



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-004493

First-tier Tribunal No: PA/50242/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

10<sup>th</sup> December 2024

**Before**

**UPPER TRIBUNAL JUDGE BULPITT**  
**and**  
**DEPUTY UPPER TRIBUNAL JUDGE SWANEY**

**Between**

**AC**  
**(ANONYMITY DIRECTION MADE)**

Applicant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Dr S Hosen – Giga Legal Solicitors

For the Respondent: Ms H Gilmour – Senior Home Office Presenting Officer

**Heard at Field House on 4 December 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. This is the appellants' appeal against the decision of First-tier Tribunal Judge Cameron (the Judge) which was promulgated on 5 February 2023. In that decision the Judge dismissed the appellant's appeal against the respondent's

decision to refuse his protection and human rights claims. Although the appellant sought permission to appeal against the Judge's decision in time, for reasons that are unexplained there was a long delay before that application was considered and permission to appeal was granted by First-tier Tribunal Judge Austin on 14 August 2024. Thus the matter came before us. At the conclusion of the hearing we indicated that we would be dismissing the appeal and that these written reasons for doing so would follow.

2. The Judge made an anonymity direction. Because this is a protection appeal which involves an assertion that the appellant's life would be in danger in Bangladesh and lest anything is said or done in these proceedings that might give rise to such a risk, we maintain that order.

## **Background**

3. The appellant is a 39-year-old citizen of Bangladesh from Sylhet. He came to the United Kingdom in 2008 on a working holiday visa. Before that visa expired he applied for leave to remain in the United Kingdom but that application was rejected on 10 October 2010, since when the appellant has remained in the United Kingdom as an overstayer.
4. In December 2016, having been detained for the purpose of removal to Bangladesh, the appellant claimed asylum on the basis he feared persecution by the ruling Awami League party because of his political opinion as a member of the rival party Jamaat-e Islami and previously its student wing the Chattra Shibir. He referred to an incident in October 2006 when he said he was attacked by armed activists from the Awami League and knocked unconscious. After this attack he said he was in hiding until, following an appeal, he was able to secure entry clearance to come to the United Kingdom two years later.
5. The respondent did not believe the appellant and refused his asylum claim. The appellant appealed to the First-tier Tribunal where his appeal was eventually heard by First-tier Tribunal Judge O'Callaghan (as he then was) on 6 November 2018<sup>1</sup>. Having heard evidence from the appellant and his brother, Judge O'Callaghan dismissed the appellant's appeal. Judge O'Callaghan found the appellant to be willing to lie as to his history and that supporting documents he had adduced were undermined by significant inconsistencies such that Judge O'Callaghan could not rely on them. Judge O'Callaghan found that the appellant had been involved in demonstrations against the Bangladeshi government whilst in the United Kingdom but only at a low-level and opportunistically for the purpose of founding an asylum claim. Judge O'Callaghan found that the appellant was not a supporter of Jamaat-e Islami and that he would not face persecution on return to Bangladesh. Judge O'Callaghan also dismissed the appellant's human rights claim, finding the interference with the appellant's private and family life to be proportionate in view of the public interest in maintaining effective immigration control. Although the appellant sought to appeal against Judge O'Callaghan's decision, permission was refused and the appellant became appeal rights exhausted on 27 February 2019. Despite that, the appellant did not leave the United Kingdom.
6. On 28 October 2019 the appellant made further submissions to the respondent which were treated as a fresh asylum claim. In those further submissions the appellant claimed he had been engaging in political activities for Jamaat-e Islami

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<sup>1</sup> There was an earlier consideration of the appellant's appeal by First-tier Tribunal Judge Cohen in 2017 but that decision was found to contain an error of law and was set aside.

in the United Kingdom, including attending demonstrations against the Bangladeshi government and posting messages on Facebook. As a result of these activities the appellant said that the authorities in Bangladesh had taken out a false criminal prosecution against him and harassed his mother. In support of this claim he submitted a number of documents including letters of support, case papers he said related to the false prosecution in Bangladesh, newspaper articles and other reports and articles about the political situation in Bangladesh. The respondent refused the appellant's fresh asylum claim in a decision dated 10 March 2020 and the appellant appealed to the First-tier Tribunal.

