



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/12276/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 16 August 2018

Decision & Reasons Promulgated  
On 18 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

M S U  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr R Wilcox of Counsel, instructed by JS Solicitors  
For the Respondent: Mr K Pal, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Bangladesh born on 28 January 1967. He appealed against a decision dated 26 October 2017 refusing to grant him asylum on the basis of his background as an organiser for the BNP in Bangladesh and the fact that he wrote

a novel in which he was trying to put forward a message to secular society. Subsequently his publisher had been killed, having been at risk because of his secularism.

2. His appeal came before Judge of the First-tier Tribunal Flynn for hearing on 22 December 2017. In a decision and reasons promulgated on 17 January 2018 the Judge dismissed the appeal on all grounds. Permission to appeal was sought in time. Ground 1 of the grounds of appeal dated 30 January 2018 asserted that the Judge had erred materially in law:
  - (i) firstly in failing to engage with the evidence, in particular, what the Appellant's activities in Bangladesh entailed, in light of the Judge's finding at [77] that the Appellant was a volunteer activist for the BNP but did not have the right profile;
  - (ii) at [81] in finding that the letters of support exaggerated the Appellant's role because by his own account he had no role in making policy, the Judge failed to take account of the fact that three of these letters were not concerned with the Appellant's activities in Bangladesh and the fourth letter did not suggest that the Appellant has a role in policy making either and this evidence was consistent with the Appellant's evidence he was a background organiser;
  - (iii) the Judge materially erred in her assessment of the oral and written evidence of Mr Rahman, the Appellant's witness, at [80] and failed to consider the significant and material evidence as to how Mr Rahman became aware of the Appellant's activities, which this was through his work as a journalist and political reporter of the Daily Amardesh, as a consequence of which he covered the activities of the BNP. He was in Bangladesh when the Appellant's book was published and knew his publisher who invited him to the book launch and Mr Rahman further confirmed he had seen the Appellant's book in the BNP library and thus his evidence put into context how he came to know of the Appellant activities;
  - (iv) fourthly, the Judge failed to engage with the evidence in the round and in particular by failing to consider that the Appellant's evidence of his activism for the BNP influenced his writing;
  - (v) fifthly, in failing to engage with the evidence that the fact that the Appellant wrote a book was at the heart of the risk to him on return, given that the book contained a political message promoting the BNP which would bring him to the adverse attention of the Awami League;
  - (vi) sixthly, in failing to consider the very strong links between the Appellant's book and the BNP and failing to take account at [78] of the Appellant's bundle a letter from the managing director of Prime Bangla Channel Europe, confirming that his novel had become very popular in Bangladesh; the evidence of Mr Rahman; the photograph at page 94 of the bundle showing the Appellant's book being held and read by the Senior Vice Chairman of the BNP and that consequently the Judge had failed to adequately assess the risk to the Appellant.
3. The second ground of appeal asserted that the Judge's approach to the medical evidence and the Appellant's vulnerability was materially flawed in that the Judge

failed to take this into account in her assessment of credibility and failed to consider whether and to what extent the Appellant's vulnerability affected his ability to give evidence and the Judge had materially erred in failing to mention or even consider the medical evidence in the form of letters from the Appellant's GP.

4. The third ground of appeal asserted, in the alternative, that the Judge had erred in a consideration at [95] of whether there will be significant obstacles to the Appellant's return, but assessed this solely in relation to the issue of risk and thus failed to apply the test correctly.
5. I granted permission to appeal upon consideration of the papers in a decision dated 20 June 2018, on the basis that the grounds of appeal, particularly the first ground, raises arguable errors of law in the decision of the First-tier Tribunal Judge.

### *Hearing*

6. At the hearing before the Upper Tribunal, I heard submissions from Mr Wilcox, Counsel on behalf of the Appellant and from Ms Pal on behalf of the Secretary of State. Mr Wilcox sought to rely on the grounds of appeal and went through the Judge's decision and reasons in some detail. He pointed out that at [77] there was some confusion by the Judge between the BNP and the Jatiyotabadi Dal, which was essentially the youth wing of the BNP but not the BNP proper.
7. He went through the judge's reasons for rejecting the Appellant's claim and submitted that she erred in failing to consider the context of the witness evidence of Mr Rahman, who is a journalist and explained how he came to know the Appellant's role within the BNP. There was no finding by the Judge as to whether someone such as the Appellant whose work had been published by somebody who had been assassinated, particularly when considered along with the fact that a friend of the Appellant and known blogger known as Mr Abijit Roy had also been assassinated, that this was material to a proper consideration of the risk to the Appellant on return. He submitted that this evidence was contrary to the Judge's finding at [86] there was nothing to show any connection with the Appellant's book or that those who assassinated his publisher had any interest in the Appellant.
8. In her submissions, Ms Pal went through the Judge's decision stating that the findings of the Judge were open to her on the evidence that was before her. In particular, it was open to the Judge at [78] to find that the Appellant would have joined the BNP in the UK earlier even if his health had prevented him from participating fully in political activities, were he a genuine activist. It was open to the judge [at 80] to find that Mr Rahman's evidence had been exaggerated in order to attempt to bolster a weak claim [see also 81]. She submitted the grounds of appeal were merely a disagreement with the clear findings of fact made by the Judge which were open to her and that these should not be disturbed.
9. In reply Mr Wilcox submitted that at its heart the crucial question which had not been directly dealt with by the judge is whether the Appellant's book embodies a form of activism. He submitted clearly if it does then the suggestion that the activities the

