



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003610
First-tier Tribunal Nos:
PA/52605/2020
IA/02621/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 11 April 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

ABDULLAH AL MAMUN
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Symes, Counsel instructed by Syed Shaheen & Partners
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

Heard at Field House on 24 January 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant, a citizen of Bangladesh, is appealing against a decision of Judge of the First-tier Tribunal Bart-Stewart ("the judge") dated 1 July 2022 dismissing his protection and human rights appeal.

The appellant's claim

2. The appellant claims to face a risk of persecution in Bangladesh because, inter alia, of his activities as a journalist in the UK working as a political reporter for the television channel NVT. He has identified three incidents which he says have attracted adverse attention in Bangladesh:
 - a. The appellant claims that in May 2019 he surreptitiously recorded the Prime Minister of Bangladesh making threats to the mother of a senior figure in the BNP and that his recording subsequently "went viral", causing a "political earthquake" in Bangladesh. He claims that as a result of this he received death threats on social media; his home in Bangladesh was raided; and Mr Rabbani, a senior figure in the Chatra League committee, threatened him. I will refer to this as "incident 1".
 - b. The appellant claims that, in August 2019, when the Prime Minister of Bangladesh visited the UK again, he was included on a list of journalists barred from covering an event and the list of barred journalists was broadcast on NTV. He believes that the list has been circulated in key areas in Bangladesh including the airport. I will refer to this as "incident 2".
 - c. The appellant claims that, in his capacity as the editor of an online portal "Hidroy Bangladesh" he published an investigation report about Mr Alam, an influential political aide of the Prime Minister, accusing him of amassing wealth in the UK. The appellant claims that Mr Alam telephoned his colleague delivering a warning should he return to Bangladesh. I will refer to this as "incident 3".

Decision of the First-tier Tribunal

3. The judge's decision is extremely comprehensive. After setting out in detail the basis of the claim (paragraphs 5-17); the respondent's reasons for refusing the claim (18-30); and the issues, hearing and submissions (32-70), the judge set out her findings and reasons in paragraphs 71-97.
4. The judge set out her overall conclusion in paragraph 74, where she stated that she did not find the appellant's account credible.
5. The judge considered the three incidents discussed above in considerable detail. Her findings, in summary, in respect of each of the incidents are as follows:
 - (a) Incident 1: The judge gave several reasons for not accepting incident 1 occurred as claimed. First, she found that it was unclear why Mr Rabbani only threatened the appellant several months afterwards and why he only threatened the appellant and not the editor or station owners. Second, there was no evidence of other complaints to NTV. Third, there was nothing to suggest it would be known that the appellant made the recording rather than other journalists who were in the room. Fourth, there was no supporting evidence of a "political earthquake" or of the recording "going viral". The judge considered the appellant's claim that his home in Bangladesh was attacked. In respect of the newspaper article provided, the judge found that there was no indication of where the newspaper had been published or as to its circulation. The judge also stated that there was no

suggestion that this was no longer the family home despite in a previous appeal saying that the house was attacked and destroyed in August 2017 and the family had moved. The judge also stated that it was not clear why his home in Bangladesh would be raided when it was known that he was in the UK and that there was no suggestion of a follow-up visit.

- (b) Incident 2: The judge found that the appellant's claim to be on a list of barred journalists was not supported by credible evidence. She stated that the witnesses were vague as to the provenance and authenticity of the list and she noted that none of the three witnesses, despite claiming to be journalists, had attempted to verify it. She stated that it was merely a typed list of names with one additional handwritten name. She stated that no plausible explanation had been given as to how the list was obtained. The judge also noted that one of the video clips adduced by the appellant purports to show him reporting on the blacklist on 3 August 2019 but he did not state that he was on it.
- (c) Incident 3: The judge considered in detail the appellant's claim about publishing a report about Mr Alam and receiving threats. The judge stated in paragraph 85:

"I am satisfied that the report and claimed Facebook response is fabricated, part of the appellant's elaborate attempt to bolster a false claim that he is a journalist. There is no apparent reason for him carrying out an investigation into a person whose Wikipedia page suggests no longer has prominence. The Wikipedia page itself does not appear authentic. I am satisfied that the timing of the so called report is to create the suggestion of the appellant being of continuing interest. The Jugantor report makes a vague reference to having noticed the report about Alam published in the media without identifying the claimed media report. The appellant is not named in any other related article that he claims was circulated in Bangladesh".

