Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01068/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 2 October 2014	**On 6 November 2014**

Before

THE HON LORD BOYD
Sitting As a Judge of the Upper Tribunal
UPPER TRIBUNAL JUDGE MOULDEN

Between

MR MATIUL ISLAM
(No Anonymity Direction Made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Hossain of counsel instructed by Hossain Law Associates
For the Respondent: Mr I Jarvis a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Bangladesh who was born on 10 February 1964. He was given permission to appeal the determination of First-Tier Tribunal Judge N P Dickson ("the FTTJ") who dismissed his appeal against the respondent's decision of 12 February 2014 to refuse to grant him asylum and to issue removal directions.

2. The appellant appealed and his appeal was heard by the FTTJ on 7 March 2014. Both parties were represented at the hearing and the appellant gave

evidence. The FTTJ dismissed the appeal on asylum, humanitarian protection and human rights grounds. The appellant applied for and was granted permission to appeal to the Upper Tribunal arguing that the FTTJ had erred in law.

3. His appeal came before Upper Tribunal Judge Dawson ("Judge Dawson") on 6 May 2014. Judge Dawson found that the FTTJ had erred in law and set aside the decision directing that it should be remade in the Upper Tribunal. The findings made by the FTTJ in paragraph 44 and 46 of his determination were preserved. It was thought that the appeal might serve as an appropriate vehicle for updating the country guidance case of H (Fair trial) Bangladesh CG [2002] UKIAT 05414. Judge Dawson's Decision and Reasons records that the main issues were whether prison conditions would infringe his Article 3 human rights, whether he would receive a fair trial and whether he would be at risk of the death penalty.

4. In his Memorandum and Directions following a case management hearing on 24 July 2014 Judge Dawson recorded that neither party was willing for the case to proceed as a country guidance case. In the circumstances he gave directions, not all of which have been observed, leading to the hearing before us. As well as the material before the FTTJ we have a skeleton argument and a bundle of documentary evidence from the appellant. Although the directions provided for a further witness statement from the appellant no statement has been submitted. Mr Hossain informed us that the only new evidence in the appellant's bundle was updated medical data from the appellant's GP. We have an updated skeleton argument and an authorities bundle from the respondent. Mr Jarvis said that the skeleton argument superseded earlier ones. The appellant attended the hearing with a Tribunal interpreter to assist him but no oral evidence was required or given.

5. On 24 July 2013 the appellant made an application for a UK visit Visa which was granted for the period from 6 August 2013 to 6 February 2014. The appellant arrived in the UK on 22 August 2013 travelling on his own valid Bangladeshi passport. He said that he had come here to see his mother who was having an eye operation.

6. On 15 November 2013 the appellant applied for an appointment in order to make a claim for asylum. He did not attend the appointment on 30 December 2013 but did attend the subsequent appointment on 20 January 2014 at which stage he claimed asylum. This was followed by the respondent's decision of 12 February 2014. There is a lengthy reasons for refusal letter from the respondent dated the same date.

7. The findings of fact made by the FTTJ in paragraphs 44 and 46 of the determination were;

> "44. I found the appellant's account of the court proceedings and the bail applications to be convincing. He has in my view satisfactorily answered these parts of the concerns of the respondent that were set out in the refusal letter. I am satisfied that the appellant was involved in the meeting of the Awami League when Mr Moziful Islam was killed. He has been accused of various crimes and the Supreme Court has even become involved relating to his bail application."
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> "46. The appellant has also claimed that he was tortured while he was in custody. However this matter has not come to the attention of the Home

Office or the Tribunal until the hearing on 21st February 2014 when he produced his initial report. There was no mention of any torture either in the asylum interview or in the letter from Universal Solicitors dated 24 January 2014. In evidence the appellant said that he had experienced eye trouble as a result of this ill-treatment but in fact he also said at his screening interview that he had suffered from eye trouble for a number of years. This was confirmed by the letter from Universal Solicitors of 24 January 2014 and the Screening Interview (3.1). I accept that the appellant was in custody from December 2012 to March 2013 but I am not satisfied that he suffered ill-treatment from the authorities during this period."

