



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005555
First-tier Tribunal No:
PA/50140/2021
IA/03317/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 03 April 2023

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

MJU (BANGLADESH)
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Solomon, instructed by Chancery Solicitors
For the Respondent: Mr Walker, Senior Presenting Officer

Heard at Field House on 10 March 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. I make this order because the appellant seeks international protection and doing so reduces the risk to him in the event that his claim is ultimately unsuccessful.

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh who was born on 15 March 1969. He appeals, with permission granted by First-tier Tribunal Judge Veloso, against the decision of First-tier Tribunal Judge Rodger ("the judge"). By that decision, the judge dismissed the appellant's appeal against the respondent's refusal of his claim for international protection.

2. The outcome of this appeal is agreed between the parties and this decision is in correspondingly short form.

Background

3. The appellant arrived clandestinely in the UK in February 2020 and claimed asylum the following month. He claimed that he had been politically active for the opposition party in Bangladesh; that false charges had been made against him; and that there was an arrest warrant outstanding.
4. The Secretary of State accepted that the appellant was a member of the Bangladesh National Party (BNP) but not that he had suffered difficulties as a result of his political beliefs. She found that his account lacked credibility for various reasons, including the fact that he had not claimed asylum *en route* to the United Kingdom.

The Appeal to the First-tier Tribunal

5. The appellant appealed. As the judge recorded at [6] of her decision, there was a significant delay in the appeal being heard. That was partly on account of documents missing from the material which had been uploaded to the MyHMCTS portal but mostly on account of the respondent's apparent desire to verify various documents which had been adduced by the appellant. On 3 August 2022, however, the respondent filed and served a letter in which she stated, in summary, that she was unable to verify documents owing to a lack of resources.
6. So it was that the appeal came before the judge, sitting at Taylor House, on 12 August 2022. The appellant was represented by Mr Solomon of counsel, as he was before me. The respondent was also represented by counsel. The judge heard oral evidence from the appellant and his witness - Mr Taleb. She heard submissions from the representatives before reserving her decision.
7. In her reserved decision, the judge accepted (as had the respondent) that the appellant was a member (indeed, a joint secretary) of the BNP. She found that the remainder of his account was not credible, however. The judge gave extensive reasons for that conclusion. At [31]-[37], the judge set out various concerns she had about the documentary evidence. At [39]-[41], she expressed concerns about the appellant's account, as provided to the respondent at interview and to her at the hearing. At [42]-[43], the judge explained why she was not prepared to attach weight to Mr Taleb's evidence. At [44], she agreed with the respondent that the appellant's failure to claim asylum *en route* to the UK did further damage to his credibility. At [45]-[46], the judge expressed further concerns about the appellant's account when set against the background material in the respondent's Country Policy and Information Note ("CPIN"). The judge summarised her findings at [49], which is in the following terms:

Overall, I do not accept that he has previously attracted the adverse attention of the Bangladesh authorities or any members or those acting for the AL or other political party or that he is likely to do so in the future. I find that the appellant sought to paint a picture that is not based on truth but which is based on events that have happened to others as set out in the objective material and that he has fabricated the main part of his account and sought to make it consistent with the objective material on treatment of high profile opponents to the Awami League in order to bolster his claim for asylum.

The Appeal to the Upper Tribunal

8. Mr Solomon advanced no fewer than ten grounds of appeal against the judge's decision. I do not propose to list those grounds in the manner they are pleaded since they can be grouped under the following heads of challenge:
- (i) The judge misdirected herself in considering the background material regarding the risk to political activists;
 - (ii) The judge failed to reach a clear finding on a material matter in issue between the parties *viz* whether the appellant was a polling agent in the 2018 elections;
 - (iii) The judge erred in her application of QC (verification of documents; Mibanga duty) [2021] UKUT 33 (IAC);
 - (iv) The judge erred procedurally, in failing to alert the appellant or counsel to various forensic concerns she had about the documents;
 - (v) The judge had given inadequate or illogical reasons for rejecting documentary evidence which was supportive of the appellant's account;
 - (vi) The judge had misunderstood the contents of documents in finding that they undermined the appellant's account; and
 - (vii) The judge had failed to take account of material matters in reaching her finding that the appellant was an economic migrant who had failed to claim asylum en route to the UK for that reason.
9. I heard lengthy submissions on these grounds of appeal from Mr Solomon, which were extended on account of difficulties in navigating differently paginated electronic bundles. I am grateful to Mr Solomon for the care with which he took me through the documents, however.
10. Having listened to Mr Solomon's submissions, Mr Walker indicated that he was not able to maintain the opposition to the grounds of appeal which had been expressed in the detailed rule 24 response which had been prepared by his colleague, Ms Gilmour. Mr Walker indicated that one matter was of particular concern to him. It was the point expressed in the second half of [7] of Mr Solomon's grounds. At [34] of her decision, the judge had found that a statement by a police officer, Md Aminul Islam, was inconsistent with the appellant's account. The appellant stated that he had absconded after it had been falsely alleged that he was involved in a violent incident on 2 January 2019. The judge thought that the statement from the officer was inconsistent with the appellant's account because it recorded that the appellant had been arrested. In fact, Mr Walker accepted, that was not what the document stated.
11. Having scrutinised the document carefully, I consider that Mr Walker's concession was properly made. The document in question is a translation of Mr Islam's statement. It appears at p256 of the Upper Tribunal bundle on the MyHMCTS system. The statement recounts a violent incident which took place between BNP and Awami League supporters on 2 January 2019. The officer states that he took an injured participant to hospital, where he subsequently died. The officer continues that he arrested:

