IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003272

First-tier Tribunal No: PA/01632/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 3rd of October 2024

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

R K
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R. Akther, instructed by Raiyad Solicitors
For the Respondent: Mr N. Wain, Senior Home Office Presenting Officer

Heard at Field House on 26 September 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 appealed the respondent's decision dated 18 October 2023 to refuse a protection and human rights claim.

2. First-tier Tribunal Judge Bunting ('the judge') dismissed the appeal in a decision sent on 28 May 2024.

3. The appellant applied for permission to appeal to the Upper Tribunal on the following grounds:

   (i) The judge erred in considering credibility issues arising from section 8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 ('AITCA 2004') as the starting point for his assessment of credibility.

   (ii) The judge erred in failing to assess the credibility of the appellant's account in the proper context of the concessions that were made by the respondent and failed to consider adequately or at all material documents that were relevant to the assessment.

   (iii) The judge erred in failing to consider the risk on return with reference to the background evidence relating to the risk to BNP members generally.

4. First-tier Tribunal Judge Hollings-Tennant granted permission in an order dated 05 July 2024.

5. The solicitors representing the appellant failed to comply with the Upper Tribunal's standard directions to file and serve a composite bundle for the hearing, despite a second piece of correspondence reminding them to do so. Further action may be taken in future under the *Hamid* jurisdiction if the Upper Tribunal notes a pattern of repeated failure to comply with orders made by this tribunal.

6. I have considered the First-tier Tribunal decision, the documentation that was before the First-tier Tribunal, the grounds of appeal, and the submissions made at the hearing before coming to a decision in this appeal. It is not necessary to summarise the oral submissions because they are a matter of record, but I will refer to any relevant arguments in my decision.

7. The Supreme Court in *HA (Iraq) v SSHD* [2022] UKSC 22 reiterated that judicial caution and restraint is required when considering whether to set aside a decision of a specialist tribunal. In particular, judges of the specialist tribunal are best placed to make factual findings. Appellate courts should not rush to find misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently: see *AH (Sudan) v SSHD* [2007] UKHL 49 and *KM v SSHD* [2021] EWCA Civ 693. Where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account: see *MA (Somalia) v SSHD* [2020] UKSC 49. When it comes to the reasons given by the tribunal, the court should exercise judicial restraint and should not assume that the tribunal misdirected itself just because not every step in its reasoning is fully set out: see *R (Jones) v FTT (SEC)* [2013] UKSC 19. I have kept these considerations in mind when coming to my decision.

Decision and reasons

8. The appellant entered the UK on 15 March 2011 with entry clearance as a student. The appellant did not apply to extend the visa when it expired after 18 months. He knowingly remained in the UK for many years before he was discovered working illegally in December 2018. It was only after he was encountered and detained that he made a protection claim in February 2019.

9. The appellant said that he joined the BNP in Bangladesh in 1997. He was active as a 'publicity secretary' in his local area between 2001 and 2010. He came to the attention of the local members of the Awami League. In August 2010 he was attached by members of the Awami league at a large protest. Following this incident, the appellant said that members of the Awami League reported a false criminal case against him. This was said to be the reason why he left Bangladesh. The appellant feared that he would be arrested on return to Bangladesh.

10. The respondent accepted that the appellant may have been a member of the BNP, but as a low level member, the respondent did not accept that the appellant would be at risk in light of the evidence contained in the CPIN on Bangladesh. The respondent did not accept that it was plausible that the appellant would be sentenced in absentia in 2019, many years after the incident that was said to have taken place in August 2010.

11. The judge started his consideration of the evidence by considering the credibility of those aspects of the account that were still in dispute. He began by considered whether the appellant's immigration history, and the 8 year delay in claiming asylum, might impact on his claim to be at risk of arrest if returned to Bangladesh. In considering this issue, he referred to the statutory provisions contained in section 8 AITCA 2004. These are statutory provisions that require a decision maker to 'take into account' specified behaviours that are likely to be damaging to the credibility of an appellant. The fact that a person does not make an asylum claim when they have a reasonable opportunity to do so, or does so only after they have been arrested under an immigration provision, are factors that are identified in the statute as damaging.

12. In *SM (Section 8: Judge's process) Iran* [2005] UKAIT 00116 the Asylum and Immigration Tribunal found that: 'There is no warrant at all for the claim, made in the grounds, that the matters identified by section 8 should be treated as the starting point of a decision on credibility.' The tribunal went on to find that the matters identified in section 8 AITCA 2004 may or may not be part of any particular claim and that their importance will vary with the nature of the claim that is being made and the other evidence that supports it or undermines it.

13. In my assessment, the argument made in the first ground is misconceived. The mere fact that the judge began his assessment of the credibility of the appellant's claim with reference to section 8 does not disclose an error of law. The tribunal in *SM (Iran)* only found was that it was not a requirement to begin credibility findings with an assessment of section 8 matters, not that beginning with an assessment of section 8 would amount to an error of law. Having found that some of the matters outlined in section 8 were damaging to the appellant's credibility, the judge made clear at [45] that these were only some of the factors that might be relevant 'and can never be determinative of credibility'. He did not make any clear finding in relation to credibility at that point. This approach is broadly consistent with the overall task of assessing evidence as a whole as outlined at [9]-[10] in *SM (Iran)*. For these reasons, I find that the first ground does not disclose an error of law in the First-tier Tribunal decision.