8. Mr Jarvis relied on his skeleton argument and corrected a minor error in paragraph 2a where the date when Mr Islam was killed should have been 21 June 2012 not 3 July 2012. He submitted that the issues in the appeal were the question of the death penalty in Bangladesh, whether the appellant would receive a fair trial, pre-trial detention and prison conditions. He took us through his skeleton argument.

9. Mr Hossain relied on his skeleton argument. He submitted that Bangladesh was no longer on the "White List" because of the human rights situation in the country. The appellant was the number one suspect in relation to the murder of Mr Islam and had the highest profile of all the accused. He had health problems, particularly with his eyes. Even if he was not sentenced to death he would face life imprisonment which would be particularly harsh. A very high proportion of those in prison in Bangladesh were in lengthy pre-trial detention. In reply to our question, he was not able to say whether if an individual was convicted and sentenced to a period of imprisonment in Bangladesh the period spent in pre-trial detention would be deducted from the sentence. Whilst the appellant had been granted bail on two occasions he submitted that this was whilst the investigations were continuing.

10. Mr Hossain asked us to put considerable weight on the evidence of the lawyer from Bangladesh whose opinion was that the appellant was highly unlikely to be granted further bail. He would be regarded as having absconded once and therefore at high risk of absconding again He had been expelled from his party, the Awami League. In all the circumstances of his case he would definitely be found guilty. Prison conditions in Bangladesh were dire and many sick prisoners died for lack of medical treatment. There were approximately 1500 prisoners on death row. We were asked to allow the appeal.

11. We reserved our determination.

Prison conditions

12. In SH (prison conditions) CG Bangladesh [2008] UKAIT 000761 the AIT took the view that prison conditions in Bangladesh, at least for ordinary prisoners, did not violate Article 3 ECHR. However, this conclusion did not mean that an individual who faced prison on return to Bangladesh could never succeed in showing a violation of Article 3 in the particular circumstances of his case. The individual facts of each case should be considered to determine whether detention would cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3. Relevant factors would include whether there was a political element to the person being detained, whether it was detention awaiting trial or detention in service of a sentence, the likely length of detention, the likely type of detention facility, and the individual's age and

state of health. The appellant claimed that he had been tortured whilst in prison in Bangladesh but the FTTJ rejected this claim and that finding has been preserved.

13. The appellant relies on the Home Office Operational Guidance Note dated September 2003 which includes the following passages;

> "3.13.3. Consideration. Prison system conditions remained harsh and, at times, life-threatening due to overcrowding, inadequate facilities and lack of proper sanitation. Human rights observers stated that these conditions contributed to custody or death. According to Odhikar, 58 persons died in prison in 2012 compared with 105 prison deaths in 211. In a 4 July 2012 report on the trials of Bangladesh Rifles mutineers, HRW documented 47 cases of custody death between 2009 and 2012, some due to torture or mistreatment.
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> 3.13.4. The US State Department report that although the constitution and law prohibit torture and other cruel, inhuman or degrading treatment or punishment, security forces, including RAB and police, reportedly employed torture and physical and psychological abuse during arrests and interrogations. Security forces used threats, beatings and electric shocks. According to Odhikar, security forces tortured at least 72 persons, killing seven. The government rarely charged, convicted or punish those responsible.
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> 3.13.10. Arbitrary lengthy pre-trial detention continued to be a problem due to bureaucratic inefficiencies, limited resources, lax enforcement of pre-trial rules, and corruption. An estimated 2 million civil and criminal cases were pending. According to a 2008 estimate from the International Centre for Prison Studies, nearly 70% of prison inmates, or 56,000 prisoners, were in pre-trial detention. In some cases the length of pre-trial detention equalled or exceeded the sentence for the alleged crime.
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> 3.13.15. Where individual applicants are able to demonstrate a real risk of imprisonment on return to Bangladesh (and exclusion is not justified), depending on the factors set out above, a grant of humanitarian protection may be appropriate."

14. The respondent submits that, according to Odhikar, there were 59 deaths in prison during 2013 and that 54 of them died because of illness. Whilst the respondent accepts that conditions in Bangladeshi prisons can, in some cases, be harsh and/or life-threatening we consider that it would be reasonable to conclude that some of these deaths in prison arose from purely natural causes not exacerbated by prison conditions.

