Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13152/2016

THE IMMIGRATION ACTS

Heard at Stoke
on 8 November 2017

Decision promulgated
on 10 November 2017

Before

UPPER TRIBUNAL JUDGE HANSON

Between

Muhammad [A]
~~**(anonymity direction not made)**~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Singer instructed by Hamlet Solicitors LLP
For the Respondent: Mr C Bates Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Juss who dismissed the appellant's appeal on protection and human rights grounds.

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Background

2. The appellant is a national of Bangladesh who claims to have been born on [ ] 1985 and who arrived in the United Kingdom on 22 November 2007 as a Working Holidaymaker with leave valid to 6 November 2009. On 30 May 2014, the appellant applied for Leave to Remain on family/private life grounds as he claimed to be in a relationship with a British national female in the UK although this application was rejected on 18 September 2009. The appellant claimed asylum on 17 May 2016. His claim was refused on 15 November 2016 against which the appellant appealed.
3. Having considered the evidence the Judge sets out his findings of fact from [14] of the decision under challenge which can be summarised in the following terms:

    a. With the application for asylum made in 2016 the appellant submitted an FIR which was verified as being fraudulent by the British High Commission in Dhaka [14].
    b. The evidence submitted by the appellant in the form of DVD recordings needs to be seen in light of his having previously submitted fraudulent evidence. The Secretary of State rightly rejected (1) appellant’s membership of the BNP in Bangladesh, (2) political incidents in Bangladesh in 2004 2007 and (3) BNP activities in the UK. The appellant has been unable to confirm that he was ever listed as a named speaker to speak at a BNP event, and initially claimed he had not, there was no one before the Tribunal from BNP to support the appellant’s claim as the appellant claimed he felt unable to ask anyone [15].
    c. The appellant will not be at risk of ill-treatment in Bangladesh because he attended on behalf of the cultural wing of the BNP. Even though the appellant claims some of the footage would have been shown on Bangladeshi channels there was no evidence that the few minutes or seconds in which he is appearing will be shown to be picked up by the authorities. Even if it was the fact is the appellant is of no interest to anyone there. The evidence the appellant has contrived to great lengths to submitted fraudulent evidence designed only to secure him asylum status in the UK [16].
    d. The appellant’s activities in Bangladesh were rightly found to be lacking in credibility because of their striking vagueness. The appellant failed to explain why is at risk first life for the BNP if he had scant knowledge of its policies. The appellant claimed to have no interest in named policies. It was not credible he had been an active member of the BNP since 2001 or that the political incidents of 2004 and 2007 took place. The appellant did

not report the alleged incidents to the police and there is no case assert of international surrogate protection that the appellant has been able to make out [17].

e. The Judge finds that even if the appellant's story is true, which the primary finding is that it is not, it was open to him to enlist the help of the state authorities if he requires protection [17].
f. The appellant had not satisfied the Judge of a well-founded fear of persecution or right to qualify for humanitarian protection [18]. The appellant had failed to establish his claim engaged article 3 ECHR [19].
g. The Judge did not accept the appellant is entitled to succeed on human rights grounds as he had not established an ability to satisfy the Rules, there was no basis for concluding exceptional circumstances exist such that it should be granted discretionary leave, the Judge adopts the reasoning in the refusal letter [20].

4. Permission to appeal was refused by another judge of the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge Kekic on 8 September 2017. The operative part of the grant being in the following terms:

> It is arguable that given the numerous mistakes in the determination, highlighted in the grounds, that the judge did not give anxious scrutiny to the case before him. Reference to the wrong country, the wrong language, the wrong date of application and the misspelling of the appellant's name do not inspire confidence in the determination and the judge's brief assessment of the claim, including the appellant's sur plas activities, is arguably inadequate.
>
> Further, it is arguable that the judge commenced his assessment of the evidence with s.8 matters and that this, when combined with the factual errors highlighted above, renders the findings unsafe.

Error of law

5. The alleged mistakes in the determination include (i) the Judge misspelling the name of the appellant as Mohammad rather than Muhammad (ii) wrongly recording the interpreter as being Arabic when in fact he was Bengali, (iii) at [1] referring to the appellant being proposed to be removed to Libya when it should be Bangladesh, (iv) at [2] wrongly referring to the application made on 30 May 2014 as being refused on 18 September 2009 when it should have been 2014. Whilst it is preferable for there to be no errors in a decision of any judicial body the reality is that at times errors do occur. The correct spelling of the appellant's first name appears throughout the First-tier Tribunal file in all places bar the header of the Judge's decision. The Judge was clearly aware of the appellant's name and identity, the issue being the substitution of the letter 'u' with the letter 'o'. This is clearly a

