



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006328

First-tier Tribunal Nos: PA/56185/2021
LP/00305/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 14 July 2023

Before

UPPER TRIBUNAL JUDGE KEITH
DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

SI
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Byrne, Counsel instructed by Messrs Paul John & Co Solicitors
For the Respondent: Mr Terrell, a Senior Home Office Presenting Officer

Heard at Field House on 26 May 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

Background to the Appeal

1. We provided an oral decision with reasons after the hearing which is set out below.
2. The background to the matter is that the Appellant is a citizen of Bangladesh. He appeals against the decision of First-tier Tribunal Judge Burnett, whereby the judge had dismissed the Appellant's appeal against the Respondent's decision contained within a Reasons For Refusal Letter dated 17th December 2021. The appeal was in relation to the Appellant's protection claim and in respect of the Appellant's appeal relating to human rights grounds.
3. The First-tier Tribunal noted that the Appellant's case was that his difficulties arose out of matters in respect of his involvement with the Bangladeshi Jatiotabadi Jubodal [BJJ], translating to the Bangladeshi Nationalist Youth Party. The Appellant was said to be involved in the party in 2007. In the United Kingdom the Appellant claimed to have been involved politically with the Bangladesh National Party [BNP].
4. The Appellant's grounds of appeal against the decision are detailed but contend in summary as follows:
 - (1) That there was an error of fact and/or a failure to consider relevant evidence because the judge said he had not been provided with a letter confirming the Appellant's work for the BNP whereas the bundle before the FtT had included a letter from the general secretary of the UK branch of the BNP confirming the Appellant's work with that party;
 - (2) The FtT materially erred in-law in giving only "very little weight" to the supporting letter from the BJJ, being the Bangladeshi Nationalist Youth Party;
 - (3) The risk to the Appellant has increased since 2018 and thereby the fact of the dismissal of the Appellant's previous appeal to the Tribunal before 2018 had to be considered through that lens;
 - (4) The FtT failed to consider the background evidence sufficiently or at all;
 - (5) The FtT failed to appropriately consider the risk on return;
and
 - (6) The judge took into account irrelevant matters relating to the Appellant's motive for claiming asylum.

Permission to Appeal

5. Permission to appeal against the decision of the FtT was granted by First-tier Tribunal Judge Dempster by way of a decision dated 29th January 2023. Judge Dempster noted, in particular, that whereas the FtT had concluded that there was no sufficient evidence there was in fact supporting evidence of the Appellant's claim, including in respect of the Appellant's refugee sur place activities, supported by a letter from the general secretary.

The Submissions Before Us

6. We first heard submissions on behalf of the Appellant. In summary, Mr Byrne submitted that ground 1(A) was not a mere failure to have regard to the letter from the General Secretary. He said the incorrect adverse finding went further because the judge said evidence had not been provided. Mr Byrne said that it was not correct for the judge to positively assert that evidence had not been provided.
7. In view of the importance being laid on that ground of appeal, we invited Mr Terrell to respond to Mr Byrne's submissions at this stage. Mr Terrell submitted that when one looks at the letter itself, it was not a letter 'from' the BNP, it was a connection which could not be made. The author was a past senior member and General Secretary of the BJJ, but the letter was not 'from' the BNP and therefore the FtT was correct that there was no letter 'from' the BNP. Mr Byrne responded to say that in reality it was in the most technical and literal response which was being relied upon by Mr Terrell. Mr Byrne said that the judge had said he had taken all of the evidence into account but he clearly had not and that it strained a proper reading of what was being said by the judge.
8. We then heard from Mr Byrne in respect of his other grounds of appeal. He said his second point was that the judge had said that there was no member of the BNP who attended court to give evidence. Mr Byrne said it needed to be noted that this was a letter from the BNP in Bangladesh and therefore, in reality, it would not be possible or feasible for that person to attend court in London to give evidence.
9. Mr Byrne submitted that the risk to the Appellant needed to be looked before and after 2018. The relevance being was because 2018 was the date of the elections in Bangladesh. Mr Byrne said it needed to be recognised that the judge had said that he found it telling in respect of the way in which the Appellant presented matters. This meant that the judge saw the difference in risks over the years as important, whereas Mr Byrne said that when one looked at paragraphs 23 and 24 of the Appellant's witness statement, this explained itself sufficiently. He stressed that whereas the judge had said in his determination at paragraph 40 that there was a delay in claiming asylum, in fact there was no delay in that the asylum claim was made in March 2019, which was just a few months after the elections in Bangladesh. Mr Byrne said where there was reference to the Appellant having returned to Bangladesh in 2009 and 2011, those visits to Bangladesh long predated the year when significant risks arose much later after the elections in 2018.
10. Mr Byrne took us to various parts of the bundle including the Appellant's witness statement where the dates and timings were set out previously before the First-tier Tribunal. Mr Byrne stated that ultimately there was simply a misunderstanding by the judge of the Appellant's case. Mr Byrne took us to his further grounds of appeal including at 1(d) where he said that there was reference by the judge at paragraph 52 to objective evidence and digital surveillance whereby the judge ultimately concluded that this Appellant would not be at risk in view of the relatively limited social media posts that had been before the judge. Mr Byrne took us to various parts of the background evidence including the Freedom House Report and a Human Rights Watch Report. He also informed us that in his skeleton argument before the FtT, he had also set out various paragraphs in relation to the background material, which he had forwarded to the Tribunal today as well.

