



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004838

First-tier Tribunal No:
PA/56203/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 14 January 2025**

Before

UPPER TRIBUNAL JUDGE RUDDICK

Between

**SI
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: G. Balać, Counsel, Black Antelope Law

For the Respondent: A. Ahmed, Senior Presenting Officer

Heard at Field House on 2 January 2025

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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Cameron (“the Judge”) dismissing his appeal against the respondent’s refusal of his protection claim.
2. An anonymity order was made by the First-tier Tribunal. I have considered whether it is appropriate to continue that order, taking into account Guidance Note 2022 No.2: Anonymity Orders and Hearings in Private. I am satisfied that it is, because the appellant has made an application for international protection. His application has been refused by the respondent and his appeal against that refusal has been dismissed by the First-tier Tribunal. However, until his appeal is finally determined, he remains an applicant for international protection. I consider that the UK’s obligations towards applicants for international protection and the need to protect the confidentiality of the asylum process outweigh the public interest in open justice at this stage in the proceedings.
3. The appellant is a citizen of Bangladesh, and between the date of his appeal hearing before the First-tier Tribunal on 16 July 2024 and the promulgation of the Judge’s decision on 3 September 2024, there were significant political changes in his country of origin. His appeal challenges the ways in which the Judge responded to those changes.

The appellant’s asylum claim

4. The appellant was born in Bangladesh in 1984. He entered the UK on a Sector-Based Scheme Work Permit on 9 March 2009, and he has remained in the UK since that time. He applied unsuccessfully in 2014 and 2018 for leave to remain on the basis of his private and family life, and on 18 November 2018, he made the asylum claim that is the subject of this appeal. He claimed to be at risk of persecution in Bangladesh by the ruling Awami League, for reasons of his political opinions and activities in support of the Bangladesh Nationalist Party (BNP).
5. The respondent interviewed the appellant about his asylum claim on 2 August 2023 and refused the claim on 30 August 2023.
6. The appellant appealed, and his appeal came before the Judge at Taylor House on 16 July 2024. As the parties confirmed at the hearing before me, the First-tier Tribunal judge had before him evidence about country conditions in Bangladesh through 8 January 2024. In the appellant’s bundle, this consisted of two of the respondent’s CPINs on Bangladesh, Political partis and affiliation, dated September 2020, and Actors of protection, dated April 2020, and fifty pages of further reports about the political and human rights situation, published between 2 January 2019 and 8 January 2024. The respondent’s bundle included two news articles from Bangladeshi media sources, one about the Awami League, published in the Daily Star in January 2023, and one about pro-BNP activities in the UK, published by Blitz in December 2022.

7. It is common ground between the parties that on 5 August 2024, Sheikh Hasina, who had ruled Bangladesh as the leader of the Awami League since 2009, fled the country following weeks of protests. It is also common ground between the parties that at the hearing, neither of them introduced evidence about the student protest movement that was then underway in Bangladesh, and that neither of them contacted the Tribunal to ask to submit updating evidence at any time between the hearing and the promulgation of the decision.

The challenged decision

8. In the challenged decision, the Judge identifies the issues before him [7], sets out the applicable law [8] and summarises the basis of the appellant's claim and the respondent's reasons for refusal [10-14]. He then notes that he heard evidence from the appellant [15] and submissions from the representatives [16], without setting out the details.
9. The Judge's findings of fact begin by setting out the key facts of the appellant's claim, as expressed both in his witness statement and his oral evidence. These are that he had been a local member of the BNP since 2004 and had "participated in various meetings and campaigned locally on behalf of the party". This had led to "numerous attacks" from the local wing of the Awami League, "including beatings which left him injured and on one occasion unconscious." [20] The police did not assist [21]. He had not been involved in any BNP activities in the UK [24], in spite of being free to do so [27]. He had not made any enquiries about whether the Awami League was still looking for him in Bangladesh [26].
10. The Judge's consideration of the country evidence runs from [28]-[34], and includes a series of excerpts from both the 2020 CPIN, Political parties and affiliation and the 2018 CPIN, Bangladesh: Opposition to the government. At [33]-[34], he concludes on the basis of this evidence that:

"criticism against the government is treated seriously and [...] there has been action taken against even local members which has included spurious criminal charges. [...] the Awami League [...] considerably restricted the activities of opposition parties, particularly the BNP by using police and other security forces to arrest thousands of opposition party members and supporters."
11. The next section of the decision is entitled "Conclusions". These are that:
 - (i) The appellant "was a low-level member of the BNP in Bangladesh [...] and he attended some demonstrations and [...] was targeted by the Awami League at that time" [41];
 - (ii) The appellant had not been politically active in the UK and he would not have come to the adverse attention of the Bangladeshi authorities since 2009 [42];

- (iii) “Given that the appellant has not been active in this country where he accepts, he is free to express his political opinions, I am not satisfied that he would in fact on return to Bangladesh bring himself to the attention of the authorities by supporting the BNP there.” [43]
- (iv) He would not be at risk on return to Bangladesh because of his prior low-level political activities [44].
- (v) His credibility was damaged by his failure to claim asylum until 2018, after other applications had been refused [45].