typographical error. In relation to the interpreter the Judge was clearly aware of the language being used during the course of the hearing and both a reference to the interpreter being Arabic and the place of return to Libya are clearly typographical errors arising as a result of a lack of anxious scrutiny when proof reading the determination. The Judge refers in the body of the determination to the appellant being a Bengali speaker and to the appellant's true nationality – see [2] and [6]. The reference to 18 September 2009 is, again, clearly a typographical error and lack of checking in the final decision as it would be physically impossible for an application made on 30 May 2014 to have been refused in 2009. In any event, the decision under challenge before the Judge is the refusal of 15 November 2016. In relation to these issues no arguable legal error arises either individually or in support of an assertion that they demonstrate the Judge failed to apply the required degree of anxious scrutiny when considering the evidence.

6. A more serious assertion raised by Mr Singer is that the Judge had failed to consider the evidence with the required degree of anxious scrutiny or given adequate reasons for the findings made generally. This allegation is coupled with the allegation at Ground 2 of the renewed grounds that the Judge took section 8 of the 2004 Act as a starting point for the assessment of the appellant's credibility and, at Ground 3, that the Judge failed to properly consider the appellant's sur place claim.

7. The Judge is criticised for placing too much reliance upon the respondent's reasons for refusal letter when it is argued there was a considerable amount of evidence provided by the appellant in support of his claim that the Judge failed to adequately or properly examine. It is argued the Judge did not deal with the interview, medical evidence, evidence of past persecution regarding the Awami League, evidence from Bangladesh, and substantial photographic and electronic evidence relating to the sur place activities. Mr Singer submitted there was no assessment of the oral evidence, photographic evidence, or points raised in submissions.

8. To ascertain whether there is any merit in the challenge to the decision one needs to consider the determination carefully. The Judge had before him the evidence relied upon by both parties. The Judge clearly understood the appellant's immigration history for, bar the incorrect date, there is no criticism of the analysis referred to, for example, at [2] of the decision under challenge.

9. The core elements of the case were set out by the Judge at [2] to [6], paragraphs [3-6] of which are in the following terms:

> 3. The reasons why the Respondent refused the Appellant's application are set out in the letter of refusal. The Respondent observes that the Appellant's fear is based upon mistreatment on account of his political opinion as he became politically involved with the BNP and fears the governing Awami League Party in Bangladesh. Extensive reliance is placed on his sur place activities

in the UK. It is unnecessary to me to set out the Refusal letter in detail. Suffice it to say that I have had full regard to it.

4. In his Witness Statement ('WS') dated 25 January 2017, (at pages 5 to 15), which he adopted at the Hearing before me together with his original WS, the appellant strenuously repeats his claim in answer to the refusal letter, namely, for example, that the chairperson of the BNP, Khaleda Zia, was arrested (para. 4); that he was himself a president of his college hostel branch of the BNP (para 5); but that it was the case that "the SSHD had failed to make a proper assessment of the BNP…." (para 7). Apart from an ever more strenuous assertion than before, as to the credibility of his claim, this extended witness statement does not add much more to what the Appellants had previously described as his claim.

5. In his examination-in-chief by Mr Singer, the Appellant drew attention to a number of coloured photographs, as well as an 11 March 2015 *Law Society Lecture Democracy and Human rights in Bangladesh,* although the Appellant accepted he did not speak at this event but just attended. Simon Danczuk MP, he confirmed as speaking from 16.05 – 16.45. He also referred to a DVD, but I noted that the Appellant was only sitting there and not interviewed, and is part of the audience. He explained here that his presence nevertheless resulted in his being put on Bangladeshi Channels. I noted that in these he was clearly not in the front row but right at the back. However, he asserted this footage was nevertheless widely available on the internet in all countries. He confirmed to me when I asked that in none of those videos is he himself giving a Speech. Of the many DVDs, there was at DVD 1 (at p.173) the Anniversary Cake is cut for Bangladesh. There was at DVD 2 (at p.174) people being assaulted in Bangladesh (although this was not shown to me on his Barrister's Laptop). There was at DVD 3 the address given by Khalida Zia of the BNP in London at a meeting and at 1 min and 4 seconds the appellant becomes visible in this footage. However, I noted that he was not even on the podium with Khalida Zia. He is simply one amongst a multitude in attendance.

