami League during the time he stayed with his uncle prior to leaving Bangladesh. As for the appellant's sur place activities, the judge considered there to be no evidence to show that those had raised his profile and put him at risk on return.

13. With regard to the appellant's Article 3 medical claim, the judge accepted that the appellant suffered from depression, PTSD, anxiety and cognitive impairment but noted that he was not alleging that those engaged Article 3. The Article 3 claim was based on the risk of suicide, but the judge did not consider there to be any evidence to show that there was such a risk. She found that the appellant could access relevant medical treatment in Bangladesh and that he could return to live with his uncle. The judge found that there were no very significant obstacles to the appellant's integration in Bangladesh for the purposes of paragraph 276ADE(1)(vi) and that his removal would be proportionate for the purposes of Article 8. She accordingly dismissed the appeal on all grounds.

14. Permission was sought on behalf of the appellant to appeal the decision to the Upper Tribunal. Permission was refused in the First-tier Tribunal. The appellant then renewed his application to the Upper Tribunal on five grounds. Firstly, that the judge had failed to take into account relevant facts and was irrational in concluding that he was not suffering from alcohol withdrawal in 2017 to 2018, and that that undermined her overall credibility findings. Secondly, that the judge had failed to take the medical evidence into account in concluding that he would not be at risk of suicide. Thirdly, that the judge had erred in law in her consideration of the newspaper article and was wrong to place negative weight on the fact that she had not been provided with the original newspaper, when it could have been provided if she had requested it. Fourthly, that the judge, when finding there to be no continuing interest in the appellant by the Awami League, had ignored the evidence of the threatening calls made to his uncle. Fifthly, that the judge had erred in her reasons for considering Dr Howlader's report to be unreliable in respect to the appellant's scars.

15. Permission was granted by the Upper Tribunal on the fourth and fifth grounds, although the other grounds were not excluded.

Upper Tribunal Hearing and Submissions

16. The matter then came before me for a hearing. Mr Lams made an application under Rule 15(2A) to adduce further evidence consisting of GCID notes for the appellant during his detention in 2017 which referred to his alcohol dependence and which had been available at the time of the hearing before Judge Athwal but had unfortunately not been produced. Ms Isherwood did not object to the notes being admitted and I therefore allowed Mr Lams to rely upon them.

17. Mr Lams submitted that the detention notes provided evidence that the appellant was suffering from alcohol withdrawal in 2017. The respondent had relied upon an absence of evidence of the appellant's alcohol dependence in 2017 and 2018, yet ought to have been aware of that from their own detention notes. The appellant had also referred to his alcohol dependence, and to the impact of alcohol withdrawal on his memory, in his asylum interview in March 2018, and that had not been considered by the judge. She had made adverse credibility findings against the appellant owing to a lack of evidence of memory impairment caused by alcohol withdrawal at that time and therefore the first ground of appeal was that her credibility findings were not safe as a result. As for the second ground, there was cogent evidence before the judge in the forms of the medical reports from Dr Moser, Dr Cohen and Dr Galappathie, which confirmed the deterioration in the appellant's mental health in 2021 and the high risk of suicide and the judge failed to consider that. With regard to the third ground, the judge could have requested the original newspaper article and therefore erred by making adverse findings on the basis that the original was not available. Fourthly, the judge had ignored the evidence of threatening calls made to the appellant's uncle by the Awami League, and fifthly the judge had erred by finding that the second scar on the appellant's body was the same size as the other scar and using that as a reason to undermine Dr Howlader's report.

18. Ms Isherwood submitted that the judge had not erred in law. The evidence of the appellant being dependent upon alcohol in 2017 did not undermine her adverse credibility findings as there were various other reasons given by the judge for finding the evidence to be unreliable. In any event the judge found that the appellant would not be at risk on return even if the account was true. The judge considered all of the medical evidence in concluding that the appellant was not a suicide risk on return to Bangladesh. She gave various reasons for finding the newspaper articles to be unreliable. She considered the telephone calls made to the appellant's uncle and assessed all of the evidence. Her decision was a detailed one and the grounds were simply a disagreement with the weight she accorded to the evidence.

