



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2024-000945
First-tier Tribunal No:
PA/51949/2022
IA/05141/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 17 June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

MA
(anonymity order made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity, given that this is an asylum appeal.

Representation:

For the Appellant: Mr P Lewis

For the Respondent: Ms A Everett

Heard at Field House on 3 May 2024

DECISION AND REASONS

1. This is the appeal of MA, a citizen of Bangladesh, against the decision of the First-tier Tribunal signed on 4 October 2023, itself dismissing his appeal against the Respondent's refusal of his asylum claim.

Summary of asylum claim

2. The Appellant's asylum claim can be summarised thus.
 - (a) He is AKZ. He has posted online in the identity BZ (via a public Facebook account in which he has criticised the government and

Prime Minister Sheikh Hasina, attracting a range of responses ranging from political disagreement to express or implicit threats of violence) and has previously used the identity MA (the latter being the name in which this appeal is brought and the name in which he exited Bangladesh so as to avoid being detected, as he would otherwise have needed police clearance given the false cases brought against him).

- (b) He was a member of the BNP student wing from 1999 and held the positions of sports and office secretary, was the subject of false politically motivated charges in 2009 and 2010, and was kidnapped, seriously assaulted and threatened with beheading by Awami league activists in 2010; he was subsequently treated in a private hospital for his injuries.
- (c) He arrived in the UK on 26 June 2011 as a student, his leave being extended until 15 September 2014, after which time he overstayed. He failed to report back to the Respondent having received a red notice of removability on 24 June 2017, was encountered working illegally on 25 October 2018 and claimed asylum on 29 October 2018.
- (d) He had been politically active in the UK in the identity AKZ as reported by various newspapers. A third false charge was registered against him in 2018 because of his social media activities here.

The First-tier Tribunal's decision

- 3. The First-tier Tribunal rejected the historical facts advanced by the Appellant, repeatedly emphasising the centrality, in its view, of the Appellant's true identity, because
 - (a) He had claimed asylum long after his leave expired notwithstanding that he asserted facing serious harm in Bangladesh before leaving the country.
 - (b) The passport in the name AKZ, which he produced to the Respondent in September 2021, had been issued in November 2008 and was valid until November 2013, meaning he could have used it to exit Bangladesh rather than using the MA identity.
 - (c) He could not establish that the enquiries of the lawyer resulting in a letter of August 2022 confirming the existence of charges corresponding to those said to be brought against him, plausibly established as relating to charges against one AKZ, in truth related to himself given his use of multiple identities.
 - (d) The First Information Report of October 2018 was dated a day earlier than his arrest for illegal working, which was suspicious. A further false charge from 2022 mentioned in a message from his brother was not corroborated by any enquiries in Bangladesh.
 - (e) No proof of hospital admission in 2010 was supplied. Whilst the expertise of the physician Dr Izquierdo-Martin was established, his opinions as to the correlation between the Appellant's scarring's appearance and his attribution of those scars was on the borderline

between consistent/highly consistent, leaving open the possibility of an alternative cause.

- (f) Supporting letters from Mr Khokon and Mr Ravi did not “transparently address” the “key” issue of the Appellant's identity. Whilst they wrote of knowing a politically active AKZ in Bangladesh, they did not expressly state that this was the same person as the Appellant, given that he also used the Mustafi identity. Two supporting witnesses gave oral evidence, Mr Ahmed and Mr Bhuiyan (the latter said that he had known the Appellant from 2001 to 2009 in Bangladesh and met him again in this country); but detail as to the name in which Mr Bhuiyan knew the Appellant was lacking.
4. The Tribunal accepted that the Appellant may have been active in student politics from 2005-2010 given the photographs he had provided from that period, and that in the UK he had been active in the two Z identities. But it did not accept he had shown himself to be AKZ, and thus not shown himself to have that individual's history of political activities and false charges in Bangladesh. Rather the Tribunal found that he was MA, and could return to Bangladesh via a travel document issued in that name without any danger of association with the two Z identities. He could reasonably be expected to delete the Facebook account in the MA identity. In the light of these findings there was no real risk that his political opponents in Bangladesh would attempt to link the AKZ and BZ identities with the MA identity such as to alight on any political activities conducted under the former name – because those UK activities were not sufficiently significant or high profile to attract any significant degree of scrutiny.

The appeal to the Upper Tribunal

5. Grounds of appeal contend that the First-tier Tribunal erred in law in relation to the Appellant's appeal by failing to consider various issues, or pieces of evidence:
- (a) That the Respondent's supplementary review had proceeded on the basis that his passport in the AKZ identity was genuine and had not put his identity in issue;
 - (b) His national identity card;
 - (c) His account as to the timing of his asylum claim being motivated by the Hasina government's success in the 2018 election and subsequent campaign of repression;
 - (d) Material relevant to his sur place claim such as the terms of the Bangladesh Digital Security Act which criminalises various online (including extra-territorial) activity, given that the Tribunal itself recognised the accessibility of his online postings in the identity of BZ and his political activities as AKZ;
 - (e) Whether the Appellant would in practice delete his Facebook account in the name MA before returning to Bangladesh.
6. A further ground challenged the transposition of findings from BS Iran to address the country situation in Bangladesh.

