



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

Appeal Number: PA/00399/2020

THE IMMIGRATION ACTS

**Heard at Field House
by Skype for Business
On 11 March 2021**

**Decision sent to parties
on:**

On 23 March 2020

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**J A (BANGLADESH)
[ANONYMITY ORDER MADE]**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Jay Gajjar, Counsel instructed by Thamina Solicitors

For the respondent: Ms Alexandra Everett, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of J A who is the subject of these proceedings or publish or reveal any

information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 3 January 2020 to refuse him refugee status under the 1951 Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds. The appellant is a citizen of Bangladesh.

Background

2. The appellant was born in a town in Sylhet District in north-eastern Bangladesh, in 1990 and has a sister and a brother. His father died in 2009 and the appellant then lived with his mother, in a nearby village in Sylhet. He had a brother and a sister: his sister married and now lives in the United Kingdom. His brother is said to have disappeared when the appellant was 'younger' and gone to Dhaka.
3. The appellant was educated up to the end of high school and then set up his own grocery business, a substantial business with a manager and three other employees. He also had a sand and stone business, and another business in car sales. The appellant was clearly a successful and prosperous businessman.
4. The appellant's problems are said to have begun with demands from money by a man called Jamal, who was a local leader of the Awami League, which has been in power in Bangladesh since winning an election in December 2008. Jamal was personally known to the appellant, but he also sent four or five of his people to the shop, to threaten the appellant's employees. They took the money in the till and told the employees to tell the appellant to pay up.
5. The appellant called a meeting of the local Shopkeepers' Council, some of whom suggested calling the police immediately, while others said to wait and see. More threats followed. The appellant consulted the Shopkeepers' Council again, and this time they suggested he went to the police. Finally, about two months later, Jamal's people beat up the appellant and took his watch, mobile phone and bracelet. Bystanders took him to hospital. The police said they could do nothing as Jamal was 'a big politician' and they would lose their jobs if they filed a report. There were a number of newspaper reports of the attack on the appellant.
6. In November 2016, the appellant's mother received a further threatening letter, saying that if the appellant did not pay up, 'she knows what would happen'. The appellant consulted a friend, who took him to a suburb of Dhaka, the capital of Bangladesh, over 6 hours drive from his home in north-

eastern Bangladesh. The friend introduced the appellant to an agent. Another friend in Sylhet put the appellant up while he waited: the agent offered an emergency passage to India (just over the border from the appellant's home in Sylhet) or to Japan, but the appellant said that he preferred to travel to an European country.

7. The appellant arranged his finances, making sure his mother would be all right. He went back to the shop and the bank, and arranged to sell the shop and for the proceeds to go to his mother. He obtained a passport and left for Europe on 25 January 2017.
8. The appellant's journey took a circuitous route: his first flight took him to Turkey via Dubai. He then flew to Libya, and took a boat to Tunisia and then Malta. From Malta, he travelled on to Italy, where he was fingerprinted. He took a train from Italy to France, arriving on foot on 1 March 2017 and managing to enter the United Kingdom, clandestinely in the back of a lorry, on 16 May 2017.
9. The appellant claimed asylum at the Asylum Screening Unit in Croydon on 14 June 2017. A Eurodac search turned up his having been fingerprinted in Italy, and on 12 October 2017, Italy agreed to accept his return under the Dublin III Convention. On 19 January 2018, the asylum claim was refused and certified on third country grounds. The appellant was not removed.
10. On 3 September 2019, further representations were received and on 3 January 2020, the respondent issued a fresh refusal letter which gave the appellant an in-country right of appeal.
11. In the United Kingdom, he has been living with his married sister. He is still single, with no children. He remains in contact with his mother, and with his best friend, and continues to fear Jamal and his men who he says will kill him on return.
12. The appellant told the respondent he had sever headaches, for which he took over the counter medication (paracetamol) and prescription medicine (Gabapentin). Both are available in Bangladesh.
13. The respondent considered that the core account lacked credibility and that there were no Article 8 ECHR or health reasons why leave to remain should be granted, within or outwith the Rules.
14. The appellant appealed to the First-tier Tribunal.

First-tier Tribunal decision

15. The First-tier Judge accepted a narrow *Chiver* core of credible facts, but rejected the rest of the appellant's account. He accepted that the appellant was a Bangladeshi man from north-eastern Bangladesh (Sylhet Province) and that he had been attacked in October 2016. The judge rejected the appellant's account that he was attacked by a government-based group (in context, the Awami League). The First-tier Judge considered that police

protection would be sufficient from any continuing threat: the appellant in his interview said that the police had offered to help him.

