Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06145/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
Heard on 14 May 2019	**On 21 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MR MD LUTFOR RAHAMAN
(Anonymity order not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Balroop, Counsel
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Bangladesh born on 11 August 1988. He appeals against the decision of Judge of the First-tier Tribunal Oliver sitting at Hatton Cross on 11 February 2019 in which the Judge dismissed the Appellant's appeal against a decision of the Respondent dated 28 April 2018. That decision was to refuse the Appellant's application for asylum.

2. The Appellant arrived in the United Kingdom on 12 February 2011 in possession of a tier 4 general student visa valid until 6 March 2011. He applied for further leave to remain as a tier 4 general student on 30 May 2013. This was granted until 3 July 2013. On 6 August 2014 his leave was curtailed due to the closure of his course at his college. On 28 November 2014 he applied for further leave to remain as a tier 4 student which was granted on 18 September 2015 until 1 September 2016. On 16 May 2016 the Appellant's leave to remain was again curtailed this time to expire on 18 July 2016. The Appellant applied for further leave to remain outside the rules, but this application was rejected on 17 October 2016. On 23 November 2016 the Appellant was served with form IAS96 as an overstayer and he claimed asylum on the same day.

The Appellant's Case

3. The Appellant's claim was based on his political activities which had come to the adverse attention of agents of the ruling party. From 2006 to 2009 the Appellant had been the organising secretary of the Bangladesh National Party (BNP) arranging programs and demonstrations. The Appellant had held the position of assistant general secretary of the Dhamrai Thana Chatradal and was on an executive committee of this organisation in the Dhaka district. He had to go into hiding to avoid being arrested by army intelligence. After the Awami league came to power in 2008 their student wing attacked him on three occasions and tried to kill him. He had been tortured harassed and threatened by an entity called the Rapid Action Battalion (I deal with this allegation in more detail below).

4. In 2010 the police arrested him and filed some cases against him. Since he left Bangladesh his family and friends had been harassed and threatened. Some of his political colleagues had been killed by the Bangladesh Chatra league and the Rapid Action Battalion. In 2016 the Appellant's home was raided by the local police and members of the Chatra league. He had organised a series of protests in the United Kingdom and was afraid of persecution upon return. Three threats against his life had been made whilst he was in the United Kingdom. He had not claimed asylum earlier because he was in possession of a visa and had hoped for change in Bangladesh.

The Decision at First Instance

5. The Judge did not accept the Appellant's explanation for the delay in claiming asylum. The Appellant had relied on the evidence of witnesses who had themselves claimed asylum, but none had apparently advised the Appellant to do likewise for reasons which the Judge found to be without foundation. The Appellant arrived in the United Kingdom at a time when on his evidence false cases had already been filed against

him. Had the Appellant claimed asylum on arrival or at any time before November 2016 that would not have prevented him from returning to Bangladesh when circumstances improved. In the event it was not until he was served with notice of his liability to removal that he made his claim.

6. The Appellant's activities in the United Kingdom were well documented but by themselves they would not place the Appellant at risk on return if he was perceived by the authorities in Bangladesh to be merely a "hanger on" as the Respondent had described the Appellant. The Appellant had provided no supporting evidence of the claims of torture. He was clearly still in contact with his father who had supported him financially, yet the father had provided no witness statement to confirm the attacks on the family home by the police or even the recent attack upon the father himself. The production of a letter from an advocate at what the Judge described as the 11th hour was an attempt to take the court by surprise giving the Respondent no time to investigate its provenance in a country where forged documents were rife. The document could have been requested at any time in the last 3 years. It was unreliable and the charges to which it referred appeared to be easily rebuttable.

7. The Appellant was a very low-level member of an opposition grouping in Bangladesh who had failed to establish that he was in any way ill-treated before he left Bangladesh, without any trouble, on his own passport. He would not be at risk of persecution or serious ill-treatment on return. While a returnee of interest to the authorities may face ill-treatment, the Appellant would have the option to relocate because he was not of interest to the authorities. The Judge dismissed the appeal.

The Onward Appeal

8. The Appellant appealed against this decision on grounds settled by counsel who had not appeared at first instance. The first ground was that the Judge had failed to take account of an expert report from Doctor Ashraf-ul Hoque who had corroborated aspects of the Appellant's claim by reference to objective country material. It was plausible that false reports would have been filed against the Appellant in absentia by ruling party operatives. Only one of the three witnesses called by the Appellant had claimed asylum. The use of the word torture by the Appellant was simply a generalised and unfortunately inaccurate term used in one set of representations submitted by his representatives.

