IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003651

First-tier Tribunal No: PA/52091/2022
IA/05351/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 16 September 2024

Before

UPPER TRIBUNAL JUDGE O'BRIEN

Between

SI (BANGLADESH)
(ANONYMITY ORDER IN FORCE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr N Aghayere, legal representative
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 5 August 2024

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 appeals against the decision of First-tier tribunal Judge Clarke ('the judge') who, in a decision and reasons promulgated on 4 April 2023, dismissed the appellant's appeal against the respondent's decision to refuse his protection and human rights claim.

2. Permission to appeal was granted by First-tier Tribunal Judge Choudhury on 29 August 2023 on all 3 pleaded grounds, namely that the judge:

    a. Confined herself to the findings of the previous First-tier Tribunal Judge and did not make findings of her own, particularly given the new evidence;

    b. Did not deal with the appellant's reliance on KK & RS (Sur place Activities, risk) Sri Lanka (CG) [2021] UKUT 0130 (IAC) ; and

    c. Failed to assess the appellant's medical evidence give adequate reasons for finding that he can access medical services in Bangladesh.

3. The respondent did not submit a rule 24 response; however, Mr Parvar did confirm today that the appeal was opposed on the basis that it was clear from the reasons that the judge's decision did not involve the making of an error on a point of law, or that any error was immaterial.

The Judge's Decision and Reasons

4. The judge found that the appellant was only a low level supporter of the Bangladesh Nationalist Party (BNP) [19], that he was no longer politically active [20], that he would attract no adverse attention from the Awami League (AL) [ibid], that he could access treatment for his medical conditions [21], that he would face no very significant obstacles to reintegration [23] and that removal would be proportionate [24]. She made extensive reference to earlier findings of First-tier Tribunal Judge Parker ('the previous judge') from a decision and reasons promulgated on 26 June 2018.

Submissions

5. Mr Aghayere submitted that the judge merely repeated at [14-16] excerpts from the earlier findings of First-tier Tribunal Judge Parker ('the previous judge') and undertook no assessment of her own of that portion of the appellant's case. That failure to consider conscientiously those matters for herself undermined the entirety of judge's conclusions. Mr Aghayere noted the judge's reliance on BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC) when assessing the risk to the appellant arising from his sur place activities [17] and argued that it was an error for her not to follow the later case of KK & RS, cited by him in argument, which suggested that a real risk of persecution would arise at a lower level of political involvement than envisaged in BA. As for the medical evidence, Mr Aghayere submitted that the judge had overlooked two significant medical issues that the appellant was noted to have – fainting fits and suicidal ideation – and had also failed to give reasons why he could access relevant treatment in Bangladesh.

6. Mr Parvar accepted that [14-16] did indeed comprise only quotes from the previous judge's decision and reasons; however, he argued that it was clear from reading the judge's reasons (and in particular [19]) that she had considered for herself whether he had made out his case. Mr Parvar submitted that KK & RS was a Sri Lanka country guidance case and that the findings therein on the level of political activity which would give rise to a real risk of persecution were specific to Sri Lanka and not expressed as principles of general application. Mr Parvar submitted that there was no proper basis to find that the judge had overlooked

any of the relevant medical evidence. As for the two specific conditions referenced by Mr Aghayere, the documentation disclosed no such diagnoses but rather recorded the appellant's self-reporting. In any event, the appellant had advanced only one basis upon which he would be unable to access necessary treatment: his political affiliation. Mr Parvar submitted that the judge had dealt with that in permissible manner.

