



IAC-FH-LW-V1

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

Appeal Number: PA/08274/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 29 January 2020**

**Decision & Reasons Promulgated
On 11 March 2020**

Before

UPPER TRIBUNAL JUDGE OWENS

Between

**R I
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Biggs, Counsel instructed by Law Dale Solicitors

For the Respondent: Mr S Kandola, Home Office Presenting Officer

Interpretation: Mr A Smad in the Bengali language

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Bangladesh born on 12 October 1986. He entered the United Kingdom as a student on 20 October 2009. His student leave was subsequently extended on several occasions until 31 May 2014. On 13 July 2015 he made an Article 8 ECHR private life application. This was rejected on 3 September 2015.

2. The appellant claimed asylum on 29 January 2016. An appeal against that decision was dismissed on 4 April 2017 by First-tier Tribunal Judge Onoufriou. Permission to appeal was granted and the appeal was remitted to the First-tier Tribunal for a de novo hearing. The appeal was allowed by First-tier Tribunal Judge Sweet on 3 June 2019. On 30 July 2019 Resident Judge Appleyard granted permission to appeal against that decision and the error of law hearing came before me on 6 September 2019. I found that First-tier Tribunal Judge Sweet had erred in law for the reasons set out in my decision of 15 November 2019 which is appended to this decision at Appendix A.
3. The matter came before me to remake the appeal.

The Appellant's Claim_

4. The appellant fears that were he to return to Bangladesh he would face serious harm from the ruling party, the Awami League, as a result of his support for the Bangladesh National Party ("BNP"). He also asserts that he would face prosecution for politically motivated criminal charges.
5. The appellant claims to have been persecuted in Bangladesh on account of his political activities. His family were all BNP supporters and he became involved with the BNP student wing whilst still a student at the Government Bangla College in Dhaka. He held the position of Assistant Secretary of the college branch of the Bangladesh Jatiotabadi Chatradol ('BJC'), the student wing of the Bangladesh Nationalist Party. In 2007 he started studying civil engineering at the World University and was elected student welfare secretary. The appellant also worked for the local MP candidate Mr Khander Delowar Hossain, the then Secretary General of the BNP who was the chief whip of the Bangladeshi parliament until 2006.
6. There was conflict between the BNP and their opposing party the Awami League. On 20 March 2007 the appellant was attacked by the Awami League whilst he was on a local BNP procession. His finger was cut with a machete during the attack and he sought medical assistance. There were tensions in late 2008 in the lead up to the elections. The situation deteriorated after the Awami League took power in the elections in January 2009. On 1 February 2009 local members of the Awami League attacked the shop and attempted to kill the appellant who was seriously wounded in his left heel. He has also been attacked on several other occasions by Awami League members. It was these events which prompted him to leave Bangladesh.
7. The appellant further asserts that false politically motivated cases were brought against him on 12 July 2010 and 2 June 2012 after he left Bangladesh at a time when he was in the United Kingdom. The appellant's father died of a heart attack on 4 March 2014, brought on, it is said, by the appellant because he was being harassed by the Awami League who were trying to take control of the family shops and assets. The appellant also asserts that his brother, who was also politically active for the BNP, was

abducted on 3 December 2014. The appellant believes that the Awami League was the perpetrator. Since the appellant has been residing in the United Kingdom, he has been politically active for the BNP attending meetings, participating in demonstrations and conferences.

- 8.** If the appellant is returned to Bangladesh he would be at risk of being prosecuted in relation to the false cases which are politically motivated. This would constitute persecution. Alternatively, he will be at risk of being persecuted by the Awami League because he is a genuine and committed BNP supporter who would continue to be politically active in Bangladesh and he would come to the attention of the authorities.

Reasons for Refusal

- 9.** The respondent accepts that the appellant was involved with the BNP in Bangladesh because he was able to demonstrate knowledge of the BNP and its history, provide details as to the general objectives of the party and the process for joining, and also provided a detailed description of his roles and activity within the party.
- 10.** The respondent does not accept that the appellant subsequently had problems with the Awami League. The respondent takes issue with a number of the documents which were submitted in support of the appellant's claim for asylum. In particular an advert placed in a Bangladeshi newspaper in relation to the appellant's brother's disappearance in 2014 was not lodged until a year later in December 2015. This is not considered to be plausible.
- 11.** On the appellant's father's death certificate his cause of death is stated to be "Awami Terrorists ambush Kriya closed die of a heart attack". The death certificate is written in basic and confused English and it is unclear why the cause of death refers to non-medical incidents.
- 12.** The letter from the appellant's mother is considered to be wholly self-serving. The letter was written on 3 December 2015 and yet addresses events which occurred in March and December 2014. The letter also refers to false cases which were lodged in 2010 and 2012. The document from the appellant's branch of the BNP in Bangladesh is vague referring to several false cases against him and asserts that the police are regularly looking for the appellant but provides no details as to how this information has been obtained. It is not considered credible that the police would continue to look for the appellant in the local area when he had been out of the country for four years. The respondent points to the prevalence of fraudulently obtained documents in Bangladesh. It is also not considered plausible that Awami League members would try to force the appellant to join his party.
- 13.** The appellant's family are wealthy and have remained in the same area of Bangladesh and have made no attempt to relocate to another part of Bangladesh, which also undermines the appellant's account. It is not

accepted that the appellant has encountered problems as he claims as a result of his BNP support.

