



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

Appeal Number: PA/10898/2018

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice Centre  
On 7 February 2019**

**Decision & Reasons  
Promulgated  
On 28 February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**G H  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Timpson, Solicitor

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Bangladesh born on 10 August 1981. He arrived in the United Kingdom on 1 April 2008 and subsequently made an

asylum application on the basis that he feared persecution as a member and supporter of the BNP from the Awami League Party which is the party in power. His application for asylum was rejected on 4 September 2018 and he appealed against that decision. His appeal came before Judge R S Drake of the First-tier Tribunal for hearing in Bradford on 11 October 2018. In a decision and reasons promulgated on 25 October 2018 the judge dismissed the appeal.

2. The Appellant sought permission to appeal in time to the Upper Tribunal on the basis of the following grounds. Firstly, that the judge had erred materially in law in failing to take into account the evidence before the Tribunal. It was submitted the Appellant had provided adequate documentation and evidence confirming that he was a member of the BNP in Bangladesh, including a letter from the BNP branch but the judge had failed to attach any weight to this evidence, nor to the Appellant's evidence which was corroborated that he had been attacked as a consequence of his involvement with the BNP.
3. Secondly, it was asserted that the judge had materially erred in his assessment of the Appellant's credibility in that he had failed to conduct that assessment in light of the background evidence, in particular the Home Office CPIN Report: Opposition to government January 2018 at 8.2.1 which makes clear the high level of violence between the Awami League and the BNP and the judge had failed to assess the impact of this on the safety of the return of the Appellant to Bangladesh.
4. Permission to appeal was granted by Judge of the First-tier Tribunal Page in the following terms on 3 December 2018:

*"I am satisfied that an arguable error of law has been identified in the judge's decision at paragraphs 24 and 25 that could cause the Upper Tribunal to interfere. The two grounds of appeal are arguable in saying that the judge erred in law by not giving appropriate weight to the evidence before him. There is no reasoning in these paragraphs to show what parts of the evidence the judge had in mind when saying that 'most if not all of the Appellant's testimony and evidence is unsatisfactory' leaving open the possibility that some unspecified part or parts of the evidence may have been satisfactory. It is also arguable that the judge failed to give weight to the documents the Appellant provided in the absence of verification. I am satisfied that there is an arguable error of law in the judge's decision due to the paucity of reasoning and findings and give permission to appeal on both grounds".*

#### *Hearing*

5. At the hearing before the Upper Tribunal, Mr Timpson for the Appellant sought to rely on the grounds of appeal as drafted and also the terms of the grant of permission to appeal to the Upper Tribunal. He submitted the key paragraphs by the judge are those set out at [24] and [25] and that

there were real problems with these paragraphs. At [25] the judge appeared to have difficulties with the fact that the documents attesting to the Appellant's membership of the BNP had not been notarised. However, it is frequently the case that documents are not notarised and that this is not a clear finding. The judge further failed to take account of the evidence set out in the CPIN which begins at page 49 of the Appellant's bundle, see [2.3.3] at AB55, [6.1.1] at page 67, [6.1.2] and [6.1.6] at page 69.

6. Mr Timpson also drew the Upper Tribunal's attention to the fact that there is a document verification report in respect of the alleged genuine FIR at D36 to D37 of the Respondent's bundle. He submitted that if, as the evidence suggests, the police are corrupt and are aligned with the Awami League then this reduces the weight that can be attached to the absence of any formal record of an FIR. Moreover, the judge failed to make any finding in respect of the DVR in any event and generally it appeared that there were sentences and findings missing from the judge's determination which when considered overall rendered it unsafe and unsustainable.
7. Mr McVeety on behalf of the Respondent conceded in light of Mr Timpson's submissions, the terms of the grant of permission to appeal and the grounds of appeal that there was an absence of material findings by the judge and an absence of reasons as to why the judge did not find the Appellant to be credible.

#### *Findings and Reasons*

8. I find in light of Mr McVeety's helpful concession that there are material errors of law in the decision of First-tier Tribunal Judge Drake. I set out the impugned paragraphs as follows:

*"24. I find that most if not all of the Appellant's testimony and evidence is unsatisfactory and incapable of meeting the required standard as mentioned above in paragraphs 7 to 11 inclusive. I do not accept that the Appellant has established he is a BNP member at the time of the alleged assaults or that he was then a supporter but I find in any event that this alone if it had been established does not put him at risk according to the 2015 guidance and nor has he shown in his documentary or other evidence that he has any new or changed political profile such as to put him at risk on return or that relocation is not possible or there is an absence of means to resort to seeking protection from relevant authorities.*

*25. Documents produced by the Appellant to support his assertion as membership of BNP are dubious in probative quality as their provenance is not supported by anything like attestation, certification, notarisation or any other form of verification. Even if they do establish BNP membership which I do not find then for*

*the same reasons as set out earlier in paragraph 25 I find that this alone does not establish a basis for fear or real risk”.*

9. Notably the judge at [26] went on to find it was reasonably likely that the Appellant had been assaulted but the evidence does not show that the perpetrators were political opponents or that the reason for the assault was his political affiliation.
10. It is in my view apparent from the findings at [24] and [25] above that there is a paucity of reasoning underpinning those findings, such that it is possible to know why the judge reached those conclusions. In particular, although there is reference in [17] of his decision to a Home Office COI document on Bangladesh dated February 2015 and updated in January 2018, the judge has not apparently factored in the contents of that report to his overall assessment of the Appellant’s credibility.

### **Notice of Decision**

I find material errors of law in the decision of First-tier Tribunal Judge Drake. The appeal is remitted for hearing *de novo* before the First-tier Tribunal.

An anonymity direction is made.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Rebecca Chapman

Date 25 February 2019

Deputy Upper Tribunal Judge Chapman