IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002631
First-tier Tribunal No:
PA/01671/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 14th of November 2024

Before

UPPER TRIBUNAL JUDGE RUDDICK

Between

MH
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Karim, Counsel
For the Respondent: Mrs Nolan, Senior Home Office Presenting Officer

Heard at Field House on 31 October 2024

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Beg dismissing his appeal against the respondent's refusal of his protection and human rights claims.

Background

2. The appellant is a citizen of Bangladesh, born in 1989. He first entered the UK in May 2010, with entry clearance as a Tier 4 student. He was subsequently granted further leave to remain first as a student and then as an entrepreneur. It is not clear when precisely his lawful status came to an end thereafter.

3. The appellant says that he is at risk of persecution for reasons of his active support for the Bangladesh Nationalist Party (BNP). He says he has been an active member of the BNP since 2008, first in Bangladesh and then in the UK. He had previously received threats from Awami League supporters by phone and on Facebook, but the threats escalated during the course of 2018, in the run up to the elections held in December of that year. The appellant says that he made a significant financial contribution to the BNP candidate in his home constituency, and that this became a matter of public knowledge. The police visited his home and spoke rudely to his mother about his political activities, false charges were lodged against him in October, and on 7 November, his family home was attacked. His mother was beaten, his sister was raped, and two vans belonging to the family were set on fire. The appellant claimed asylum one month later, on 7 December 2018.

4. The respondent interviewed the appellant about his asylum claim on 22 November 2021, and she refused his claim in a decision dated 1 November 2023. The appellant appealed, and his appeal came before Judge Beg at Hatton Cross by Cloud Video Platform on 16 April 2024. In a decision dated 18 April 2024 and promulgated on 25 April 2024, the Judge dismissed his appeal on all grounds.

Grounds of appeal

5. The appellant's grounds of appeal have been criticised for their length. However, I consider that their length was justified by the nature of the challenge made to the Judge's decision. Essentially, the appellant argues that in making her findings of fact, the Judge repeatedly erred in her approach to the evidence before her. This was an argument that needed to be put in some detail in order to establish that the grounds constituted more than a disagreement with her ultimate findings.

6. Nonetheless, the length of grounds means that some abbreviation is required. I consider it helpful to summarise the grounds as follows:

   (i) The Judge rejected the Bangladeshi documents that the appellant relied on for reasons that were not open to her, including mistakes of fact about their nature and their contents and irrational criticisms of their contents.

   (ii) The Judge rejected various evidence in part because it had been obtained at the behest of the appellant, when either there was no indication that this was the case or there was no proper reason given as to why this meant the evidence should be rejected.

   (iii) The Judge imported her own purported knowledge about various aspects of the country context, such as procedures for making police complaints and the reporting practices of Bangladeshi publications.

(iv) The Judge appears to accept that false criminal charges have been brought against the appellant, but has failed to engage with the evidence before her of the risks that could arise for this reason.

(v) The Judge appears to have overlooked the photographic evidence of the appellant's sur place political activities, making her conclusions as to the lack of risk arising from those activities unsafe.

(vi) The Judge's finding that the appellant's credibility was damaged by his failure to claim asylum years before the events he describes is irrational.

(vii) The Judge rejected the evidence of a witness who attended the hearing and whose credibility had not been challenged. This was procedurally unfair.

(viii) In her Article 8 assessment, the Judge should have given more weight to the five-year delay in the decision on the appellant's asylum claim.

7. The Upper Tribunal granted the appellant permission to appeal on all grounds, but at the hearing before me, one final ground was not pursued. That was that the Judge erred by finding that the appellant's credibility was damaged by the lack of documentary evidence of his financial contributions to the BNP candidate, when in fact the contributions are corroborated by the appellant's UK bank statements. The appellant accepts that these bank statements were not before Judge Beg, and at the hearing before me it was conceded that she therefore cannot have erred in noting their absence.

Discussion

8. After careful consideration of Judge Beg's decision and of the evidence before her, and with the assistance of helpful submissions by both Mrs Nolan and Mr Karim, I have concluded that Judge Beg's decision involved the making of material errors of law requiring it to be set aside.

Errors in the consideration of key documents

9. I consider that Judge Beg's reasons for rejecting several of the appellant's key documents were not rationally open to her, and further that the number of errors regarding the documents is sufficient to raise concerns about her approach to the evidence more generally.

10. At [26-27], the Judge gave multiple reasons for finding that the hospital letter corroborating his sister's rape was unreliable. As Mrs Nolan argued, some of those reasons may have been open to her. However, several of them were not. These include:

(i) "It makes no reference to medical notes" [26], when in fact the second paragraph begins "According to our records".

(ii) “There is no reference to DNA swabs being taken” [27], when it states that the hospital collected “forensic evidence for legal purposes” and

(iii) “it does not give details of any counselling, for example by whom […]” [27], when it states “Our hospital’s mental team provided [the appellant’s sister] with individual counselling, trauma-focused therapy and support groups […]”

11. At [31], the Judge found the hospital letter confirming the appellant’s mother’s injuries to be unreliable. Here, too, some of her criticisms were not reasonably open to her on the evidence before her. These include:

(i) As with the sister’s letter, the Judge complains that it makes no reference to contemporaneous reports [31], when again, it states that it is based on the hospital’s records.

