IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002492

First-tier Tribunal No:
PA/56295/2023
LP/02018/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 31 December 2024

Before

UPPER TRIBUNAL JUDGE PINDER

Between

M A M
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M McGarvey, Counsel instructed by Seren Legal Practice.
For the Respondent: Ms Nwachukwu, Senior Presenting Officer.

Heard at Field House on 19 November 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 with the permission of First-tribunal Judge Gumsley granted on 23rd May 2024 against the decision of First-tier Tribunal Judge Webb. By their decision of 13th April 2024, Judge Webb ('the Judge') dismissed the Appellant's appeal against the Respondent's decision dated 24th August 2023 to refuse his protection and human rights claim.

Background

2. The Appellant is a citizen of Bangladesh, who pursued his protection claim on the basis that he was an activist for the BNP. The Appellant had entered the UK on 8th January 2020 on a false document, which contained a student visa that he had obtained in Bangladesh. He subsequently claimed asylum on 15th March 2022.

3. In her decision, the Respondent had accepted the Appellant's identity and that he was a low level supporter of the BNP. The Respondent also accepted that if the Appellant was at risk, this would be as a result of a Refugee Convention reason, namely his political opinion. The Respondent considered that the Appellant's actions had engaged s.8 Asylum and Immigration (Treatment of Claimants etc) Act 2004 ('the 2004 Act'). This was because the Appellant had used a false document to enter the UK and had delayed claiming asylum by over two years after his entry in 2020.

4. Before the Judge, the Appellant was represented by Mr McGarvey of Counsel, as he was before me, and the Respondent by a Presenting Officer. At the hearing, Mr McGarvey confirmed that the Appellant was not seeking to pursue an Article 8 ECHR claim. The Judge heard oral evidence from the Appellant, as well as from a friend of the Appellant's, and submissions from the advocates before reserving their decision.

The Decision of the First-tier Tribunal Judge

5. After recording the pre-liminary issues raised at the hearing, the issues in dispute and the correct legal framework, the Judge set out their findings from [20] onwards. The Judge correctly directed themselves on the relevant principles and authorities when assessing the credibility of an appellant's account at [22]-[23] and then considered the issues raised by the Respondent as engaging s.8 of the 2004 Act. The Judge accepted at [25] the Appellant's explanation in relation to the false document - this having been secured by the broker used when arranging his travel to the UK. The Judge did not therefore consider that this issue damaged the Appellant's credibility more generally.

6. In respect of the delay in claiming asylum, the Judge found at [26]-[28] that the Appellant's explanations and oral evidence were not reasonable and did not satisfactorily address this issue, thereby damaging his credibility pursuant to s.8. The Judge did also note at [28] that this was one of the factors that he would need to consider when assessing the credibility of the Appellant's account.

7. At [29]-[36], the Judge considered the other issues that had been raised by the Respondent against the Appellant finding in favour of the Appellant. This included the following:

   (a) The Appellant had reasonably explained why he had not travelled soon after obtaining his student visa in December 2019;
   (b) Any inconsistency on the period that he had been detained for in 2015 (between the account given at screening interview and subsequently) was minor and did not adversely affect the Appellant's credibility;
   (c) The Appellant had not been inconsistent in respect of the reasons why he had come to the UK;
   (d) The Appellant would have been able to leave Bangladesh without adverse attention from the authorities on account of his false document.

8. The Judge then considered the evidence of the Appellant's friend but determined at [39] that little weight could be placed on this since he was not able to give first hand evidence of events in Bangladesh after 2013.

9. The Judge's findings against the Appellant's account set out at [40]-[42] and included that the Appellant had described himself as a member of the BNP in his asylum interview, had a membership card but did not pay any membership fees. This was not consistent with the background information concerning membership costs. The Judge did not accept the Appellant's submission that the Appellant was a student member, who therefore "may" not pay fees, as the Appellant had not described himself as a student member in his accounts. The Judge did find at [43] that the Appellant had otherwise given a clear, consistent and detailed account of the activities that he had carried out for the BNP in Bangladesh and this was also consistent with the background evidence, which added to the credibility of the Appellant's account.