16. The First-tier Judge also considered that the appellant had an internal relocation option and that the risk, if it existed, was limited to his former home area in north-eastern Bangladesh. He gave some limited negative weight to the appellant's failure to claim asylum in Italy when he was fingerprinted there, with reference to section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and *JT (Cameroon) v Secretary of State for the Home Department* [2008] EWCA Civ 878.
17. The First-tier Judge did not find it credible that there was any ongoing threat from Jamil or his men. He gave little weight to the appellant's private life, which has all accrued while he was here unlawfully. There was no question of family life.
18. The First-tier Judge dismissed the appeal, and the appellant appealed to the Upper Tribunal.

Permission to appeal

19. Upper Tribunal Judge Lindsley granted permission to appeal because she considered that the First-tier Judge's decision was arguably irrational in relation to the following findings of fact and credibility:
 - (a) At 35(ii), that the appellant was not attacked for political reasons, given the acceptance that the attack took place, and the press articles produced, sourced to 'local residents' which said that it was a political attack by the Awami League;
 - (b) That the appellant had probably fed the account of his attack to the press to support a future asylum claim, given that the press reports were all published in October 2016, around the date of the attack, but that the asylum claim was not made until June 2017;
 - (c) In rejecting the assertion that pressure was placed on the appellant's mother (see [167] and [169] in the asylum interview);
 - (d) That the First-tier Judge's decision was contrary to the evidence: at [145] and [149] of his asylum interview, the appellant said that the police had refused to help, due to Jamal's political affiliations, such that even though he trusted them, they could not protect him;
 - (e) That internal relocation was an option, given that the Awami League was a national government organisation, and having regard to the CPIN and other country of origin evidence before the First-tier Tribunal; and that
 - (f) The judge's delay of 5 months in rendering his decision tainted his assessment of credibility and his assessment of the appellant's oral evidence, of which there was little mention in the First-tier Judge's decision.
20. Judge Lindsley also gave triage directions.

Rule 24 Reply

21. The Secretary of State filed a Rule 24 Reply. She argued that
- (a) the grounds of appeal were no more than a disagreement with the findings of fact and credibility by the First-tier Tribunal;
 - (b) the assessment of the 'local residents' reliability in relation to the press reports was open to him, and that it was for the fact-finding judge to evaluate the evidence before it;
 - (c) it was relevant and important to consider what had happened in Bangladesh after the appellant left, and whether he had any difficulty in leaving Bangladesh openly, as he claimed to fear a national party;
 - (d) overall, the judge's consideration of the evidence was sufficient and disclosed no material error of law;
 - (e) that issues relating to his mother were irrelevant since the targeting was not accepted; and that
 - (f) delay alone did not render the decision unsafe and in this case, there was no reason to think that delay had negatively affected the decision.
22. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

23. For the respondent, Ms Everett said that she had some sympathy with the grounds. The First-tier Judge arguably had not dealt adequately with the newspaper articles or considered internal relocation properly. She maintained her position on delay, with reference to *SS (Sri Lanka) v Secretary of State for the Home Department* [2018] EWCA Civ 1391 at [28]-[29].
24. At question 144-145 of the interview, the police had said that they would 'see what they could do', on the appellant's account. The appellant's evidence was that he had sold the business and that it had now closed down. It was difficult to see on that basis why the Awami League would now seek to extort money from the appellant if he returned.
25. For the appellant, Mr Gajjar said that the Upper Tribunal should take an holistic view of the credibility findings: the First-tier Judge had accepted that the attack occurred in 2016 as stated. The Awami League were not likely to take kindly to the things that had been said about them. Two of the newspapers in question were Sylheti, but the third was a national newspaper.
26. The appellant's account that there were 'photographs [of him] in every district' (see question 166), taken with the contents of the newspaper reports, indicated a wider risk than that found by the First-tier Judge. It was not safe to rely on the existence or otherwise of the photographs: the First-tier Judge, and the Upper Tribunal, were not Bangladeshi.
27. Mr Gajjar asked me to allow the appeal.

Analysis

28. **Delay.** This decision was sent to the parties on 1 July 2020, the hearing having taken place on 18 February 2020, just as the Covid-19 pandemic broke out. That is a long delay, but given the difficulties caused by the pandemic, that is not as surprising as it might otherwise have been. The approach to delay was considered in principle in *SS (Sri Lanka)* at [22]-[29], concluding at [28]-[29]:

“28. There is no justification for applying a different or special approach on appeals to the Upper Tribunal (Immigration and Asylum Chamber) from the approach which is generally applicable in cases of delay in giving a decision. Nor does the fact that the appellant's credibility was in issue justify applying a different test – though it may of course, depending on the circumstances, be an important factor in applying the test. There is no good reason to remit a case for rehearing just because it turned on assessment of the appellant's credibility if the appellate court or tribunal can be confident that the assessment has not been affected by the delay. In each case, the question that needs to be asked is whether the delay in preparation of the decision has caused the decision to be unsafe.