Appellant is involved in would not bring him to the attention of the people outside the party is problematic. He submitted that there was a clear deficiency in the reasons in that the Judge had not directly addressed that issue.

10. In respect of the assassination of the Appellant's publisher Mr Dipon, whilst Mr Wilcox accepted that he was not assassinated for publishing the Appellant's book, the Appellant's book fell into a category of books and his circumstantial evidence that the book embodies a type of activism i.e. secularism claimed. Mr Wilcox drew the Upper Tribunal's attention to the evidence at Annex J of the Respondent's bundle in relation to the assassinations of Faisal Arefin Dipon and Abijit Roy.

### *Findings*

11. I find material errors of law in the decision of First-tier Tribunal Judge Flynn for the reasons set out in ground 1 of the grounds of appeal, set out in detail at [2] above and expanded upon by Mr Wilcox in his oral submissions. The Appellant's consistent case is that he is a background organiser for the BNP and that he also wrote a book favour of secularism, which implicitly criticised the current government in Bangladesh.
12. Whilst the Judge did grapple with the issues raised before her, I find that her findings of fact and the treatment of the evidence of Mr Rahman is arguably flawed. At [84] of her decision and reasons, the Judge treated his evidence with caution, in light of her conclusion that he had embellished the Appellant's role in order to support his asylum claim. This conclusion was in turn based on her finding at [80] that Mr Rahman's description of the Appellant has having a "*high profile political involvement*" was not reasonably likely to be accurate but simply an attempt to bolster a weak claim. His evidence was that he became aware of the Appellant's activities through his work as a journalist and political reporter of the Daily Amardesh, as a consequence of which he covered the activities of the BNP; he was in Bangladesh when the Appellant's book was published and knew his publisher who invited him to the book launch and he confirmed he had seen the Appellant's book in the BNP library. The difficulty with this finding is that, having acknowledged at [80] that Mr Rahman is not a close friend of the Appellant and his motive for supporting the claim was unclear, she failed to give adequate or cogent reasons as to why she considered he was embellishing the Appellant's level of political involvement.
13. I further find that the Judge's finding at [81] that the four letters of support clearly exaggerate the Appellant's role because he had no role in policy making is a material error, in that none of these letters suggested that the Appellant had a role in policy making but were consistent with the Appellant's evidence that he was a background organiser. The Judge's error meant that this evidence was not treated as corroborative of the Appellant's claim.
14. I further find that the Judge failed to consider properly the risk on return to the Appellant as the author of a book which is implicitly critical of the regime. At [86] she held that it was not "*reasonably likely that there is any risk for him as the author of his book*" or that it was "*reasonably likely that he will face any risk because of having written this novel.*" Her reasons for so finding were that neither the AL nor the BNP are named in the book

and the Appellant did not claim to have received any threat that mentioned the book. However, this finding failed to take into consideration the evidence that the book contained a political message promoting the BNP and the written evidence at [78] of the Appellant's bundle which is a letter from the managing director of Prime Bangla Channel Europe, confirming that his novel had become very popular in Bangladesh; the evidence of Mr Rahman that he had seen the Appellant's book in the BNP library and the photograph at page 94 of the bundle showing the Appellant's book being held and read by the Senior Vice Chairman of the BNP. I find that this evidence is capable of supporting the Appellant's claim to be at risk because of his book and the Judge materially erred in failing to engage with this evidence and provide clear and adequate reasons for her findings at [86].

15. I find, in light of the evidence as a whole in support of the Appellant's claim, that the Judge failed to adequately assess the risk to the Appellant if returned to Bangladesh.

### **Notice of Decision**

For the reasons set out above I find material errors of law in the decision of First-tier Tribunal Judge Flynn. I set aside that decision and remit the appeal for a hearing *de novo* before the First-tier Tribunal.

### **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 their 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 *Rebecca Chapman*

Date 14.9.18

Deputy Upper Tribunal Judge Chapman