10. Drawing the above positive findings together, the Judge accepted at [44] the Appellant's account to have been an activist for the BNP and that he had come to the attention of the authorities, as claimed, in 2015, when he was detained on politically motivated criminal charges. Further, at [45] that this amounted to persecution with the Judge correctly directing themselves to the principle that past persecution is a serious indication that a fear of future persecution is well-founded.

11. Following the above, the Judge went on to consider the Appellant's account of events between 2015 and his departure from Bangladesh in

2020. At [47]-[48], the Judge recorded that the Appellant's evidence was that he continued the same activities following his arrest and detention in 2015, as he had done before, and that the authorities had come to his house once during the night and a few times during the day. The Appellant had also stated that they had come once after he had left Bangladesh and that the actions of Awami league members against him following his arrest were limited to threatening telephone calls. On this basis, the Judge found at [48]-[49] that the actions of the police and Awami League were not sufficiently serious by nature or repetition to amount to persecution, serious harm or cruel, inhuman or degrading treatment. This was particularly so in light of there being a five or so year period after the Appellant's arrest and detention, during which if the Appellant had been of interest to the authorities as a result of his continued activities, more robust action would have been taken against him again.

12. Similarly, the Judge found at [51] that if the Appellant was to return to Bangladesh and continue with the same activities, he may continue to have visits from the police and telephone calls from Awami league members, as he has had previously, but no more than that and that this would not be sufficiently serious by nature or repetition to amount to treatment, prohibited by the Refugee Convention and/or the ECHR.

The Appeal to the Upper Tribunal

13. Permission to appeal was granted on a limited basis by First-tier Tribunal Judge Gumsley. Judge Gumsley considered that it was arguable that the Judge had not provided adequate reasons as to why the police visits and Awami League member telephone calls, that may continue, would not amount to persecution going forwards. Judge Gumsley also considered that given the contents of the Appellant's skeleton argument, it was also arguable that the Judge had made a mistake of fact in relation to the level of the Appellant's claimed involvement with the student wing, and thereafter permitted this to affect his overall credibility assessments.

14. The Respondent had not sought to file and serve a Reply to the grounds of appeal under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

15. Mr McGarvey, on behalf of the Appellant, relied on the grounds of appeal as drafted and which attracted permission to appeal and made further oral submissions before me in response to Ms Nwachukwu's oral submissions defending the Judge's decision. I have addressed those respective submissions in the section immediately below when setting out my analysis and conclusions.

16. I reserved my decision at the conclusion of the parties' respective submissions.

Analysis and conclusions

17. I am not satisfied that the Judge has materially erred in law. In respect of the Appellant's first ground of appeal, the Judge gave adequate reasons for finding that the Appellant would not be at risk of persecution/serious harm and/or any ill-treatment contrary to Article 3 ECHR. Those reasons, as can be seen from my summary above, related to the absence of such treatment experienced by the Appellant, on his own case, between the time of his release from arrest and detention in 2015 to his leaving Bangladesh for the UK in 2020. It was also the Appellant's case that he had not altered the way in which he conducted himself and had not stopped undertaking the political activities, which led – as the Judge accepted – to the Appellant's ill-treatment in 2015.

18. I agree with Ms Nwachukwu that the Judge had correctly directed themselves at [45] to Paragraph 339K of the Immigration Rules concerning the serious indication that past persecution does provide. However, it is trite to note that that provision and/or principle is a "serious indication" and is therefore not determinative of persecution being repeated in the future. Paragraph 339K does also provide the caveat that there must be good reasons to consider that such persecution or serious harm will not be repeated and in my judgment, the Judge has considered and found such good reasons. Those reasons are, in my view, grounded, as I have already addressed, in the Appellant's own case.

19. The Appellant had also relied on the authority of *Demirkaya v Secretary Of State For Home Department* [1999] EWCA Civ 1654 and specifically paragraph 22 of that judgment for the proposition that it is incumbent on a tribunal to explain why they consider that there has been such a significant change that an appellant is no longer at risk. However, I do not consider that what is stated at paragraph 22 by the Court of Appeal is anything more than specific to the Appellant and to the country conditions in Turkey at the time.

20. Returning to this appeal, the period of time that elapsed following the Appellant's release from detention is by no means insignificant and the Judge also took into consideration that the threatening telephone calls from the Awami League members and the handful of visits from the police to his home, did not result in ill-treatment of the Appellant – on the Appellant's own case - in that five or so year period. The Judge was therefore entitled to take this into consideration and to find against the Appellant on this point.

