



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/10719/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 7 March 2019**

**Decision & Reasons Promulgated
On 20 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTER

Between

**SANJOY KUMAR SAHA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Swain, counsel.

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal issued on 4 January 2019 dismissing his appeal against the respondent's decision of 21 August 2018 refusing him asylum and humanitarian protection.

Background.

2. The appellant is a citizen of Bangladesh born on 17 October 1981. He arrived in the UK on 2 September 2009 as a Tier 4 (General) student. He went back to Bangladesh for the funeral of his father in November 2011. He returned to the UK on 3 September 2012 again as a Tier 4 (General) student and his leave was later extended to 30 April 2015. On 29 April 2015 he made an application under article 8 based on his private and family life. This application was refused on 6 November 2015 with an out of country right of appeal. He made further submissions on 11 December 2015, but these were rejected on 5 April 2016 with no right of appeal. He claimed asylum on 21 February 2018.
3. The basis of his claim was that he had been targeted and attacked by members of the Awami League (AL) in Bangladesh as a result of his activities with the Bangladesh National Party (BNP). He said that he joined the student wing of the BNP in 2001, organising meetings and attending demonstrations on behalf of the party. He claimed that he was attacked on 7 January 2007 while attending Bangla College and at interview said this either happened because of his activities with the BNP or because of his Hindu faith.
4. He claimed that he was attacked again on 6 April 2012 at his village home by people supporting AK, a local AL politician. The appellant said that he had a dispute with this politician who wanted to take over his properties after his father's death. He feared that he would be targeted again if he returned to Bangladesh because he had been politically active with the BNP in the UK and he had received threats on Facebook.
5. The respondent refused the claim for the reasons set out in the Reasons for Decision annexed to the decision letter of 21 August 2018. The respondent accepted that the appellant was a national of Bangladesh and a Hindu but not that he had been politically active for the BNP or had had any difficulties because of any such activities. It was not accepted that he would be of any adverse interest to the authorities in Bangladesh on return.

The Hearing before the First-tier Tribunal.

6. The appellant appealed against this decision and at the hearing before the First-tier Tribunal the judge heard oral evidence from the appellant and from three further witnesses MB, AI and AA. The judge found that the appellant did not have any significant profile within the BNP or that he had a well-founded fear of persecution on return to Bangladesh for a Convention reason [39]. He noted in respect of the claimed incident in January 2007 that in his interview the appellant stated that he was attacked either because of his involvement with the BNP or because of his Hindu faith.
7. The witness MB had stated at [6] of his witness statement that he had come to know that the appellant was attacked but he did not state how this information came to him. He said that he had visited the appellant's

house and he told him that he had been attacked by opposition party activists but in his evidence, he said that he did not see the appellant having problems in Bangladesh but had heard that he had had problems. The judge attached limited weight this evidence as he provided no detailed evidence about where and how the appellant was attacked in 2007. She also commented on the fact after being asked in re-examination about the attack in 2012, after a considerable pause, he added that the appellant had been attacked when they were both involved in politics in 2007 [27].

8. The appellant gave evidence that between 2007 and 2009 he had had occasional threats when he visited his village, but the judge found that this was vague and unsubstantiated [28]. He also claimed that he was attacked at his home in April 2012 by people who were supporters of the AL. However, the judge noted that the appellant had not provided any telephone messages of the threats that were made or discussions they had about his father's properties [28]. She also noted a letter relied upon by the appellant from RU, a local president of the AL [29]. She commented that if the appellant had a known profile in Bangladesh as an activist for the BNP in his area, she did not find it remotely credible that a local president of the AL would write a letter of support for him in his human rights application [30].
9. The judge noted the appellant had produced a number of photographs in relation to his attendance at demonstrations in London, but he had not produced a single photograph of his claimed activities in Bangladesh, although he had claimed that he had attended demonstrations and organised meetings and was generally very active. She attached limited weight to the evidence of the witnesses who attended the appeal hearing in support of the appellant's claim. AI had only met the appellant in 2015 in the UK and any information he had about his activities in Bangladesh must have come from the appellant himself. AA stated that he knew the appellant from 2012 and that he had come to know about the appellant's involvement with the BNP in Bangladesh, but he had not stated how he came to know that information [31].
10. Further, the judge found that the appellant's credibility was significantly damaged under s. 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 because he did not claim asylum either when he arrived in the UK in 2009, despite claiming he had been attacked in 2007, nor did he claim when he returned from Bangladesh in 2012. He said he had not claimed because he hoped there would be a power change in Bangladesh and that he could go back if the BNP came to power [32] He had also stated that he was advised by his solicitor to make an application on human rights grounds so that if his party came to power he could return to Bangladesh. [33]
11. The judge did not find that credible. She found that the appellant was an educated man who had previously made applications for Tier 4 student visas and was well aware that he could claim asylum. He had only made