5. It is, however, DVD 4 is (p.176) which actually shows the appellant speaking into a microphone in English with a crowd of demonstrators at a protest in London. As the Appellant explained, this event took place on 17 June 2015 at the Hilton on Park Lane because Shiekh Haseena (of the opposition Awami League Party, which is currently in power) was at the hotel. He was in English denouncing the illegal party. I noted, however, that he was wearing large black tinted sunglasses (as were the others alongside him) and this was no doubt intended to make identification of these demonstrators difficult. On another occasion, the Appellant is shown speaking again in an address given in Bengali, and this appears at [at p.181 there is an English translation). There is also a second DVD of only 2 mins or so, where he is again shown addressing, what appears to be cinema hall crowd. Various other videos were also highlighted. For

example, at DVD 4 (File A) there is a proper meeting (translated into English at P.178), which the Appellant explained was in 2014. This was a meeting addressing the plight of those who had been kidnapped in Bangladesh by the security forces, but for whom no voice was being raised. At DVD 4 (File D) the Appellant explained that he was being seen again at and 4 mins into the footage, although he is not here making a speech. At DVD 5 (P.177) here shown to be at 10 Downing Street, and this is most recently in January 2017, where together with others he goes in, as he claimed to hand in a Petition against the Bangladeshi government. Apart from the Appellant highlighting this evidence, no other questions were asked by Mr Singer of the Appellant.

10. At [7] the Judge sets out in what appears almost verbatim the questions and answers given and received in cross-examination and notes there was no re-examination by Mr Singer.
11. At [9 – 11] the Judge sets out the closing speeches made by both representatives. It is not suggested before the Upper Tribunal that the Judge misunderstood the thrust of the legal arguments.
12. The assertion by Mr Singer that the Judge failed to consider the evidence with the required degree of anxious scrutiny is not made out. The Judge was clearly aware of the material provided and a reading the determination fails to establish the Judge then chose to ignore or pay no attention to it. It is noted Mr Singer's challenge appears to be predicated on the basis the Judge fails to make detailed reference to the substantial volume of material the appellant provided. It is not legal error for a judge not to set out chapter and verse in relation to the evidence provided or all his or her thoughts upon the same. A requirement to do so would end up in decision substantially longer than those that are already produced. The question to be addressed is whether a reading of the decision under challenge supports a finding that that material, even if not mentioned to the extent Mr Singer submitted it should have been, was properly considered. I find the answer to this question is in the affirmative and that no arguable legal error is established on this basis.
13. The assertion the Judge failed to provide adequate reasons necessitates my setting out the findings made at [12 – 20] of the decision under challenge. A summary of those finding is set out above, but in light of the specific nature of the challenge before the Upper Tribunal a more detailed account is required.
14. Those findings are in the following terms:

> 12. The law relating to refugee protection claims is contained in the Qualification Directive (2004/83/EC) which has been transposed into the law of the UK through party 11 of the Immigration Rules and the Qualification Regulations 2006. The burden of proof lies upon the Appellant the standard of proof is usually described as a low standard, being assessed according to "real risk" or "reasonable likelihood".

13. I have given careful consideration to all the documentary evidence and to the oral evidence before me. I remind myself that, “the real question, as always in these cases, was, notwithstanding that which had happened .. Whether it be safe for this Appellant to return” (see Lord Justice Moses in AM (Pakistan) v SSHD [2008] EWCA Civ 1064 (at paragraph 18). I do not find that the Appellant satisfies the requirements of paragraph 329L and that his evidence is not coherent implausible for the following reasons.

14. This is a case where the Appellant, who arrived in the UK on a working holiday maker visa entered on his own valid passport and visa. He then tried to get further LTR on family/private life grounds on the basis of a relationship with a British girl. It was only when the application was rejected in 2014 that he applied for asylum. Even then he did not do so for two years to 2016. When he did so he submitted an FIR which was verified as being fraudulent by the BHC in Dhaka.

15. The evidence that he has today submitted in the form of DVD recordings needs to be seen in the light of his having previously submitted fraudulent evidence (see the RL at paras 35-40). I find that the SSHD has rightly rejected the following: (i) Membership of the BNP in Bangladesh; (ii) Political incidents in Bangladesh in 2004 and 2007; and (iii) BNP activity in the UK. The Appellant has gone to considerable lengths to produce DVD footage today but he was unable to confirm that he was ever listed as a named Speaker to speak at the BMP events (and in fact at first had said he was not) and it is a fact that there was no one here today from BNP to support him quite simply because the Appellant felt unable to ask anyone.

16. I find that the Appellant will not be at risk of any ill-treatment in Bangladesh because he has attended on behalf of the cultural wing of the BNP. Moreover, although he says that some of this footage will have been shown on Bangladeshi channels there is no evidence that the few minutes or seconds that he is appearing will be shown or picked up by the authorities there. Even if it was, the plain fact is that he is of no interest whatsoever to anyone there. The evidence that he has contrived at great lengths to submit is fraudulent and designed only to secure him asylum status in the UK.

