Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: **PA/11293/2019 (P)**

THE IMMIGRATION ACTS

Decided under Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 On 22 June 2020	**Decision & Reasons Promulgated On 02 July 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

RM
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. This decision has been made on the papers, under Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008, further to directions issued by the President of the Upper Tribunal sent out on 8 April 2020 and 19 May 2020.

2. The appellant is a national of Bangladesh born on 1 May 1989. He arrived in the United Kingdom on 1 January 2010 on a student visa valid until 20 April 2012. On 24 September 2012 he made an application for leave to remain on the basis of his private and family life, but his application was refused on 6 January 2014 without a right of appeal. The appellant claimed asylum on 24 October 2016 after being arrested and detained on 21 August 2016 and served with removal papers as an overstayer. His claim was refused on 4 November 2019.

3. The appellant claimed to be at risk on return to Bangladesh because of his involvement with the political party Jamaat-e-Islami (JI). He claimed to have joined the party when studying at college in 2006 and to have become the general secretary of the student wing of the party for his area, organising large rallies and meetings. He claimed to have been accused of involvement in the murder of a JI party leader who was believed to have been murdered by someone within the party in September 2007 and that an arrest warrant had been issued for his arrest. He claimed that the police visited his home several times between 2007 and 2009 but he was not at home on any of those occasions. He left Bangladesh at the end of December 2019 after obtaining a student visa. He feared persecution by the Awami League and the police.

4. The respondent, in refusing the appellant's claim, did not accept that he was a member of the JI, owing to his limited knowledge of the party and inconsistencies and discrepancies in his evidence. The respondent considered that he would not be at risk on return to Bangladesh and that his removal to that country would not breach his human rights.

5. The appellant appealed against that decision. His appeal was heard by First tier Tribunal Judge O'Garro on 20 December 2019. Judge O'Garro accepted that the appellant was a JI party member in Bangladesh but did not accept that he was an activist and did not accept that he held the role claimed. She found that he had no political profile when he was in Bangladesh and that he would be returning there with no political profile. The judge did not accept the appellant's claim to be the subject of an arrest warrant and did not accept his reasons for leaving Bangladesh. She considered that he was not a credible witness and she did not accept his explanation for the delay in making his asylum claim. She considered that he was of no interest to the Awami League or to the authorities in Bangladesh and would be at no risk on return. She dismissed the appeal on all grounds, in a decision promulgated on 7 January 2020.

6. Permission to appeal was sought by the appellant on the grounds that the judge's finding, that the appellant was at no risk as a low level JI member, was inconsistent with the country reports which the judge had failed to consider; that the judge's findings on the lack of an arrest warrant were inconsistent with the country information; that the judge had erred by failing to consider the appellant's explanation for the delay in making his asylum claim; and that the judge made an incorrect assessment of the appellant's private life claim under Article 8.

7. Permission was granted on 6 February 2020.

8. The matter was listed for a hearing in the Upper Tribunal on 14 April 2020, but was subsequently postponed due to the circumstances relating to Covid 19. The case was then reviewed by the Upper Tribunal. In a Note and Directions initially sent out on 8 April 2020, but then re-sent on 19 May 2020 owing to the appellant's change of solicitors, the President of the Upper Tribunal indicated that he had reached the provisional view that the question of whether the First-tier Tribunal's decision involved the making of error of law and, if so, whether

the decision should be set aside, could be made without a hearing. Submissions were invited from the parties.

9. Written submissions have been received from both parties. In a rule 24 response dated 23 April 2020 the respondent responded to the grounds of appeal and made no objection to the matter being decided on the papers. The appellant's representatives made written submissions on 2 June 2020, which included an objection to the matter being dealt with on the papers under rule 34.

10. I have had careful regard to the objections made by the appellant's solicitors to the matter being decided without an oral hearing and have considered Rule 5A as inserted into the Tribunal Procedure (Upper Tribunal) Rules 2008 as relied upon by the appellant at [19] and [20] of his submissions. Rule 5A(3) makes it clear that a decision to determine a matter without a hearing is not restricted to the conditions in 5A(2). The objections at [22] to [24] are general in nature and provide no satisfactory reason as to why, in this particular case, the appellant would be prejudiced by the absence of an oral hearing. I have the benefit of submissions from both parties as well as the detailed grounds of appeal and I can find no reason why a consideration of those submissions, as opposed to hearing from counsel in person, would prejudice the appellant in this particular case. I do not accept that deciding the matter without a hearing would give rise to any unfairness and I consider that I am able, fully and fairly, to consider the error of law issue on the basis of the papers before me in accordance with rule 34 of the Procedure Rules.

