



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

Appeal Number: AA/04050/2015

**THE IMMIGRATION ACTS**

**Heard at : Harmondsworth**

**Determination  
Promulgated**

**On : 20 May 2015**

**On : 26 May 2015**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**M A I  
(ANONYMITY DIRECTION)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr I Palmer, instructed by Duncan Lewis & Co Solicitors

For the Respondent: Mr G Jagpal, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a national of Bangladesh born on 28 December 1990. He entered the United Kingdom in February 2010 with leave to enter as a Tier 4 student and then overstayed after his subsequent application for leave to remain as a student was refused. He was issued with a notice of removal as an overstayer on 14 May 2014 and then made an Article 8 human rights application on 9 June 2014, which was refused and certified as clearly unfounded on 19 January 2015. He was detained when reporting and removal directions were set on 30 January 2015 for his removal to Bangladesh on 10 February 2015. The removal directions were cancelled when he made a claim

for asylum on 4 February 2015. On 13 February 2015 he was accepted on to the fast track process and was interviewed about his claim on 4 March 2015. His claim was refused on 5 March 2015 and a removal decision was made the same day.

2. The appellant appealed against that decision and his appeal was heard before the First-tier Tribunal and dismissed in a determination promulgated on 27 April 2015. Permission to appeal to the Upper Tribunal was granted on 7 May 2015.

### **The Appellant's Case**

3. The appellant's claim, in summary, is that he is at risk on return to Bangladesh as a result of his previous political activities for the youth faction of the Bangladesh National Party, the Bangladesh National League Jubo League, and due to being homosexual. He claimed to have been involved in politics since October 2007 and to have experienced problems as a result from 1 June 2009 when he was part of a group of BNP members that attacked an Awami League meeting resulting in an Awami League member being shot dead by a BNP member. He claimed that he played no part in the attack but a warrant for his arrest was issued on 2 June 2009 and the police came looking for him, whilst he was in hiding, so he fled the country after being issued with a student visa. He claimed also to have realised that he was gay when he was aged 16 years although no one found out about that whilst he was in Bangladesh. He had had five or six casual gay relationships in the United Kingdom and had a longer relationship with a male from April 2012.

4. The respondent, in refusing the appellant's claim, did not accept that he was politically involved as claimed and did not accept that he was homosexual. It was considered that his removal to Bangladesh would not breach his human rights.

5. The appellant's appeal against that decision was initially heard before the First-tier Tribunal on 17 March 2015 and was dismissed in a decision promulgated on 19 March 2015. However, following the grant of permission to appeal, an Upper Tribunal Judge set aside the decision for error of law and remitted the case to the First-tier Tribunal where the appeal was heard *de novo* by First-tier Tribunal Judge Chana on 23 April 2015.

6. Judge Chana heard from the appellant and three of his friends and considered the documentary evidence before her, which included a charge sheet, an FIR, an arrest warrant and a letter purporting to come from the President of the BNP Shariatpur District Committee. She found none of the evidence to be reliable and concluded that the appellant had fabricated his claim relating to involvement with the BNP. She also rejected his claim to be homosexual and found that he would be at no risk on return to Bangladesh. She accordingly dismissed the appeal on asylum, humanitarian protection and human rights grounds.

7. Permission to appeal was sought on behalf of the appellant on two main grounds: firstly that the judge had made inconsistent and contradictory findings on the appellant's claim as regards his political activities and had failed to determine the reliability of the documentary evidence; and secondly that her approach to the question of the appellant's sexuality was flawed and that her rejection of the witness' evidence lacked reasoning.

8. Permission was initially refused, but was subsequently granted by Upper Tribunal Judge O'Connor on 7 May 2015, with specific reference to the second ground, on the basis that the judge's reasons for rejecting the witness' evidence in relation to the appellant's sexuality were arguably flawed.

### **Appeal hearing**

9. At the hearing Mr Palmer produced correspondence from the appellant's former solicitors to the respondent advising them that he was also relying upon his sexuality as part of his claim, but found it hard to talk about such personal issues with strangers and had therefore not mentioned it at his screening interview. He requested that the documents be admitted as relevant to Judge Chana's findings at paragraph 72 of her decision where she placed weight upon the appellant's delay in raising his sexuality as part of his claim.

10. The parties then made submissions on the error of law.

11. Mr Palmer expanded upon the grounds of appeal, submitting that the judge had made inconsistent findings about the appellant's attendance at a meeting on 1 June 2009 and had wrongly rejected the legal documents which were, contrary to her conclusion, consistent with the appellant's account. He submitted further that the judge, in making adverse findings about the appellant's claim as to his sexuality due to his delay in raising the matter, had failed to have regard to the respondent's guidance on sexual orientation issues in asylum claims, and had made adverse findings against the witnesses for reasons which were unlawful. He requested that the decision be set aside and re-made afresh.

12. Mr Jagpal submitted that the judge had made no errors of law in her decision and that the grounds amounted to little more than a disagreement with her findings.

### **Consideration and findings.**

13. In my view the judge's decision does not contain any material errors of law such that it has to be set aside. My reasons for so concluding are as follows.