17. His activities in Bangladesh were rightly found to be lacking in credibility because of their striking vagueness (RL at paras 12-14) and the Appellant singularly failed to explain why he was risking his life for the BNP if he had scant knowledge its policies (RL at para 15). In fact, the Appellant even remarkably said that he had no interest in named policies (RL at para 16). It is not credible that he had been an active member of the BNP since 2001 (RL at para 22) or that the political incidents of 2004 and 2007 took place (RL at para 24) and it is clear that there is no case for international surrogate protection that the appellant has been able to make

out. In short, if his story is true (which I hold it is not) it is open to him to first enlist the help of his state authorities.

18. Having found that the Appellant is not a refugee because he has not established a well-founded fear of persecution, by analogy, I find that the Appellant cannot qualify for humanitarian protection either.

19. As I have found that the Appellant has not established a well-founded fear of persecution, by analogy, I also find that his claim does not engage Article 3 of the Human Rights Convention either.

20. As for the Appellant's article 8 rights, he has no claim that can succeed under paragraph 276ADE and Appendix FM and there is no basis for his showing that there are exceptional circumstances such that he should be granted discretionary leave to remain. I adopt the reasons set out in the refusal letter.

15. The criticism that the Judge has done no more than rubberstamp or repeat the content of the reasons for refusal letter is not made out. It is accepted that for a judge to do so might amount to arguable legal error but this is not what has occurred in this case. The Judge clearly considered all the evidence made available and the findings made clearly mirror not only the Judge's opinion but the position set out in the Reasons for Refusal letter which represents the Secretary of States position in relation to this appeal. As Mr Bates submitted, it would always be open to the Judge to set out verbatim exactly what is written in the Refusal letter in the Judges own terms but that was arguably not necessary. The conclusions arising from the evidence reflected in [11] are in accordance with the material from which such findings originate.

16. In relation to the FIR, Mr Singer submitted the Judge failed to take into account the appellant's explanation in his evidence in relation to this document. I find no arguable merit in this claim which is, in effect, a challenge to the weight the Judge gave to the evidence in relation to this aspect of the appeal. I find the Judge considered the evidence with the required degree of anxious scrutiny. It is not disputed that the FIR has been verified as being fraudulent by the British High Commission. Although Mr Singer sought to argue in the alternative it has not been made out the conclusion regarding the credibility of that document is in any way flawed nor the extent to which the Judge was reasonably unable to place any weight upon it.

17. In relation to the sur place activities, the Judge was clearly aware of these and refers in the above paragraphs to the photographic and other electronic evidence submitted by the appellant. The analysis of that evidence set out at [4 – 6] has not been shown to be infected by arguable legal error. Whilst the appellant sought to argue he has a profile that will place him at real risk on return, this was clearly not found to have been made out by the Judge on the basis of the material provided. It was submitted by Mr Bates that the burden of

proving an entitlement to international protection lies upon the person so asserting which, in this case, is the appellant.

18. The material before the Judge failed to establish any arguable real risk arising from the activities undertaken by the appellant, recorded by the Judge, such as to create a real risk on return to Bangladesh.

19. The Judge also notes, in the alternative, at [17] that even if the appellant's account was true he has a sufficiency of protection from the authorities in Bangladesh. This is not specifically challenged before the Tribunal to the extent that it can be found this is an arguably perverse or irrational finding.

20. Mr Singer's submissions inferring that the sheer volume of material provided by the applicant should have led the Judge to allow the appeal has no arguable merit. It is the quality of the evidence provided from all sources and the interpretation of the same that leads a judge to consider the weight that can be attached to that material. That is the important factor, not sheer volume alone. As I have found the Judge has considered the evidence with the required degree of anxious scrutiny and I find has given adequate reasons to support the findings made, the weight to be given to the evidence was a matter for the Judge.

21. Although Mr Singer referred to the fact that if arguable legal error is found and the matter considered further the appellant has additional evidence to adduce, this was not material before the Judge. If warranted, as a result of post-decision material, it is always open to the appellant to make a fresh claim which can be considered by the decision-maker pursuant to paragraph 353 of the Immigration Rules.

22. Having considered the matter with the required degree of anxious scrutiny I find that the appellant has failed to make out that the Judge has erred in law in a manner material to the decision to dismiss the appeal.

Decision

23. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

24. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed……………………………………………….
Judge of the Upper Tribunal Hanson

Dated the 9 November 2017