



IAC-AH-KRL-V1

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

Appeal Number: IA/16055/2014

THE IMMIGRATION ACTS

Heard at Bradford
On 8 July 2015

Decision & Reasons Promulgated
On 7 September 2015

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**MD GOLAM KIBRIA
(NO ANONYMITY DIRECTION)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Marshall, NBS Solicitors

For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Md Golam Kibria, was born on 31 December 1978 and is a male citizen of Bangladesh. The appellant had made applications for indefinite leave to remain in the United Kingdom on account of his long residence and also for asylum. These claims had been refused by the respondent in decisions dated 14 March and 19 October 2014 respectively. The appellant appealed to the First-tier Tribunal (Judge Kelly) which, in a decision promulgated on 17 December 2014, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant asserts in his grounds of appeal that the judge failed to deal with one of those grounds, namely based upon Article 8, ECHR. The judge noted [2] that the appellant had appealed on Article 8, ECHR grounds but his decision is silent thereafter as to Article 8. In her Rule 24 notice, the respondent asserts that it was clear that the appellant and his family would be returned together to Bangladesh and that there would be no breach of family life. That may well be the case but the judge should have dealt with a ground of appeal which had been raised before him.
3. Secondly, the appellant asserts that the judge has failed to consider how and why he may curb his opposition political activities upon return to Bangladesh (see *HJ (Iran)* 2010 UKSC 31). The judge was satisfied that the appellant had been involved in politics, as he claimed, in Bangladesh prior to his departure in 2003 [30]. He was also satisfied that the appellant had been involved in sur place activities whilst in the United Kingdom [31]. The judge dealt at length [41] *et seq* with the “brutal crackdown in Bangladesh” by the Government and its agencies against those who it considered had been associated with opposition violence during the election in January 2014 and the six month period preceding it [43]. The finding firmly made by the judge was that the appellant, upon his return to Bangladesh, would not be at real risk for that reason because he had left the country long ago. I consider that to be a sound finding for which the judge has provided cogent and adequate reasons. The problem, however, is that the appellant, notwithstanding his long absence from Bangladesh, may feel impelled by his genuinely-held political convictions to espouse the opposition cause and may, as a consequence, expose himself to risk. Equally, the appellant may choose to remain silent because he fears that the open expression of his political views may, in the current climate prevailing in Bangladesh, expose him to a real risk of persecution. These are questions with which Judge Kelly has not grappled in his otherwise sound and thorough decision.
4. Finally, the appellant asserts that the judge has not made a finding regarding the appellant’s own evidence and corroborative evidence from the appellant’s party leader that the appellant’s home in Bangladesh had been attacked after the appellant had given a speech in Leeds in December 2013. It is generally not necessary for a judge to make findings about each and every event detailed in an appellant’s account. However, I consider that, in the light of all the other evidence in this appeal, the judge should have made a finding as to whether he believed that aspect of the appellant’s account.
5. I told the representatives in court that I considered this to be an unusual case where the judge’s decision, so far as it goes, is sound; he has approached his analysis of the appellant’s case in an even-handed way giving very clear reasons for accepting parts of the appellant’s account and rejecting other parts of the evidence. He has, however, omitted to complete that analysis by considering the further important questions which arise from his acceptance of parts of the appellant’s account. He has also failed to deal (as I have noted above), with the Article 8, ECHR appeal. The representatives did not disagree with my proposal that the appeal should be remitted to Judge Kelly sitting at Bradford so that he might complete his analysis by determining the Article 8, ECHR appeal, by making a finding of fact as regards the

appellant's claim that his home in Bangladesh was attacked and (*per HI (Iran)*) by determining whether the appellant would be at real risk on return to Bangladesh if he espoused his political views or, if he chose not to express them, his reasons for refraining from doing so.

Notice of Decision

6. The appeal is allowed to the extent that it is remitted to Judge Kelly in the First-tier Tribunal for him to further consider the appeal in accordance with this decision of the Upper Tribunal.

Signed

Date 1 September 2015

Upper Tribunal Judge Clive Lane