### **The Judge's decision**

7. The Judge heard the appeal on 17 June 2022. The appellant was represented at the hearing and gave oral evidence as did his partner. The Judge did not promulgate his decision dismissing the appeal until 5 February 2023.
8. In his decision the Judge noted at [14] and [15] that the respondent accepted that the appellant had engaged in "low level" political activity in the United Kingdom, but it was not accepted that a false case had been lodged against him or that his mother had been harassed in Bangladesh. The Judge recorded that his starting point when considering the appellant's claim was the previous decision of Judge O'Callaghan and he set out the findings of fact that Judge O'Callaghan had made at [22] - [25]. He then set out the evidence he heard from the appellant and his partner at [26] - [31] before turning to his conclusions.
9. At [32] the Judge reminds himself that Judge O'Callaghan's decision forms his starting point and that Judge O'Callaghan found the appellant not to be credible, that he was not politically active in Bangladesh and that his activities in this country would not have brought the appellant to the attention of the authorities in Bangladesh.
10. The Judge then turned to consider the additional documentation submitted with the appellant's fresh claim. At [33] he notes that a number of additional documents have been submitted, at [34] he notes the appellant's explanation for how he came to be in possession of the documents, the Judge then reminds himself that he must consider the documentation in the round. In somewhat obscure language, at [36] the Judge comments on the lack of an explanation for how the documentation was obtained in Bangladesh and states "I do not find it credible that the appellant's representative in Bangladesh would not have forwarded the documentation with an explanation as to how he obtained them." At [37] the Judge considers objective evidence that false documents are relatively easy to obtain in Bangladesh. At [38] - [40] the Judge notes that the appellant left Bangladesh with a valid visa in 2008 and concludes that there is no credible reason for the appellant to still be of interest to the authorities in Bangladesh in 2016 or 2019. At [41] the Judge notes that there are documents and witness statements that indicate the appellant has been involved in protests against the Bangladeshi government whilst in the United Kingdom, but notes that the witnesses and authors of those documents had not attended the hearing and given evidence.
11. At [42] - [46] the Judge states his conclusions. At [42] he concludes that the appellant's political activity in this country clearly is at a very low level and would not bring him to the attention of the Bangladeshi authorities. At [43] the Judge states "I am not satisfied on the evidence available to me that I should go behind the findings of Judge O'Callaghan in relation to the appellant not been (sic)

politically active in Bangladesh and that any actions in this country are in order to support an asylum claim". The Judge then repeats that the appellant's activities in the United Kingdom will not have brought him to the attention of the Bangladeshi authorities and at [46] gives his ultimate conclusion that the appellant had not established his case to the required standard of proof. He therefore dismissed the appeal.

### **The appeal to the Upper Tribunal**

12. Although the appellant sought permission to appeal against the Judge's decision on 5 grounds, permission was granted by another First-tier Judge only in respect of ground one. That ground asserts that "The Judge failed to give findings in light of the fresh claim guidance and misapplied the case of *Devaseelan*". There was no renewed application for permission to the Upper Tribunal so this is the only ground before us.
13. In his submissions Dr Hosen expanded on the ground of appeal arguing that significant consideration of the new evidence was required as a matter of fairness but that instead the Judge applied *Devaseelan* too strictly and did not consider that new evidence in a fair and flexible way. Dr Hosen argued that the Judge needed to give adequate reasons for why the new evidence was not enough to cause him to depart from the findings of Judge O'Callaghan and that the Judge failed to do that.
14. In her submissions Ms Gilmour relied on *AL (Albania) v SSHD* [2019] EWCA Civ 950 and argued that Judge O'Callaghan's decision should be followed unless there is a very good reason not to do so. Ms Gilmour then took us through the Judge's consideration of the appellant's new evidence submitting that it was clear from this that the Judge engaged with the new evidence and that tying all the strands of the Judge's analysis together, it was apparent the Judge reached the conclusion that there was no good reason to depart from the previous findings, a decision that was open to him and was adequately explained.

### **Analysis**

15. We begin by reminding ourselves of the role of the Upper Tribunal in reviewing decisions of a First-tier Judge. At [26] of *Ullah v Secretary of State for the Home Department* [2024] EWCA Civ 201 the Court of Appeal gave a useful summary of the settled law in respect of that role, including the fact that (i) the First-tier Tribunal is a specialist fact-finding tribunal and the Upper Tribunal should not rush to find an error of law simply because it may have reached a different conclusion on the facts or expressed themselves differently; (ii) where a relevant point was not expressly mentioned by the First-tier Tribunal, the Upper Tribunal should be slow to infer it had not been taken into account; (iii) judicial restraint should be exercised by the Upper Tribunal when it comes to the reasons given by the First tier Tribunal and it should not be assumed the First-tier misdirected itself just because not every step in its reasoning was fully set out; (iv) the issues for decision and the basis upon which the First-tier Tribunal reaches its decision on those issues may be set out directly or by inference; (v) judges sitting in the First-tier Tribunal are to be taken to be aware of the relevant authorities and to be seeking to apply them; and (vi) it is the nature of assessment that different tribunals without illegality or irrationality may reach different conclusions on the same case.

