IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001499

First-tier Tribunal No: IA/04869/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 2 July 2024

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

MB
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr B Hawkin, of Counsel, instructed by Diplock Solicitors
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 18 June 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

Introduction

1. The appellant is a citizen of Bangladesh born in November 1980. He arrived in the UK on 2nd August 2011 with a Tier 4 student visa. His student leave was curtailed to end on 17th June 2013. He made two further applications to remain in 2014 and 2016, both of which were unsuccessful. The 2016 application was a human rights claim which led to an appeal which was dismissed. He applied for asylum on 13th December 2018. His appeal against this decision was dismissed on all grounds by First-tier Tribunal Judge Cartin in a determination promulgated on the 15th December 2023.

2. Permission to appeal was granted by Upper Tribunal Judge Keith on 8th May 2024 on the basis that it was arguable that the First-tier judge had erred in law in failing to properly determine the claim based on sur place activities within the UK. Permission was also granted to argue the second ground based on failure to consider the documentary evidence adequately although this was assessed as less strong. A decision was not made on whether to admit the new evidence as a full application under Rule 15(2A) had not been made.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so to determine whether any such error was material and whether the decision should be set aside.

Submissions – Error of Law

4. In the grounds of appeal and in oral submissions from Mr Hawkin it is argued, in short summary, as follows. Firstly, it is contended that the First-tier Tribunal failed to specifically consider and made findings on the appellant's sur place claim, a material matter in the appeal, which it is argued is supported by his own witness statement, the witness statements of two others, photographs and a letter from his party, Shechasebok Dal UK, and was raised in the skeleton argument. It is argued that political activists in the UK are being persecuted on return to Bangladesh if they have been involved with anti-Bangladeshi government protests, and that this is supported by the CPIN Bangladesh: Political parties and affiliation September 2020. It is argued that the only reference to political activity in the UK is at paragraph 32 of the decision where it is stated that the appellant had not engaged in political activity in the UK until 2016 when considering the credibility of the appellant's asylum claim and his delay in claiming asylum.

5. The second ground contends that material evidence was wrongly assessed. It is argued that it was wrong to fail to give weight to the legal documents because the appellant's solicitor had mistakenly failed to provide the email correspondence which showed the opinion had been sent to a UK solicitor, in circumstances where this error was not the appellant's fault. Ultimately it transpired that the email, which clearly was not before the First-tier Tribunal, showed that the legal documents had been sent by Azim Uddin from email azimuddin~@~.com to Andre Minnaar. The sender's name and email

does appear on the documents supposedly from Md Azim Uddin of the Sylhet District Bar Association. But the email contains no further information confirming that this person is genuinely a lawyer. There is also no evidence that the documents were provided as a result of the UK based solicitors having contacted Mr Uddin of there own accord rather than the appellant simply having arranged for the documents to be sent by Mr Uddin.

6. Thirdly, it is argued, that the appellant would also have succeeded on Article 8 ECHR grounds if he had been found to been at real risk of serious harm due to his protection claim so this decision also errs in law.

7. No Rule 24 notice was lodged but Mr Terrell opposed the appeal. He argued that there had been no separate argument before the First-tier Tribunal that the appellant was at risk on return to Bangladesh because of sur place activities in the UK, either in the skeleton argument or elsewhere. The sur place activities were only relied upon to show that the appellant was genuine in his political beliefs, and thus that the evidence of sur place activities meant that he should be found to be credible in his contended Bangladeshi activities which had led to his problems with the authorities. This is also reflected in what is set out at paragraph 4 of the decision as the issues in the appeal, and paragraph 12 of the decision in the submissions the submissions. Therefore, in accordance with Lata (FtT: principal controversial issues) [2023] UKUT 163, the First-tier Tribunal rightly did not examine this issue. Mr Terrell also argued that the cover email, which was not before the First-tier Tribunal and so they could not be criticised for not considering, took the issue of the genuineness of the legal documents and the status of Mr Uddin, the contended Bangladeshi lawyer no further. There was no error on this basis either.

8. At the end of the hearing I informed the parties that I found that the First-tier Tribunal had not erred in law but that I would set out my full reasons in writing.

Conclusions – Error of Law

9. The First-tier Tribunal gives numerous reasons for not giving weight to the lawyer in Bangladesh's letters and court documents at paragraphs 22 –31 of the decision. These reasons relate to the extensive and implausible delays in the processing of the charges by the court system; the lack of any bar reference number or any other identification number for the contended lawyer Mr Uddin; the lack of dates on the letters; the poor quality drafting; dates mentioned in documents being after the date of the document itself; and the country of origin evidence about the ease by which fraudulent documents such as these can be obtained. Whilst the fact that these documents were not shown to have been obtained by lawyer to lawyer communication is relied upon at paragraph 28 of the decision this is only one point amongst many for

not placing reliance on the documents. The grounds only assert that the documents were sent to the UK lawyer not that he requested them from a Bangladeshi lawyer, Mr Uddin. The additional email, which was not provided to the First-tier Tribunal, is consistent with these documents having been sent to the UK lawyer but not that they were sent as a result of lawyer to lawyer communication. I find that no error of fact has arisen as a result of this email not having been provided to the First-tier Tribunal by the appellant's representatives. The email is not evidence that Mr Uddin was contacted and identified as a lawyer by British solicitors, and also contains no additional evidence that Mr Uddin is indeed an advocate and member of the Sylhet Bar Association. I therefore find that this is not an error of fact amount to an error of law applying E v SSHD [2004] EWCA Civ 49 because it led to no material mistake on the part of the First-tier Tribunal.

10. In so far as the grounds contend that Mr Masud's knowledge of the appellant's political activities in Bangladesh is inaccurate set out in the decision I find that what is said at paragraph 36 of the decision accurately reflects that it is not clear in the statement whether this came from what the appellant told him after the event or was contemporaneous.

11. At paragraph 32 of the decision there is reference to the appellant's lack of UK activity until 2016 in the UK when considering the credibility of claim to have been a relatively senior figure in the BNP student wing. I find that it is the case that there was no consideration by the First-tier Tribunal as to whether the appellant was separately placed at risk on return to Bangladesh by these activities. The appellant definitely maintains he has been active with Schchasebok Dal UK at paragraph 32 of his witness statement and this is confirmed by the other witnesses. However I agree with the submissions of Mr Terrell that at no point either in the skeleton argument, the witness statements or the recorded submissions for the appellant at the hearing before the First-tier Tribunal, as set out at paragraph 12 of the decision, is there an argument that these activities separately place the appellant at risk on return to Bangladesh. I find therefore that this argument was not made before the First-tier Tribunal. As set out in Lata at point 4 of the head note: "It is a misconception that it is sufficient for a party to be silent upon, or not make an express consideration as to, an issue for a burden to then be placed upon a judge to consider all potential issues that may favourably arise, even if not expressly relied upon. The reformed appeal procedures that now operate in the First-tier Tribunal have been established to ensure that a judge is not required to trawl though the papers to identify what issues are to be addressed. The task of a judge is to deal with the issues that the parties have identified." I find that there was no failure of anxious scrutiny by the First-tier Tribunal, or other error of law, in not dealing with a separate risk arising from the appellant's sur place activities in the UK as this was not identified in any way, through witness evidence, the skeleton argument or in oral

submissions as the case the appellant wished to put for being at real risk of serious harm on return to Bangladesh.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

2. I uphold the decision of the First-tier Tribunal dismissing the appeal on asylum, humanitarian protection and human rights grounds.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25th June 2024