15. The respondent submits that in 2013 the total prison population was 69,968. 70% of this does not equate to 56,000 but we accept that the majority of those in prison in Bangladesh are held before trial or after trial and before sentence.

16. The appellant was a member of the Awami League and the local secretary for that party. He was present at the meeting where there was a clash between two groups of the Awami League and Mr Islam was killed. He claimed to have been expelled from the Awami League and the respondent now accepts this (paragraph 56a of the respondent's skeleton argument). He has been accused of murder in relation to the death of Mr Islam. The respondent concedes this

(again in paragraph 56a of the skeleton argument) and we find that there is a political element to the charges brought against the appellant. This does not arise as a result of conflict between the main political parties but from an internal conflict within one party, the Awami League.

17. This appellant has been detained in prison in Bangladesh since the death of Mr Islam. We consider that what happened in the courts and in prison whilst he was detained assist us in assessing his future treatment if he returns and is imprisoned.

18. In August 2012 the appellant and all the other accused were granted "anticipatory bail" by the High Court. In December 2012 the appellant's advocate explained that the appellant had missed court dates because of ill-health but a Senior Judicial Magistrate decided that the appellant had absconded and revoked his bail. It was said that he could be given the necessary medical treatment in prison. In January 2013 the appellant was represented by an advocate before a Senior Judicial Magistrate in the same court. The appellant was not produced for this or an earlier hearing and it was directed that the prison prepare a report. Later in January 2013 the appellant's advocate explained to a Senior Judicial Magistrate that the appellant had been admitted to Rangpur Medical College Hospital on 14 January 2013 and from there had been referred to the National Eye Hospital on 16 January 2013. Bail was refused. However, on 14 March 2013 in the Rangpur Session Judge Court the appellant's advocate explained that he had been unwell and receiving hospital treatment. The court had sight of a report from the prison authorities and the appellant was granted bail. A court document dated 30 October 2013 indicated that all those accused as a result of the same events were on bail. Mr Hossain informs us that there were 10 or 11 of them.

19. Whilst we accept that there can be lengthy delays for those held in prison awaiting trial or convicted and awaiting sentence the past history of the appellant's treatment within the prison and court system indicates that he has been able to instruct an advocate on a number of occasions and that his representatives have been able to obtain access to the courts at both lower and higher levels without serious delays and with applications being renewed at short intervals. He has been able to obtain appropriate medical treatment including being released from prison in order to access this. The evidence does not support Mr Hossain's submission that the appellant received better treatment whilst the investigation was still pending and that he would be subjected to worse treatment and longer delays on his return.

20. There is a lack of clear evidence before us as to whether there are any circumstances in which the appellant would be able to obtain bail if on his return he was arrested and held pending trial. We note that Mr Hossain's skeleton submits that there is no power for the police to grant bail after a murder charge has been brought but there is no suggestion that a judge or court cannot grant bail in these circumstances. The evidence submitted by the appellant at pages 33 to 35 of his bundle, whilst indicating that bail has been refused or revoked on appeal in some individual cases, does not show the application of any wider principles. Mr Siddiq is a barrister qualified in both this country and Bangladesh. We are not able to accept the opinion in his letter of 3 May 2014 that a court would be highly unlikely to exercise its discretion to grant the appellant bail on a murder charge. We accept that the appellant's period of absence from the country could tell against him. However, Mr Siddiq does not appear to have been informed or have taken into

account the fact that the appellant was granted bail in Bangladesh at a time when it was known that he was accused of murder, even if he had not been formally charged. His previous experience of being able to obtain bail because he needed medical treatment indicates that he may well be able to do so if his health problems recur.

21. Assessing the reports of prison conditions and delays in awaiting trial in Bangladesh in the light of the appellant's particular circumstances and experiences we find that he has not established that there is a reasonable likelihood that he would suffer either persecution for a Convention reason or infringement of his Article 3 human rights.