11. Mr Byrne also referred to his other grounds of appeal including, in respect of the refugee sur place aspects and he said that what arose there was the '**HJ (Iran) v Secretary of State for the Home Department** [2010] UKSC 31 scenario', to use his terminology. Ultimately, after referring to his second ground of appeal, which he took briefly, Mr Byrne said that the motivation for the Appellant's refugee sur place activities becomes irrelevant. He said, if the activities give rise to risk, then the risk is what is relevant and has to be considered.
12. We then heard submission from Mr Terrell. There was no Rule 24 reply but Mr Terrell was able to make detailed submissions. He, said that the first letter, it was not possible to read it in a way in which it can be said that it was a letter from the BNP and that therefore the judge was plainly right to say, as he did, that there was no letter from the BNP. Insofar as the second letter at page 97 was concerned, the judge had referred to this letter and at paragraph 46 in particular, it showed that the letter was not consistent with the Appellant's claims and that was because this letter, read correctly, suggested that more than one person was tortured, which was inconsistent with the Appellant's claims.
13. We were taken to paragraph 4.1 of the screening interview and Mr Terrell said that it could be seen that the judge was clearly correct because there was an inconsistency with the Appellant's claim. The judge was entitled, said Mr Terrell, to place limited weight on the letter, for the reasons that had been provided by the judge.
14. Insofar as the Appellant's claim, as to when the risk first materialised, Mr Terrell said that this was vague and looking at paragraph 23 of the Appellant's witness statement that "the Appellant walks something of a tightrope" and that the main problems started from 2014 and then after the 2018 general election. Mr Terrell said that it was not correct that the problems started after 2018 because, according to the Appellant, there was some risk predating that and that the trips to Bangladesh were in secret and that the Appellant was not telling anyone of them.
15. Mr Terrell said that the judge was perfectly entitled to take the point that he did in relation to this aspect of the Appellant's case. Mr Terrell said that he accepted that the Appellant did mention the Appellant's parents having political involvement and there being that risk but Mr Terrell said that it did not detract from that and it was all the more surprising that the Appellant on return in 2014 referred to the risk. Mr Terrell said there was simply no material error.
16. In respect of the social media grounds, Mr Terrell highlighted to us that ultimately this was a case in which there were only four screenshots and that was what was presented to the judge within the Appellant's bundle. This was a private social media account and not open to members of the public. There was no chronology of the Appellant's activities and the judge had properly referred at paragraph 48 to the Upper Tribunal's decision in **PJAK (sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC)** and what Mr Terrell asked rhetorically is why would someone who has these four social media posts be targeted in this context and he submitted that it was unlikely that the Bangladeshi authorities would target somebody like this and it was stressed that the background or the objective material referred to within the skeleton argument at the FtT really relates to others who have been charged with spreading rumours about the state. He submitted that this Appellant is not in that category. The ultimate submission was that looking at the case holistically, there

was no risk on return and the judge disbelieved the claim and that the judge was entitled to do so.

17. Mr Byrne responded and provided further submissions including in relation to the Appellant's father and he also responded to other parts of Mr Terrell's submissions.

Consideration of the Claim and Decision

18. We have considered the rival submissions. We conclude that there is a material error of law in the decision of the First-tier Tribunal. We come to this conclusion for the following reasons.

19. Firstly, the First-tier Tribunal stated at paragraph 46 that it did not have a letter from the BNP. Indeed, the judge said:

"I note that there is no letter from the BNP confirming the Appellant's role, his attendance at any demonstrations in the UK and his current political involvement."

20. We have looked at that letter which is at pages 11 and 12 of the bundle, which was before the FtT. It clearly shows the following was set out within a letter (we have anonymised the Appellant's name),

"I write in respect of Mr [xx] with the aim of particularly highlighting his political involvement in the UK. Mr [xx] was an active member of the UK Branch of Bangladesh Nationalist Student Party, student wing of Bangladesh Nationality party (BNP).

I was General Secretary of the UK Branch of Bangladesh Nationality Student Party. I did seek Asylum and it was granted on 29th August 2014. Mr [xx] is personally known to me. He was focused as a student activist. I am a witness from 2020 of his several protest and rallies against the Sheikh Hasina regime in Bangladesh.

In this situation I would like to conclude my saying that there is a possibility of Mr [xx] to be persecuted and tortured if he goes back to Bangladesh. So his situation can be considered for sack of humanity. I wish him safe and secure life."

21. Whilst it is strictly correct in the most of literal senses that the letter was not sent by the BNP, it was clearly wrong for the Judge to suggest that there was no supporting letter from the BNP because this letter was from the student wing of the BNP and the author was the General Secretary of the UK Branch of the BJJ.

