



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09490/2019**

THE IMMIGRATION ACTS

**Heard at: Field House
On : 7 January 2020**

**Decision & Reasons Promulgated
On: 15 January 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MD GULJAR HUSSAIN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Parkin, instructed by Londonium Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh born on 15 January 1983. He has been given permission to appeal against the decision of First-tier Tribunal Judge Housego dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.

2. The appellant arrived in the United Kingdom on 18 April 2019 with a working holidaymaker visa valid until 9 March 2011. He overstayed his visa. On 15 November 2017 he was encountered and arrested as an overstayer, was served with removal papers and released on temporary admission. He failed to report and absconded. He was subsequently encountered during an

enforcement operation on 20 June 2019 and was detained and served with removal papers. He claimed asylum on 25 June 2019. His asylum claim was refused on 19 September 2019.

3. The appellant's asylum claim was made on the basis that he feared persecution in Bangladesh as a result of his involvement with the Bangladesh National Party (BNP). He claimed to have joined the BNP in 2005 and remained as a Union Secretary for two years. He attended BNP programmes in 2007 and 2008. As a result of his political involvement he experienced problems with the Awami League. On 25 August 2008 he was attacked by members of the Awami League and beaten up. He was taken to hospital because of his injuries. On 30 October 2008 his friend had a fight with an Awami League member who later died from his injuries. Since he, the appellant, was present at the fight, a false allegation was made against him. The police came to his house to make enquiries and he ran away. He came to the UK and, after arriving here, found out about the false case against him. If he returned to Bangladesh he would be killed or put in prison by the Awami League.

4. In support of his claim the appellant submitted some documentary evidence consisting of a BNP membership receipt, a supporting letter from the General Secretary of the BNP dated 29 July 2019, an FIR registered against him relating to the incident on 30 October 2008, a charge sheet dated 26 November 2008 referring to that incident, an arrest warrant signed on 23 August 2009, a newspaper article dated 4 September 2008 about the attack on 25 August 2008 and an injury certificate from the hospital.

5. In the decision refusing the appellant's claim, the respondent considered that his lack of knowledge about the BNP undermined his claim to be a member and that the timing of his asylum claim undermined his credibility. The respondent did not accept that the appellant was involved with the BNP or had the problems described and did not accept that he was of any adverse interest to the Bangladeshi authorities or at any risk from the Awami League. The respondent did not accord any weight to the documents relied upon by the appellant. The respondent considered that in any event there was a sufficiency of protection available to the appellant and that he could also safely relocate to another part of Bangladesh. It was considered that his removal to Bangladesh would not breach his human rights.

6. The appellant appealed against that decision. His appeal was heard on 24 October 2019 before First-tier Tribunal Judge Housego. The judge found that the appellant was an economic migrant. He did not accept that being a member of the BNP would give rise to a risk and he noted that the appellant had had no involvement in the party since 2008. The judge found the documentary evidence to be unreliable. The judge considered that the respondent was wrong in the submission that the appellant had left Bangladesh at a time when he had an arrest warrant issued against him, since the warrant was dated four months after his departure from the country, and he considered that the appellant's failure to point that out was notable. He drew an adverse inference from that, as well as from the lack of any

explanation as to why an arrest warrant would have been issued a year after the asserted incident, from the timing of the appellant's claim and his behaviour prior to making the claim and from the lack of an account of how his mother obtained the documentary evidence. The judge found that the appellant was a member of the BNP from 2005 and secretary of a small branch of the BNP from 2006-2008. He did not accept his account of being attacked by the Awami League and he did not accept that there was an arrest warrant issued against him. He found that, even if he had been attacked by a small group of people in 2008 he was no longer at risk from them as he was no longer active in politics and in any event they would not know if he returned to Bangladesh and went to live somewhere else. The judge considered that the appellant's removal would not breach his Article 8 rights. He dismissed the appeal on all grounds.

7. The appellant sought permission to appeal on the grounds that the judge applied a higher standard of proof, gave no reason for rejecting the appellant's account of the incident on 25 August 2008 and was wrong to do so as the account was supported by the background country information; that the judge's finding, that the appellant would not be at risk as a local leader of the BNP, was inconsistent with the background country information and that the judge had been wrong not to accept the existence of false criminal proceedings against the appellant; that the judge erred by not accepting the appellant's explanation for his delay in claiming asylum; and that the judge had erred in his Article 8 assessment.

8. Permission to appeal to the Upper Tribunal was granted on 19 November 2019.

9. At the hearing, both parties made submissions. Mr Parkin submitted that the judge erred by failing to consider the documentary evidence which supported the appellant's claim, in particular the newspaper report and the hospital report, and gave no reasons for finding the documentary evidence as a whole to be unreliable. The reason given by the judge for not accepting the arrest warrant was inadequate. The appellant's delay in claiming asylum was a matter the judge was able to take into account but could not form the sole basis for rejecting his claim. The judge did not explain why he rejected the appellant's evidence but yet accepted his claim to be a member of the BNP. His findings lacked adequate reasoning and the decision was flawed.