9. The Judge's conclusion that the Appellant's well-documented UK activities would not place the Appellant at risk given they were focused on human rights criticisms did not take into account the Respondent's country policy and information note (CPIN) which had quoted evidence that human rights defenders faced escalating repression, harassment and

threats. The Judge had erred by categorising the Appellant as a mere hanger on. The Appellant had given a presentation at Parliament and was recorded as having lectured at a public rally in February 2017. Little or no evidence or speculation was required to arrive at the strong possibility that foreign embassies not only film or photograph their nationals but have informers who can name them. It was an error to say that the charges allegedly faced by the Appellant were easily rebuttable given the expert's evidence that the issue of false charges was a common and effective method of silencing opposition. The Judge had effectively required the Appellant to give evidence of an elevated profile beyond the Appellant's own level of activism.

10. The 4th ground argued that any political supporter of the BNP faced a real risk of serious harm if they continue to exercise their right to political expression. The Tribunal had accepted that the Appellant had some political beliefs given that the evidence of the Appellant's UK activities could not be seriously disputed. There was no reason to think the Appellant would change his activities in the future unless he acted with a degree of discretion that would be driven by fear of persecution. This argument relied on the case of **HJ (Iran) [2010] UKSC 31**.

11. The application for permission to appeal came on the papers before Judge of the First-tier Tribunal Andrew on 1 April 2019. In granting permission to appeal she was satisfied that there were arguable errors of law. The Judge did not appear to have taken note of the expert evidence when assessing the credibility of the Appellant. The Judge did not seem to have considered the Respondent's own guidance in the CPIN or the level of the Appellant's political activities. The Judge had not considered the **HJ (Iran)** principles when considering whether the Appellant would be at risk on return.

The Hearing Before Me

12. In consequence of the grant of permission the matter came before me to determine in the first place whether there was a material error of law such that the determination fell to be set aside, and the appeal reheard. If there was not, then the decision at first instance would stand.

13. At the outset of the hearing the Presenting Officer raised a preliminary point that paragraph 5 (c) of the grounds of onward appeal may have some merit in relation to the complaint that there was not a lack of medical evidence corroborative of the Appellant's account of torture because he had not stated that he had been tortured. It was for the Appellant to clarify the claim, but it was not clear what his representatives had said. The Judge had taken an adverse point against the Appellant over the claims that the Appellant had been tortured, see for example [34] where the Judge referred to none of the Appellant's witnesses mentioning torture and [36] that the Appellant had provided no

corroboration of the claims of torture said to have been made at the outset of his asylum claim. Arguably the Judge should have made a finding as to whether the Appellant had alleged ill-treatment.

14. For the Appellant counsel argued that at question 66 the Appellant had been asked whether he had received any threats whilst being in Bangladesh and he replied: "they told me to quit and that if I don't do it they would harm me". The Appellant had never said he was tortured.

15. Nevertheless, the principal argument made by counsel in support of the Appellant's onward appeal was that the Judge had failed to deal adequately with the expert report of Doctor Ashraf-ul-Hoque. At [32] the Judge had stated that the expert's report "largely dealt with political background and general prospects on return it was suggested that the Appellant would be unable to relocate within Bangladesh". Counsel acknowledged that the report did set out much background material but at paragraph 60 the report dealt with why the Appellant had joined the BNP, at paragraph 76 what was the risk to the Appellant, at paragraphs 88 and 89 what the Appellant's UK activities were and why they would place him at risk on return and at paragraphs 95 to 96 the issue of internal relocation. The Tribunal it was argued had not grappled with the report's contents.

16. The 2nd part of this argument was that the three witnesses who gave evidence on the Appellant's behalf had not all claimed asylum, only one had. One had obtained leave to remain through marriage and the second had leave to remain as a result of 10 years lawful residence. The Appellant had not claimed asylum earlier because he intended to return if his party got into power. It was not his case that he had failed to claim asylum because he did not know how to make a claim. The Appellant was at risk because of his human rights activities. The Judge was wrong to say the Appellant was a mere hanger on.

