IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004660

First-tier Tribunal No: PA/60829/2023
LP/04404/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 31 January 2025

Before

UPPER TRIBUNAL JUDGE LODATO

Between

AL
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Solomon, counsel instructed by Lawmatic solicitors
For the Respondent: Mr Thompson, Senior Presenting Officer

Heard at Phoenix House (Bradford) on 17 January 2025

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

Introduction

1. I have decided to maintain the anonymity order originally made in these proceedings by the First-tier Tribunal because the underlying claim involves international protection issues in that the appellant claims to fear persecution or

serious harm on return to Bangladesh. In reaching this decision, I am mindful of the fundamental principle of open justice, but I am satisfied, taking the appellant's case at its highest for these purposes, that the potential grave risks outweigh the rights of the public to know of his identity.

2. The appellant appeals with permission against the decision, dated 19 August 2024, of First-tier Tribunal Judge Horton ('the judge') to dismiss the appeal on international protection and human rights grounds.

Background

3. The appellant's immigration history to the appeal is not in dispute between the parties. The central thrust of the appellant's claim is that he is at risk of persecution from local Awami League officials and supporters in his home area because he was a prominent political activist on behalf of the BNP. The Awami League interest in him was said to have continued following his departure for the UK in 2016.

Appeal to the First-tier Tribunal

4. The appellant appealed against the refusal of his claim. The appeal was heard by the judge on 12 August 2024 before he dismissed the appeal on all grounds in a decision promulgated on 19 August 2024. For the purposes of the present proceedings, the following key matters emerge from the decision:

- At the outset of the decision, the judge stated that the political picture had significantly changed in Bangladesh and this change had a considerable bearing on the appeal ([3]). The political shift was canvassed as a preliminary issue but it was noted that neither side sought to adjourn the hearing to gather and serve background information touching on the very recent developments which included the ousting of the Awami League leader from the national government and the release of the national BNP leader from custody ([7]).

- The parties relied on FCDO advice to British citizens not to travel to Bangladesh unless for essential reasons due to the volatility of the situation on the ground ([7]). In light of these developments, the judge, at [8], made the following observations about the shape of the appellant's case as it then stood:

> *The changes clearly affected the appellant's arguments as he had claimed to fear the party now expelled from power, the Bangladesh Awami League (BAL). By definition it was not tenable to suggest that he feared the BAL led authorities when BAL were no longer in power. Instead his fears were now said to result from a historic criminal case as well as from a named individual in the local area who was a local leader of BAL.*

- The central issues in respect to the protection grounds of appeal were agreed to be the credibility of the appellant's various factual claims about persecutory events which both preceded and post-dated his exit from Bangladesh ([11] and [17]).

- The judge admitted further correspondence from the appellant's Bangladeshi lawyer ([12]).

- At [18], consideration was given to the weight to be attached to information from sources other than the appellant including the respondent's Country Policy and Information Notes ('CPIN's) which had not been withdrawn and assessed conditions in Bangladesh:

> *I take the view that the very recent change in leadership, as evidenced by open source news and the email from the appellant's own lawyer in Bangladesh, means that the CPINs that would normally be relevant no longer assist to any great degree; such as:-*
> *- Country policy and information note: political parties and affiliation, Bangladesh, September 2020; and*
> *- Country policy and information note: actors of protection, Bangladesh, November 2023.*

- The appellant's core narrative factual case was summarised at [19]-[20]. Relying on documents provided by the appellant, the judge accepted that the appellant was the subject of politically motivated and false criminal charges before he departed for the UK ([22]-[23] and [25]) but found that the delay in claiming asylum once he arrived undermined his credibility ([24]).

- At [26], the judge rejected the appellant's claim that his family's shop was targeted in a continuation of persecutory attention. This incident was found to be a fabrication which was one of a sequence of false reasons to justify his unwillingness to return.

- The risk assessment, which was the focus of the error of law hearing, is at [27]-[29] in the following terms:

