IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000657

First-Tier Tribunal No: PA/50294/2023
LP/01259/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 28th May 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

A
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. M. Chowdhury, Legal Representative, A.K.M Quamruzzaman Londonium Solicitors
For the Respondent: Ms. J. Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 5 April 2024

Order Regarding Anonymity

The order of the First-tier Tribunal granting the appellant anonymity continues. The First-tier Tribunal referred to the appellant as "A", which is replicated in this decision for the sake of continuity.

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

1. This is an appeal by the appellant against a decision of First-tier Tribunal Judge J.C. Hamilton, (the "Judge"), dated 19 December 2023, in which he dismissed the appellant's appeal against the respondent's decision to refuse his protection and human rights claim. The appellant is a national of Bangladesh who claimed protection on the basis of his political opinion.

2. There are two grounds of appeal. Ground 1 asserts the Judge erred in expecting the appellant to adduce evidence that his activities had come to the attention of the authorities in Bangladesh. This it is said falls foul of the principles established in WAS (Pakistan) v Secretary of State [2023] EWCA Civ 984. Ground 2 asserts the Judge's findings are contrary to the information contained in the County Policy and Information Note ("CPIN") of September 2020 v.3.0.

3. Permission to appeal was granted by First-tier Tribunal Judge Bird in a decision dated 27 February 2024 on all grounds. The order granting permission to appeal is odd. In addressing ground 1 Judge Bird said this:

> "3. The judge was right in starting with the earlier decision of the Tribunal in 2018. She set out the additional evidence, not before the judge in 2018 at paragraphs 8-21 which formed the basis of the asylum claim which was refused by the respondent on 21 January 2023.
>
> 4. The judge considered the earlier decision and findings of fact made by the judge in 2018 at paragraph 59 and appears to adopt this as her own findings without giving adequate reasons without considering the further documentation provided by the appellant that was before her.
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> 5. The judge considers this documentary evidence at paragraph 59 and dismisses it for the same reasons given by the judge in 2018. This did not take into account the additional evidence produced and which was not before the judge in 2018 and is set out by the judge at paragraphs 5 and 6. The judge has failed to give adequate reasons for finding these documents to be false and simply finds "it is easy to obtain false documentation in Bangladesh". The judge does not explain and give any reasons why she found the documents before her were false.
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> 6. The appellant argues that the judge erred in the assessment of the appellant's evidence. This ground on reading of the relevant paragraphs set out in the grounds seeking permission is made out."

4. I make the following observations. First, the reasoning of Judge Bird does not correlate to ground 1 which does not raise a reasons challenge. Second, the grant of permission does not specifically deal with the substance of ground 1. The closest Judge Bird comes to it is at paragraph 6 where she states: "*The appellant argues that the judge erred in the assessment of the appellant's evidence. This ground on reading of the relevant paragraphs set out in the grounds seeking permission is made out*". Whether or not the ground is made out is a matter for this Tribunal.

5. Whilst it is not clear how Judge Bird reached this formulation of the grounds; she was clearly of the view that the Judge arguably failed to give adequate reasons for rejecting the documentary evidence considered at [59] on grounds of falsity notwithstanding that this is not raised in the grounds. If Judge Bird was purporting to grant permission on what she considered was a *Robinson* obvious arguable error, she did not say so. This is not a matter which Ms Isherwood appreciated at the hearing, or if she did, she raised no objection, but it

was a matter upon which Mr Chowdhury relied, but in doing so, he impermissibly went beyond the grounds and the observations of Judge Bird and made submissions that simply sought to re-argue the case despite reminders that this was an error of law hearing. For instance, Mr Chowdhury submitted the Judge failed to consider two letters from the BNP personal to the appellant, that the Judge erred in departing from the guidance in *Tanveer Ahmed*, and that the appellant was not a low-level but a mid-level member of the BNP, but even low-level members were at risk. These matters are not raised in the grounds, there was no application to amend them and it is not open to the appellant to raise these matters at the hearing.

6. I have thus considered the submissions in so far as they relate to the grounds but given what is said in the grant of permission, whilst odd, I have decided I ought to consider it. I shall return to this later.

7. The respondent did not provide a Rule 24 response. Ms Isherwood nonetheless robustly opposed the appeal.

The Hearing

8. I heard oral submissions from both representatives. It is not necessary to recite their submissions, they are reflected where necessary in order to support my conclusions. At the end of the hearing, I reserved my decision.