17. The 4th ground was that the Appellant would be unable to continue to exercise his right to political expression relying on the authority of **HJ Iran**. I queried with counsel whether that point had in fact been made to the First-tier Tribunal or whether the first time that the **HJ Iran** point was being taken was in the grounds of onward appeal. Counsel acknowledged that there appeared to be no mention by the Appellant either in his witness statement or his oral evidence that he intended to engage in political activities upon return. The Respondent was wrong to say in the refusal letter at paragraph 99 that the Appellant had a wife in Bangladesh. He was not married.

18. For the Respondent it was argued that there was not a great deal of force in the criticism of the Judge's treatment of the expert report. The expert had laid out evidence in general terms and the adverse findings made by the Judge were permissible. Arguably what had happened about the allegation of torture was that the representations by the legal

representative were different to what the Appellant had given instructions on. Whether that was a material error of law on the Judge's part was another matter.

19. The Respondent did acknowledge that the Appellant had claimed to have given a presentation to Parliament and lectured at a public rally. Although it was the Respondent who had initially said that the Appellant was a mere "hanger on" the Respondent did not now stand by that comment. The Judge had accepted that the Appellant was involved in activities in the United Kingdom but whether those activities would lead to serious harm upon return was quite another matter. The Judge had spoken about an outstanding First Information Report (FIR) as a minor matter easily rebutted by the Appellant. There were a number of nuanced layers to the Appellant's claim.

20. In conclusion counsel reiterated that the Appellant's political involvement in the United Kingdom took on more weight in terms of the risk on return in the light of the expert's report.

Findings

21. In submissions to me counsel argued that the Appellant had never mentioned that he had been physically harmed at any stage. This submission sat uneasily with a letter written to the Respondent by the Appellant's previous solicitors, Chancery solicitors, dated 6 December 2016 which stated that the student wing of the Awami league attacked the Appellant three times and attempted to kill him. The letter then went on to say "[the Appellant] has been tortured, harassed and threatened by the Rapid Action Battalion, Detective Branch, police and BCL [Bangladesh Chatra League] cadres for his political activities which have started from March 2007" and later the letter said: "he has already been subject to persecution".

22. This letter was written 13 days after the Appellant claimed asylum and was a clear notification on the Appellant's behalf to the Respondent that the Appellant had been tortured whilst in Bangladesh. The Judge summarised this claim of torture at [15] of the determination under the subheading "Development of the Appellant's Case". The Judge noted that there was no supporting evidence to confirm the ill-treatment of which the letter complained. It does not appear that there was a repudiation of that letter by the time of the hearing in the First-tier. In those circumstances the Judge was entitled to draw the conclusion that this was part of the Appellant's case. The first repudiation of the solicitors' letter appears in the grounds of onward appeal where the reference to torture (used in the letter) is described as "a generalised term" and "unfortunately inaccurate".

23. That characterisation itself is not completely accurate since there was more to the letter than a single mention of the word torture. There was also an allegation of physical attacks and the alleged perpetrators of these attacks in Bangladesh were identified. The solicitor's letter was written to the Respondent. It is not obvious why the Respondent in submissions to me should suggest it might not be clear what the representatives had said, particularly as the Respondent had the opportunity of questioning the Appellant in interview 4 months later. It was not incumbent upon the Judge to investigate whether the Appellant had in fact been tortured. It was open to the Judge to find that an allegation of torture and ill-treatment had been made by the Appellant's solicitors but no supporting evidence to back that up had ever been produced. The representatives appeared to be embroidering the Appellant's account and that was a factor which the Judge was entitled to consider in deciding the overall credibility of the Appellant's account.

24. I was not referred to any evidence of any complaint made against the previous solicitors for example that they had acted without instructions. The letter of 6 December 2016 is a detailed one and sets out many of the Appellant's activities which he does rely on, it was not just an allegation of torture. The letter must have been written after the solicitors had taken full instructions. It was open to the Judge to find as he did at [14] and [15] that the letter was written on the Appellant's behalf and as such the lack of corroboration adversely impacted on the Appellant's credibility. The attempt in the grounds to distance the Appellant from the letter of 6 December 2016 appears to be an attempt to repair the damage to the Appellant's credibility but does not disclose a material error of law on the Judge's part. It was not a material error of law for the Judge to have regard to representations written on the Appellant's behalf and to factor those representations into his general assessment of the credibility or otherwise of the Appellant's account.