Fair trial

22. The case of H (Fair Trial) Bangladesh [2002] UKIAT 05410 is no longer country guidance and has not been replaced.

23. In order to succeed under Article 6 of the European Convention of Human Rights, the appellant must able to show substantial grounds for believing that there is a real risk of a breach of his right to a fair trial. His entitlement to a fair trial is defined in that Convention as;

> "Article 6 - Right to a fair trial
> 1. In the determination of … any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
> 3. Everyone charged with a criminal offence has the following minimum rights:
> (a) To be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
> (b) To have adequate time and facilities for the preparation of his defence;
> (c) To defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
> (d) To examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
> (e) To have the free assistance of an interpreter if he cannot understand or speak the language used."

24. We find that the conclusion in R on the application of Zakir Husan v Secretary of State EWHC 189 (Admin) ruling against the certification by the Secretary of State on the basis that there was in general in Bangladesh no serious risk of persecution of persons entitled to reside there or the removal of such persons would not in general contravene the UK's obligations under the human rights

convention does not provide any material help either to the appellant or the respondent in determining whether on return to Bangladesh the appellant would obtain a fair trial.

25. The respondent argues that whilst there is some corruption within the lower first instance level of the Bangladeshi courts the evidence overall shows that the level of corruption at the higher appellant levels is not endemic or significant and that seen in its entirety the legal system does provide a fair trial. The nature of corruption at the lower level of the judicial system is not reasonably likely to lead to an unfair convictions based on false accusations. Mr Hossain in his skeleton and submissions says little about the risk of the appellant not obtaining a fair trial beyond the arguments that he would not get a fair trial because he was accused of the murder of an Awami League leader and had been expelled from the party and that he would have no control over whether his case would be dealt with by the Speedy Trial Tribunal. The report at page 41 of the appellant's bundle relates to representations by two independent United Nations human rights experts urging the Bangladesh government to halt the execution and allow a further appeal of an individual convicted of murder and sentenced to death on the basis that he did not receive a fair trial. We note that there had been a trial outside the mainstream criminal jurisdiction system, by the Bangladesh International Crimes Tribunal. The facts differ from those in this case because that individual had exhausted his appeal remedies under the system as it stood.

26. Whilst we accept the evidence submitted by the respondent that "Speedy Tribunals" have been set up to help deal with the backlog of cases within 90 to 120 days and that these can deal with crimes including murder there is no clear evidence as to whether the appellant's case would be dealt with by such a Tribunal.

27. Paragraph 19 of the respondent's skeleton sets out a number of matters which, it is argued, indicate that overall there is a fair system of judicial oversight. In summary these are; the withdrawal of two proposed appointments to the High Court Division following adverse media scrutiny; the High Court overturning the conviction and death sentence issued by a Special Tribunal which was found to have been based solely on a newspaper report; the Supreme Court declaring a mandatory death sentence provision unconstitutional on the basis of the constraint of judicial discretion to consider the credibility of evidence and witnesses; the acquittal of four death-row convicts who had been sentenced to death in 2008 for their alleged part in the killing of eight political leaders and activists; the increase in judges salaries in 2013; the establishment of Speedy Tribunals; the implementation by the government in 2007 of most of 12 directives detailed by the Supreme Court which aimed to separate the lower judiciary from the Executive; the Law Ministry whilst carrying out the posting transfer and promotion of judges in this subordinate courts does so in consultation with the Supreme Court; legislative reforms intended to guarantee the independence of Tribunals; amendments to the rules of procedure including the right to the presumption of innocence, the right to a fair and public hearing with counsel of their choice, the right to apply for and be granted bail, a prohibition on convicting a person twice for the same crime, a prohibition on requiring the accused to confess guilt, placing the burden of proof of proving guilt beyond reasonable doubt on the prosecution and the creation of a victim and witness protection system; a second Tribunal has been set up to share the growing workload of the 2010 International Crimes Tribunal. Finally, the War Crimes Committee of

the International Bar Association considered that the 2010 amended legislation provided "a system that is broadly compatible with international standards".

28. The "National Household Survey on Corruption in Bangladesh – 2007" report indicated that less than half of households had used bribery whilst interacting with Magistrates or Judge Courts in both urban and rural areas; the level of bribery in the High/Supreme Court and Special Court was negligible and the number of judges receiving or negotiating bribes was negligible. Whilst it is disturbing to note the number of households using bribery whilst interacting with the lower courts the indication that the levels of bribery were negligible at high levels is more encouraging.

