Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11112/2019

THE IMMIGRATION ACTS

Heard at Field House via Teams
On 14th February 2022

Decision & Reasons Promulgated
On 27th April 2022

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR MD S H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr H Broachwalla, Counsel instructed by E1 Solicitors
For the Respondent: Miss Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge S Gill, ("the judge") who dismissed the appellant's appeal against the Secretary of State's refusal on 1st November 2019 of his asylum, humanitarian protection and human rights claim.

2. The appellant is a Bangladesh national who arrived in the UK on a Tier 4 Student visa on 8th February 2010. His visa was curtailed with no right of appeal in 2015. Following being served with a notice as an overstayer he made a protection claim on 15th June 2018 and that claim was refused and thus this claim was generated. The appellant claimed that he became

involved with the Chatra Dal, a student wing of the Bangladesh National Party, whilst he was at college and prior to entering the UK in 2010 and that he commenced a blog in 2014, namely politicsofbangladesh.wordpress.com, and that his posts mainly covered politics. In May 2015 he set up a Facebook account in his own name and that everyone in the world was thus aware of his blog and Facebook posts and that he had written articles and newspapers online. He maintained he had received threats on Facebook and should he return home he feared the government and the Rapid Action Battalion, who had visited his home in Bangladesh on 4th May 2018.

3. Permission to appeal was granted by First-tier Tribunal Judge Gumsley, who was satisfied that it was arguable the judge had made various mistakes of fact when considering an analysis of the evidence and that they were sufficiently numerous and significant so as to influence the judge's decision and amount to a material error.

4. At the hearing before me Mr Broachwalla focussed on three main issues in the grounds of appeal, (1) the failure to assess the evidence properly by the judge, (2) the approach of the judge to the expert evidence of Mr G S Majumder, a lawyer of the Supreme Court who had obtained court documentation in connection with cases filed against the appellant in Bangladesh and (3) the weight given to the screening interview.

5. I deal with grounds 1 and 3 together. I am not persuaded that the judge placed undue weight on the screening interview. I accept that **YL (Rely on SEF) China [2004] UKIAT 00145** at [19] confirms that screening interviews are not conducted to establish in detail the reasons a person gives to support the claim for asylum but nevertheless, if the main element of the claim is of a political nature because the appellant asserts he risks persecution owing to his longstanding political beliefs and involvement in organisations, that is a very significant issue to omit in a screening interview.

6. It was open to the judge to place weight on the appellant's answer at [5.5] of his screening interview where he was asked "have you ever been involved with any … political organisation?" the appellant simply answered "no". He had an interpreter. He was not tired from any journey because he had been in the UK since 2010. The appellant's response was in sharp contrast with his developed claim that he had been involved in the Chatra Dal in Bangladesh since prior to his entry to the UK and the discrepancy between the screening interview in this case and his later claim was marked and it was open to the judge to refer to this. As held in **KD [2007] EWCA Civ 1384** at [8], the judge was entitled to give weight to the "absence of any reference to the trigger for the series of events which were said to give rise to a well-founded fear of persecution in the future".

7. As recorded by the judge at the impugned paragraph 30, the appellant was said to be a member of the Chatra Dal when at college in Bangladesh and prior to coming to the UK. The Chatra Dal is the student wing of the

Bangladesh National Party and it was entirely open to the judge to comment on this marked contradiction in the appellant's claim because it went to the heart of his claim for asylum. The judge gave sound reasoning for rejecting the appellant's explanation that he was "rushed" because no complaint had been made against the Secretary of State's interviewer.

8. However, contrary to the judge's statements also at [30] that the appellant had failed to mention threats as a result of blogs and social media, the appellant in fact did identify that he had criticised the government and the RAB "in articles and blogs" although he did not refer to the threats but to his fear. Nor was, contrary to the judge's assertion, the fear of the RAB "the sole reason" cited in the screening interview. There was also cited, fear of the government.

9. The judge also stated incorrectly that the appellant had failed to include all of the details in his pre-interview questionnaire two months later. The appellant *did* in his PIQ state that he was a member of the BNP and that he had received threats. Although the judge asserted that the appellant's claim lacked detail and this observation appeared to refer to the PIQ as well as the screening interview at paragraph 30, the appellant, it is clear from the document, attached documentation to his PIQ. Although it is not entirely clear what was attached, Mr Broachwalla confirmed that this was in relation to his blogs. Additionally, as the grounds advance, the judge stated that the appellant had failed to include his court cases at the date of his screening interview but as indicated, the asserted court cases were all said to be filed <u>following</u> his screening interview.

