



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005469
First-tier Tribunal No:
PA/54187/2021
IA/12391/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 April 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

MMM
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr P Lewis, counsel instructed by Ascentim Legal Solicitors
For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

Heard at Field House on 19 April 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

Introduction

1. This is an appeal against the decision of Designated First-tier Tribunal Judge Shaerf heard on 12 September 2022.
2. Permission to appeal was granted by on first-tier Tribunal Judge O'Brien on 17 November 2022.

Anonymity

3. Such a direction was made previously and is affirmed as this is a protection appeal.

Background

4. The appellant is a national of Bangladesh now aged thirty-four. He entered the United Kingdom on 31 January 2010 with leave to enter as a Tier 4 (General) migrant. After the appellant's leave expired on 17 October 2011, he made no applications to extend his leave nor regularise his stay. On 2 November 2016, the appellant was apprehended and served with a notice of removal as an overstayer. He failed to report as requested on 12 December 2016. On 30 August 2017, the appellant made an asylum claim which was refused. The appellant's appeal against that decision was dismissed on 7 February 2019. Following further submissions made on the appellant's behalf, the Secretary of State refused the protection claim by way of a decision dated 6 August 2021, which is the subject of this appeal.
5. The basis of the appellant's protection claim, in brief, is that he was a member of the Bangladeshi Nationalist Party (BNP), he is politically active in the United Kingdom and that owing to this activity his life is at risk at the hands of members of the Awami League (AL). The decision letter adopted the findings of the previous judge and dismissed the appellant's subsequent claimed political activities concluding that he was, 'at best a low-level member of the BNP, and therefore not at risk of persecution.'

The decision of the First-tier Tribunal

6. Following the hearing before the First-tier Tribunal, at which the appellant was the sole witness, the judge accepted that the appellant had been beaten by AL members in 2008, that he had attended BNP meetings in the United Kingdom but nonetheless concluded that he was not at risk in Bangladesh for those reasons. The appellant's documentary evidence was rejected as the judge saw no reason to depart from the findings of the earlier judge.

The grounds of appeal

7. The grounds of appeal are threefold. Firstly, that there was a lack of adequate reasons for the judge's conclusions as to the risk to the appellant on account of his sur place activities. Secondly, there was a failure to consider the risk to the appellant if he were to continue his political activities on return to Bangladesh. Thirdly, the judge's approach was erroneous in relation to the corroborative evidence relating to the death of the appellant's brother.
8. Permission to appeal was granted on the basis sought with the judge granting permission making the following comments.

The judge's reasoning at paragraph 42 is confusing and arguably contradictory as to whether his sur place activities would place the appellant at risk on return. If the judge did in fact accept that the appellant was a sincere BNP activist, it is arguable that he erred in failing to consider the appellant's case in accordance with HJ(Iran). Ground 3 is considerably less persuasive. However, having granted permission on the other grounds, I consider it appropriate to grant permission on all three.

9. The respondent did not file a Rule 24 response.

The hearing

10. At the outset, Ms Nolan stated that the respondent accepted that the First-tier Tribunal materially erred in relation to the matters set out in grounds one and two. That left only the third ground, which was opposed. I then heard succinct submissions from Mr Lewis and Ms Nolan. At the end of the hearing, I informed the parties that I was satisfied that ground three was also made out. I set out my reasons below.

Decision on error of law

11. Ms Nolan was right to concede that grounds one and two identified material errors of law. In finding that the appellant's activities in the United Kingdom would not put him at risk of persecution, the First-tier Tribunal took no account of the background material, including in the most up to date CPIN on Bangladesh. Nor did the judge consider the risk arising to the appellant from his Facebook postings, in light of that background evidence. As for the second ground, given the positive findings made by the judge, there was a material error in the lack of consideration of whether the appellant would continue his opposition politics on return to Bangladesh.
12. The third ground concerns the judge's approach to the evidence relating to the claimed killing of the appellant's brother as well as a failure to take into consideration the background material. The judge's main criticisms of an online news article reporting the death of the appellant's brother were that no original was available and that this article was not corroborated by any other reports of the same incident. The reference to an original of an online article appears misplaced. Furthermore, the judge had regard to other articles which solely appeared online, including the BBC report he referred to at [41]. In view of the background evidence showing large numbers of politically motivated killings and disappearances, the judge's expectation that there would be an additional report relating specifically to the appellant's brother, is flawed. While Ms Nolan asked me to preserve the judge's findings on the matters referred to above, I am satisfied that they are unsafe and cannot stand.
13. I canvassed the views of the representatives as to the venue of any remaking and both were of the view that the matter ought to be remitted if there were no preserved findings of fact. Applying *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), I carefully considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statements. I took into consideration the history of this case, the nature and extent of the findings to be made as well as the fact that the nature of the errors of law in this case meant that the appellant was deprived of an adequate consideration of his protection appeal. I further consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and therefore remit the appeal to the First-tier Tribunal.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, by any judge except Designated Judge Shaerf.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 April 2023