14. In granting permission on all grounds, Upper Tribunal Judge O'Connor said that he found little merit in the grounds relating to the judge's findings on the appellant's political involvement. I agree. The judge gave lengthy and detailed reasons for concluding that the appellant's account of his political involvement and the risk he allegedly faced on that basis was lacking in credibility. Contrary to the assertion in the grounds, her findings were not inconsistent or contradictory but simply pointed out the various inconsistencies in the

evidence. At no point did she accept that the incident on 1 June 2009 had genuinely taken place, but she merely pointed out that the appellant's claim to have been unaware of the intention of his colleagues to attack the Awami League members was inconsistent with the account given in the FIR that his colleagues were armed with deadly weapons and with his own evidence that they were armed with guns and bombs. Her findings, at paragraph 62, that the appellant feared prosecution not persecution was no more than a comment on his claim in the alternative, but it is plain that that did not amount to an acceptance that the events actually took place.

15. As regards the assertion in the grounds that the judge made no findings on the weight to be attached to the documentary evidence, that is patently wrong. She considered the documentary evidence in detail, in particular at paragraphs 53 to 57 of her decision, and noted several discrepancies and inconsistencies between the contents of the documents and the appellant's own evidence, concluding that the evidence was not reliable. There can be no doubt, from her findings in those paragraphs and her reference, at paragraph 57, to the reported prevalence of fraudulent documents in Bangladesh, that she did not attach weight to any of the documents and found that they formed part of a fabricated claim.

16. Whilst Mr Palmer accepted that the judge's findings on the letter from the president of the BNP were open to her for the reasons given, he submitted that her findings on the legal documents were unsustainable. He focussed in particular upon her reliance, at paragraph 53, on the FIR failing to explicitly state that the Awami League victim had died and upon her reliance, at paragraph 54, upon the title of the charge sheet referring to the Explosive Substance Act rather than a charge of murder. However the judge was entitled to give weight to such concerns, particularly in light of the more weighty concerns, expressed at paragraphs 51 and 52 of her decision, that the appellant had previously expressly stated that no arrest warrants had ever been issued against him and that he had previously made no mention at all of the incident described in the documents. In view of such significant inconsistencies in the appellant's evidence, the judge was perfectly entitled to place the weight that she did upon the documents and the evidence as a whole.

17. Having found, for reasons properly given, that the appellant's claim as regards his political involvement was a complete fabrication, the judge was entitled to approach his claim in regard to his sexuality with some circumspection. In any event it is plain that she gave full and detailed consideration to that claim and to the supporting evidence. She took account of the appellant's explanation for having introduced the claim only at a later stage and, in rejecting that explanation, gave clear and cogent reasons for so doing. There was nothing inconsistent with the respondent's policy guidance in her approach. Mr Palmer relied upon new evidence indicating that the appellant had raised the matter of his sexuality with his solicitor at the time of his screening interview and that his solicitor had communicated the additional strand to his claim to the respondent subsequent to the interview. However that does not undermine the judge's findings at paragraph 72, where she

properly found that the appellant had failed to mention his sexuality on various previous occasions when he had had the opportunity to do so and that his explanation for not having done so was not a credible one. She was entitled to rely upon that as a matter undermining the credibility of the appellant's claim.

18. In any event that was not the sole reason given by the judge for rejecting the appellant's claim as to his sexuality. She noted that, aside from making no mention of being gay, he had in fact previously claimed to be in a relationship with a woman, Ms Maharjan. Further, his evidence as to his homosexual relationships in the United Kingdom was inconsistent. Aside from the claimed casual relationships he had had with men whose full names he did not know, he claimed to have had one relationship which was still ongoing, yet the evidence given by himself and his claimed partner as to the nature of their relationship and in particular whether or not they had cohabited, was completely contradictory and his partner had not even attended the hearing.

19. As regards the witnesses appearing at the hearing, the judge was entitled to attach the weight that she did to their evidence. In rejecting the evidence of Ms Maharjan the judge noted the inconsistent evidence given by the appellant about the nature of his relationship with her at a previous interview and considered, but rejected, his explanation for that inconsistent evidence. The fact that the evidence given by both at the hearing was consistent was not in itself a reason to accept the accounts given, when there had been previous inconsistent evidence and when there otherwise existed considerable concerns about the reliability of the appellant's account of his sexuality.

20. Likewise, in view of such concerns as to the evidence as a whole, the judge was entitled to place the weight that she did upon the evidence of Mr Mojumdar (referred to in her decision as Mr Kader) and Mr Ahmed. She gave reasons for finding their evidence to be lacking in credibility: in relation to Mr Mojumdar, at paragraph 75 and in relation to Mr Ahmed at paragraphs 78 and 79. The grounds of appeal only challenge her findings in relation to Mr Mojumdar, although Mr Palmer challenged her findings on both witnesses, and assert that the reasons she gave for rejecting the evidence were irrational. However I am in agreement with Mr Jagpal's submission that such an assertion is no more than a disagreement with the judge's findings and that she was entitled to place the weight that she did upon their evidence for the reasons given, and in the light of the lack of credibility of the evidence as a whole.

21. Taken as a whole, the judge's decision contains a careful and detailed assessment of all the evidence before her and clear findings of fact supported by cogent reasoning. The grounds amount to little more than a disagreement with those findings. The judge was entitled to make the adverse credibility findings that she did in rejecting the appellant's claim as to his political activities and his sexuality and the grounds disclose no material errors of law in her decision.

## **DECISION**

22. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed

Date

Upper Tribunal Judge Kebede