his claim after being notified of a decision to refuse his further submissions in relation to his human rights application and had waited until as late as 21 February 2018 to claim asylum [33].

The Grounds of Appeal.

12. In the grounds of appeal it is argued in ground 1 that the judge failed to consider filed evidence of the appellant's political activism in Bangladesh and, in particular, failed give due weight to evidence at pages 68-73 of the appeal bundle, which had been referred to in the appellant's skeleton argument, and was evidence that the appellant was an active, high-profile supporter of the BNP in Bangladesh.
13. In ground 2 it is argued that the judge's analysis of the letter of support from RU disclosed an inconsistent approach to the evidence. The judge had attached significant prejudicial weight to the letter of 7 December 2015 from RU, the president of a local AL branch, said to be a man sympathetic to the appellant who did not seek to persecute him despite their different political views in 2015. The judge in [30] had dismissed that letter as not being genuine and found that his credibility was significantly diminished. That analysis, so the ground argues, was wholly at odds with the judge's subsequent finding at [39] that the letter was genuine, showing that the appellant had friends in the AL and was, therefore, not at risk of persecution.
14. In ground 3 it is argued that there was an unreasonable assessment of the evidence of MB who had attended the hearing as a supporting witness. He was an active supporter of the BNP in Bangladesh and had been granted refugee status in the UK. It is argued that the judge was wrong to place little weight on his evidence in the light of the fact that one answer had been given after some considerable pause in relation to whether the appellant had been attacked in 2007. The judge had failed to give proper weight to MB's witness statement which would confirm that, while he had not seen the appellant being physically attacked in 2007, he had seen him shortly afterwards at his home and had urged him to report the matter to the police.
15. Further, the judge had been wrong to find that there was an inconsistency in the evidence saying at [27] that MB's oral evidence was that the appellant was attacked in 2012 by members of the Chhatra League despite the appellant himself not making that claim. The ground argues that the judge failed to afford appropriate weight to the evidence of MB. In ground 5 (there is no ground 4) there is a challenge the judge's assessment of the threats received by the appellant on-line, but permission was not granted on this ground, permission only being granted on grounds 1-3.

Submissions.

16. In his submissions, Mr Swain adopted these grounds. When dealing with ground 1 he argued in substance the judge had failed to take all relevant evidence into account when considering whether the appellant had been a political activist for the BNP in Bangladesh. The judge had referred to the appellant's lack of profile but, so he argued, she had failed to take into account the evidence contained in the appellant's bundle particularly at pages 68 to 73, which showed that he was an active high-profile supporter of the BNP in Bangladesh. She had, therefore, failed to take into account the evidence relating to the extent of the appellant's activities.
17. So far as the ground 2 was concerned, he submitted that disproportionate attention had been paid to the letter from RU, provided in support of the human rights appeal in 2015, whereas the judge had failed to give similar attention to the evidence adduced on behalf of the appellant. In respect of ground 3, he argued that undue weight was given to a perceived discrepancy in the evidence between the account given by the appellant and MB in relation to the attack in 2007. The judge had not considered all the evidence and in particular MB's account in his witness statement. The appellant's account was that he was attacked by young men who were supporters of the AL and as such they would be members of the Chhatra League.
18. Ms Isherwood submitted that the judge's findings were properly open to him for the reasons he gave. The letters the appellant sought to rely on at pages 68 to 73 of the bundle were written in general terms and, in any event, the judge could not reasonably be expected to refer to each and every item of evidence. The judge was entitled to consider what inferences should be drawn from the fact that the appellant had produced a letter from a local AL president in support of his human rights application in 2015, when he based his later asylum claim on a of the AL. The judge's comments on this issue were properly open to her.

Assessment of whether the judge erred in law.