19. Mr Lams, in response, emphasised the significance of the GCID notes to the judge's adverse credibility findings and submitted that the judge's decision ought to be set aside on that basis and the matter remitted to the First-tier Tribunal to be heard afresh.

Discussion

20. It is asserted on behalf of the appellant that the judge failed to take account of relevant facts in concluding that he was not suffering from alcohol induced memory loss in 2017 and 2018, but that it is clearly not the case. The judge undoubtedly gave detailed consideration to the appellant's evidence at his interview and clearly that was what she was referring to at [70] when she stated that she only had his evidence that he was alcohol dependent at that time. She assessed the medical evidence in detail, noting the doctor's views on his alcoholism and when that commenced and cannot in any way be said to have failed to have given full regard to the evidence before her. The medical notes she had before her only commenced in 2019 and there was no independent medical evidence to confirm the appellant's account of his alcoholism prior to that. Mr Lams now relies upon the 2017 GCID detention notes which do lend support to the appellant's account in that regard to his alcohol dependency. However, the judge cannot be criticised for failing to have regard to evidence that was not before her.

21. It is asserted on behalf of the appellant that that evidence, now produced, undermines the judge's credibility findings, but I do not find that to be the case. It is relevant to note that, whilst the appellant claims that his severe alcohol problem was the reason for ceasing his studies, for delaying his asylum claim and for failing to appeal the refusal of his claim in 2018, the judge noted that that explanation contradicted earlier accounts he had given. At [55] she noted that he had previously stated that he ceased studying because he could not afford the fees and at [51] his evidence was that he delayed in claiming asylum because he did not have the funds or proper paperwork. At [57] and [81] the judge also noted that the appellant was found working in 2017 and 2019 and she considered the fact that he was able to work and hold down a job undermined his claim to have been unable, due to alcohol dependency, to appeal the refusal of his asylum claim. Whether or not Dr Galappathie was aware of the appellant's work history when he wrote his report (paragraph 3 of the grounds), it seems to me that the judge was perfectly entitled to conclude on that basis and otherwise that alcohol dependency was not a satisfactory explanation for the timing of the appellant's claim and his failure to appeal and I reject the suggestion that the GCID notes referring to his alcohol dependency in 2017 undermine her conclusions.

22. Likewise, with regard to the merits of the appellant's claim, it seems to me that nothing material arises from the GCID notes for 2017. As Ms Isherwood submitted, the judge assessed the evidence as a whole in the context of the appellant being a vulnerable person with mental health problems and was not bound simply to accept his evidence at face value and ignore significant inconsistencies because of his mental health and impaired memory. The judge was plainly fully aware of the medical experts' opinions on the impact of the appellant's alcoholism on his ability to recall events and facts and she clearly took that into account in her findings. However she concluded that the appellant's evidence was simply not reliable, and she provided various reasons for so concluding, most of which were completely independent of his alcohol dependency and memory problems.

23. At [71] to [79] the judge identified numerous significant inconsistencies in the evidence, between the documentary evidence and the appellant's own evidence and within the documentary evidence itself. At [72] and [73] she noted that there were varying accounts, from the appellant at his interview, in the rule 35 report and in Dr Howlader's letters, of when the attack by the Awami League occurred, where the appellant was treated after the attack and which part of his body was injured. The grounds assert that the judge erred by drawing adverse conclusions from Dr Howlader's reference to only one stab wound when Dr Moser had referred to several, and that she was wrong to say that the stab wound to the appellant's abdomen was nearly the same size as the one to his leg, but the judge pointed to various additional inconsistencies in Dr Howlader's report and was perfectly entitled to conclude that it was not consistent with the other documents and the other accounts given.

