



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/11467/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 11 March 2020**

**Decision & Reasons Promulgated
On 14 April 2020**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

**'HR'
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

By virtue of the appellant appealing an asylum decision, 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. Failure to comply with this direction could lead to contempt of court proceedings.

Representation:

For the appellant: Mr N Ahmed, Solicitor, Lincoln's Chambers Solicitors

For the respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

These are a written record of the oral reasons given for my decision at the hearing.

Introduction

This is an appeal by the appellant against the decision of First-tier Tribunal Judge Buttar (the 'FtT'), promulgated on 15 January 2020, by which she dismissed the appellant's appeal against the respondent's refusal on 13 November 2019 of his protection and human rights claims.

The core points taken against the appellant by the respondent were as follows. While the appellant, a Bangladeshi national, had been a member of a student political organisation, Bangladesh Islami Chhatra Shabir or 'BICS', in Bangladesh, which he joined in 2001, the respondent did not accept that he had suffered any adverse interest as claimed, including being attacked on two occasions in 2009. In particular, the appellant's account that he had fled Sylhet and moved to the Dhaka as a result of that adverse interest was inconsistent with his family's move to Sylhet. The respondent did not accept, as containing accurate information, first information report documents alleging prosecutions in 2009 which were inconsistent with the name of his father in the appellant's visa application. They are also inconsistent with his wife's ability to obtain a visa; return to Bangladesh in 2011; and then departure for the UK, if, as the appellant claimed, she had been threatened by the Awami League on her return to Bangladesh.

If the appellant had genuinely feared the Bangladesh authorities, the respondent concluded that he would not have obtained a copy of a relative's birth certificate from the Bangladesh High Commission in London. The respondent did not accept that the appellant had engaged in *sur place* activities which were any more than minimal and the respondent also noted the delay in the appellant claiming asylum, by reference to section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004. He had entered the UK in 2009 and had not claimed asylum until 2017.

The respondent further considered the appellant's application by reference to article 8 of the ECHR. The appellant's partner was not a British citizen or with settled leave in the UK. The couple had a child born on 15 July 2014 who is not a British citizen. Even noting the child's best interests, its focus, given its age, would remain on the appellant and his wife who could return as a family unit to Bangladesh.

The FtT's decision

The FtT was not impressed by various aspects of the evidence of a witness, [S] who testified as to the appellant's activities in Bangladesh and in the UK. There was no other evidence of him having attended demonstrations in the UK and the FtT concluded that bearing in mind that [S] had claimed asylum himself and had known the appellant since 2003, the FtT did not regard it as credible the appellant would not have known about the right to claim asylum, which he explained had been the reason for the delay in his claim ([42]). Moreover at [43], the FtT concluded that if he had feared persecution in 2009, as he claimed, he would not have allowed his wife to return to Bangladesh in 2011. The FtT also regarded the appellant's

account of whether his wife had been threatened directly or indirectly as inconsistent and also noted what she regarded as inconsistencies in the movements of his family to Sylhet, despite his fear of persecution in Sylhet (44)].

The FtT did not accept that the appellant had been beaten in the manner he described in 2009 and noted that the medical certificate did not say how injuries were caused. Moreover, it was not credible that he would have had copies of medical certificates which related to an attack on him in 2009, but had not claimed asylum before 2017. The FtT noted the availability of false or inaccurate documentation in the 2018 Country Policy and Information Note or 'CPIN'. The FtT had similar concerns about the authenticity of the first information reports ([48]). The FtT also considered but attached limited weight to a death certificate said to be in respect of his uncle and the cause of that death ([50]).

Even if the FtT had reached alternative conclusions, the FtT noted that by reference to paragraph 2.3.4 of the 2018 CPIN, the appellant could seek protection from the Bangladesh police in respect of attacks. In respect of the claimed fear of persecution because of *sur place* activity in the UK, she regarded such activity as very limited and the appellant would not attract adverse attention from Awami league activists or the Bangladesh government as a result.

Having considered the evidence as a whole, the FtT rejected the appellant's appeal in its entirety.

The grounds of appeal and grant of permission

The appellant lodged grounds of appeal which are as follows:

- 1.1. Ground (1) - the FtT erred in failing to give due weight to the fact that the appellant was a member of BICS. Even limited *sur place* activities would give rise to adverse attention from the intelligence wing of the Bangladesh High Commission in London. The appellant could not be expected to keep quiet about his political opinions, were he returned to Bangladesh;
- 1.2. Ground (2) - the FtT had failed to give due weight to the appellant's witness, [S] who testified about the appellant activities in Bangladesh. Although they had known each other since 2003, the appellant did not discuss his 'personal issues' with [S], which the FtT had failed to consider;
- 1.3. Ground (3) - the FtT's findings in relation to the delay in claiming asylum were flawed as there were many reasons why he could not claim asylum earlier;
- 1.4. Ground (4) - the FtT's analysis of the first information reports, which were referred to as photocopies at [46], ignored the fact that originals were available. Moreover, it would be unused to expect medical certificates to provide for the causes of injuries or death;

- 1.5. Ground (5) - the FtT had failed to make an assessment of risk to the appellant by reference to the objective evidence from organisations such as Amnesty International or Human Rights Watch.

