



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006318

First-tier Tribunal Nos: PA/50678/2022
IA/01992/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

15th December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

JH
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr M Biggs, instructed by Londonium Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 21 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. At an error of law hearing on 16 August 2023 I found that First-tier Tribunal Judge Gaskell in a decision dismissing the Appellant's appeal on 19th October 2022, fell into error when assessing the impact of the Appellant's sur place activities, having mistaken the evidence of the Country and Policy Information Note on Political Parties and Affiliations. My written reason for my decision followed on the 31st August 2023. As there was no challenge to the judge's findings of fact I preserved with the agreement of the parties the findings of the judge between paragraphs 52, 53 and 56, save the final part of the final sentence "and nor do I find this his activity in the UK is such as to have drawn him to the attention of the Bangladeshi authorities."
2. The appeal was agreed to be suitable for rehearing to redetermine on the basis of submissions. Unfortunately Mr Biggs had not been provided a full bundle and so was unable to proceed to submissions on the day. The appeal was consequently relisted before me on the 21st November to hear submissions on the remaking.

The Remaking Hearing

3. In advance of the hearing, those representing the Appellant applied under 15(2) (a) of the Tribunal Procedure (Upper Tribunal) Rules 2008 for the admission of further evidence which was not before the First-tier Tribunal, which included a Country Expert Report and an internet article dated Friday 10th 2023 and a United Nations call urging Bangladesh to treat the Human Rights Council review as an opportunity to address deteriorating human rights situation in light of the forthcoming national elections in early 2024. There were also some posts which were untranslated and which Mr Biggs indicated he did not seek to rely on. Ms Cunha did not object to the admission of late evidence. In those circumstances, save for the untranslated posts, I agreed to admit the same. I heard submissions from the representatives and reserved my decision.
4. Ms Cunha relied on the assessment of the Respondent that the Appellant did not, even at the highest point of his case, face a risk because of his sur place profile. The Appellant's social media had not attracted very much attention and had unlikely come to the attention of those in Bangladesh. The CIPN evidence showed that the media in Bangladesh was regulated much as it is regulated in the United Kingdom through the control of defamation actions imposing financial penalties in respect of social blogs. The limited profile of the Appellant was not in the most significant arena of television and was unlikely to be considered to be a threat by the government. All the evidence was that ordinary people were more interested in TV than in social media and intellectuals who would, would not be persecuted per se for accessing social media. Further the evidence tended to show that the area of Government control and restriction was centred much more on persons who were able to expose things at a government level such as corruption rather than the issue of protests such as the Appellant had supported.
5. Ms Cunha invited me to attach little weight to the Country Expert Report now produced on the basis that it was overly emotive and failed to provide any balance so that it was self serving. Although the expert had referred to his credentials, they were all limited to the law. It is not quite clear how he is a country expert and there is no explanation as to how they know what they had recorded in the report. In particular there is no mention as to when they were

last in Bangladesh and what research tools they have used. Ms Cunha said that she had checked some of the notes to the report, and in particular had found the unreliable for example: citation number 27 on page 9 of the report was used by the expert to support the assertion that there were dangerous restrictions on freedom of expression, but when checked the reference did not say, as the expert had said, that the Act had been used to detain hundreds of people. Similarly, the citation at 31, which would not open from his report, but which she had copied and pasted into a search engine, did not seem to refer to the context of this expert's report. In particular, the expert has referred at some length to a colleague of the Appellant's in the BNP having been arrested but the footnote, whilst referring to the protest that the colleague was allegedly involved in in the United Kingdom, did not make any specific reference to his arrest as indicated in the body of the report. In short, she invited me to give the evidence little weight.