Conclusions

7. The approach to be taken in hearing a second appeal to the factual findings made in an earlier appeal is addressed by the guidance in Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka* [2002] UKIAT 00702; [2003] Imm AR 1. In terms of the general approach to be taken, the following is said at [37-38]:

> [37] ...The first Adjudicator's determination stands (unchallenged, or not successfully challenged) as an assessment of the claim the Appellant was then making, at the time of that determination. It is not binding on the second Adjudicator; but, on the other hand, the second Adjudicator is not hearing an appeal against it. As an assessment of the matters that were before the first Adjudicator it should simply be regarded as unquestioned. It may be built upon, and, as a result, the outcome of the hearing before the second Adjudicator may be quite different from what might have been expected from a reading of the first determination only. But it is not the second Adjudicator's role to consider arguments intended to undermine the first Adjudicator's determination.
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> [38] The second Adjudicator must, however be careful to recognise that the issue before him is not the issue that was before the first Adjudicator. In particular, time has passed; and the situation at the time of the second Adjudicator's determination may be shown to be different from that which obtained previously. Appellants may want to ask the second Adjudicator to consider arguments on issues that were not - or could not be - raised before the first Adjudicator; or evidence that was not - or could not have been - presented to the first Adjudicator.

8. As for the more specific guidance, the following points are relevant:

   a. The first Adjudicator's determination should always be the starting-point. It is the authoritative assessment of the Appellant's status at the time it was made [39(1)].
   b. Facts happening since the first Adjudicator's determination can always be taken into account by the second Adjudicator [39(2)].
   c. Facts personal to the Appellant that were not brought to the attention of the first Adjudicator, although they were relevant to the issues before him, should be treated by the second Adjudicator with the greatest circumspection. An Appellant who seeks, in a later appeal, to add to the available facts in an effort to obtain a more favourable outcome is properly regarded with suspicion from the point of view of credibility [40(4)].
   d. If before the second Adjudicator the Appellant relies on facts that are not materially different from those put to the first Adjudicator, and proposes to support the claim by what is in essence the same evidence as that available to the Appellant at that time, the second Adjudicator should

regard the issues as settled by the first Adjudicator's determination and make his findings in line with that determination rather than allowing the matter to be re-litigated [41(6)].

e. The force of the reasoning underlying guidelines (4) and (6) is greatly reduced if there is some very good reason why the Appellant's failure to adduce relevant evidence before the first Adjudicator should not be, as it were, held against him [42(7)].

9. Undoubtedly, the judge took the previous judge's findings as her starting point [13]. The criticism is that she took her reasoning no further and that the previous judge's findings were also her end-point, certainly in respect of those findings quoted in [14-16]. However, it is important to bear in mind what issues were decided by the previous judge.

10. The answer to that can be found in [13] and [17]. In [13], the judge says, 'The Immigration Judge rejected that the AL would be interested in the Appellant on return as he was at best a low-level member of the BNP and therefore did not have a significant risk profile.' The previous judge necessarily was considering only the appellant's political activities in Bangladesh and his sur place activities to the date of the previous hearing. I should note also that the respondent had not conceded before the previous judge that the appellant had any involvement with the BNP.

11. Clearly the judge did take into account the fact that the respondent had now conceded that the appellant was a low-level member of the BNP [8]. However, it is also said that the judge also had new evidence before her. According to Mr Aghayere, that evidence comprises: a new witness statement from the appellant; a BNP letter dated 1 September 2022; further BNP letters; letters from Golapganj Helping Hands (UK) and a number of photographs of the appellant at meetings or demonstrations.

12. Some of the letters to which I was referred I strongly suspect were before the previous judge given their dates (such as the BNP letter dated 5 May 2018 and the Golapganj Helping Hands (UK) letter dated 13 May 2018) and, if not, certainly should have been. The high point of those two letters is that the former describes the appellant as 'former publicity secretary' and suggests that it is not safe for the appellant to go to Bangladesh and that the latter says that the appellant is an 'active member' of the organisation and a 'social activist within the Bangladeshi community'. Two undated BNP letters refer to the appellant's membership of the 'Golapgonj Upazila' section of the BNP without any detail of his role or activities. A further BNP letter dated 7 February 2020 describes the appellant as an 'activist of the BNP since 2006'. The 'new' Golapganj Helping Hands (UK) letter gives no additional information than their previous letter.

13. I should note that there also appeared to be before the judge letters from the appellant's brother, sister and wife. However, the letters from the appellant's family add effectively nothing to the appellant's case. I also note that the appellant relied on a witness statement dated 30 August 2022, in which he referred to the above letters and claimed to have been significantly politically active until his health deteriorated, as a result of which he no longer attended political activities.

14. The judge expressly considered the recent photographs [18]. It is also clear from [20] that she considered his most recent witness statement.

15. It is fair to say that the judge does not expressly state that she found no basis to depart for the previous judge's earlier conclusions. However, I am not persuaded that she has thereby erred in law. She expressly considers for herself the new photographs and new witness statement and there is no basis to believe that she failed to consider the (possibly) new letters, their having been referred to in the new witness statement. She reaches her own conclusions on the extent of the appellant's support for the BNP [19], the extent of his activities [20] and the consequential risk he faces from the AL [ibid].

16. Even if the judge did, by failing to explain why she did not depart from the previous judge's conclusions and/or by failing expressly to deal with all of the new evidence, err in law, it was not a material error. No rational judge could have considered the new evidence a proper basis to depart from the conclusions of previous judge (save to the extent conceded by the respondent). Ground 1 therefore fails.

17. The judge does not refer in her reasons to KK & RS (Sur place Activities, risk) Sri Lanka (CG) [2021]. It is her failure to do so in preference to the older case of BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT36 which is said to give rise to legal error. However, neither of these country guidance cases concern Bangladesh. The appellant relies on paragraphs 455-456 of KK & RS which consider the meaning of 'significant role'. However, it is the meaning of that phrase as used in paragraph 356(7)(a) of the previous Sri Lanka country guidance case of GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) which is being considered (see paragraph 434) and the analysis in paragraphs 455 and 456 concerns the Government of Sri Lanka's attitude to Tamil separatism. These is not an analysis of general application.

18. In any event, the judge's conclusion that the appellant was a low level supporter of the BNP was unarguably open to her on the evidence. It was the unimpugned finding of the previous judge that the appellant was 'at best a low level member and supporter' and, as I have found above, it was open to (indeed inevitable for) the judge not to depart from that finding. Notwithstanding the judge's repeated reference to BA, it was in fact by reference to the applicable Country Information and Policy Note that the judge concluded that the appellant would not as a low level support be at risk on return [19]. That particular point was not taken in the grounds (and certainly permission was not given on that basis), and in any event would be hopeless. Consequently, ground 2 fails.

19. In support of ground 3, the appellant relies on GP records and a GP letter dated 1 September 2022. Mr Aghayere submits that these disclose two particular conditions (fainting fits and suicidal ideation) not taken into account by the judge.

20. Regarding the former, the GP noted that the appellant had complained of these in 2017 and had been referred to cardiology for investigation which found no abnormalities. Regarding the latter, the appellant commenced a course of antidepressants (citalopram) and was referred to Newham Talking Therapies (NTT) in 2019. He completed a course of 'psychology' in 2019 and had intermittently taken citalopram until his last prescription request in Oct 2021. Above all, the GP indicated that he could not comment on the appellant's current health as he was last prescribed medication in October 2021 and had last been seen in the practice in Feb 2020. The discharge letter from NTT, attached to the GP's letter, noted the 'great progress' made by the appellant, the belief that he

had the tools to cope with future difficulties and the opinion that there were no risks on discharge.

21. The judge's consideration of the medical evidence, whilst brief, was unarguably adequate. The judge's reasons record that the only basis upon which it was suggested that the appellant would be unable to access any necessary treatment: his political affiliation. She cannot be criticised for failing to deal with any other arguments now advanced. In any event, given the state of the medical evidence before her, it is fanciful to suggest that any other conclusion would have been open to her. Ground 3 fails.

Anonymity

22. Subsequent to the grant of permission to appeal, Upper Tribunal Judge O'Callaghan made an order for the appellant's anonymity. I maintain that order at least until such time as the appellant's appeal rights are exhausted or until further order.

Notice of Decision

1. The judge's decision did not involve the making of an error of law, or alternatively any material error of law, and the appeal is dismissed.

Sean O'Brien

Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 September 2024