14. However, the second ground of appeal discloses a fairly clear error of law relating to failure to give reasons for rejecting evidence produced by the appellant in support of his claim that charges were laid against him by the police and that he had been convicted of a crime in his absence. At [38] the judge noted

that this was an issue in dispute between the parties. The judge made the following findings at [49]-[51]:

> ’49. The respondent did not challenge the appellant’s account of being injured at a demonstration. However, whilst that was clearly unacceptable, it does not show that he was individually targeted by opponents rather than being someone who [was] caught up in political violence.
>
> 50. The appellant is an intelligent and well-educated man, and it would appear that the only reason to not claim protection in the circumstances that he found himself is that one does not have sufficient confidence in the strength of it to withstand scrutiny.
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> 51. In light of that, even to the lower standard, I do not accept that he was targeted in Bangladesh, or that he had attracted the interest of the police (at the behest of the Awami League). Applying Tanveer Ahmed, I do not accept that I can rely on the documentation provided.’

15. The judge did not identify the ‘documentation provided’ by the appellant, nor give any reasons, let alone adequate reasons, for apparently rejecting it. It is insufficient to simply refer to the decision in *Tanveer Ahmed (Documents unreliable and forged) Pakistan* * [2002] UKIAT 00439 without giving reasons for placing little weight on a document produced in support of a claim. That case is not authority for the suggestion that all documents purporting to be from an appellant’s country of origin should be given little weight. The case still required a judge to conduct an adequate assessment of the range of possibilities that might occur in assessing what weight should be placed on a particular document. If, in the alternative, the judge was using his earlier negative findings as a means of rejecting the documents, that would also amount to an error of approach because the documents should have formed part of a holistic assessment of the appellant’s credibility.

16. The second ground refers to ‘the fact of the Appellants (sic) outstanding arrest warrant’. The appellant’s bundle included a document that in the index was said to be an ‘arrest warrant’. When the document is considered it is a typed document in English on what appears to be a plain piece of A4 paper. On the face of the document, it purports to be issued by ‘The Chief Judicial Magistrate’ and the ‘Officer in Charge (GM Branch)’. It is entitled ‘Handover the accused’. The document states that a person with the appellant’s name ‘is convicted under section 143/186/332/353/307/34 of the Penal Code for 04 (four) years 02 (two) months imprisonment… at the Chief Judicial Magistrate Court, Moulvibazar’. The document does not clearly identify the charges nor state on what date the conviction was said to have taken place. The document goes on to state that an arrest warrant was issue against the accused at a specified police station on 17 August 2010. The document concludes by stating that a notice of arrest warrant was published in a named newspaper on 10 March 2020. The ‘arrest warrant’ itself is not dated. It contains what appears to be a red sticker/seal towards the bottom right of the document but the details of the seal cannot be discerned. On the top left of the document is a purple stamp of a ‘Notary Public’ and towards the bottom left is another purple stamp from the same person stating that the document was ‘Attested’ on 29 April 2024. The document appears to be accompanied by a ‘Notarial Certificate’ from the same Notary Public of the Court in Moulvibazar, again in English, and again, dated 29 April 2024.

17. The next page is a scanned/photocopied page of a newspaper that appears to be in Bengali. The only English in the title appears to indicate that it might be the

newspaper referred to in the ‘arrest warrant’ but there appears to be no English translation or any evidence to indicate whether the original copy of the newspaper was produced in evidence. In the bottom right hand corner is a box with a black border. The box contains a photograph of a man and some text in Bengali. The box is surrounded by an area of white, which although difficult to discern in a scanned copy, appears to obscure some of the edges of the text in bottom right hand side of the article to the left.

18. Without wanting to express my own view of this evidence, not having heard from the appellant as to how he obtained this evidence, or having heard evidence in relation to the timing, content, or its reliability, it did at least require some reasoning from the judge before it could be rejected. For this reason, I conclude that the second ground discloses an error of law in the First-tier Tribunal decision.

19. The second ground is framed as an error relating to the assessment of credibility, and makes other points arguing that it was perverse for the judge to find that, while not disputing that he might have been attacked during general political violence, there was little evidence to suggest that the appellant was targeted by Awami League supporters. Those findings were open to the judge to make given that the appellant’s evidence was that it was a large demonstration.

20. The third ground tends towards general submissions on the background evidence. It is trite that a judge does not need to refer to each and every piece of evidence although the more important or relevant the evidence the greater the need to engage with it. Having found an error of law in the assessment of specific evidence that might have been relevant to the issue of risk on return, it is not necessary for the purpose of this decision to conduct an analysis of the background evidence relating to Bangladesh that was before the First-tier Tribunal at the date of the hearing to assess whether it was as compelling as asserted in the grounds.

21. For the reasons given above, I conclude that the First-tier Tribunal decision involved the making of an error of law. The decision is set aside. The usual course would be for the Upper Tribunal to remake the decision even if it involves making further findings of fact. On this occasion the error goes to the heart of the credibility findings that will need to be remade in this case. Although some aspects of the case were accepted by the respondent, the credibility of all the issues still in dispute will need to be considered holistically. I am also conscious of the fact that there have been recent political developments in Bangladesh, which will need to be assessed for the first time. For these reasons, it is appropriate for the appeal to be remitted to the First-tier Tribunal for a fresh hearing.

Notice of Decision

The First-tier Tribunal decision involved the making of an error on a point of law

The appeal is remitted to the First-tier Tribunal for a fresh hearing

M. Canavan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

02 October 2024