> *The appellant's own case is not now compelling generally on risk, as claimed from a 2015 politically motivated prosecution and a local political individual. The state BAL support underpinning those risk factors has simply gone. If the leader of the BNP has been released and power changed in Bangladesh, it is merely speculation that (long term) there would be an appetite by the prosecutorial authorities and the courts to proceed with a BAL led case from 2015. An email from a local lawyer saying that "All the criminal cases are in their judicial process as normal" is not enough upon which to base on ongoing real risk. On his own evidence, under cross-examination, when asked why his local lawyer had not applied to have the arrest warrant thrown out – he said that those higher up were all BAL supporters. That is no longer an argument that holds water. In terms of FI, the man he fears, the appellant presented no evidence that FI was still alive, present in the local area and had retained any power. It was pure supposition by the appellant. Even if FI is there and police capacity is reduced, the army is deployed to maintain order.*
>
> *Taking into account all that is referred to above, I accept that the appellant was politically active pre-exit and there was a case*

started against him in 2015 with an arrest warrant issued in 2016. Given the huge shift in political power in Bangladesh, the BAL created prosecution and FI do not show that there is an ongoing real risk now of persecution due to political activity/belief. The sands of time have shifted against the appellant and he tries to cling to an unsustainable claim under the Convention.

Therefore, I find that there is not a well-founded fear of persecution for a Convention reason.

- Risk was again assessed, in the context of humanitarian protection principles, between [33] and [34]:

There is insufficient evidence to base a suggestion of a real risk of suffering serious harm; for example by unlawful killing, torture / inhuman or degrading treatment or punishment or a serious and individual threat to a civilian's life or a person by reason of indiscriminate violence. What there is (per the FCDO travel advice and open source news material) is a change of power, the army on the streets with police capacity significantly reduced and some violence that precipitated the change of power. However, international airports are operating subject to delays and cancellations. Family members of British High Commission staff have been temporarily withdrawn (but not actual staff) and the British High Commission continues with essential work including assistance to British nationals. Also the BNP leader has gone free.

The humanitarian protection ground of appeal fails by some margin.

Appeal to the Upper Tribunal

5. The appellant applied for permission to appeal in reliance on the following grounds:

I. Ground 1 – the judge misdirected himself in law as to the correct standard of proof in the context of the asylum claim.

II. Ground 2 – the judge failed to give lawfully adequate reasons going to the assessment of the appellant's credibility and risk on return to Bangladesh considering recent events.

III. Ground 3 – the judge reached irrational findings on whether the appellant was at risk according to humanitarian protection principles.

6. In a decision dated 10 October 2024, First-tier Tribunal Rodger granted permission for grounds two and three to be argued but refused permission for ground one. The following observations were made in granting permission on grounds two and three:

Given that the Judge accepted that the court documents and 2016 arrest warrant were genuine and accepted the Appellant's account of pre-exit

issues, it is arguable that the Judge failed to take into account objective material relating to risk on return and has arguably made assumptions on whether the Bangladeshi authorities would pursue the criminal action before any objective evidence being available that the opposition party is now in power. The findings are not made with reference to any referenced objective material and the error of law is arguable.

7. At the error of law hearing, I heard oral submissions from both parties. Mr Solomon recognised that only grounds two and three were in issue following the permission decision of Judge Rodger. He clarified that grounds two and three were difficult to separate. He further crystallised the appellant's position in that the focus of his arguments would be on the suggested failure to consider extant CPINs which went to the situation at a ground and local level consistent with the appellant's core factual claim that he was at risk from local Awami League officials and sympathisers. I address any submissions of significance in the discussion section below.

Discussion

8. Before assessing the substance of the grounds of appeal which attracted permission, it should be recorded that the drafting of the original grounds left much to be desired. Mr Solomon's submissions were well-pitched at the only complaint of any substance in seeking to argue that the judge ought to have devoted greater attention to the CPINs which had yet to be withdrawn in the wake of the fast-moving political shift of power in the weeks which preceded the hearing. The original grounds lacked focus and interspersed factual disagreements, such as those at paragraph 16 which were manifestly a rehearsal of the arguments deployed at first instance, against drawing adverse inferences from the delay in claiming asylum once the appellant had arrived in the UK.

9. By the time of the hearing, the gravamen of the appellant's challenge to the judge's decision was that he was bound to assess the parts of the yet to be withdrawn CPINs which went to conditions on the ground as they related to the politicisation of organs of criminal investigation, prosecution and adjudication. The judge was said to have fallen into the trap of taking a bird's eye view when he should have been looking at the position from ground level. In the appellant's home area, the removal of the Awami League from power at the national level did not necessarily safeguard the appellant from abuses by local authorities who were likely to remain hostile to those affiliated to the BNP.