(ii) The same doctor wrote both letters, and the Judge did not “find it credible that he would have attended to both the appellant’s mother and his sister at the same time […]”[30] Nowhere, however, does the doctor say he was the treating doctor. On the contrary, he says his report is based on hospital records.

12. The Judge also criticises the letters for not containing specific details, but in several places it is difficult to identify why the lack of such details undermines their reliability. For example, she complains the letter does not say to whom the forensic evidence regarding the sister’s rape was sent [27]. As this is a report of the sister’s injuries and treatment, rather than a document being produced for the purposes of a criminal prosecution, it is unclear why it would necessarily have included the name of the police station or police officer to whom the forensic evidence was sent. Similarly, she finds the mother’s letter undermined because it does not state that she was hit on the head with a hammer, as described in the appellant’s brother’s account of the attack [31]. The letter says only that she suffered “head trauma, which required close monitoring for signs of neurological complications”. It is unclear why a treating hospital would be concerned with confirming whether the head trauma had been caused specifically by a hammer. It may have been reasonable to find that the letter could not confirm that the attack had unfolded precisely as described by the appellant’s brother, but it is unclear why that undermines its reliability as a record of the injuries that resulted.

13. The appellant also relied on a document purported to be from his village council, describing a meeting to discuss the appellant’s brother-in-law’s desire to divorce his wife (the appellant’s sister) following her rape. At [36], the Judge gives three reasons for rejecting this document. The first is that “It was translated by a translator in Bangladesh; there is no accreditation provided to demonstrate that he is a professional translator.” This is plainly a mistake. It was translated by a professional translator based in the UK whose name and qualifications appear multiple times throughout the bundle. The second is that that document was “written at

the behest of the appellant." It is not clear on what basis she has found this, as there is nothing in the document itself that says so. The third is that, "It is unclear why the matter was brought before the Council, if both parties […] had already agreed to a divorce […]" This is also a mistake, as the document records the appellant's family's vehement opposition to the divorce.

14. At [43], the Judge summarises her findings with regard to the appellant's documents in general, noting that she does not refer "to each and every one of them individually". She refers to Tanveer Ahmed and concludes, "I do not find the documents to be reliable for all the reasons that I have given." Given that where she did give reasons for rejecting specific documents, these were in part based on material mistakes, there is an obvious risk that her reasons for rejecting all of the other documents were similarly flawed.

Importing personal knowledge or assumptions about the country context

15. At several points in the determination, the Judge refers to the situation in Bangladesh without identifying the source of her knowledge. This includes at [37], where she puts little weight on a police report made by the appellant's brother partly on the grounds that "It is relatively easy in Bangladesh to attend a police station and make a complaint." At [51], she acknowledges that the appellant's name was listed in the Daily Star, a Bangladeshi publication, but remarks that "it is relatively easy and common practice for people to provide their names for publications to demonstrate that they are supporters of a particular political party." At the hearing before me, Mrs Nolan accepted that if there was no evidence before the Judge on either of these issues, that might be an error of law. It was also agreed that the relevant sources would have been the two CPINs the Judge refers to in her determination: Bangladesh: Political Parties and Affiliation, September 2020, and Bangladesh: Actors of Protection, November 2023. Following the hearing, I have been unable to find any support in either publication for these views. What evidence there is points in the other direction. Actors of Protection describes the difficulties in making police complaints without paying bribes and the reluctance of the police to act against the Awami League, and in both CPINs, the Daily Star is treated as a reputable source.

Error of logic in assessing the appellant's overall credibility

16. At [52], the Judge draws an adverse credibility inference from the appellant's delay in claiming asylum, on the grounds that

> "if he was a genuine asylum seeker, he would have claimed asylum either shortly after arriving in the United Kingdom or in 2012 when his student visa expired. I find that the later claim for asylum in 2016 [sic] damages his credibility."

17. I consider that there is a serious mistake of logic here. According to the appellant's account, he decided to claim asylum after the attack on his

family home in November 2018. The attack, moreover, is said to have been in retaliation for his financial support for a BNP candidate who was running for office in the 2018 elections. That account cannot be undermined by his failure to claim asylum in 2010 or 2012.

Conclusion

18. As Mrs Nolan ably pointed out, some of the Judge's adverse credibility findings were cogent and open to her on the evidence before her. But it is trite that credibility must be assessed in the round. Given the number of adverse credibility points that were based on mistakes of fact or on factual assumptions that have no apparent basis in the evidence that was before the Judge, I consider that the Judge's overall credibility assessment is fatally flawed.

19. Because I consider this to be sufficient reason to set aside the decision, I do not address the other grounds of appeal outlined above.

Notice of Decision

20. The making of the decision of the First-tier Tribunal involved the making of a material error of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Beg.

E. Ruddick

Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 November 2024