7. Permission to appeal was granted by the First-tier Tribunal on 9 February 2024, on the basis that the first and fourth grounds of appeal (ie those challenging the findings on identity and as to sur place activities) were arguable.
8. Mr Lewis's skeleton argument for the hearing before me builds upon those grounds, submitting that
 - (a) The First-tier Tribunal had been procedurally unfair in the sense identified in Abdi [2023] EWCA Civ 1455: as Popplewell LJ put it §23, "it will be unfair, ordinarily at least, for it to base its decision upon its view of the issue without giving the parties an opportunity to address it upon the matter ... the tribunal is entitled to reject evidence notwithstanding that the evidence has not been challenged before it. Fairness may, however, require it to disclose its concerns about the evidence so as to afford the parties an opportunity to address them."
 - (b) These procedural duties were all the more important where the Secretary of State was unrepresented, and given the fact that the second Respondent's review ostensibly proceeded on the basis that the AKZ identity was now accepted, and where a witness of standing in the community, Mr Khokon, a barrister and former BNP Member of Parliament, had described meeting the Appellant in that identity in the UK and in Bangladesh, and where photographs of Mr Khokon and the Appellant together were available. Furthermore, the Respondent's CPIN on journalists, the press and social media stated that "The authorities sometimes use legal provisions, such as the Information and Communication Technology (ICT) Act or Digital Security Act (DSA), to harass, arrest, detain or prosecute persons who have published material that is deemed to be critical of the state, the Constitution or the ruling party, and thus considered seditious or defamatory."
9. Before me Mr Lewis made brief submissions in line with his skeleton argument; Ms Everett did not demur from his analysis.

Decision and reasons

10. The original Respondent's review of September 2022 maintained that the Appellant's identity was in issue and that he had not established himself as the person referred to any documents relating to the name AKZ or BZ given his use of the Mustafi passport to come to the UK. Following disclosure of the passport in the name AKZ and the provision of other documents relating to activities in the UK, the Supplementary Review from the Central POU London of 29 June 2023 appears to take a different position, at para 17:

"A has provided his original passport which shows the name [AKZ] along with his ID card. R notes that A was able to hold a passport even though A asserts that he was a fugitive [AB/p25/paras11&13] and highlights that the passport was issued in November 2008 which is 9 years after A became politically active. R submits that if he was of interest to the authorities, he would not have been issued

with the passport in 2008. A did not submit his passport at the earliest opportunity which in R's opinion damages his credibility."

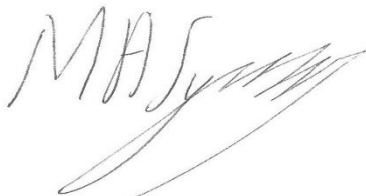
11. It is unfortunate that this appeal proceeded without Home Office representation. Had the Secretary of State been present it would have been possible to clarify the position as to whether the Appellant's identity was accepted. There is a very significant difference in the stance taken, on the face of things, between the first and second Respondent's reviews. The former repeatedly puts identity in issue; the latter appears to accept the AKZ identity, this being the basis for the criticism then advanced that the Appellant had been able to obtain a passport, notwithstanding a record of political dissidence, in 2008. In the circumstances it was understandable that the Appellant believed that he was now accepted to be AKZ. Many asylum seekers travel to the UK on false documents and this would not necessarily lead to the Secretary of State maintaining that such an identity of convenience was their true identity.
12. There are further difficulties with the reasoning below. Mr Khokon is a member of the Bangladesh political establishment and plainly believed he was supporting the case of the man he had known as AKZ; his letter states that he had known him in Bangladesh and met him in the UK. The First-tier Tribunal's finding implied that this letter was a forgery, or had been procured by some other deception rendering it unreliable. The Appellant's less prominent witnesses, Mr Ahmed and Mr Bhuiyan, the latter a recognised refugee, plainly stated they knew him in that identity, and attended the hearing to support the Appellant's appeal. Their evidence could only be rejected with the clearest notification that this fundamental aspect of their evidence was suspect; there is no indication that the judge gave them any such warning.
13. I conclude that, as the parties agreed before me, the First-tier Tribunal decision is flawed and the appeal must be re-heard. The scale of the requisite further findings is such that remittal is the only option.

Decision:

The decision of the First-tier Tribunal contained a material error of law.

I set it aside.

The appeal is remitted to the First-tier Tribunal for re-hearing.



Deputy Upper Tribunal Judge Symes

Case No: UI-2024-000945
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Immigration and Asylum Chamber

15 June 2024