16. We also remind ourselves of the approach to be taken in an appeal that involves a second consideration of an asylum claim by a First-tier Tribunal as identified in Devaseelan v Secretary of State for the Home Department [2002] UKIAT 00702. Those principles were helpfully summarised by Lady Justice Nicola Davies at [18] of AL (Albania) and pithily described at [25] of that case as meaning that: *“following the Devaseelan guidelines, not only is the earlier determination the starting point, it should be followed unless there is a very good reason not to do so”*.
17. We do not accept Dr Hosen’s submission that the Judge applied those Devaseelan guidelines too strictly. Twice in his decision the Judge correctly repeats that Judge O’Callaghan’s findings were his starting point. The significance of those earlier findings by Judge O’Callaghan was especially acute here because those findings were reached after an assessment by Judge O’Callaghan of an account the appellant had given in his appeal against the refusal of his application for a visa in 2008 which was completely contradictory to the asylum claim that the appellant was pursuing before the Judge. The Judge was unquestionably correct to start his consideration of the appeal with Judge O’Callaghan’s findings just as he said he did. Very good reason would have been needed to deviate from those previous findings.
18. The appellant’s case was of course that the new documentation he had provided about a false prosecution in Bangladesh and his political activity in the United Kingdom provided those very good reasons for deviating from the earlier findings. The problem for the appellant is that reading the Judge’s decision as a whole, it is apparent that the Judge considered the new material but found it to be unreliable.
19. Having already set out the appellant’s evidence, the Judge refers to the new documentation at [33] and explicitly states that he has considered it along with the appellant’s evidence “in the round”. We reject Dr Hosen’s submission that he did so unfairly. Instead we find that the Judge’s analysis demonstrates that he considered the new evidence in a context that included: the previous findings about the appellant’s lack of credibility, the objective evidence about the ease with which false documents can be obtained, the lack of an explanation for how they were obtained by the lawyer in Bangladesh, and the slim likelihood of a false prosecution being commenced more than a decade after the appellant left the country. These were all clearly matters that were relevant to the Judge’s consideration and that the Judge was right to assess.
20. We do acknowledge that the decision would have been clearer if having undertaken this assessment, the Judge had expressed his conclusions on the reliability of the documentation more explicitly. However, reminding ourselves that judicial restraint should be exercised by the Upper Tribunal when it comes to the reasons given by the First tier Tribunal and it should not be assumed the First-tier misdirected itself just because not every step in its reasoning was fully set out; and that the issues for decision and the basis upon which the First-tier Tribunal reaches its decision on those issues may be set out directly or by inference (see Ullah above), we are satisfied that, though it is not expressed in the clearest terms, the decision does make it adequately clear that the Judge’s assessment of the documents in all the circumstances led him to the conclusion that those documents were unreliable. We agree with Ms Gilmour that this conclusion was expressed by the Judge at [40] of his decision when, pulling together the different strands, he states his conclusion that there was no credible reason to consider the appellant would be of adverse interest to the Bangladeshi authorities.

21. It is equally clear that having considered the evidence the Judge concluded that the appellant's political activity in the United Kingdom did not provide a good reason to deviate from the previous findings made by Judge O'Callaghan. Those previous findings included that the activity in the United Kingdom was for the sole basis of establishing an asylum claim. Having noted that witnesses to the appellant's activities in the United Kingdom had not attended the hearing to support the appellant, the Judge, like Judge O'Callaghan had done previously, concluded that the appellant's activities in this country "are in order to support an asylum claim". That was a conclusion that was open to him and one which was evidently reached on an assessment of the evidence as a whole and not just by adopting the previous conclusions.
22. Overall therefore we find no merit in the suggestion in the ground of appeal that the Judge "ignored the fresh evidence" and no merit in the submission that he considered that fresh evidence unfairly. Instead we find that the Judge has reached a conclusion on the evidence that was reasonably open to him and that although it could have been expressed with greater clarity, the Judge has given an adequate explanation for that conclusion.

### **Notice of Decision**

**The appellant's appeal is dismissed.**

**The decision of the First-tier Tribunal Judge did not contain an error of law and will stand.**

Luke Bulpitt  
**Upper Tribunal Judge Bulpitt**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**6 December 2024**