29. It can therefore be confirmed that the approach to the issue of delay adopted by the Upper Tribunal in the case of *Arusha* and *Demushi*, applying the decision of this court in *RK (Algeria)*, which requires a nexus to be shown between the delay and the safety of the decision, is the correct approach. The only significance of the fact that delay between hearing and decision has exceeded three months is that on an appeal to the Upper Tribunal this period remains an appropriate marker of when delay is of such length that it requires the FTT judge's findings of fact to be scrutinised with particular care to ensure that the delay has not infected the determination.”

29. At [33]-[43] in *SS (Sri Lanka)*, the Court expressly rejected the question that demeanour could be determinative, and gave guidance on the proper approach at [42]-[43]:

“42. ... the way in which the appellant answered questions did not create a favourable impression. Quite rightly, however, the FTT judge did not attach weight to that impression in assessing the credibility of the appellant's account. Instead, he focussed on whether the facts alleged by the appellant were plausible, consistent with objectively verifiable information and consistent with what the appellant had said on other occasions (in particular, at his asylum interview and in recounting his history to the medical experts). Applying those standards, the FTT judge found numerous significant inconsistencies and improbable features in the appellant's account which he set out in detail in the determination. As the FTT judge explained, it was "the cumulative effect of the implausible and inconsistent evidence" given by the appellant which led him to conclude that the core of the appellant's account was not credible.

43. Accordingly, even if the appellant had through his demeanour when answering questions given the FTT judge the impression that he looked and sounded believable, the suggestion that the FTT judge should have given significant weight to that impression, let alone that he could properly have

treated it as compensating for the many inconsistencies and improbabilities in the content of the appellant's account, cannot be accepted.”

30. In this case, the file contains a full contemporaneous note of the evidence given in the First-tier Tribunal. Nothing in the grounds of appeal or in the argument today satisfies me that the delay has tainted the judge's reasoning on credibility. The First-tier Judge considered the evidence before him and its inconsistencies and improbabilities. I have reviewed (see below) the three press reports to which he is said to have given insufficient attention.

31. **Irrationality.** I begin by reminding myself of the narrow circumstances in which it is appropriate to interfere with a finding of fact by a First-tier Judge who has heard the parties give oral evidence: see *AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296 at [41] in the judgment of Lord Justice Popplewell, with whom Lord Justice Baker and Lord Justice Moylan agreed:

“41. ...This appears to me to be a case in which the Upper Tribunal has interfered merely on the grounds that its members would themselves have reached a different conclusion. That is impermissible. ... However it is no part of such function to seek to restrict the range of reasonable views which may be reached by FTT Judges in the value judgments applied to the many different private and family life circumstances which make almost all cases in this area different from each other. It is emphatically not part of their function to seek conformity by substituting their own views as to what the outcome should be for those of first instance judges hearing the evidence.”

32. Unless there is a factual error sufficiently serious to amount to an error of law, the Upper Tribunal has no power to interfere in the findings of fact and credibility made by the First-tier Judge: see *R (Iran) & Others v Secretary of State for the Home Department* [2005] EWCA Civ 982 at [90.2]-[90.4] in the judgment of Lord Justice Brooke, with whom Lord Justice Chadwick and Lord Justice Maurice Kay agreed:

“...2. A finding might only be set aside for error of law on the grounds of perversity if it was irrational or unreasonable in the *Wednesbury* sense, or one that was wholly unsupported by the evidence.

3. A decision should not be set aside for inadequacy of reasons unless the adjudicator failed to identify and record the matters that were critical to his decision on material issues, in such a way that the IAT was unable to understand why he reached that decision.

4. A failure without good reason to apply a relevant country guidance decision might constitute an error of law.”

33. I accept, as I must, that the appellant, who was a prosperous businessman in a town in Sylhet, did suffer a serious attack which was reported in the newspapers. There are photographs showing a person bleeding heavily, and a head wound being stitched.

34. The first press report in the appellant's bundles is dated 16 October 2016, the day of the attack, and comes from Protom Sokol, a national newspaper in Bangladesh. It says this:

"A businessman in [town and name] has been seriously injured by a terrorist attack. ...Attackers seized [his] mobile phone and cash money during the time of attack.

The incident took place at half past eleven in the morning on Sunday 16th October near the [local] High School. Local residents informed that [the appellant] was heading to his business establishment by motorcycle. When he arrived near [the school], a group of 10/12 terrorists blocked the way of [the appellant].

At that time, the terrorists demanded a large amount of extortion money from [the appellant]. When [he] refused to pay the extortion money, terrorists attacked him with hockey sticks and home made arms.

Terrorists fled the scene, leaving him seriously injured. Later, local residents took [the injured man] to [the local hospital] where he is undergoing medical treatment. Police visited the scene after they were informed about the incident, however, nobody was arrested in connection to this incident.

It has been reported that a government party backed terrorist group often demanded extortion payment from [the appellant] and used to cause different sorts of intimidation and threat.