10. Mr Avery submitted that the grounds were simply a disagreement with the judge's decision. The judge heard the evidence, considered the documents and properly applied Tanveer Ahmed. He was entitled to assess the documentary evidence in the context of all the circumstances including the fact that the appellant had only claimed asylum after been encountered twice and trying to run away before being detained. The judge did not have to refer to each and every piece of evidence. His determination was a properly considered one.

Discussion and conclusions

11. Contrary to the assertions made on behalf of the appellant, there can be no doubt as to what the judge's decision was and why and how he reached the conclusions that he did. The judge clearly set out the evidence and explained his approach to the assessment of the evidence in the context of the relevant legal provisions and the country information. He summarised the reasons why the respondent did not accept the appellant's claim and he particularised the appellant's response to those reasons as well as setting out the appellant's evidence at the hearing, including specifically, at [36], the appellant's explanation for the matters which were of particular concern. The judge's reasons for according the limited weight that he did to the evidence are set out from [53] where he referred back to the credibility concerns raised in the respondent's submissions at [43], and at [56] to [58] where he considered the documentary evidence and the appellant's submissions. Contrary to the mention in the grant of permission of the judge having failed to deal with the medical documentation, the judge in fact made specific reference to the hospital report at [56]. He also specifically addressed the arrest warrant, FIR, charge sheet and the letter from the BNP.

12. It was Mr Parkin's submission that the judge failed to give reasons why he considered the documentary evidence to be unreliable, but he plainly did give such reasons at [57]. Mr Parkin submitted that the judge's reasoning at [57.1] in relation to the arrest warrant was not a sufficient basis for placing no reliance on the document, but on the contrary the judge was perfectly entitled to draw adverse conclusions from the appellant's contradictory evidence in that regard. Not only did the appellant make no attempt to correct the respondent's submission that he had been able to leave Bangladesh after an arrest warrant had been issued, as the judge noted at [57.1], but the appellant's own evidence, recorded at [38], was that he left after the warrant had been issued, which was clearly inconsistent with the information in the document. For that reasons, and for the further reason given at [57.1], the judge was perfectly entitled to have the concerns that he did about the evidence relating to the arrest warrant.

13. In addition to pointing out specific difficulties with some of the documents, the judge's concern about the reliability of the documentary evidence as a whole was also expressed in terms of the lack of any clear explanation as to their provenance ([57.5]), the background evidence relating to fraudulent documentation, and the circumstances leading to their production, all of which were matters upon which the judge, properly applying the principles in Tanveer Ahmed, was entitled to take into consideration. As Mr Avery properly submitted, the judge was entitled to consider the evidence in the context of the timing of the appellant's claim and the circumstances under which it was made. It was not the case that the judge rejected the appellant's claim on the sole basis of the delay in making his claim, but he was entitled to approach the evidence with caution in the light of such circumstances, having before him evidence in the form HO minute sheets setting out the appellant's adverse immigration history and behaviour when encountered on two occasions leading up to the claim.

14. Mr Parkin made specific reference to a newspaper report relied upon by the appellant in support of the claimed incident on 25 August 2008 which he submitted was not referred to by the judge. However, for the reasons given above, it is plain that the judge had regard to all the evidence as a whole and was not required to address each and every piece of evidence in turn. He accorded the evidence the limited weight that he did for the reasons fully and properly given. In any event it is relevant to regard that evidence in the context of the judge's findings at [59.8] where he considered the appellant's position on the alternative basis that the incident on 25 August 2008 had occurred.


15. Accordingly, for all these reasons, it seems to me that this was a case where the judge carefully assessed all the evidence in the round and in the context of the background country information and made properly reasoned findings on the evidence, applying the correct standard of proof. It was open to the judge, for the reasons cogently given, to conclude that the appellant had fabricated an account of being the subject of an arrest warrant and of outstanding charges in Bangladesh and to conclude that he would not be of any adverse interest to any party or at any risk on return Bangladesh on the basis of his limited profile. The judge was entitled to reach the conclusions that he did and to dismiss the appeal on the basis that he did. I note that the grounds relating to Article 8 did not form part of the submissions made before me by Mr Parkin and that he quite properly did not pursue a matter upon which the judge reached conclusions fully open to him on the evidence.

DECISION

16. 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.

Anonymity

It is not clear whether Judge Housego intended to make an anonymity order, as he made a direction at the end of his decision to that effect, but stated below the appellant's name at the beginning of the decision that an anonymity direction was not made. I see no reason for this decision to be anonymised and therefore discharge any direction which may have been made.

Signed 
Upper Tribunal Judge Kebede
2020

Dated: 10 January