19. I must consider is whether the judge erred in law such that her decision should be set aside. Ground 1 argues that the judge failed to consider the evidence relating to the appellant's political activism in Bangladesh and, in particular, failed to attach weight to the documentary evidence at pages 68 to 73. These include a letter at 68 from the organisational secretary of the Pabna branch of the BNP certifying that the appellant was actively involved with the BNP student wing and that his family had been harassed and victimised in different ways by militant Muslim and AL leaders. The appellant's contribution to local organisational activities was described as irreplaceable.
20. At 70 there is a letter from the local president of the BNP in Pabna saying that the appellant actively participated in different organisational activities, meetings and seminars and was involved with the anti-AL movement, adding that because of different types of harassment by the

government party and militant Muslims, he had been bound to go back to the UK in 2012 after returning home because of his father's death.

21. There is no reason to believe that the judge did not take these documents into account. She said at [24] that she took fully into consideration all the documents contained in the appeal file. The appellant's bundle of documents was extensive and in excess of 400 pages. When the judge's decision is read as a whole, it is clear that she took the documentary evidence in the bundle into account specifically referring to a number of documents: she referred in [12] to page 409 showing the appellant in a photograph with the secretary of the BNP, to the Facebook messages at [29] and to the photographs produced in relation to the appellant's attendance at demonstrations in [31], in this context commenting that he had not produced a single photograph of his claimed activities in Bangladesh. She also referred at [17] to the newspaper reports in the bundle.
22. I am not satisfied that the failure to refer specifically to the documents at pages 68-73 indicates that they were not taken into account. The issue of the extent of the appellant's activities for the BNP was clearly before the judge and for the reasons she gave at [25]-[35], she reached findings properly open to her that he had failed to show that he was anything other than a low-level activist at best [35].
23. So far as ground 2 is concerned, the argument is that the judge attached disproportionate weight to the letter from RU and this was inconsistent with the way that she treated other evidence. There is no substance in this submission. Issues of weight were for the judge to assess. The grounds argue that the judge erred by finding at [30] that the letter was not genuine and is inconsistent with her comment at [39] that it demonstrated the appellant had friends within the AL.
24. However, it was for the judge to decide what inferences to draw from the fact that this letter had been produced by the appellant in support of his application for leave to remain on human rights grounds in 2015. She was entitled to draw an adverse inference from his reliance on this letter, when the substance of his asylum claim was that he would be at risk from the AL because of his activities and support for the BNP. There was no inconsistency in the way the judge assessed the evidence. It was for her to decide what weight to give to each item of evidence in the context of the evidence as a whole.
25. The third ground argues that the judge's assessment of MB's evidence was unreasonable. However, this ground, like the other grounds, raises issues of fact rather than law. When assessing MB's evidence, the judge was entitled to take into account the fact that he could not give direct evidence about the claimed attack in 2007 and the fact that in his interview the appellant had stated that he was attacked either because of involvement with the BNP or because of his Hindu faith. Similarly, the judge was entitled to note that according to MB the appellant was

attacked by members of the Chhatra League in 2012 whereas the appellant had not in fact said that himself, simply that he was attacked by supporters of the AL at the instigation of AK. I am satisfied that the grounds are in substance an attempt to reopen and reargue issues of fact where the judge reached findings properly open to her.

26. In any event, the judge had to consider the evidence of the witnesses in the context of the evidence as a whole and when assessing the credibility of the appellant's account, she was entitled to take into account the long delay in claiming asylum. He did not claim in 2009 nor when he returned in 2012. He only claimed after an unsuccessful application for leave to remain on human rights grounds in 2015 and after his further submissions had been rejected in April 2015, then only claiming asylum in February 2018.
27. The judge was also entitled to reject the appellant's evidence that he had been advised by a solicitor to make a human rights claim as, if his party came to power, he could return to Bangladesh and, as I have already said, to draw an adverse on credibility from the fact that the appellant had previously relied on a letter from a local president of the AL, but later claimed to be at risk from the AL.
28. In summary, I am satisfied that the judge's findings and conclusions were properly open to her for the reasons she gave, having taken all relevant evidence into account. The grounds of appeal do not satisfy me that she erred in law.

Decision.

29. The First-tier Tribunal did not err in law and it follows that the decision to dismiss the appeal stands.

Signed: H J E Latter

Dated: 15 March 2019

Deputy Upper Tribunal Judge Latter