12. The appellant has not challenged any of these findings.

13. The three paragraphs that follow are at the heart of the appellant’s appeal. I set them out in full:

“46. The situation has recently changed with the Prime Minister Sheikh Hasina being removed from power. It is still too early to determine what the change in regime will entail and it is not possible to conclude that the new military regime will be any more sympathetic to protests than the old regime. There are still a number of laws in place, and it is not clear whether these will be enforced.

“47. Although it is still too early to be able to determine how the position in Bangladesh will develop, I do not accept even to the lower standard of proof that the appellant’s previous low-level activities between 2004 and 2009 would now bring him to the adverse attention of the ruling regime. The Awami league would no longer be in a position to affect the appellant.

“48. I am not therefore satisfied even to the lower standard of proof that the appellant has shown that there is a real risk that he would suffer persecution on return to Bangladesh even if he continued to support the BNP there.”

14. The Judge concluded the decision by considering the appellant’s ability to reintegrate in Bangladesh and the limited evidence of his private life in the UK, before dismissing the appeal on all grounds.

The grounds of appeal

15. The appellant applied to the First-tier Tribunal for permission to appeal on the ground that “there have been significant changes within the country since his appeal was heard, which render the FTTJ’s decision unsafe”. That application pointed to the flight of Sheikh Hasina, the resignation or arrest of various high-ranking members of the Awami League and of the security forces, and the installation of an interim government, led by Muhammad Yunus, who was described as an “open critic of Sheikh Hasina” who had faced numerous charges under her regime. There was also said to be general political instability and increasing attacks on members of minority religions.

16. The grounds argued that:

“Had such information been before the FTTJ, or considered by the FTTJ in the intervening period between hearing the substantive appeal and the handing down of the decision, it is submitted that the decision of the FTTJ would have been sufficiently different to render the inclusion of this evidence material.”

17. Or, alternatively, “even if the same conclusion had been reached, there would have been a sound basis for doing so.”

18. The grounds further argued that the respondent and/or the Upper Tribunal should issue new guidance on Bangladesh as a matter of urgency.

19. At this stage, the grounds did not attempt to identify any error of law by the Judge.

20. In his renewed application to the Upper Tribunal, the appellant’s ground was recast as that “the FTTJ reached an unfounded conclusion on the developing country situation in Bangladesh,” namely, the conclusion at [46-47] that the appellant would not be at risk because “[t]he Awami league would no longer be in a position to affect the appellant.”

21. It was not said that the Judge had fallen into legal error by not asking the parties to provide him with updated evidence “once it had become clear that the status quo in Bangladesh for political activists and asylum seekers had changed dramatically”. However, as he had not done so, his finding as to the lack of risk from the Awami League was:

(i) reached without any proper foundation; and

(ii) procedurally unfair, as the “Appellant has been deprived of the opportunity to put forward submissions on the unrest in Bangladesh and the impact which this will have on him.”

22. On 24 October 2024, Upper Tribunal Judge Reeds granted the appellant permission to appeal. Judge Reeds noted that

“The fact that there has been recent political change in a country does not necessarily mean that the FtTJ’s decision was unsafe by not considering it. It does not appear that the appellant’s representatives took any steps to ask the FtTJ to reconvene the hearing before he promulgated his decision.”

23. However, Judge Reeds found that there was an arguable procedural unfairness in the Judge considering evidence of updated country conditions that had not been the subject of representations by either party, and then concluding on the basis of the evidence that the Awami League would no longer be in a position to affect the appellant.

24. On 30 December 2024, the respondent submitted a skeleton argument, together with an application under Rule 15(2A) to rely on additional

evidence, namely her CPIN Bangladesh: Political situation, which had been published on 20 December 2024. The respondent argued that the CPIN showed that the Judge's assessment of the political situation had been factually correct, and that it had been consistent with the overriding objective for the Judge to determine the appeal without inviting supplementary submissions from the parties. It would also have been "futile" to have done so, as the situation was too uncertain at that time. Moreover, the appellant had not sought to file further submissions prior to the decision.

25. The respondent then asserted that there was no procedural unfairness, although without explaining why.
26. In addition, the respondent argued that "even without the change of country situation, [...] the Judge's decision is sound and adequately reasoned."

