



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

Appeal Number: PA/04692/2017

THE IMMIGRATION ACTS

Heard at Field House

On 1 December 2017

**Decision & Reasons
Promulgated
On 16 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**R S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Gaisford, Counsel instructed by Hunter Stone Law
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

Anonymity:

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 his 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.

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh born on [] 1982 whose protection claim was refused by the respondent on 31 April 2017. The appellant appealed to the First-tier Tribunal where his appeal was heard by Judge Devittie. In a decision promulgated on 7 July 2017 the judge dismissed the appeal. The appellant is now appealing against that decision.
2. The appellant entered the UK unlawfully in 2008. He was arrested in November 2016 following which he made his asylum application.
3. The basis of his claim is that he would be at risk on return to Bangladesh because of his involvement with the Bangladeshi Nationalist Party (BNP) both in Bangladesh and in the UK. He claims that his brother-in-law held a senior position in the BNP and that he worked with his brother-in-law's security team. He claims that in 2004 he was beaten and assaulted by Awami League supporters following his refusal to pay a bribe and that a case has been filed against him which is currently open. He also claims that there was a media campaign against him in Bangladesh.
4. The appellant claims that since coming to the UK he has been actively involved with the BNP. He claims to have attended multiple demonstrations and been active in numerous activities. He submitted letters of support from several members of the BNP including individuals who operate at a senior level. In addition he submitted numerous photographs showing him at demonstrations including one where he is next to an individual holding a sign saying "Go Back Killer Hasina". He claims that this photograph was taken at a demonstration when Mr Hasina was visiting the UK.
5. The respondent accepted that the appellant was a supporter of the BNP in Bangladesh and that he has been a supporter whilst in the UK. However, it was not accepted that he was attacked or had a case lodged against him because of his political opinion and it was not accepted his sur place activities would place him at risk on return to Bangladesh.

Decision of the First-tier Tribunal

6. The judge did not accept that the appellant was attacked in 2004 or that proceedings were brought against him. He found this aspect of the appellant's evidence to be contrived.
7. The judge gave several reasons for rejecting the appellant's account.
 - (a) Firstly, the appellant's immigration history gave rise to a legitimate suspicion that the asylum claim was contrived, given that it was made when he was facing imminent removal. At paragraph 5(ii)(b) the judge stated that he rejected the appellant's explanation of why he failed to claim asylum earlier because if the appellant had been in touch with leading BNP political activists, as he claimed, it would have been plain to him that an early asylum claim was a reasonable course for him to pursue.

- (b) Secondly, the judge found that the appellant was vague and incoherent in his explanation for the legal proceedings he claims are ensuing against him in Bangladesh. The judge stated that: “One would reasonably expect in the circumstances that the appellant would be able to give a very clear and coherent account of the state of play in the prosecution proceedings against him.”
- (c) Thirdly, the judge did not accept that the authorities in Bangladesh would maintain an active adverse interest in the appellant for several years over allegations that amount to no more than a physical altercation between opposing political groups. The judge stated: “There is absolutely nothing in this appellant’s profile that would justify the sustained interest in him for close to a decade even taking into account his claim to have high profile links. He held no high profile position in the BNP.”
- (d) Fourthly, the judge noted that the appellant adduced several statements from BNP members in the UK and in Bangladesh to support his claim but none of the statements mentions the appellant’s account of the reasons why he was subject to persecution; that is, the active and outstanding warrant of arrest against him in Bangladesh.
8. The judge found that even if the appellant’s claim was taken at its highest it would be reasonable and viable for him to relocate within Bangladesh. The judge stated that even on the appellant’s own evidence he did not come to any serious harm whilst in Bangladesh between the incident in 2004 and leaving for the UK in 2008.
9. The judge accepted that the appellant has been politically active for the BNP in the UK and that he attended demonstrations where photographs had been taken showing him beside leading members of the BNP. Although the judge accepted that these photographs could be in the public domain he rejected the contention that they would place the appellant at risk.
10. The judge acknowledged that the Bangladeshi authorities in the UK actively monitor demonstrations but found that because there is nothing in the appellant’s background that would lead to the authorities having an interest in him he would not be distinguishable from the hundreds of other demonstrators that participate in such demonstrations from time to time and consequently he would not be identified at the airport as someone of interest to the authorities.

The Grounds of Appeal

11. The first ground of appeal argues that the judge failed to have proper regard to the appellant’s sur place activities. The appellant adduced photographs including one of him at a recent protest against the Bangladeshi Prime Minister where he was photographed next to an individual holding a sign describing the Bangladeshi Prime Minister as a killer. The grounds maintain that no reference was made in the decision

to the specific content of the photograph or the way in which it and the other photographs would be perceived by the authorities.