25. It is correct to say that the Judge deals with the expert's report somewhat briefly but the problem for the Appellant is that it is not the function of the expert to give an opinion on the Appellant's credibility. In this case the expert was assessing what would be the risk to the Appellant if his account were true. The Judge was aware of the Appellant's attendance at an international conference in Parliament in January 2017 as he referred to them at [22]. At [35] the Judge accepted that the Appellant's activities in the United Kingdom were well documented but did not accept that those activities would place the Appellant at risk. The Judge drew a distinction between the Appellant's human rights activities rather than any exclusively political activities. For example, it appears from the documents supplied by the Appellant that some of the representations made to Parliament were about the treatment of the Rohingya minority in Myanmar. It was open to the Judge to find that such activities were unlikely to be of concern to the Bangladesh authorities.

26. The Judge applied the description “hanger on” to the Appellant taking that from the refusal letter. That the Respondent now resiles from that description does not of itself invalidate the Judge’s conclusion. The Judge had to assess all the evidence and form his own view which happened to agree with what at that stage was the Respondent’s case.

27. It was not just the lack of corroboration of the allegations of torture which concerned the Judge. There was also the lack of supporting evidence from the Appellant’s father. The Appellant had on a number of occasions claimed that his family had been harassed by the Bangladesh authorities and it was reasonable to have expected the Appellant to have produced some supporting evidence but as the Judge noted at [36] the Appellant had not done that. The grounds complained that any political supporter of the BNP faced a real risk of serious harm if they continued to exercise their right to political expression. It does not appear to have been the Appellant’s case at first instance that he was proposing to continue political activities on return. It is not a fair criticism of the determination that the Judge failed to anticipate an argument not made before him. I disagree with the grant of permission that it was an arguable error of law that the Judge had not considered the **HJ Iran** principles when the matter had not been raised before the Judge.

28. It was speculation in the grounds to suggest that the Judge should have found that agents of the Bangladesh government had filmed the Appellant taking part in sur place activities. The Appellant’s expert stated that he was unable to say that the Appellant’s activities will have been monitored by the Bangladesh authorities and the matter therefore was for the Judge to decide. This paragraph in the grounds also appears to be attempting to raise a matter not previously argued before the Judge.

29. Whilst it might have been helpful if the Judge had dealt with the expert’s report in more detail, was not necessary for the Judge to set out each and every piece of evidence that was put before him. His overall conclusion on the expert’s report was that it dealt more with generalities. The Judge’s fundamental point was that the Appellant was engaged in a relatively low level of activities and what was undertaken in the United Kingdom was unlikely to bring him to the adverse attention of the Bangladesh authorities. At a fairly early stage in his claim the Appellant’s representatives had embroidered matters which inevitably undermined the credibility of the claim. The Judge was in a better position to assess the credibility of the claim than the expert as the Judge had the benefit of seeing the Appellant cross-examined.

30. The Judge also found against the Appellant that he had delayed a claim for asylum. The Appellant only made his claim after being served with a removal notice. This was very late in the day by any reckoning. The Judge was aware of the Appellant’s explanation for the delay but rejected it at [34] of the determination. The complaint in the grounds about this rejection is a mere disagreement with the Judge’s cogent findings. If the

Appellant had claimed earlier that would not have prevented him from returning to Bangladesh at a later date if he judged the situation to have improved.

31. The Judge explained at [37] why he placed little weight on the FIR(s) against the Appellant, the Appellant had had ample opportunity to obtain evidence confirming the import of the FIRs but instead had chosen to provide a letter at what the Judge described as "the 11th hour". That affected the weight that could be afforded to the FIRs given the background material which showed that such documents were readily issued and as the Judge pointed out in a context of widespread forged documents. That this information was photocopied only added to the Judge's anxiety about its authenticity. The grounds are a lengthy disagreement with the determination they do not demonstrate any material error of law in the Judge's decision and I dismissed the onward appeal against it.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

I make no anonymity order as there is no public policy reason for so doing.

Signed this 15 May 2019

.....
Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

No fee was payable and I have dismissed the appeal and therefore there can be no fee award.

Signed this 15 May 2019

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Judge Woodcraft
Deputy Upper Tribunal Judge