29. The respondent's submissions in relation to political influence on the judiciary are that whilst there is a lack of transparency as to the relationship between the Executive and the lower courts there was little reliable evidence to show the judges were subjected to political influence in decision-making and that the attempts to separate the judiciary from the Executive have been of some effect.

30. We have not been shown any evidence which might militate against the respondent's argument that the High/Supreme Court is subject to routine political pressure which adversely affects decision-making. On the other hand the evidence from Odhikar does indicate general public suspicion of the decision-making of the National Committee for Withdrawing Politically Motivated Cases on the basis that most of those dropped were against leaders and activists of the ruling Awami League whose cases, as a result, bypassed the judiciary. If, as a result of what he is thought to have done, and having been expelled from the Awami League, the appellant does not benefit from a decision from this committee it does not provide evidence that politically motivated interference against him would be brought to bear on the higher judiciary.

31. The Awami League were in power in Bangladesh from 1996 until October 2001 and from December 2008 until now. The party was in power when the alleged killing of Mr Islam took place, when the appellant was arrested detained imprisoned, bailed and released. They would be the party in power if he was returned now.

32. The appellant's treatment by the courts in Bangladesh does not indicate that he has suffered political interference, undue delays, denial of appropriate hearings or proper legal representation. On the contrary he has been represented by an advocate of his choice, hearings have taken place without unreasonable delay and he and those accused with him have been able to obtain bail.

33. We find that in line with Othman (Abu Qatada) v the United Kingdom 8139/09 [2012] ECHR 56 (17 January 2012) and the authorities reviewed in that case the appellant would need to establish that he would suffer a "flagrant denial of justice" to bring himself within Article 6. He has not shown that he falls within any of the forms of unfairness cited as examples in Othman.

34. We find that on the appellant's own evidence as to what has happened to him, viewed in the light of the country evidence before us he has not been treated unfairly by the courts and there is no evidence to show that the courts have

shown a lack of independence for example by bribery or political pressure. In the past he has not suffered flagrant denial of justice.

35. The fact that he has not suffered flagrant denial of justice in the past is some indication but only part of the question of what may happen to him on return. In the light of all the evidence, including the country information and the information about his personal circumstances, we find that he has not established that there are substantial grounds for believing that if he is removed to Bangladesh he will be exposed to a real risk of being subjected to a flagrant denial of justice.

Death penalty

36. Paragraph 339C of the Immigration Rules provides that;

> "A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:
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> (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom;
>
> (ii) he does not qualify as a refugee as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;
>
> (iii) substantial grounds have been shown for believing that the person concerned, if he returned to the country of return, would face a real risk of suffering serious harm and is unable or, owing to such risk, unwilling to avail himself of the protection of that country; and
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> (iv) he is not excluded from a grant of humanitarian protection.
>
> Serious harm consists of:
>
> (v) the death penalty or execution;
>
> (vi) unlawful killing;
>
> (vii) torture or inhuman or degrading treatment or punishment of a person in the country of return; or
>
> (viii) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict."

37. What is meant by "substantial grounds" in subparagraph (iii)? In our opinion this part of the definition is not to be equated with a standard of proof. "Substantial grounds" means what it says – there are grounds which have substance to them. A "real risk" is one which is not fanciful or speculative or theoretical.

38. It is also clear that given that there is at least the prospect of the imposition of the death penalty we have to approach our task with anxious scrutiny. If we find that a real risk has been established it is for the respondent to dispel that risk; Saadi v Italy [2008] EHRR 179 at paragraph 129.

39. It is common ground that in Bangladesh murder is one of the crimes punishable by death under the Penal Code. It is also common ground that a conviction for murder does not automatically result in a death sentence. Section 302 of the Penal Code provides; "whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine".