12. In addition, the first ground submits that the finding that the authorities would not expend resources on identifying and prosecuting the appellant on return was perverse/irrational, given that the judge accepted that the authorities actively monitor demonstrations in the UK and that the photographs could well be in the public domain.
13. Mr Gaisford elaborated on the first ground of appeal as follows: he argued that the judge's factual findings about the appellant's sur place activities combined with his finding that the authorities actively monitor activities of BNP activists in the UK could lead to only one conclusion: that the appellant would be at risk on return. His argument was that having found that the appellant (a) is affiliated with prominent individuals in the BNP; (b) is active in the BNP in the UK; (c) had attended multiple demonstrations for the BNP; and (d) had been photographed with leading members of the BNP including in a photograph where he is next to an individual holding a sign describing the Prime Minister of Bangladesh as a killer; the only conclusion to draw is that the appellant would be at risk on return to Bangladesh and it was perverse or irrational to conclude otherwise.
14. The second ground of appeal concerns the adverse inference against the appellant arising from the delay in making an asylum application. The appellant claimed that the reason for the delay was that he was advised by a solicitor to not make an asylum claim. The grounds argue that the judge erred by overlooking or ignoring this. Alternatively, the second ground argues that even if the judge did consider the appellant's explanation about being advised to not make a claim by a solicitor the judge erred by holding the appellant responsible for this error when a party should not be held to account for his representative's procedural errors.
15. In addition the grounds contend that the judge committed a procedural irregularity because the appellant's evidence about the advice he took from a solicitor was not specifically challenged at the hearing or engaged with in the decision.

Consideration

Sur Place Activities

16. The fact that – as accepted by the judge – the Bangladeshi authorities actively monitor demonstrations in the UK does not mean that the activities of this particular appellant would be known to them. The relevant question for the judge was whether this appellant, with his particular profile, would be at risk on return to Bangladesh because his sur place activities would (applying the lower standard of proof) become known to the authorities.

17. The judge found that given the appellant's profile it was not reasonably likely he would be at risk on return. The profile of the appellant, as found by the judge, was that he had not been subject to persecution (or arrest) in Bangladesh because of his support for the BNP and that he had not held any significant – or indeed, any – official position in the BNP in Bangladesh. The judge's conclusion, which was open to him on the evidence, was that there was nothing in the appellant's history and conduct in Bangladesh that would draw him to the attention of the authorities.
18. Having reviewed afresh the objective evidence that was before the First-tier Tribunal, I am of the view that although it indicates that there may be monitoring and surveillance of BNP activities outside Bangladesh, it does not show (applying the lower standard of proof) that someone who has not had a senior or official role in the BNP and who has not been persecuted or arrested in Bangladesh for BNP activities would come to the attention of the authorities in Bangladesh merely for participating in demonstrations (and being photographed at such demonstrations next to provocative banners).
19. Whether a particular individual faces a risk on return to Bangladesh solely because of sur place activities in the UK requires a fact specific enquiry engaging with the question of whether the individual would become known to the authorities. This is the approach the judge followed and which resulted in his conclusion that "there is nothing to suggest why and how this appellant is distinguishable from the hundreds of other demonstrators that participate in such demonstrations from time to time." This was not an irrational conclusion. It may be that other judges would have drawn a different conclusion from the same evidence, but the question is whether this judge reached a conclusion which was open to him. I am satisfied that he did.

Delay in claiming asylum

20. The appellant's explanation for delaying his asylum application by eight years was that he was advised by a solicitor to not make an asylum claim as he would be arrested for entering the country illegally.
21. Mr Gaisford argued that the judge failed to consider this explanation for the delay. I disagree. The judge dealt with the explanation at paragraph 5(ii)(b) of the decision. Some confusion arises because the third word of paragraph 5(ii)(b) is "this" when, reading the decision as a whole, it is apparent that the judge meant to say "his". The point made by the judge is that the appellant's claim to have been misled by a solicitor as to the appropriate course of action is undermined by his claim to have been in touch with leading political activists who would have made plain to him that an asylum claim should be brought upon arrival in the UK.
22. Mr Gaisford's alternative argument was that the appellant should not be held responsible for mistaken procedural advice from his representative. This argument has no merit. If the appellant is contending that he was

given incorrect advice by a solicitor, then there needs to be evidence that the allegation was put to the solicitors. See BT (Former solicitors' alleged misconduct) Nepal [2004] UKIAT 00311. However, there was no evidence before the First-tier Tribunal to show that any attempt had been made to contact the former solicitor.

23. There was insufficient evidence before the First-tier tribunal to establish that a solicitor had advised the appellant to not make an asylum claim and I am satisfied that there is no discernible error of law in the judge's assessment of the considerable delay by the appellant in making the asylum application.

Decision

A. The appeal is dismissed.

B. The judge has not made a material error of law and the decision of the First-tier Tribunal stands.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 10 December 2017