10. The judge found the lack of detail to damage the appellant's credibility but failed to accurately reflect the evidence in her analysis within the determination. I appreciate that her task was not made simple because of the nature and the production of the evidence but it is important to cite correctly the detail in the material within the bundle.

11. Again at [35] the judge incorrectly stated that the appellant had given clear evidence that despite the numerous court cases "his family have never suffered any repercussions from anyone". The judge does not make clear if she was referring only to the oral evidence but as recorded in the grounds, the appellant's witness statement at [4] did refer to threats to his father. Indeed, the judge in other parts of the determination noted this. These may have not been accepted as credible but the evidence was not accurately portrayed and consequently carefully considered.

12. In terms of the analysis of the Facebook entries, it was pointed out in the grounds that the respondent had not taken issue with the translated copies and if the judge wished to have seen the original Facebook page she could simply have asked to do so but did not. The judge therefore rejected the existence of the Facebook account without in my view proper clarification. The judge also concluded that the appellant had failed to share how he would be at risk because he had not faced consequences in the UK but the risk being assessed was that in Bangladesh.

13. Turning to the ground in relation to the expert, the judge asserted that the Supreme Court lawyer was "abusing" his position. The judge's reasoning as to the "abusing" was not entirely clear. The judge stated that the lawyer's licence had not been produced but this was open to the judge to clarify, which she did not. That is not to say that the extraction of court documents for the purpose of providing them in legal proceedings in the United Kingdom did fall within the parameters of "research" but it is difficult on the evidence adequate reasoning to find abuse. I can see that there may be other problems with the use of the services of this lawyer and his operations of obtaining court documents (such as an active practising certificate) but these were not explored by the judge.

14. Also problematical is the treatment by the judge of the court cases filed. I agree that it was open to the judge to criticise the lack of context of the documentation but the judge also criticised the lack of dates or that they did not accord with the lawyer's report in for example case 719/2018 and case 475/2019. There are, however, dates given in the record of those court cases, which appear to align with the lawyer's report.

15. Additionally, at [53] the judge stated that case 78/2019 did not have a date in accordance with the expert's report, which was incorrect, and that further, there were no personal details supplied for the appellant. A careful reading of the document shows that indeed there were personal details relating to the appellant.

16. Again, the judge criticised at [51] the failure to provide the original newspaper article entitled "Fascist Hasina should be eliminated to free Bangladesh". That, however, was provided at pages 75 to 80 of the appellant's key bundle. At [54] the judge asserts that she had no original article for "Time demands fascist Hasina's elimination" but this could be found at pages 83 to 89 of the bundle.

17. Mr Broachwalla contended that the article referred to by the judge at [50] was not part of the magazine "Atheist in Bangladesh" but a separate document entirely. Miss Ahmad contended that this indeed was part of the magazine but it was not clear on the face of the documentation, thus the judge's comment on the regularity of publication was sustainable. This, however, was a matter that the judge should have clarified, particularly as she stated it was a "significant discrepancy without satisfactory explanation". This is another relevant difficulty within the determination.

18. Miss Ahmad valiantly attempted to save the determination and I agree there are some valid points made in the decision which undermine the credibility of the appellant although at times it was difficult to read the decision because it had not been proofread. I accept that the onus is on the appellant, as Miss Ahmad submitted, to evidence his own claim and it was curious as to why he failed to give an explanation that he could not access his own personal blog and that the judge is not expected to go on a forensic assessment of the evidence, particularly with regard to the approach to Facebook. **XX (PJAK - sur place activities - Facebook)**

Iran CG [2022] UKUT 23 (IAC) confirms that production of a small part of a Facebook or social media account may be of very limited evidential value in a protection claim when such a wealth of wider information is readily available as part of the functions of Facebook and that secondly, a decision-maker should not necessarily rely on purported printouts from an account which may have very limited evidential value but should have access to an actual account. Mr Broachwalla, however, submitted that the judge simply could have asked the appellant for his Facebook link and failed to do so.

19. Given the myriad of factual errors made by the judge, I am satisfied that the findings cannot stand and as a result, the analysis of the appellant's sur place activities is also flawed by a material legal error. I cannot be confident that on the basis of the reasons which have survived scrutiny the same conclusion would have been reached. There was a wealth of evidence produced in this case and it was important to carefully analyse the facts.

20. I therefore set aside the decision in its entirety and the matter will be remitted to the First-tier Tribunal for a hearing de novo.

Notice of Decision

The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

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 Helen Rimington Date 7th April 2022

Upper Tribunal Judge Rimington