40. The respondent argues that the background evidence does not reveal a reasonable likelihood of the appellant being subjected to the death penalty even if convicted of murder. The appellant submits that “it is well known that Bangladesh” would impose on the appellant punishment at the highest level, meaning the death sentence. There is no objective evidence to support the contention that “it is well known”. However he also submits that his is the first name on the charge sheet. He is regarded as the principal accused and as a former member of the Awami League accused of the murder of a rival he is more likely to receive the death sentence.

41. The respondent has provided more detailed information as to the risk of a death sentence or execution. There were approximately 247 executions in Bangladesh between 1975 and January 2005. The most recent information, from Odhikar, shows 76 death sentences in 2010, 97 in 2011, 77 in 2012 and 93 between January and August 2013. Nine death sentences were carried out in 2010, four in 2011, one in 2012 and one between January and August 2013. Amnesty International reports that there were two executions in Bangladesh in the whole of 2013.

42. In June 2014 there were 1071 prison inmates on death row in Bangladesh. Neither the Magistrate’s Court nor the Courts of Assistant Sessions can pass a final death sentence. Such a sentence can be passed by the Courts of the Sessions or the Additional Sessions but these cannot be executed until examined and confirmed by the High Court Division.

43. The High Court Division can pass a final sentence of death. There is also the opportunity to ask for clemency from the President.

44. We have already found that the appellant will not be subjected to flagrant denial of justice. In the light of what has happened to him in the past and current evidence we find that he is likely to have a fair trial. He denies the charges brought against him. We have no means of judging whether he is more likely to be convicted or acquitted. If he is convicted of murder or any lesser charge we do not know what extenuating circumstances may be advanced in his favour. The respondent has not established that, if convicted, he is more likely to be sentenced to a life sentence as opposed to the death penalty.

45. In our opinion there are substantial grounds for concluding that the appellant if convicted would be sentenced to death. The figures show that even if there have been in recent years fewer executions substantial numbers are being sentenced to death and many remain on death row. We note that the appellant is regarded as the principal accused and that the murder appears to be relatively high profile, particularly since it has a political element to it. We do not know whether in those circumstances a court might feel obliged to make an example of the appellant or pass a sentence which might be seen as a deterrent to others who might engage in acts of political violence. Finally we note that no attempt has been made by the respondent to obtain any guarantees from the receiving state that the appellant would not be sentenced to death.

46. The figures appear to show that there has been a reduction in the number of death sentences carried out in recent years. It may well be that if the appellant is convicted and sentenced to death it may never be carried out.

On the other hand there is no guarantee of that. There are still executions in Bangladesh; while they may be few in number there is no evidence before us that would enable us to say that the appellant would not be one of those executed. In any event a reduction in executions in recent years does not mean that that trend will necessarily be maintained.

47. We are satisfied that, without any guarantees from Bangladesh that the appellant if convicted of murder would not be sentenced to death, his deportation to Bangladesh would not be in accordance with the rules.

48. We do not consider that it would be in breach of Article 2. In our opinion that would only arise if there was the prospect of a death sentence following an unfair trial; see Bader v Sweden [2008] 46 EHRR 13. As we have found we do not consider that a trial would be unfair.

49. We note the high number of people currently on death row. In Soering v UK 11 EHRR 439 the ECtHR concluded that a person convicted and sentenced to death who then spends a protracted period of time on death row (the "death row phenomenon") might suffer inhuman and degrading treatment thereby engaging Article 3 of ECHR. While the information that we have before us is limited we do not consider that the respondent has dispelled any concern arising from the prospect that the appellant could well spend a substantial period of time on death row. Accordingly we consider that the appellant's deportation would also be in breach of Article 3.

50. The FTTJ did not make an anonymity direction. We have not been asked to make such a direction and can see no good reason to do so.

51. We conclude that there are substantial grounds for believing that the appellant, would, if returned to Bangladesh face a real risk of suffering serious harm in the form of the death penalty or inhuman or degrading treatment or punishment. Accordingly he is entitled to humanitarian protection.

52. The decision of the FTTJ having been set aside we remake that decision. The appellant has not shown that he faces a real risk of persecution for a Convention reason. He is not entitled to asylum. However, for the reasons we have given, we allow the appellant's appeal on humanitarian protection and Article 3 human rights grounds.

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Signed Date

31 October 2014

Upper Tribunal Judge Moulden