24. The judge also referred, at [76] and [77], to differing accounts of the incident given in the newspaper articles which were significantly at odds with the appellant's own description and with the information provided by Dr Howlader, and at [78] to the account given in the newspaper about the Awami League setting fire to his house which again contradicted the appellant's own account. The appellant's third ground of appeal seeks to challenge the judge's adverse findings on the newspaper reports. It is asserted that the judge was wrong to place negative weight on the first newspaper report owing to not having the original document, when no request for the original had been made, but that was only one of a number of reasons why she found the document to be unreliable. She also considered that the poor grammar, the inconsistent explanation for the delay in producing the article and the inconsistent account of the incident that it contained were reasons for finding the document to be unreliable. The grounds go on to assert that the second newspaper article did not suffer from similar grammatical concerns and criticise the judge for according no weight to that document, but the judge gave various other reasons at [78] for finding the newspaper article to be an unreliable piece of evidence, including the timing of the report in relation to when the incident occurred and the inconsistency in the account as against that given by the appellant.

25. In addition to the inconsistent and contradictory accounts provided in the documentary evidence already mentioned, the judge, at [79], provided cogent reasons why she could not accord weight to the letters from the Jatiyata Badi Jubo Dal party. That has not been challenged in the grounds and lends further support to the judge's overall findings that the documentary evidence provided by the appellant was simply not reliable or credible. In the circumstances, the appellant's memory problems and inability to recall events caused by his alcohol addiction and withdrawal from alcohol clearly did not provide a sufficient response to the respondent's concerns about his claim and the judge was fully and properly entitled to conclude as such and to find that his claim was not a credible or genuine one.

26. In any event any criticism of the judge's credibility findings is immaterial given that she went on to consider risk on return to Bangladesh even if the appellant's account were true. From [84] to [89] the judge provided reasons for

concluding that the appellant was of no ongoing interest to the Awami League or the authorities in Bangladesh prior to him leaving the country and that the evidence did not suggest that he had a profile which would lead to him being of any interest on return. The judge noted that the appellant was able to remain living with his uncle for almost a year without any problems and concluded, as she was entitled to do, that that demonstrated a lack of any ongoing interest in him. The appellant's fourth ground of appeal asserts that the judge erred in so concluding, as she ignored relevant evidence, namely of threatening telephone calls having been made by Awami League members to the appellant's uncle after he left the country, which showed an ongoing interest in him and an ongoing risk. However the judge was perfectly aware of the appellant's evidence in that regard, referring to it at [78], but properly noted that he never claimed to have been contacted by the Awami League himself before he left the country and was not approached for the period he was residing with his uncle and she was entitled to conclude that there was therefore no ongoing risk.

27. For all of these reasons I do not consider that the grounds identify any errors of law in the judge's findings and conclusions in the appellant's asylum claim, and I agree with Ms Isherwood that this is essentially a disagreement with the judge's decision. Likewise I find no merit in the second ground, which asserts that the judge, having accepted that the appellant had been attacked in Bangladesh, albeit not in the circumstances claimed, failed to give proper consideration to the traumatising effect of return to Bangladesh and to the risk of suicide. On the contrary, however, the judge undertook a careful and detailed analysis of the impact of removal upon the appellant in light of the medical evidence when considering Article 3, from [90] to [97]. She had full regard to all the medical reports and was fully aware of the references in the reports to the risk of suicide. She had regard to the relevant caselaw and to the country reports on the availability of medical treatment, and she considered the support available to the appellant in Bangladesh. Having considered all the evidence and all relevant matters, the judge provided full and cogent reasons for concluding that Article 3 was not engaged on such a basis. She was fully entitled to reach the conclusion that she did and again the grounds are nothing more than a disagreement.

28. Accordingly I find no errors of law in the judge's decision and I uphold her decision.

DECISION

29. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 15 January 2023