6. The judge did not attach weight to the evidence of the three journalists giving evidence on behalf the appellant. She noted that none of them was able to point to independent evidence to support the appellant's claims.
7. The judge observed that one of the witnesses, Mr P, despite claiming to have a more senior role than the appellant in NTV – and to have a regular political talk show – has been able to travel to Bangladesh recently without being stopped at the airport or having any other problems. The judge noted that Mr J, who claims to be the former general secretary of the Press Club of which the appellant is a member, was also able to visit Bangladesh without any difficulties. The judge found in paragraph 93:

"I have gone through the large range of material including the video clips, Facebook post blogs and online articles and I have serious doubts as to the veracity and authenticity of most of the material. I am satisfied that it has emanated from and been created by the appellant. Items such as the blog post and the investigation into Mr Alam I find to be clearly self-serving but even if genuinely posted and appearing online somewhere, there is nothing in the communication purportedly from Mr Alam that I consider puts the appellant at risk on return to

Bangladesh nor does the blog, even if genuinely online, as the appellant has hidden his identity”.

Grounds of Appeal

8. The grounds argue that the judge’s assessment of the three incidents described above was deficient because the conclusion was reached without regard to material evidence.
9. With respect to incident 1, the grounds contend that:
 - (i) the judge was wrong to find that there was no explanation of why Mr Rabbani waited several months to send a threat when that explanation is contained within the threat: he stated that it was subsequent activities of the appellant which prompted the threat;
 - (ii) the threat to the appellant (rather than the editor or station owners) was because of a cumulation of his journalistic activities; and
 - (iii) when considering whether the appellant’s family home would be targeted despite the appellant being outside of the country, the judge overlooked evidence that it is in the Bangladeshi government’s playbook to target family members of exiled journalists.
10. With respect to incident 2, the grounds contend that:
 - (i) the judge was wrong to find that the appellant’s report of 3 August 2019 did not name him as being on the journalist blacklist; and
 - (ii) the judge failed to appreciate that the blacklist shows the appellant alongside other political journalists and represents evidence that he has come to the attention of the authorities.
11. With respect to incident 3, the grounds submit that the appellant never claimed to have written the report about Mr Alam but the adverse attention arose because his name was the only name attached to the report.
12. The grounds also argue that the judge failed to appreciate that although the appellant’s blog is not under his name, his name appears in it repeatedly.
13. The grounds take issue with the judge’s assessment of the witness evidence, where the judge described it as “vague, ultimately repeating what has been told to them by the appellant”. The grounds submit that Mr P is an independent journalist, Mr J is the convenor of Voice for Bangladesh and Mr J is the secretary of London Bangla Press Club. The grounds, in summary, submit that these are individuals of significant standing whose evidence cannot be so lightly dismissed.
14. The grounds also submit that the judge failed to explain why, even if the appellant’s activities have been undertaken in bad faith, he would not be at risk due to having come to the adverse attention of the authorities in Bangladesh.

Submissions

15. Mr Symes relied on the grounds, which he carefully took me through. He highlighted that the three supporting witnesses are well-known journalists who gave independent opinions. He was critical of the judge characterising them as having been “fed” stories. He also submitted that the judge was plainly wrong to state in paragraph 86 that there was no evidence of NTV being seen in Bangladesh. He noted evidence in the bundle indicating that NTV is well-known in Bangladesh.
16. With respect to the three main issues in the grounds, Mr Symes acknowledged that his argument, essentially, was that the judge had reached a perverse conclusion. He submitted that although the threshold for this is high, it was met in this case
17. Mr Whitwell gave brief submissions. He argued that the judge’s decision was extremely comprehensive and that a plethora of sufficient reasons had been given to support the conclusion reached.

Analysis

18. The higher courts have made it clear that caution must be exercised before interfering with findings of fact and inferences drawn from fact. In paragraph 2 of *Volpi & Anor v Volpi* [2022] EWCA Civ 464 the Court of Appeal summarised the relevant principles as follows:
 - i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
 - ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
 - iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
 - iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
 - v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
 - vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow

textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.