Discussion

9. I turn first to the Judge's decision. My general observation is that this is a detailed and well considered decision. The Judge was required to consider a significant amount of evidence following on from a previous appeal dismissed in 2018 based on the appellant's political activities. In the previous appeal it was accepted the appellant had been involved with the BNP at the lowest level, but not that he had been targeted because of those activities either in Bangladesh or the United Kingdom. The Judge set out in detail the background that led to the appeal before him, the evidence of the parties - documentary and otherwise - and the law at [3] to [47] and began his consideration at [48]. The Judge summarised the findings made in the previous appeal at [52] and identified this as his "starting point" before embarking on a consideration of the background evidence at [53] to [56] and the "new evidence relied on by the appellant" at [57] to [69].

10. As to the background evidence the Judge reviewed the expert evidence observing that the opinions expressed by the expert were "*…based on an uncritical acceptance of the appellant's account*". The Judge noted that the expert's report contained generic background country information which did not add to the information available in the September 2020 CPIN, which the Judge summarised at [54] to [55]. As to the evidence that was personal to the appellant, the Judge noted at [57] that many of the documents relied on were considered in the previous appeal and he demarcated the new evidence into three distinct categories. I paraphrase these as: (i) further legal documentation and correspondence from a lawyer in Bangladesh; (ii) additional evidence of the appellant's political opinions in Bangladesh and evidence of family harassment; and (iii) additional evidence including articles, social media posts and photographs regarding the appellant's political activities in the United Kingdom.

11. At [59] the Judge said this:

> "59. Judge Seelhoff found that the incredible and inconsistent aspects of the appellant's account raised concerns about the reliability of the documents he had provided. For this appeal also, the appellant provided a great deal of documentary evidence in support of his account. However when considering the weight I can give this evidence, I take into account that it is easy to obtain false documentation in Bangladesh (I have taken all this into account when considering **MA (Bangladesh) [2016] EWCA Civ 175).** the evidence as a whole."

12. The Judge then considered the additional legal documentation and the new evidence regarding the appellant's activities in Bangladesh and the United Kingdom and found the evidence was inconsistent and unreliable and this seriously damaged the appellant's credibility (at [72]). The Judge concluded the appellant was nothing more than a low-level activist who had not been targeted, and that the background evidence did not establish that such persons were at risk of persecution on return. The Judge further rejected the appellant's claim that his activities in the United Kingdom, which showed that he was nothing more than a supporter of the BNP, would place him at risk as this was inextricably linked to his claim of past persecution which was untrue. The Judge thus concluded the appellant was not at risk on return and proceeded to consider Article 8 ECHR, and ultimately found that the appellant's removal was not disproportionate.

Ground 1

13. Ground 1 quotes the Judge's findings at [68] to [69] and then paragraph 84 and 85 of WAS, and then states at paragraph 8 that the Judge erred "…by seeking evidence of whether the Appellant's activities have come to the attention of the Bangladeshi authorities." The issue that was being addressed by the Court of Appeal in WAS was whether, on remaking an asylum appeal decision for itself, the Upper Tribunal (UT) imposed unrealistic expectations on the appellant to adduce evidence of the Pakistani authorities' surveillance capabilities. The Court concluded "…the UT erred in law by losing sight of the fact that direct evidence about 'the level of and the mechanics of monitoring' in the United Kingdom is unlikely to be available to an asylum claimant or to a dissident organisation, and by imposing too demanding a standard of proof on A. The UT repeatedly said that A had not 'established' things, that 'cogent evidence' of something was absent, and that parts of A's evidence were not supported…".

14. The grounds contend the Judge committed the same error at [68] and [69]. I fail to understand how the Judge erred in this manner at [68]. At [68] the Judge considered the photographic evidence of the appellant at events, and whilst noting they were consistent with his account, it did not necessarily follow the appellant was a leader or was taking a prominent role. The operative paragraph seems to be [69]. The Judge said this:

> "69. I accept that the government in Bangladesh is repressive and carries out some level of surveillance of opposition members/supporters particularly on social media. This is supported by the background information. However there was inadequate evidence to show any surveillance of opposition members of in the UK is sophisticated or pervasive *[sic].* It is reasonable to conclude that, as in Bangladesh itself, the government would concentrate its attention on leaders and high-profile activists who are more likely to be perceived as a threat. In the absence of evidence to the contrary, I do not find there is any adequate evidence that mere participation in anti-government demonstrations and other low-level activities such as posting views on social media would in itself, bring an individual to the adverse attention of the government in Bangladesh."
>
> (my emphasis)

15. I would agree that the sentence emphasised is representative of the Judge placing an unrealistic expectation on the appellant concerning evidence of surveillance. If, however, this was the sole ground relied on by the Judge in finding that the appellant was not a target or interest to the authorities, then I would have been persuaded that this was a material error of law. But the Judge also based many of his findings on the inconsistencies in the evidence and the unreliability of the documentary evidence, which are not challenged. It is also worth pointing out that the Judge found at [66] that there was no evidence the articles the appellant claimed to have written had been published online, and in respect of the Facebook posts he had failed to comply with the guidance in XX(PJAK, sur place activities, Facebook (CG) [2022] UKUT 000023.

