



IAC-FH-CK-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/12708/2019**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the 20<sup>th</sup> September 2021**

**Decision      &      Reasons  
Promulgated  
On the 20<sup>th</sup> October 2021**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**MR MD SAMSUL ISLAM  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms C Bayati, Counsel instructed by MQ Hassan Solicitors  
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

The appellant is a citizen of Bangladesh born on 10 June 1981, who has been in the UK since 2008. He is appealing against a decision of Judge of the First-tier Tribunal Moffatt (“the judge”) promulgated on 10 March 2020.

**The appellant’s claim**

The appellant claims to face a risk of persecution in Bangladesh because of his involvement with the Bangladeshi National Party (BNP). There are, broadly, two aspects to his claim. First, he claims that in 2007 he was arrested and tortured

by the Rapid Action Battalion (RAB) and subsequently, for political reasons, charged with murder. He claims that the threat to him is ongoing as, inter alia, the RAB have been looking for him in his village and have contacted his brother in Bangladesh.

Second, the appellant claims to be at risk because of his sur place activities in the UK which have included attending demonstrations and having a Facebook account where he has made posts supportive of the BNP. He claims that in 2015 the authorities in Bangladesh became aware of his participation in demonstrations in the UK and threatened his brother.

### Decision of the First-tier Tribunal

To support his claim the appellant adduced several documents from Bangladesh. The judge noted that the appellant submitted three sets of translations which had several discrepancies between them. The judge found that because of the discrepancies between the translations she could not place any weight on them.

At a previous hearing (that was adjourned) it was noted that a particular document (at page 205 of the appellant's bundle) had not been translated and directions were given to the appellant to obtain a translation. In paragraph 71 the judge stated:

"I note that the appellant has not complied with the direction of my colleague made at the adjourned first listing of this substantive hearing, to file a translation of the document found at page 205 of the appellant's bundle."

The judge then went on to give other reasons for not accepting the appellant's account, finding at paragraph 76 that he was not a credible witness.

The judge found that the appellant's account of sur place activities had been embellished. She stated in paragraph 77:

"The appellant has not provided any evidence to satisfy me to the lower standard that the Bangladesh authorities would be aware of his Facebook posts."

### Grounds of Appeal and Grant of Permission

The appellant advanced two grounds of appeal:

- (a) Ground 1: The first ground argues that the judge fell into error by stating in paragraph 71 that he had not adduced a translation of the document at page 205, as a translation of this document was submitted in the appellant's supplementary bundle of documents.
- (b) Ground 2: The second ground of appeal submits that the judge failed to have regard to objective evidence concerning the intensity and intrusiveness of surveillance of social media by the Bangladeshi authorities. Reliance was placed on a Human Rights Watch Report

from October 2018, which is cited and quoted from in the grounds of appeal.

Permission to appeal was granted by Upper Tribunal Judge Lindsley. Judge Lindsley considered it arguable that the judge erred by failing to consider objective evidence about risk emanating from Facebook posts.

She also granted permission because of the judge's mistake about whether a translation of the document at page 205 of the bundle had been adduced. However, she questioned whether this error was material. She stated:

"It seems unlikely however that this could have made a difference to the outcome of the appeal relating to the claimed past history as the First-tier Tribunal Judge found that he did not believe any of the historical persecution claims and found that as there were significant variations in the three sets of translations weight could not be placed on them. Unless the appellant can provide any reason why the First-tier Tribunal erred in law with the conclusion that any translations provided by the appellant were unreliable, ultimately this ground cannot disclose a material error in law. I do not refuse permission on this ground, but the appellant must consider what I have said before pursuing arguing this ground at the hearing on error of law."

The error of law hearing in this matter was listed before Upper Tribunal Judge Pickup on 14 May 2021. Neither the appellant, nor a representative on his behalf, attended the hearing and Judge Pickup adjourned the matter. The appellant's representatives have explained that their non-attendance was because they did not receive notice of the hearing. Judge Pickup raised the question of whether a wasted costs order should be made. I have not considered this further, or made such an order, because Dr Clarke stated that he did not wish to pursue it.

### Submissions

Ms Bayati conceded that she was not in a position to pursue the second ground of appeal. She stated that she had carefully reviewed the evidence that was before the First-tier Tribunal and acknowledged that the reports which the grounds of appeal criticised the judge for not considering were not before the judge. She also acknowledged that there was no objective evidence before the judge to support a claim that the Bangladeshi authorities would be aware of the appellant's Facebook posts.

With respect to ground 1, Ms Bayati submitted that the error, which was clear from the face of the decision, was material because the translation of the document at page 205 of the bundle, which was included at pages 8 to 12 of the supplementary bundle, was by a qualified translator in the UK. She contrasted this to the other translations, which had been criticised by the judge, which had emanated from Bangladeshi sources.

Mr Clarke acknowledged that the judge was mistaken at paragraph 71 to state that the document at page 205 of the appellant's bundle was not translated. However, he maintained that the error was not material because the judge gave multiple reasons for not trusting the translations of the other documents.

He submitted that even if this particular document had been properly translated that would not affect the outcome of the appeal given the serious discrepancies found in the other documents and the multiple other reasons given by the judge for not finding the appellant credible.

### Analysis

It was common ground that the judge was mistaken in paragraph 71 when she stated that a translation of the document found at page 205 of the appellant's bundle had not been submitted, as a translation was submitted. Moreover, as is clear from the appellant's supplementary bundle of documents before the First-tier Tribunal, not only was a translation submitted but alongside it was a certificate from a UK-based translator.

However, I agree with Mr Clarke that this error was immaterial. This is because, even if no fault can be found with the translation of this particular document, that does not change the fact that the translations of several other documents, which were highly significant to the appellant's case, were given no weight by the judge for sustainable (and unchallenged) reasons. The judge's findings in respect of the reliability of the other translations is not undermined by the document at page 205 being properly translated. I therefore agree with Mr Clarke that the error in paragraph 71 was not material.

I will address the second ground of appeal only briefly because Ms Bayati did not pursue it at the hearing. The second ground criticises the judge for not having regard to a 2018 Human Rights Watch report ("the HRW report") which considered social media surveillance in Bangladesh. The ground has no merit because the HRW report was not submitted, or relied upon, by either party in the First-tier Tribunal. As the HRW report was not included in the evidence that was before the judge, the judge did not err by not considering it. Indeed, if the judge had considered this report that might have rendered the decision unsafe for improper independent judicial research: see *AM (fair hearing) Sudan* [2015] UKUT 00656 (IAC). The more general criticism of the judge that he failed to consider objective evidence about surveillance of social media is also not sustainable because, as acknowledged by Ms Bayati, there was no objective evidence before the First-tier Tribunal to support a finding that there was any such surveillance.

### **Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of a material error of law and stands.

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

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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

D. Sheridan  
Upper Tribunal Judge Sheridan

Dated: 29 September 2021