19. A frequently cited summary of the relevant principles is set out in para. 114 of *Fage UK Ltd & Anor v Chobani UK Ltd & Anor* [2014] EWCA Civ 5:

Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The best known of these cases are: *Biogen Inc v Medeva plc* [1977] RPC1; *Piglowska v Piglowski* [1999] 1 WLR 1360; *Datec Electronics Holdings Ltd v United Parcels Service Ltd* [2007] UKHL 23 [2007] 1 WLR 1325; *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33 [2013] 1 WLR 1911 and most recently and comprehensively *McGraddie v McGraddie* [2013] UKSC 58 [2013] 1 WLR 2477. These are all decisions either of the House of Lords or of the Supreme Court. The reasons for this approach are many. They include

i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.

ii) The trial is not a dress rehearsal. It is the first and last night of the show.

iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case.

iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.

v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).

vi) Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done.

20. Incident 1 concerned a claim by the appellant that he surreptitiously recorded the Bangladeshi Prime Minister making a threat and that this went viral and caused a "political earthquake". The judge considered the claim in great detail and thoroughly considered all of the evidence that was material to it. She then gave detailed reasons explaining why she did not accept that the incident occurred as the appellant claims. Mr Symes has undertaken a very careful examination of the judge's reasons and has identified a few points that, perhaps, can legitimately be criticised. However, these criticisms must be considered in the context of the judge giving plainly sustainable reasons to support a finding of fact that, on any view, was not plainly wrong.

21. Incident 2 concerned the appellant's claim to be on a list of barred journalist. As with incident 1, the judge considered the appellant's claim thoroughly and plainly did not overlook any material evidence. Moreover, detailed and clear reasons were given. Even if the judge made a mistake with respect to one of her reasons (whether the appellant identified himself as being on the blacklist in the report on 3 August 2019) that would not, on any view, be sufficient to constitute an error of law in the context of the other reasons that she gave. The judge's factual findings concerning incident 2 were made after having regard to "the whole of the sea of evidence presented". The findings were plainly open to the judge.
22. The appellant's challenge in respect of incident 3 has the same weakness as the challenge to the judge's evaluation of the facts relating to the other incidents. The judge plainly considered the document about Mr Alam and all of the associated evidence. It is clear from the decision that the judge engaged with this evidence comprehensively. Clear and detailed reasons are set out in paragraphs 80 - 85. The grounds fail to identify anything in the judge's factual findings and reasoning that could, on any legitimate view, be characterised as plainly wrong.
23. The judge's assessment of the three journalists who gave evidence on the appellant's behalf is, like the rest of the decision, thorough and comprehensive. Having heard the oral evidence, it was open to the judge to conclude that their evidence was vague. The grounds highlight the credentials of the individuals but the judge did not overlook this. The findings in respect of the witnesses were plainly open to the judge.
24. The grounds submit that the judge failed to explain why, even if the appellant's activities have been undertaken in bad faith, he would not be at risk due to having come to the adverse attention of the authorities in Bangladesh. This submission cannot succeed because the judge adequately addressed the point in paragraph 95, where she found that the appellant would not face a risk because he does not have a high profile as a journalist or as an activist against the current regime.
25. This is a case where the judge has not misdirected herself as to the applicable law, has not overlooked any material evidence, has not given weight to any immaterial matters, has not failed to resolve any issues in dispute, and has given comprehensive reasons. Although not explicitly framed as such, this is, as Mr Symes acknowledged at the hearing, a perversity challenge, where the appellant disputes the judge's evaluation of the facts relating, in particular, to three incidents. The difficulty for the appellant is that the conclusion reached by the judge, in respect of each of the three incidents as well as in her overall finding as to the credibility of the appellant's account, is plainly not irrational. Another judge might have been persuaded that the appellant was telling the truth about the incidents but that does not mean that it was not open to this judge to not believe the appellant, for the reasons she gave.

Notice of Decision

26. The grounds fail to identify an error of law and the appeal is dismissed. The decision of the First-tier Tribunal stands.

Appeal Number: UI-2022-003610
First-tier Tribunal Numbers: PA/52605/2020
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D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13.2.2023