16. In my judgement, the Judge gave a plethora of sustainable reasons for finding that the appellant would not be of interest on return which were not solely predicated upon his findings at [69]. I find on a holistic reading of the decision no material error of law is made out.

Ground 2

17. Ground 2 asserts the Judge's decision is contrary to the CPIN. The grounds refer to the following paragraphs of the CPIN:

> "10.2.8 Reporting on allegations of false criminal cases being filed by police against opposition party members and supporters, a March 2019 VoA article noted: 'Police in Bangladesh have filed criminal complaints against tens of thousands of people for violence-related cases in recent years. But the opposition and rights activists say most of the cases, allegedly involving bombing and rioting, were made up.
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> 10.2.11 Human Rights Watch explained that: 'Since the beginning of 2018, the authorities have dramatically increased the practice of filing false or fictitious cases against the government's democratic opponents, primarily from the BNP. Typically, a single case accuses a list of named individuals, sometimes more than 100, of participating in a crime, plus an unspecified number of "unknown" perpetrators. Other people can then be added to the case later, if the police claim that they were among the earlier "unknown accused".'
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> 10.2.12 Despite the claims that cases were filed against persons who were dead, disabled, absent from the country or in jail at the time of the reported offences, the government insisted such cases were not politically motivated."

18. The specific complaint raised in this ground is that in light of this evidence it was unreasonable if not irrational for the Judge not to accept that false charges had been levied against the appellant by the authorities in consequence of his political activities. There is no merit in this ground. It is appreciably clear the Judge considered the CPIN. He refers to it at [24], [25], [32], [54] and [55]. It is also plain that the Judge was aware that the CPIN and the expert's report confirmed that false charges are brought against political opponents (at (53] and [55]). The Judge did what he was required to do, namely, to consider the evidence within the context of the background and expert evidence, it could not, however, be determinative. What the grounds fail to point out is that the Judge considered the appellant's claim that five new cases had been filed against him in Bangladesh at [60], and noted inconsistencies in the evidence, which he factored into his assessment in concluding overall that the appellant's claim to be of interest to the authorities was not true. These are findings which are not challenged and were open to the Judge on the evidence. The Judge's approach was neither unreasonable nor irrational.

19. The complaint at paragraph 13 of the grounds, namely, that it was not reasonably open to the Judge to find that the appellant could integrate on return because there is a "threat to his life" does not establish an error of law, let alone a material one. The Judge made clear findings that the appellant was not at risk on return and was entitled to find for this, and the many other reasons given, that there were not very significant obstacles to the appellant's integration on return.

20. I find that the Judge has not erred in his consideration of the background evidence. I find that he gave adequate and sustainable reasons for his findings based on the evidence. Ground 2 does not identify a material error of law.

Judge Bird's grant of permission

21. Judge Bird recognised that the Judge rightly observed the previous appeal decision was the starting point, but she considered the Judge appeared to adopt those findings as his own without giving adequate reasons and without considering the further documentation provided by the appellant. Judge Bird further considered that the Judge did not reason why he found the documents were false. I disagree. First, it is plain the Judge did not treat the findings in the previous appeal as determinative. He directed himself correctly in identifying those findings were his starting point and treated them as such (at [52]). It was open to the Judge to note that much of the evidence had been considered in the previous appeal, but he then proceeded to set out in some considerable detail the background evidence, the additional documentary evidence, and the new evidence upon which the appellant relied. The Judge then analysed that evidence at [57] to [69] and gave intelligible and cogent reasons why he considered that evidence was not capable of belief and did not establish a risk of persecution on return. That assessment was not conducted in a vacuum but on a holistic consideration of all the evidence both old and new.

22. Second, at [59], the Judge was simply stating that he factored into his assessment that it was easy to obtain false documentation in Bangladesh and cited MA Bangladesh in support. Third, the Judge did not expressly find the documents were false but found the weight that could be attributed to them was reduced by their unreliability, the inconsistencies, and incredible aspects of the evidence (at [60] to [71]. It is plain to the reader of the decision why the Judge reached those conclusions. I find the Judge made adverse findings on a whole sea of evidence, which the grounds cherry-pick all but a few. In the context of the Judge's decision overall, his findings are thorough and based on the evidence and are adequately reasoned.

23. For these reasons, I find that the decision does not involve the making of a material error of law.

Notice of Decision

24. The decision of the First-tier Tribunal does not involve the making of a material error of law.

25. The decision of the First-tier Tribunal stands.

R.Bagral

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
5 May 2024