6. Mr Biggs, on the other hand, reminded me of the judge's findings at paragraphs 52 and 53 and that although he is not in the leadership of the BNP, the evidence is that he is a member of the BNP, has been a low-level activist since 2016 and holds an actual position in the BNP in the Youth Wing. In terms of Ms Cunha's reference as to the footnotes in the expert report evidence, Mr Biggs invited me to look at the points raised by Ms Cunha, but also referred me to the Human Rights Watch Reports reference in the same section, all of which showed that in fact his colleague had been arrested and that he had been added to cases so as to support the tenor of the report.
7. Mr Biggs submitted that the evidence from the Country Information Reports was that those who were critical of the government suffered harassment, false court cases and were forced to self-censor to avoid persecutory treatment. In particular in the CPIN 2021 version 2 at Section 7 on the sur place activity and 7.2 showed that expats were targeted in respect of blogging from abroad, on the facts of this case that was a matter which was supported by the evidence concerning the Appellant's colleague. Contrary to Ms Cunha's submission the evidence of the report was not self-serving, either in the context of the colleague's witness evidence, in terms of his letter, or the newspaper article. There is no suggestion that either are false and indeed have been further corroborated by the reference to the Human Rights Watch Report footnoted in the expert's evidence. The evidence was sufficient to show that the Appellant would have come to the attention of the authorities to the standard of, at least, a real risk. In respect of internal relocation, as this was persecution by the State, the matter of internal relocation was not available. Mr Biggs also sought briefly to add to the standing argument to suggest that in light of the findings of fact that the Appellant was a low-level activist, the reality was that if he were to be returned, he would have to self-censor or risk persecutory treatment, which in the context of the case of RT (Zimbabwe) would be sufficient to found his international protection claim. I pointed out to Mr Biggs that in that context, I have no evidence at all and the matter had not been covered in the Appellant's witness statement or in the context of fresh evidence to the UT and that the implication there was no insufficient evidential basis upon which to found such a claim.

My Findings

8. There is an extended history to this appeal. It has already been found that the Appellant's claim of preflight activity is discredited. The Appellant likely took up activism in 2016 shortly before his first asylum appeal hearing to bolster his

claim. He has been a low level activist since 2016. He is not a BNP leader making policy and speaking officially on behalf of BNP. Currently he is a hardworking activist and is the joint secretary of one of six London Branches of the BNP Youth Wing.

9. The dispute I need to resolve is whether in the context of that background the Appellant's surplac social media activities are such that there is a likelihood of his having been drawn to the attention of the authorities in Bangladesh so as to put him at risk on return. I need to make an individualised assessment of risk. The lower standard of proof applies, which can be expressed as a reasonable degree of likelihood or serious possibility.
10. Contrary to Ms Cunha's submission that the method of control in Bangladesh is through defamation proceedings much in line with the civil process of defamation proceedings in the UK, which carries no risk, the CPIN evidence shows that defamation proceedings in the context of Bangladesh may involve police involvement and a context of criminal charges and persecutory treatment. It follows that social media activity is not activity which lacks any relevance to the issue of risk. I have mentioned that in her submission Ms Cunha drew to my attention to difficulties with the report from the lawyer where footnotes referred to do not clearly match the points made. Whilst it appears that the author miscites in the footnotes references to information of hundreds of arrests made under the powers of the new legislation, the force of that falls away somewhat when the CPIN itself refers to hundreds of arrests under the legislation. Similarly although the foot note I was taken to by Ms Cunha did not identify the arrest of the Appellant's colleague, as Mr Biggs pointed out, other footnoted references to Human Rights Watch did. The evidence established the arrest as asserted.
11. In reaching my conclusion as to the individual position of the Appellant the evidence of the Human Rights Watch to the point that a colleague who is, with the Appellant joint secretary of a London youth wing, has been arrested and faced persecutory treatment in Bangladesh on his return is a significant factor. Importantly in the context of Ms Cunha's concerns the source for the evidence of the persecutory treatment of the Appellant's colleague is not the lawyer but Human Rights Watch, and there was no issue before me but that that reference stands up. The report specifically references the background of the attendance of the colleague on the same demonstration as the Appellant is accepted to have been present when the Prime Minister was in the United Kingdom. The Appellant has an accepted history of activism, as well as presence on social media having posted on his personal social media as well as with appearances on the BNP official facebook pages. Although he is not a BNP leader but a longstanding low level and hardworking activist I am satisfied on the evidence in the round that there is a real risk his surplac activity may have brought him to the attention of the authorities so as to be at a real risk on return.
12. **Notice of Decision**
13. The decision of the First-tier Tribunal did involve the making of an error of law and that decision has been set aside
14. The decision in this appeal is remade and the appeal is allowed.

E M Davidge

12 December 2023

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber