



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

Appeal Number: PA/00036/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
on 8 February 2018**

**Decision & Reasons Promulgated  
On 13 February 2018**

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**MA  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Symes, Counsel, instructed by Londonium Solicitors  
For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of Judge of the First-tier Tribunal Telford (the judge), promulgated on 30 August 2017, in which he dismissed the appellant's appeal against the respondent's decision dated 22 December 2016 refusing his asylum claim.

**Factual Background**

2. The appellant is a national of Bangladesh, date of birth [ ] 1991. He entered the United Kingdom in 2011 with entry clearance as a Tier 4 (General) Student. Although his leave was extended, the college and which he was studying informed the Home Office that he was no

longer attending. His leave was curtailed so as to expire on 31 July 2014. After several attempts to serve on the appellant decisions confirming his unlawful status in the UK he was recorded as an absconder. He claimed asylum on 24 June 2016.

3. The following is a brief summary of the appellant's asylum claim. He joined the Islamic Chattrā Shibir, the student wing of the Jamaat-e-Islami political party, in 2003. He was elected secretary locally in 2005 and led the local party in a challenge to the Bangladesh caretaker government in 2007/2008. He entered the UK with a view to avoiding the increasing political violence in Bangladesh which led to the execution of senior party leaders and his own arrest on various occasions. Although he returned to Bangladesh in 2013 to see his sick mother he was attacked by member of the Awami League's student wing. There was an attempt to extort money from him by forcing him to sign a cheque. False charges were levelled against him and his family continued to face harassment and vandalism of their home.
4. The respondent did not accept the appellant's account of political activity in Bangladesh. This was based on several inconsistencies in the appellant's account. The respondent took issue with the reliability of various letters provided by the appellant. Given that the appellant was able to leave Bangladesh in 2011, and able to return in 2013, and given that he had been released whenever detained on payments of bribes, the respondent did not accept that the appellant faced a real risk of serious ill-treatment. The fact that the appellant was able to lodge a First Incident Report (FIR) with the police suggested that the authorities were capable and willing of providing a sufficiency of protection. Pursuant to s.8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 the respondent drew an adverse inference based on the delay of 5 years in claiming asylum.

### **The decision of the First-tier Tribunal**

5. The judge did not find that the appellant had been involved at the level claimed with anti-government political opposition in Bangladesh. In his summary findings at [16] the judge found that the appellant had not been involved in politics and that he faced no risk of harm for a Convention reason. Under the heading 'Credibility' the judge found "all aspects" of the appellant's evidence to be incredible [17]. In this section the judge attached significant weight to the appellants delay in claiming asylum ([17] to [22]). At [20] the judge rejected the appellant's explanation for making a late claim as "pure invention and frankly inconsistent." At [21] the judge noted that the appellant had access to legal advisers, and at [22] the judge rejected the appellant's submission that he felt he had no need to claim asylum because he was present as a student.
6. Under the heading "Political persecution" the judge noted that documents produced by the appellant were not properly translated and that even if taken at face value they were at odds with events. By

way of example, the appellant relied on an arrest warrant issued in late 2016 despite the fact that he initially left Bangladesh in 2011 and only returned for a brief period in 2013. The judge found inconsistencies in the appellant's account of a dishonoured cheque and in respect of the amount owed to the Awami league's student wing. At [25] the judge stated,

"... his account of being able to easily bribe the police from arrests on 2 occasions and being simply let go without warrant for arrest or charges on an earlier occasion indicates to me that no one is prepared to view the appellant in Bangladesh as a serious political figure. If he were viewed as anti regime or in opposition to them then he would not in my view have been so lightly treated."

7. The judge additionally found inconsistent the appellant's claim that the authorities would not protect him given that an FIR had been issued against those he claimed were harassing him, and found that relevant documents were not properly certified in translation.
8. At [32] the judge found there was nothing in the appellant's case regarding the threat of persecution which was credible. At [35] the judge found the appellant's evidence on the core issues to be incredible. The judge consequently found that the appellant's claim did not engage the Geneva Convention because it was not based on his political views or his membership of a social group, and dismissed the protection claim. The article 8 claim was also dismissed.

### **The grounds of appeal and the error of law hearing**

9. The grounds contend that the judge gave paramount weight to the timing of the appellant's asylum claim. The grounds note that the entirety of the judge's assessment under the heading "Credibility" concerned the delay in the asylum claim and that the judge failed to consider the appellant's evidence that he planned to return to Bangladesh once the political situation had calmed down. Moreover, in drawing an adverse inference based on the issuance of an arrest warrant in 2016, the judge failed to appreciate that the appellant's political profile rendered him an ongoing target for harassment, which would explain the issuance of the arrest warrant so long after his departure in 2011. There were some aspects of the appellant's account that appeared to be accepted (e.g. his arrests, considered at [25]), yet elsewhere the judge made wholesale adverse credibility findings ([32] and [35]).
10. The grounds further contend that the judge failed to consider corroborating evidence from various sources relating to the death of his cousin (who, it was claimed, was murdered for political reasons), that the judge failed to consider statements from the appellant's own brother and sister confirming the authorities adverse interest in him, that no reference was made to photographs showing the appellant in various political roles, and that no consideration was given to a letter from a lawyer engaged by the appellant in Bangladesh to defend himself against political persecution.

11. The grounds finally tend that, if the judge accepted the appellant's arrests, the background evidence indicated that a recurrence might very well be attended by a real risk of persecution, and that the judge failed to have regard to such background evidence.
12. At the hearing Mr Symes adopted and expanded his grounds. It was submitted that the judge attached disproportionate weight to the timing of the asylum claim and failed to engage in the explanation for delay offered by the appellant. The letters from the appellant's brother and sister were independently written and were capable of having at least some weight attached to them despite the absence of any opportunity to question the authors. The photographs suggested that the appellant had political involvement and were not considered by the judge, and the letter from the lawyer in Bangladesh was *prima facie* reliable yet was not considered at all by the judge. Mr Nath submitted that the judge's conclusions were open to him for the reasons given and that although there was no reference in the decision to the letters from the appellant's sibling and, in particular, the letter from the lawyer in Bangladesh, even if these documents were considered it could not have made any material difference to the ultimate outcome of the appeal. I reserved my decision.

## Discussion

13. For the following reasons I am satisfied that the decision is vitiated by material errors of law such as to render its conclusions unsafe.
14. At [16], a summary of the subsequent judicial findings, the judge rejected the appellant's claim to have been involved in politics. Yet earlier within the same paragraph the judge found that the appellant had not established his involvement "... at the level he claims with the anti-government political opposition in Bangladesh." It is not altogether clear whether the judge is rejecting wholesale the appellant's claimed involvement in politics, or whether the judge is merely rejecting the nature and extent of the appellant's claimed political involvement and activities. The rejection of the appellant's claim to have been involved in politics is also difficult to reconcile with the judge's assessment at [25] where he appears to accept the appellant's account of bribing the police following his arrest on 2 occasions. Although the judge states that, if viewed as anti-regime or in opposition, the appellant would not have been so lightly treated, it remains unclear whether the judge actually found as a fact that the appellant had been arrested but simply let go, or whether he rejected this claim entirely.
15. At [20] the judge rejects the appellant's explanation for making a late claim as "pure invention and frankly inconsistent." The judge does not however identify the explanation provided by the appellant for the delay in making an asylum claim in paragraph 13 of his statement dated 20 January 2017, and no reference is made to paragraph 10 of the appellant's 2016 personal statement where he indicated that he

intended to return to Bangladesh when the political situation improved. In the 2017 statement the appellant maintained that he did not want to claim asylum on arrival because he wanted to go back on completion of his studies as he thought the situation in Bangladesh would improve. The situation however got worse and, as time passed by, he realised that there was no realistic chance to return to Bangladesh. The judge, at [22], refers to the appellant's claim that there was no need to make an asylum application as he was still a student. Yet there is no reference to the appellant's explanation that he thought the situation in Bangladesh might improve and did not claim asylum for this reason. I am not satisfied that the judge engaged with the full explanation offered by the appellant for the delay in his asylum claim. I find this particularly relevant given the very significant weight attached by the judge to the delayed claim. While it may well have been open to the judge to reject the full explanation offered by the appellant I cannot say with certainty that such rejection would inevitably have followed.

16. The judge makes no reference to photographs in the appellant's bundle that purport to show him engaged in political activities. Whilst a judge is not obliged to consider all the evidence provided, a failure to consider material evidence may render a decision unsafe. The photographs, on their face, suggested that the appellant may have had some political involvement. Nor does the judge make any reference to the letters from the appellant's siblings in which they assert that he was politically active and targeted because of his activities. A letter written by a family member is not incapable of bearing weight, although regard must be given to the absence of any opportunity to test the assertions contained in such a letter and in light of the totality of other credibility findings (*R (on the application of SS) v Secretary of State for the Home Department ("self-serving" statements)* [2017] UKUT 00164 (IAC)). The judge failed to make any reference at all to the letter purportedly written by Md. Abu Taleb, Advocate, dated 30 June 2016. Although written in brief and general terms and in relatively poor English, there was nothing on the face of the letter to suggest it was not genuine (the letter contained the contact details for the advocate). The letter supported the appellant's account of political activities and his targeting at the hands of the Awami league. Once again, while the judge may have ultimately been entitled to reject the document as being unreliable, given the nature of the document, he was required to at least consider it. His failure to do so amounts to an error of law.
17. For the reasons given above I am satisfied that the errors in the judge's assessment of the credibility of the appellant's account renders the decision unsafe.
18. Given that the errors go the issue of credibility, and having regard to the representations of the parties, it is appropriate to remit the matter back to the First-tier Tribunal for a complete fresh hearing before a judge other than judge of the First-tier Tribunal Telford.

**Notice of Decision**

**The First-tier Tribunal decision is vitiated by material errors of law. The case is remitted to the First-tier Tribunal for a fresh (de novo) hearing, all issues open, to be heard by a judge other than Judge of the First-tier Tribunal Telford.**

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal 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.



Signed  
Upper Tribunal Judge Blum

Date 9 February 2018