10. There are various difficulties with the arguments levelled against the judge's analytical approach.

11. Firstly, the judge plainly forewarned the parties that he would be mindful of recent and significant political changes in Bangladesh, and yet he was not invited to adjourn by either side. It cannot now be known whether an adjournment application might have succeeded to enable the parties to gather and serve country background information informed by recent events. Mr Solomon recognised that the tactical decision not to seek an adjournment was perhaps unwise in hindsight and he noted anecdotally that other Bangladeshi protection appeals were being adjourned around this time. The procedural effect of the hearing fairly proceeding as it did is that the parties must recognise that the judge could only look to the evidence which was then made available to him including the appellant's supplementary bundle which he admitted at the hearing and the CPINs which had been put before him. I agree with the submission made

by Mr Thompson for the respondent that the weight he attached to this evidence, and the inferences he properly drew from gaps in the evidential picture, were matters for his judicial assessment.

12. I am satisfied that it was manifestly open to the judge to approach with some caution CPINs which were demonstrably prepared at a time when the Awami League governed the country both at a national and local level. In a claim for political asylum, it is unrealistic to think that a judge should close his eyes to the departure from Bangladesh of the former Awami League leader, the release from custody of the leader of the opposition BNP and the installation of an interim government. The suggestion that, instead, the judge should have been guided by paragraphs 2.4.12 and 2.4.15 of the then-yet to be withdrawn CPIN about the politicisation of law enforcement and the increased risk of violence around elections was somewhat divorced from reality. To have adopted such an approach would have required the judge to sideline a demonstrable change in the party who was in control of the organs of the state and which the appellant feared. This would have been tantamount to blindly following guidance which had been objectively shown to have been overtaken by events.

13. As was recognised during the hearing, CPINs do not enjoy the same status of country guidance which is to be followed unless set aside or it has been shown that there has been a durable change in conditions on the ground. Instead, a CPIN is simply a part of the evidential picture which the judge must assess and then decide how much weight to give to it. The challenge to how the judge considered this evidence amounted to the suggestion that he was bound to engage with certain parts of the CPIN and that his reasoning in rejecting the existence of risk was inadequate and therefore vitiated by unlawfulness.

14. The judge was not required to subject the CPIN to the kind of line-by-line analysis suggested. The touchstone for considering adequacy of reasoning as an error of law remains R (Iran) & Others v SSHD [2005] EWCA Civ 982. At [13]-[14] of the judgment of Brook LJ, it was emphasised that reasons must be sufficiently detailed to show the principles on which a decision was made and why the ultimate decision was reached. Reasons need not be elaborate nor is it necessary to address each and every matter which might have had a bearing on the overall decision if those which were material to the reasoning have been articulated. In DPP Law Ltd v Paul Greenberg [2021] EWCA Civ 672, the Court of Appeal, in the context of employment proceedings, considered adequacy of reasoning as an error of law. Popplewell LJ, stressed, at [57], the need to consider judicial reasons fairly and as a whole without being hypercritical. Restraint is required to read reasons benevolently. “Simple, clear and concise” reasoning was to be encouraged to enable to parties to broadly understand why they had won or lost. Further, it should not be assumed that an element of the evidence which was not expressly discussed was thereby left out of account. While these observations were made in the context of employment proceedings, they are of relevance in the immigration and asylum sphere because this is also a jurisdiction in which decisions are made by expert tribunals attenuated by the need to give appeals anxious scrutiny.

15. When applying the above guidance and reading the judge’s reasons benevolently, I am bound to ask myself whether the appellant was left in a state of uncertainty about why he lost his appeal. I am satisfied that the judge’s reasons were perfectly clear in setting out why he accepted parts of the appellant’s evidence as credible, other parts as lacking credibility and, importantly, why the conclusion was reached that there was a not a reasonable

degree of likelihood or real risk that he would be persecuted for his political opinions or suffer serious harm on return. The judge explained why he derived little assistance from the CPINs which had been overtaken by events. In his assessment of whether the appellant remained at risk of persecution in his local area, it is a misreading of [27] to suggest that the judge found, as a fact, that local Awami League actors would lack the appetite to pursue political grievances through the criminal justice system. It was simply observed that such a proposition had become speculative in view of the changes at a national level. This was but one factor which informed the overall risk assessment which drew upon the passage of time, the paucity of specific evidence going to current risk including an absence of anything tending to suggest that the particular man he feared "was still alive, present in the local area and had retained any power". In the assessment of risk, the judge was entitled to take account of all of these factors and he fully explained why he relied on these factors in lawfully adequate reasons.

16. For the reasons given above, I am not satisfied that the decision of the judge involved an error of law and I dismiss the appeal.

Notice of Decision

I find that the decision of Judge Horton did not involve an error of law and I dismiss the appeal against his decision. It follows that the decision to dismiss the appeal on all grounds must stand.

Paul Lodato

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 January 2025