21. With regards to the second ground of appeal, it was submitted in writing on behalf of the Appellant that the Judge had made a mistake of fact: that the Appellant was not associated with youth or student wings of the BNP party when in fact it had been submitted (again in writing) as part of the Appellant's skeleton argument that the Appellant had engaged in political activities including meetings and demonstrations with the student and youth wings. I do not consider that the Judge has made this

error of fact. As per my summary above, the Judge found [42] that the Appellant had not described himself as a "student member", which is different to what was presented to the Judge in the skeleton argument, namely that the Appellant was involved in meetings with the student and youth wings.

22. In addition, even if there was an error of fact, I am not of the view that such an error is significant, or indeed amounting to a material error of law. The Respondent had accepted in this case that the Appellant was a low-level supporter of the BNP and did not, as I understand it, significantly dispute the Appellant's involvement in political activities in the UK. It has not been particularised before me, whether in writing or in oral submissions, how any such error of fact, if made, would be material in displacing the Judge's findings on risk on return. No pleadings to that effect have been placed before me.

23. I also remind myself of the guidance from Green LJ in the Court of Appeal in *Ullah* at [26], which provided as follows and which has application to first ground in particular pursued by the Appellant:

> Sections 11 and 12 TCEA 2007 Act restricts the UT's jurisdiction to errors of law. It is settled that:
>
> (i) the FTT is a specialist fact-finding tribunal. The UT should not rush to find an error of law simply because it might have reached a different conclusion on the facts or expressed themselves differently: see *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49 [2008] 1 AC 678 at paragraph [30];
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> (ii) where a relevant point was not expressly mentioned by the FTT, the UT should be slow to infer that it had not been taken into account: e.g. *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49 at paragraph [45];
>
> (iii) when it comes to the reasons given by the FTT, the UT should exercise judicial restraint and not assume that the FTT misdirected itself just because not every step in its reasoning was fully set out: see *R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority* [2013] UKSC 19 at paragraph [25];
>
> (iv) the issues for decision and the basis upon which the FTT reaches its decision on those issues may be set out directly or by inference: see *UT (Sri Lanka) v The Secretary of State for the Home Department* [2019] EWCA Civ 1095 at paragraph [27];
>
> (v) judges sitting in the FTT are to be taken to be aware of the relevant authorities and to be seeking to apply them. There is no need for them to be referred to specifically, unless it was clear from their language that they had failed to do so: see *AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296 at paragraph [34];
>
> (vi) it is of the nature of assessment that different tribunals, without illegality or irrationality, may reach different conclusions on the same case. The mere

fact that one tribunal has reached what might appear to be an unusually generous view of the facts does not mean that it has made an error of law: see *MM (Lebanon) v Secretary of State for the Home Department* [2017] UKSC 10 at paragraph [107].

24. It is also well established that the reasons given by a judge for conclusions made on an appeal need not be extensive - *Shizad (sufficiency of reasons: set aside)*.

25. In addition to the authorities I have referred to above, I also reminded myself that the Judge's decision should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirection simply because they might have reached a different conclusion on the facts or expressed themselves differently: **AH (Sudan) v Secretary of State for the Home Department** [2007] UKHL 49; [2008] 1 AC 678, at [30].

26. The Judge's decision is comprehensive and contains clear reasons for each of the findings made therein. As Ms Nwachukwu submitted, the findings are also well-balanced with the Judge finding on several occasions against the Respondent on other issues and the Judge's findings on credibility are well structured, very clearly following the guidance that they directed themselves to at [22].

27. It follows therefore that I am satisfied that the Judge has set out sufficient reasons for finding that there is no reasonable degree of likelihood that the past persecution to which the Appellant was subjected in 2015 would be repeated on any return to Bangladesh by the Appellant. Furthermore, that the Judge did not err in fact with regards to the Appellant's involvement with the student wing of the BNP and that if any error was committed, such an error is not material. The Judge's decision does not disclose any errors of law.

28. In the circumstances, I dismiss the Appellant's appeal and order that the decision of the Judge shall stand.

Notice of Decision

29. The Appellant's appeal is dismissed. The Judge's decision to dismiss the Appellant's protection and human rights appeal stands.

Sarah Pinder

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17.12.2024