



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

Appeal Number: PA/00614/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20 May 2019**

**Decision & Reasons Promulgated  
On 5 June 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**A A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

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

**Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their 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.**

**Representation:**

For the Appellant: Mr P Jorro, Counsel, instructed by Waterstone Solicitors  
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

## **DECISION AND REASONS**

### **Introduction**

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge M R Oliver (“the judge”), promulgated on 21 March 2019, in which he dismissed the Appellant’s appeal against the Respondent’s decision of 21 December 2018, refusing his protection and human rights claims. These claims arose as a result of further representations put in in September 2018 following a previous unsuccessful claim and subsequent appeal.
2. The essence of the Appellant’s protection claim was that he was related to a prominent member of Jamaat-e-Islami in Bangladesh and that this individual, Mr S (his paternal grandfather), had been imprisoned and sentenced to death in relation to allegations of war crimes in Bangladesh’s past. The Respondent, and indeed the previous judge, had rejected the relationship. In light of this, and in refusing the latest protection claims, the Respondent had also rejected the Appellant’s claims to have been genuinely involved in politics, both in Bangladesh and, significantly, in the United Kingdom.
3. On the basis of what the judge clearly considered to be a significant volume of evidence, he found that the Appellant was in fact related to Mr S (para. 34). Notwithstanding this favourable finding the judge went on to conclude that the Appellant’s claim was not made out. This was on the basis of a number of factors. It was said that an unreliable arrest warrant had been produced; there was no evidence to suggest that the Bangladeshi authorities would be aware of or interested in any United Kingdom-based activities; and that there was no reliable evidence to associate the Appellant with the activities of his grandfather. It was also said that the late timing of the Appellant’s protection claim counted against his overall credibility. It is also of some note that the judge expressly declined to make a finding as to whether the Appellant’s United Kingdom activities were genuine or not.

### **The grounds of appeal and grant of permission**

4. The succinct grounds of appeal place significant emphasis on the assertion that once the judge had found that the Appellant was related to Mr S as claimed, he then failed to factor this in to the claim as a whole, having regard to political activities in Bangladesh and in this country, which in turn had to be considered in the context of the country information.
5. Permission to appeal was duly granted by First-tier Tribunal Judge Andrew on 12 April 2019.

## **The hearing**

6. At the hearing before me Mr Jorro relied on his skeleton argument and the grounds of appeal. In essence he submitted that once the favourable finding on the claimed relationship had been made, the judge was then bound to take full account of this when assessing the credibility of the Appellant's claim to have been politically involved, the extent of those activities, and the nature of any risk presented to him as a result. Mr Jorro submitted that the judge had simply failed to undertake this important step and that none of the specific adverse findings made could go to save the initial fundamental error.
7. Mr Tufan submitted that the judge had considered all of the evidence in the round and the findings made had been open to him. There was enough, he submitted, for this decision to be sustainable.

## **Decision on error of law**

8. I conclude that the judge did materially err in law in the way clearly set out by Mr Jorro in his grounds and skeleton argument.
9. It is clear to me that the issue of the Appellant's relationship to Mr S was of crucial importance to his claim as a whole. I accept Mr Jorro's submission that once a favourable finding on the relationship had been made, it was therefore inherently more likely (although not of course decisive) that the Appellant would have been genuinely involved in political activities both in Bangladesh and this country. Issues of risk as a result of his profile would have had to have been assessed in light of this. In my view, the judge has simply failed to factor in his finding on the relationship to the other core aspects of the Appellant's claim as it was put to him.
10. As I read the decision, there is no assessment by the judge as to whether the fact of the relationship and the nature of Mr S's profile would have been relevant to any political involvement by the Appellant himself. There was no consideration of whether the relationship, when seen in its proper context, would have caused the Bangladeshi authorities to have an adverse interest in the Appellant.
11. It is clear that the judge failed to take the relationship into account when assessing whether the Appellant's undisputed activities in this country were genuine or not because of course the judge declined to make any finding on motivation (para. 36). I regard that as being a significant omission in and of itself. In my view, the question of whether the Appellant had been genuinely involved in politics was relevant to the way in which the Bangladeshi authorities might perceive him, particularly in light of the country information that was before the judge.

12. I recognise that the judge did address the issue of the relationship in para. 37, but having read the relevant passage it is clear to me that he did not assess this important factor on an appropriate basis. Rather it appears as though he had been looking for some connection between the crimes allegedly committed by the grandfather of himself in the past and the Appellant himself. This of course was artificial given that the grandfather's alleged actions would have occurred decades ago.
13. The judge was in my view entitled to have regard to the experiences of other family members, but that does not go to save the decision as a whole from the effects of the errors I have set out.
14. The same applies to the judge's consideration of the timing of the protection claim at para. 38, and indeed his consideration of the arrest warrant at para. 35. In respect of the latter point, this was and is a problematic issue for the Appellant, but it simply cannot render the judge's errors immaterial in the context of the Appellant's case as a whole.
15. A further point on materiality arises from the country information that I am satisfied was cited to the judge. Having looked at this information for myself it is clear that the Bangladeshi authorities have and continue to have a significant adverse interest in political opponents. In particular, there is country information to indicate that relatives of those involved in Jamaat-e-Islami have themselves been specifically targeted (see, for example, page 325-326 of the Appellant's bundle).
16. In summary if, as he should have done, the judge had properly factored in the finding on the relationship into the other core elements of the Appellant's claim, there is a real possibility that the outcome would have been different.
17. In light of this, I set the judge's decision aside, subject to any preserved findings of fact (see below).

## **Disposal**

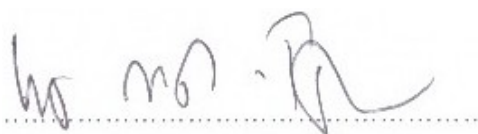
18. Having heard from both representatives, I have decided to remit this appeal to the First-tier Tribunal. Although the default position is that cases will be dealt with in the Upper Tribunal, in this appeal there is a significant amount of fact-finding to be undertaken.
19. It is clear that the judge's findings relating to the Appellant's political involvement, together with the conclusions resulting therefrom, are unsound.
20. However, the judge's clear finding that the Appellant is in fact related to Mr S was reached after consideration of a good deal of evidence. The errors I have identified do not impinge on this particular finding and it shall stand.

21. I appreciate the potential difficulties facing First-tier Tribunal Judges when confronted with preserved findings on a remitted appeal. Here though, the preserved finding is limited and should present no material difficulties for a careful consideration of the remaining “live” issues in the case.

**Notice of Decision**

**The decision of the First-tier Tribunal contains material errors of law and I set it aside, subject to the preserved finding set out in para. 20 of this Decision.**

**I remit this appeal to the First-tier Tribunal**



Signed

Date: 31 May 2019

Upper Tribunal Judge Norton-Taylor

**Directions to the First-tier Tribunal**

- 1. This appeal is remitted for a rehearing, subject to the single preserved finding of fact set out in para. 20 of this Decision;**
- 2. The remitted hearing shall not be reheard by First-tier Tribunal Judge M R Oliver**