1. Sumon (Age-20), Village Noakhala, Police Station:Muradnagar, District: Comilla, 2 Md Rubel (Age-18), Father: Md Shafiul Haque alias Shafu, Village: Noakhala, Police Station: Muradnagar, District: Comilla, 3. Md Nizam Uddin (Age-20), Father: Shamsul Haque, Village: Noakhala, Police Station: Muradnagar, District: Comilla, 5. Md Shafiul Haque Patwari alias Shafu, Father: Late Ayubul Haque Patwari, Village: Noakhala, Police Station: Muradnagar, District: Comilla. **And, 6. Md Jasim Uddin (Age-48), Father: Md Siddiqur Rahman, Mother: Foyzun Nesa, Village: Noakhala, Police Station: Muradnagar, District: Comilla, 8/10 unknown persons from Village: Noakhala, Police Station: Muradnagar, District: Comilla have been staying absconded. Though [sic] interrogating the arrested defendants, I came to know that 6. Md Jashim [sic] Uddin (Age-48), Father: Md Siddiqur Rahman, Mother: Foyzun Nesa, Village: Noakhala, Police Station: Muradnagar, District: Comilla, is the General Secretary of Jubo Dal (Youth Wing of BNP) of Noakhala Village under this police station.**

[emphasis added]

12. I am satisfied that the only correct reading of this rather dense and confusing document is as contended for by Mr Solomon, in that the full stop before the passage which I have emboldened indicates that the appellant is part of the group which 'have been staying absconded'. When I read the document as a whole, I am reinforced in that view by the fact that the officer makes reference to having interrogated certain arrested individuals and having learned from them that the appellant is the General Secretary of the Youth Wing of the BNP. That reading of the document also chimes with the alternative translations of it which appear in the papers. Insofar as the judge considered that this document contradicted the appellant's account of having absconded, therefore, I am satisfied that she misdirected herself on the evidence.
13. Mr Walker also accepted that the judge had erred in the manner contended for at [3] of Mr Solomon's grounds, in that she had failed to make a finding on the appellant's claim that he had been a polling agent in the 2018 elections. That concession was also properly made.
14. The appellant claimed to have been an election official at question 38 of the asylum interview. He stated that the police had taken his BNP ID card when he first became a polling agent and that it was partly as a result of that that false charges had subsequently been made against him. This claim is consistent with the background material and is potentially an important facet of the appellant's risk profile on return to Bangladesh. I note (as Mr Solomon did in his grounds of appeal) that this aspect of the appellant's claim is absent from the judge's decision, in that it features neither in her summary of the claim, at [10], or in her subsequent analysis. I am satisfied that it was necessary for the judge to make a finding on that aspect of the claim and that she erred in law in failing to do so.
15. Given Mr Walker's concessions, I did not consider it necessary to hear from him on the remaining grounds. In the circumstances, I propose to comment on only one of those grounds. It is the point which I have summarised at [8](iv) above.
16. It does appear to be the case that the judge failed to alert the appellant or his counsel to the concerns she expressed about the inconsistencies between the various translations which were prepared in 2020 and 2022. Both parties were

represented before the judge and I am content to accept Mr Solomon's submission that these forensic points were not taken by counsel for the respondent. If these were matters of concern for the judge, she should in my judgment have alerted Mr Solomon to that concern so that the point could have been put to the appellant. It is a peculiar situation for there to be two translations of the same documents and the appellant should have been asked why it was thought necessary to pay twice for the documents to be translated. The simple answer to the question, Mr Solomon explained before me, was that the earlier translations were considered to be inaccurate. It would obviously have been better for that explanation to have been given in a witness statement, whether from the appellant or his solicitor), or in examination in chief, but the fact that no explanation had been provided did not entitle the judge to assume that there was no explanation without putting the point to the appellant. Proceedings before the IAC are adversarial and a point which is not taken by an advocate should not ordinarily be taken, without notice, by the judge.

17. In the circumstances, and as conceded by Mr Walker, I am satisfied that the judge erred in law in dismissing the appeal and that her decision falls to be set aside.
18. In deciding whether to retain the case for remaking in the Upper Tribunal or to remit it to the First-tier Tribunal, I am mindful of what was recently said by the Court of Appeal in AEB v SSHD [2022] EWCA Civ 1512; [2023] 4 WLR 12 and by the Upper Tribunal in Begum [2023] UKUT 46 (IAC). This is clearly a case in which there will need to be a *de novo* examination of the case. It is also one in which I have expressed a concern about the procedural fairness of the first hearing in the FtT. It is in those circumstances that I will accede to both advocates' submissions that the proper course is to remit the appeal to the FtT for a *de novo* hearing.

Notice of Decision

The appeal to the Upper Tribunal is allowed. The decision of the FtT is set aside and the appeal is remitted to the FtT to be heard by a judge other than Judge Rodger.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 March 2023