Discussion

27. In making my decision, I have reminded myself of the principles set out in Ullah v Secretary of State for the Home Department [2024] EWCA Civ 201 [26] and Volpi & Anor v Volpi [2022] EWCA Civ 464 [2-4] and of the danger of "island-hopping", rather than looking at the evidence, and the reasoning, as a whole. See Fage UK Ltd & Anor v Chobani UK Ltd & Anor [2014] EWCA Civ 5 [114].
28. At the hearing, Ms Ahmed repeatedly urged me to admit the respondent's current CPIN, published almost four months after the decision, so that she could establish that the Judge's assessment of the Awami League's loss of power had been correct. I declined to do so. As I explained, this was an error of law hearing, and it would make no sense to consider that the Judge had erred in law by not taking into account the respondent's policy position and compilation of supporting evidence published almost four months after he made his decision. Moreover, to admit the evidence at this stage would only compound the potential for procedural unfairness. It would mean taking into account the respondent's view of current country conditions at a stage in the proceedings where current country conditions were not yet normally in issue and the appellant had not provided any updating country evidence of his own. She responded that the appellant had submitted his own evidence of post-hearing events, and complained that he had made no formal Rule 15(2A) application. I considered that the appellant's evidence was offered simply to show that there had been a very significant change in country conditions by the date of the decision, which was accepted on all sides. The appellant was not seeking to persuade me, at this error of law stage, as to what the current risk to the appellant is. None of his evidence post-dated the decision.
29. The discussion therefore proceeded on the basis that it is common ground that there was a significant change in country conditions several

weeks after the appeal hearing, but that neither party sought to make any submissions to the Judge about this change prior to the promulgation of the decision. There was no further discussion of country conditions now.

30. Ms Balać helpfully clarified that she was not arguing that the Judge erred by not inviting the parties to make submissions on the change in country conditions before coming to his decision. Instead, her argument focussed entirely on the procedural unfairness point. She argued that although the Judge said at [46] that, “It is still too early to determine what the change in regime will entail” and again at [47] that “it is still too early to be able to determine how the position in Bangladesh will develop”, he nonetheless went on to make a finding about the consequences of the change in regime, and one that was adverse to the appellant. This was obviously unfair. The Judge should have reached his decision only on the evidence before him, which (it was agreed by both parties after consulting the bundle) was last updated after Sheikh Hasina’s re-election in January 2024.
31. Ms Ahmed responded by pointing out that there had been no challenge to any of the findings at [41]-[44] about the lack of risk to the appellant from the Awami League regime when it was in power. The comments about the lack of risk after the fall of the Awami League were simply an afterthought and therefore immaterial. Without the challenged two paragraphs, the decision would stand.
32. Ms Balać responded that the Judge’s decision needed to be read as a whole, and that we could not know that his view of the lack of risk post 5 August 2024, expressed at [46]-[47], had not infected his assessment of risk in the preceding paragraphs.
33. I am grateful to both representatives for their submissions. Having read the decision carefully and taking into account the principles set out above at [27], I conclude that the Judge did err by making a finding about the impact on the appellant of the Awami League’s fall from power without inviting submissions from the parties. However, reading the decision as a whole, I am satisfied that that this error did not infect the findings he made on the evidence that was before him at the hearing.
34. The Judge’s consideration of the risk to the appellant on the basis of his support for the BNP and opposition to the Awami League is squarely based on the evidence of the behaviour of the Awami League while it was still in power. At [29-34], he cites excerpts from the 2018 and 2020 CPIN that refer to law enforcement working together with or on behalf of the Awami League and describe the Awami League as the “ruling” party and the BNP as the “opposition”. On the basis of that evidence, he makes strong findings about the persecution of opposition party member and supporters by the Awami League, using the apparatus of state power, including the police and the courts. There is nothing here to hint at any doubt that the Awami League is still in power.

35. This is immediately followed by an assessment of the risk to the appellant personally. It is unarguably clear that this assessment proceeds on the basis that the Awami League are still “the authorities” and the BNP are still the opposition. He begins by making findings about the appellant’s role in the BNP in Bangladesh [35, 41] and the harm he suffered from the Awami League as a result [36, 41], before considering whether the appellant would have “come to the attention of the authorities in Bangladesh since he came here in 2009” [42] or would “bring himself to the attention of the authorities by supporting the BNP” on return to Bangladesh [43]. The authorities are, in other words, presumed for the purposes of this assessment to be the same as they were in 2009, and to be still seeking to persecute supporters of the BNP.
36. Given the strong findings the Judge had made about the persecution of BNP supporters by “the authorities” in Bangladesh, it is a key part of his reasoning that the appellant would not actively support the BNP on his return. His remarks at [46-48], when read in their entirety and in the context of the decision as a whole, are clearly made in the alternative: “even if” (contrary to what had been found above) the appellant did support the BNP on return to Bangladesh.
37. The findings on the basis of post-hearing developments are, therefore, only put forward as an alternative to the findings on the basis of the evidence at the hearing. The decision on the basis of the evidence that was before the Judge would have inevitably been the same without this alternative finding.
38. For these reasons, the error made by the Judge in making findings on the basis of post-hearing evidence was not material and does not require his decision to be set aside.

Notice of Decision

The decision of First-tier Tribunal Judge Cameron dated 3 September 2024 did not involve the making of an error of law. I therefore uphold that decision with the consequence that the appellant’s appeal remains dismissed.

E. Ruddick

Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 January 2025