



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

Appeal Number: PA/12086/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27<sup>th</sup> August 2019**

**Decision & Reasons  
Promulgated  
On 4<sup>th</sup> September 2019**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**MR S M B H  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr P Turner (instructed by Chancery Solicitors)

For the Respondent: Miss J Isherwood (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Appellant in relation to a Decision of First-tier Tribunal Judge Cockrill who, in a Decision and Reasons promulgated on 21<sup>st</sup> May 2019, dismissed the Appellant's protection

appeal. That followed a hearing at Taylor House on 8<sup>th</sup> April 2019 when the Appellant was represented by Mr Chelvan of Counsel.

2. The Appellant's case is that he is a national of Bangladesh and is at risk on return on account of his links with the BNP, both in Bangladesh before leaving and in the UK since.
3. The background of this case is that when the substantive hearing was first listed, the day before the hearing two voluminous bundles were lodged, which the Secretary of State had not had the opportunity to consider in any depth and which contained two FIRs containing very serious allegations against the Appellant, including one of murder. Those documents referred to incidents which had allegedly taken place while the Appellant was in the UK. The matter was adjourned on that occasion, because of the amount of documentation submitted at the last minute and with a direction by the judge for the Secretary of State to consider and verify, if possible, those FIRs.
4. When the matter next came before the Tribunal on 8<sup>th</sup> April 2019, the Secretary of State, not unusually, had done nothing about verifying those documents. On that occasion the Appellant attended court ready to give evidence, having filed a witness statement and a host of other documents. He was also accompanied by three witnesses who had also filed witness statements and were ready to give evidence.
5. Unfortunately for the Appellant, on that occasion Counsel who represented him decided to take what he believed to be a good legal point, namely that if the Secretary of State had not verified the documents that inferred that the Secretary of State accepted the documents and the Appellant was entitled to win his appeal. Counsel called no evidence and proceeded on the basis of his submission only. Not surprisingly his submission did not find favour with the judge, rightly, in light of VT (Article 22 Procedures Directive - confidentiality) Sri Lanka [2017] UKUT 368 (IAC).
6. Mr Turner did not challenge that decision but submitted the Judge had erred in not considering the written evidence provided. It is the case that when one reads the Decision of the First-tier Tribunal that the judge was clearly distracted by the argument being put to him and indeed more of the Decision and Reasons is taken up with dealing with that submission than the written evidence before him. He did not hear any oral evidence because Counsel elected not to call it, relying on his legal point and submissions only. The judge, whilst considering the main thrust of the claim, did not give any detailed consideration to the documentary evidence and did not have anything to say at all about the witnesses' evidence as contained in their witness statements.

### **Notice of Decision**

7. As I hope I have made clear, I am not criticising the judge unduly in this because he was somewhat misled and distracted by the unmeritorious

submission being made to him. However, this is a protection appeal and the Appellant is entitled to have his case given the most anxious scrutiny and all of the evidence taken into account. It was not in this case and for that reason the Decision has to be set aside because all the evidence needs to be considered and findings of fact made on it. Miss Isherwood acknowledged that to be the case. The appellant not having had a fair hearing before the First-tier Tribunal, it is appropriate to remit it to the First-tier Tribunal for a full rehearing on all matters before a different judge. The appropriate hearing centre remains Taylor House. The appeal is allowed to the limited extent that it is set aside and remitted to the First-tier Tribunal for a rehearing. I maintain the anonymity direction.

**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 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:

Date 28 August 2019

Upper Tribunal Judge Martin