22. The First-tier Tribunal also said at paragraph 43 that there were various letters in the bundle in respect for the Appellant's first appeal, but the judge said none of the letters mention anything of the Appellant's political involvement in the UK. Again, read correctly and in context this is wrong because the FtT did have the letter which was referring to the Appellant's political activities and as we have just read out, it is clear that the ex-general secretary said that he was a witness on behalf of the Appellant.

23. We have considered Mr Terrell's submissions and we conclude that he said and had done all that he could in seeking to resist this and the other grounds of

appeal. Whilst Mr Terrell is correct that the letter does not state that it is from the BNP and that therefore in that literal sense, the judge was correct to say that there was no letter 'from' the BNP, we conclude that the letter from Mr J was of crucial importance and required a finding, indeed it required a specific finding, as to its veracity and its place within the assessment of the Appellant's asylum claim as a whole. That holistic assessment is missing in our view. The failure to refer to that letter specifically, whether it was from the Bangladesh Nationalist Student Party or from the BNP was not of real substance in our judgment. The important assessment being that the letter was a crucial piece of evidence and it had required a specific finding.

24. Secondly, we then turn to the letter from the BJJ, the Youth Party. The Appellant's grounds of appeal contend that "very little weight" was given to the letter by the FtT. We conclude that whilst, on its own, such a ground of appeal would usually be difficult to mount because 'weight' is for the judge, in the context of this protection claim, to which the lower standard of proof applies and to which the most anxious scrutiny has to be applied, we consider that this ground of appeal is also made out. We conclude that is especially so when coupled with the Appellant's first ground of appeal that the judge had failed to note or to take into account the letter from Mr J. We are satisfied that had the judge correctly considered this letter, then he would have correctly considered the letter from Mr J too. The judge would then have also cumulatively considered the letter from the BJJ as highly supportive of the Appellant's claim.
25. We consider that these two grounds of appeal are sufficient to show that the decision of the First-tier Tribunal cannot stand. Had it been necessary we would have gone on to consider the other grounds of appeal. Indeed, we asked Mr Terrell what his approach would have been if we found ground 1 to be proved (noting the ground is 1a to 1e) and he said that if we were satisfied that that ground 1, was proved, then the judge's whole decision would be tainted requiring further consideration.
26. In our judgment the two grounds in respect of the documents have been made out. They are of such importance that they undermine the whole of the judge's determination. It is clear to us that the judge had not considered the letter from the former General Secretary within the determination. If the judge had considered the letter then he would have said so. It is not sufficient to attempt to strain to read the determination that the judge 'must have' taken the evidence into account. Further, we conclude that the judge would not have said what he did at paragraph 43 if he had taken the letter into account in his decision. Therefore, whilst it is correct that the judge said that he had considered all of the evidence, we conclude that it is clear that the judge did not take into account this crucial part of the evidence.
27. We also add for completeness, that many of Mr Terrell's other submissions in response to the remaining grounds of appeal related mainly to whether or not the Appellant and his family were at risk from the Bangladeshi authorities whereby the Appellant, for example, had not mentioned risk in the way now being advanced at his previous hearing and whereby the Appellant had visited Bangladesh.
28. As was observed during the discussion part of the hearing today, in reality there was a timing issue. Namely that the elections in Bangladesh were in 2018 and it was then that the risks of violence and the crackdowns escalated exponentially. Indeed the background material confirms this and as we have said already, the

skeleton argument cited to the judge had referred to various background material. That background material has also been provided to us today. We therefore conclude that there is little of substance to the Respondent's response to the other grounds of appeal because the risks to this Appellant were clearly of a much lower scale prior to 2018. It meant that the Appellant was not of any lesser interest to the authorities at the time of the hearing before the judge, compared with the situation prior to 2018. The Appellant's appeal needed to be looked at in the full and proper context in terms of what was happening over very many years with the background material in mind. Indeed we note that the Appellant's visits to Bangladesh were very many years before the elections in 2018.

29. We come to a similar conclusion about the Respondent's response to the Appellant's grounds about the refugee sur place activities. Again, we do not need to consider those grounds in detail because of the fundamental flaw we have identified in the first part of ground 1 of the Appellant's submissions.

Disposal and Re-Making of Decision

30. Accordingly, we set aside the decision of the First-tier Tribunal. We apply **AEB [2022] EWCA Civ 1512** and **Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC)**, and having we carefully consider whether to retain the matter for remaking in the Upper Tribunal in line with the general principle set out in Paragraph 7 of the Senior President's Practice Statement. We take into account the history of this case, the nature and extent of the findings to be made and that this appeal requires assessment of the Appellant's credibility. In considering paragraph 7.1 and 7.2 of the Senior President's Practice Statement there has to be a re-assessment of the Appellant's claim as a whole, we conclude that fairness requires that there be a re-hearing at the First-tier Tribunal and that the Appellant be afforded the opportunity of having his appeal heard by the First-tier Tribunal.

Notice of Decision

31. **The decision of the First-tier Tribunal contains material errors of law and we set it aside.**
32. **The matter is remitted to the First-tier Tribunal for re-hearing. None of the findings previously made shall stand**

Order Regarding Anonymity

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Deputy Upper Tribunal Judge Mahmood

Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 May 2023