First-tier Tribunal Judge Grant-Hutchison granted permission on 14 February 2020, regarding there as being arguable errors of law on all grounds.

The hearing before me

The appellant's submissions

Mr Ahmed submitted to me that witness [S] had been a vital witness and had not been cross-examined, so the evidence that he had given should be accepted as valid. In particular, I was referred to the witness statement of witness [S], a copy of which was at pages [14] to [16] of the appellant's main bundle, and in particular paragraphs [3] and [4], which state:

- “3. The appellant is personally known to me from 2003. I have seen him as a well-known organiser of BICS. I am aware that as part of nationwide oppression on Jamaat-Shibir leaders and activists by the current Awami regime in Bangladesh.*
- 4. Under the circumstances I strongly believe that his life is at serious risks under the Awami regime if he now returns to Bangladesh. I strongly believe that he should be granted asylum in the UK to save his life. I believe that everything I have stated in this statement is true.”*

What was said by Mr Ahmed was that whilst it was accepted that witness [S] was not an expert witness, if the FtT had not agreed with the opinion of witness [S], then the FtT was obliged to analyse that evidence and explain why not.

In relation to the question of delay, the appellant had given particular reasons at paragraph [17] of his witness statement (see page [10] of appellant's bundle): (1), he was afraid that if his asylum claim were refused he would be removed and (2), that as a lay person he was not clear of all of the pros and cons as to when and how asylum needed to be claimed. When I asked Mr Khan how it was that at paragraph [42], the FtT had failed to engage with the question of delay he referred me to paragraph [19] of the FtT's decision, which had referred to the appellant entering the UK in 2009 and waiting to see the outcome of the 2014 election. *“He said he was intending on returning to Bangladesh if BICS won the election. Instead the AL won and remained in power.”* Paragraph [20] continued: *“Further he states he only found out about claiming asylum in 2017.”*

In relation to the disputed medical evidence at paragraphs [18] and [45] of the FtT's decision, the originals had been available for inspection. If the respondent had not accepted their authenticity, then it had been open to them to carry out a document verification report and having failed to do so, it was unfair to then criticise their authenticity or accuracy.

Next, the FtT had failed to consider the objective evidence that the appellant's representative had referred to and in that regard, I was referred to the FtT's record of proceedings, and the example at page [31] of the supplemental bundle, which referred to three BICS members being killed in 2010, and a number of other references that were referred to orally, albeit not in the skeleton argument. There had been effectively a failure to engage in that evidence despite it being referred to at paragraph [28] of the FtT decision.

The respondent's submissions

Ms Everett in contrast submitted that it had never been disputed that the appellant was a member of BICS and similarly, even though the witness [S] was not cross-examined, the FtT was not obliged to accept his view that the appellant would be at risk on return to Bangladesh. Witness [S] had not been accepted as an expert witness. Similarly, in relation to the question of delay, the FtT was not obliged to address in the reasons each and every issue said to be the reason for the delay and the FtT had explained adequately at [42] of the decision why she did not believe the appellant's evidence. In relation to the question around the medical certificates and the first information reports, the FtT was entitled to take into account the CPIN about the circulation of documents which even though they may be genuine, in the sense of having been issued by a particular authority, were inaccurate as to their contents.

In any event, in the analysis at paragraph [46] the FtT had considered the absence of correspondence from lawyers, if the documents were genuine, as well as, in particular, correspondence from a Supreme Court advocate. Finally, in relation to the claimed lack of assessment by reference to objective evidence, this was not a case where the FtT had regarded the narrative as being inconsistent with well-known objective evidence i.e. that Bangladesh is a country where there is political instability and political opponents may be the subject of adverse interest. What, however, the FtT was entitled to do here, was to assess that even in that context, the appellant's account was not truthful in light of the internal inconsistencies in it.

Discussion and conclusions

Whilst I will deal with each of the grounds separately, I have also considered them in the round, in terms of assessing whether the FtT's decision contained errors of law.