11. I have therefore proceeded to consider whether or not Judge O'Garro's decision contains errors of law such that it should be set aside. I conclude that there are no errors of law in her decision. I do so for the following reasons.

12. Contrary to the assertions made in the grounds, Judge O'Garro provided various cogent reasons for rejecting the appellant's claim to have been a party activist for the JI. Paragraph 10 of the appellant's original grounds asserts that the judge failed to give him credit for the explanation he provided in his statement about his responses to questions at his interview, but that it is clearly not the case because she was prepared to accept that he had been involved with the student wing of the JI, despite the respondent's rejection of his claim in that respect.

13. The judge, however, did not accept that the appellant had any active involvement, or any particular role, within the JI, other than being a low level member/ supporter. She considered, at [31], that the absence of any harm or threat of harm to the appellant despite the evidence of violence faced by political activists, suggested that he did not have any significant profile. She noted, at [32], that the background evidence suggested that it was mainly leaders and political activists who were exposed to violence and that the appellant had provided no evidence to show that he had such a profile. The appellant's grounds seek to challenge the judge's findings in that respect, asserting that her findings showed a disregard of the reports in the background country information of problems faced by all JI members. However it seems to

me that the reports relied upon by the appellant in fact support the judge's findings, as they clearly refer to the incidents of violence, false and fabricated cases, harassment and intimidation and arrests being particularly directed against those who were leaders and political activists. There is nothing in the extensive extracts from the country information within the grounds which supports a claim that all those involved with the JI at any level are, as a matter of course, at risk of persecution, which is what the appellant is effectively arguing. It is plain that the judge had regard to all the country background evidence, in any event, and the fact that she did not make specific references to the reports does not, in my view, show that she failed to engage with the country information.

14. In addition to the absence of threats of harm and actual harm experienced by the appellant, the judge went on to give further reasons for considering that he had not provided a credible account of having come to the adverse interest of the Awami League and the authorities. The judge, at [34], noted the absence of evidence to support the appellant's claim to have had an arrest warrant issued against him. The appellant's grounds of appeal, at [9], assert that the judge was being selective in her reliance upon the background evidence in relation to the issuing of arrest warrants to the accused, and state that the evidence also showed that arrest warrants and court documents were not always delivered to the accused or their family. At [11] the grounds asserted that the judge was wrong to expect the appellant's family to attempt to obtain documents from the police. However, it seems to me that the judge was perfectly entitled to conclude that if there had been an arrest warrant issued against the appellant together with court documents, at a time when he was in Bangladesh, it was reasonable to expect evidence of such to be obtained. There was background information before her suggesting that he would have access to such documents and the judge was perfectly entitled to rely upon that evidence and draw the adverse conclusions that she did from the appellant's failure to produce relevant documentary evidence, particularly when taken together with the other cogent reasons given for finding his account to be lacking in credibility.

15. A further reason given by the judge for having concerns about the appellant's credibility was the timing of his asylum claim, which was made over six years after his entry to the UK and only after he was arrested as an overstayer. At [13] of the grounds it is asserted that the judge erred by failing to accept the appellant's explanation for the delay in making his claim. However, the judge plainly had regard to the appellant's explanation, at [39], and provided proper reasons for rejecting it and for drawing the adverse conclusions that she did from the timing of the claim.

16. For all these reasons it seems to me that the judge was perfectly entitled to conclude that the appellant was at no risk on return to Bangladesh. She had the benefit of hearing live evidence from the appellant and she provided clear and cogent reasons for concluding that he had not provided a genuine and credible account of his political profile and his reasons for leaving Bangladesh. Furthermore, the judge plainly gave full consideration to the background country information before her when assessing the risk on return and was

properly entitled to conclude that the appellant did not have a profile which would give rise to any adverse interest in him by the authorities in Bangladesh. Indeed, there is nothing in the evidence before the judge to show, even to the lower standard of proof, that a person with the appellant's history of low level political involvement in Bangladesh and with no current active involvement since coming to the UK ten years ago, would be at any risk on return to that country. The judge's findings and conclusions were cogently reasoned and were fully and properly open to her on the evidence before her. The grounds do not disclose any errors of law in her decision.

DECISION

17. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: S Kebede
Upper Tribunal Judge Kebede Dated: 22 June 2020