It was known from a family source of [the appellant] that the reason for the attack was for not paying the extortion money. When contacted, the officer in charge of [the local police station], he accepted the authenticity of the incident and informed that they were going to take action against the attackers. " *[Emphasis added]*

I note that none of the press reports mentions the Awami League. Jamal is not mentioned. I note also that, contrary to what the appellant said in his asylum interview, in the press reports there were 10-12 assailants, not 5-6 as he later said.

35. The second press account, also dated 16 October 2016, is from Sylhet er Songbad and is headed Sylhet News. It is in identical language. There is also a report from Dainik Sylhet Dot Com dated the day after the attack, 17 October 2016, again in near-identical terms, save for the addition of a final sentence:

"Members of [the appellant's] family informed that they are suffering from insecurity for not having the criminals under police custody."

36. It is clear that the three newspaper accounts are from the same source: that is not surprising. It is possible that one of the three is the source, and the other two simply picked up the story, as happens with press reports. The description of the attackers as 'terrorists' is difficult but perhaps that is an interpretation issue.

37. None of the reports names the Awami League as the aggressors, just ‘a government party backed terrorist group’ and all make it quite clear that the reason for the attack, and the attackers’ interest in the appellant, a prosperous local businessman, was said to be his refusal to pay a large sum of money demanded by way of extortion, rather than any political issue. On his own account, the appellant is apolitical and has no involvement with Bangladeshi politics.
38. The First-tier Judge recorded the appellant’s evidence at [26]: he agreed that he had never been involved in politics and had no political views, and had been attacked because the aggressors wanted money from his business. He had spoken to journalists ‘because they wanted to ask him questions’. The appellant admitted having answered questions from the journalists, so at least part of the press accounts comes from him.
39. At [36(ii)] the First-tier Judge found that the appellant’s explanation for the attack lacked credibility. There had been no hounding of his mother after he left, and the appellant had been able to remain in Bangladesh, elsewhere in Sylhet, for three months after the attack. The judge continued:

“36(ii) ...If the group were as organised and informed as he claims, they would have been able to find him during this time, or during his exit from Bangladesh. If this was a government group, I find that they would not [have] allowed the appellant to leave, or be at large for three months after the incident. I find the claim that each district has a photograph of the appellant is clearly not credible, as the appellant would have been detained, threatened or attacked after the October [2016] attack, if this was the case. Furthermore, the lack of effort to stop him to leave clearly contradicts the point put forward in submissions that this was a police or government terrorist group. ...though the journalist has reported this, it is my finding that they have received this information from the appellant or another source which has not been verified. ... ”

The judge observed that the country evidence ‘clearly shows that political violence is limited to high profile figures’, referring to the January 2018 CPIN *Bangladesh - opposition to the government*.

40. It was open to the First-tier Judge to find that ‘Jamal’ (whose full name has never been given in these proceedings, nor in the press accounts) did not have an extensive area of influence. In fact, his reach did not extend even across Sylhet, since the appellant spent a further three months there, waiting for a European flight route as opposed to India or Japan. If the Jamal group were as powerful as claimed, and wanted to find him, they could easily have done so. The finding that the appellant had an internal relocation option, which in fact he had exercised, was open to the judge.
41. On the basis of the oral and written evidence before him, including the three press reports, it was unarguably open to the First-tier Judge to conclude as he did that the attack was unconnected either to the appellant’s business or to any political party. Another judge might have reached

another conclusion, but that is not a matter for me unless the finding made was clearly not open to this judge on the evidence.

42. Even had the judge taken the account at its highest, the most that the press reports supported was that this attack was for the purpose of extortion of a local businessman by a local group of 'terrorists' and that he was beaten up when he refused to pay. The appellant sold his shop: his mother received that money but has not been troubled for it by the gang. There is no money left for them to extort now, even if they wished to do so, and if (which the judge did not accept) that was the purpose of the attack.
43. The appellant left Bangladesh openly on a new passport, obtained for the purpose, and was not stopped. That seems to be most unlikely to have occurred if, as he claimed in his asylum interview, there was a photograph of him in 'every district' of Bangladesh. The appellant has not explained what the relevance of such a photograph would be. He does not say that there is any criminal case against him.
44. The First-tier Judge was entitled to conclude, as he did, that the question of there being photographs in 'all the districts' was an embellishment of the appellant's account and lacked credibility. Even allowing for the differences between policing in Bangladesh and policing in the United Kingdom, that conclusion by the judge is neither perverse nor *Wednesbury* unreasonable and I have no power or inclination to interfere with it.
45. The decision of the First-tier Tribunal is upheld and I dismiss this appeal.

DECISION

46. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Signed [Judith AJC Gleeson](#)
Upper Tribunal Judge Gleeson

Date: 15 March 2021