Ground (1) - BICS and 'sur place' activities

The FtT expressly acknowledged that the appellant had been an active member of BICS before leaving Bangladesh (at [41]). Nevertheless, the FtT considered in detail the account of ill-treatment in Bangladesh, together with claims of *sur place* activities in the UK, at [47] to [49]. In the circumstances, whilst the general proposition is put that even limited *sur place* activities would give rise to adverse attention from the intelligence

wing of the Bangladesh High Commission, the FtT had considered at paragraph [49] that whilst the appellant may have come to the attention of the UK general public because of cultural events, there was no evidence he had come to the attention of the Awami League or Bangladesh government or that he would become a target in the future. The FtT analysis of a generalised assertion about interest from an intelligence wing of the Bangladesh High Commission in London has to be considered in that context, namely that it was a generalised assertion; that the nature of the appellant's activities was so limited such as not to attract adverse interest; and the fact of his proactive contact with the High Commission for help in getting a family member's certificate was not consistent with a genuine fear of the High Commission. Beyond a general assertion that any *sur place* activities would attract adverse interest, which the FtT did not accept, the appellant does not identify any particular error in the FtT's reasoning. In the circumstances, I conclude that this ground does not disclose an error of law by the FtT.

Ground (2) - witness [S]

An FtT is not obliged to refer to each and every part of evidence before them. I accept Ms Everett's submission that the opinion of witness [S] as to the risk faced by the appellant, which was stated in very brief terms, was simply that, namely an opinion, one that the FtT was entitled to conclude was for the FtT to reach and not for witness [S]. In the circumstances, I do not accept the proposition that the FtT is required to expressly refer to and make a statement that it is not for the FtT to be bound by witness [S]'s opinion, when witness [S] is not an expert witness. This ground discloses no error of law.

Ground (3) - delay

I conclude that the FtT adequately explained her reasons for rejecting the explanations for the appellant's delay in claiming asylum, at [42] and [43]. Whilst the appellant has referred to two reasons, namely fear and the lack of knowledge about the pros and cons of claiming when he did, it is also clear that, as the FtT records, that the appellant claimed to be ignorant of the right to claim asylum until 2017 in the oral evidence (see [20]). The FtT was unarguably entitled to conclude that that was not a credible assertion, knowing that he had known the witness [S] since 2003 and in particular that witness [S] had successfully claimed asylum himself a number of years previously. In the circumstances, the question of delay, whilst it is always only one part of an assessment about credibility, was one that the FtT was unarguably entitled to take into account.

Ground (4) - first information reports and medical documents

I considered the FtT's references to the first information reports not being original documents at [46]. However, that reference has to be seen in its context, as does the FtT's reference to the absence in the medical records of details about the cause of injuries. In relation to the first information reports, at [46], the FtT had drawn inferences from the absence of

correspondence from lawyers; and in relation to correspondence from a Supreme Court advocate. The FtT's comment about the fact of the documents being copies was by way of background in the context of a wider analysis and does not, in my view, amount to an error of law, even in the absence of a document verification process having been adopted by the respondent.

Similarly, in relation to the FtT's references to the details of the injuries and causes of those injuries, at [42] and [50], they have to be considered in the wider context of the FtT's assessment of the appellant's account, which the FtT did not regard as plausible or consistent. In summary, the FtT did not fall into the error identified in Mibanga v SSHD [2005] INLR 377, i.e. of discounting medical evidence on the basis of adverse findings about the appellant's credibility, but instead considered all of the evidence in the round, including, for example, why the appellant would have the medical documents in 2009 but not claim asylum until 2017. Once again, the FtT did not err in law in her analysis of the medical documents, which provided limited detail of the cause of injury, but considered them in the round.

Ground (5) - consistency with objective evidence

I have reviewed the FtT's record of proceedings, which refers to a number of specific references by Mr Ahmed to objective evidence, the gist of which is to record adverse treatment of supporters of BICS in the years from 2009 onwards in Bangladesh. The FtT referred to Mr Ahmed's submissions on the point in general terms at [28]. As with other grounds, the FtT's decision has to be read as a whole. The FtT did not regard the appellant's account as being inconsistent with general objective country evidence. However, the FtT did regard the appellant's account as internally inconsistent and implausible. Just taking one example, the FtT regarded as not credible that the appellant's wife would return to Bangladesh from the UK, after his claimed adverse interest. That was so, even in the context of background evidence said to be consistent with such adverse interest.

Summary

Considering the grounds as a whole, they broadly amount to alleged failures by the FtT to give adequate reasons; and failures to engage with the specific evidence and wider objective evidence about Bangladesh. As I have already indicated, I do not accept that the FtT's decision, when read in context, discloses such failures. The FtT's findings were, in my view, unarguably open to the FtT to reach on the evidence before her and do not contain any errors of law.

For those reasons therefore, the appeal to this Tribunal fails and is dismissed.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal stands.

Signed J. Keith

Date: 19 March 2020

Upper Tribunal Judge Keith