- 14.** Section 8(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 applies because of the delay in the appellant claiming asylum. The appellant entered the United Kingdom in 2009 but did not claim asylum until 2016. This is behaviour to which Section 8(2) applies.
- 15.** The respondent goes on to consider that there is sufficiency of protection in Bangladesh. It is said that the appellant would be able to defend himself from any false charges against him and would be able seek protection from the authorities in relation to the alleged attacks. It is also open to the appellant to relocate internally within Bangladesh away from his home area to avoid being persecuted by the local Awami League members.
- 16.** The respondent does not accept that the appellant is at risk of serious harm from the authorities in Bangladesh if returned there and refuses his claim for asylum, his claim for humanitarian protection under paragraph 339C of the immigration rules as well as his Article 2 and Article 3 ECHR claims. Further, the removal of the appellant would not breach Article 8 ECHR since the appellant does not meet any of the requirements of the immigration rules and there are no very significant obstacles to his reintegration to Bangladesh. There are no exceptional circumstances which would warrant the exercise of discretion outside of the context of the Immigration Rules.

Grounds of Appeal

- 17.** At the outset of the appeal Mr Biggs confirmed for the appellant that he was relying on Refugee Convention and Article 3 grounds only. He would not submit that it would be a breach of the appellant's private or family life to return him to Bangladesh. He also confirmed that he was not putting forward an Article 3 ECHR medical claim.

The Burden and Standard of Proof

- 18.** The burden of proof is on the appellant to demonstrate that as at the date of the hearing there are substantial grounds for believing, or a real risk that he meets the requirements of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006.

The Law

- 19.** In order to qualify for international protection, the appellant must meet the requirements of the 1951 Convention, Article 1A, as reflected in the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 and the provisions set out in paragraphs 327 to 339P of the Immigration Rules which implement Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals as refugees or as persons who otherwise need international protection.

20. Paragraph 339L (implementing Article 4(5) of the Directive) indicates that it is the duty of the appellant to substantiate the claim and sets out the relevant conditions to be met when assessing evidence. I have also had regard to the case of **Tanveer Ahmed [2002] UKIAT 00439** in respect of the documents submitted with the claim.

Documentation

21. At the outset of the appeal I clarified with the parties that we all had the same documentation. This comprised of the respondent's bundle enclosing the appellant's screening interview, statement, asylum interview and documents provided in support of his asylum claim as well as three appellant bundles comprising of those documents set out in the detailed indexes and an additional witness statement dated 6 March 2019. Counsel also handed up the authorities of **MA (Bangladesh) v Secretary of State for the Home Department [2016] EWCA Civ 175** as well as **RT (Zimbabwe) & Ors [2012] UKSC 38**.
22. I have considered all of the documentation before me.

The Hearing

23. The appellant gave evidence in Bengali through the court appointed interpreter. He confirmed at the outset of the hearing that he understood the interpreter. The appellant adopted his five separate statements as evidence-in-chief and confirmed that the contents were true. The oral evidence is set out in full in the Record of Proceedings and I will refer to those relevant parts throughout my determination.
24. Both representatives made submissions which are also set out in the Record of Proceedings.
25. There was evidence before the Tribunal that the appellant has PTSD and on this basis I decided to treat him as a vulnerable witness. I ascertained that he was comfortable reminded him that he could take breaks and asked during the hearing if he needed to take a break. I also reminded Mr Kandoola about the appropriate way of cross examining a vulnerable witness.

Findings and Reasons

Support for BNP and situation in Bangladesh

26. The starting point in this appeal is that the respondent accepts, which was also conceded by Mr Kandola at the outset of the appeal, that the appellant was historically involved with the BNP. The appellant's description of his activities for the BNP in Bangladesh are set out in his statements and asylum interview. In summary he describes himself as a political activist in Bangladesh. He became involved in the BNP because of his older brothers' and his father's involvement. The appellant's father was a member of the BNP and his older brother was the President of the

Youth Wing of the Dalut Pur. The appellant became involved with the party in 2004 when he was attending the Government Bangla College in Dhaka. At that point he joined the BJC and later became the Assistant Secretary of the college branch of the organisation because of his hard work and dedication to the party. He regularly attended processions and demonstrations as well as various commemorative days and events. He describes himself as carrying out party activities as instructed by the Central Organisation General-Secretary. He organised meetings and rallies, celebrated and hosted different national days such as Independence Days. He worked closely with the Central Secretary, a Mr Hossain and a Mr Islam and a Mr Rizvi.

- 27.** In 2007 the appellant commenced a degree at a private university in Dhaka undertaking an engineering course and was elected to become the student welfare secretary. These activities are all accepted by the respondent on the basis of the detailed answers that the appellant gave in his asylum interview in relation to the leadership and the setting up of the party, its aims and aspirations, his activities and his description of his personal involvement and I am in agreement with this.
- 28.** The respondent remains silent on whether it is accepted that the appellant was attacked in Bangladesh by the Awami League. The appellant's evidence is on 20 March 2007 after returning home from a meeting of his party he was attacked by a group of people in the "Hasan Ali and Hamida Group". The appellant describes being beaten, punched and kicked severely. One of them took a sharp knife or machete and slashed the appellant on his finger. Local people broke up the attack and the appellant was taken to hospital where he received medical treatment. The appellant knew the Hasan Ali and Hamida Group personally, Mr Hasan Ali being the leader of the local student wing of the Awami League. The appellant describes being personally targeted as a representative of the rival student party. The situation deteriorated after 2008 when the Awami League came to power. In 2009 the appellant was present at a demonstration in his local area, Manikgonj, when he was attacked by members of the Awami League with sticks and machetes, cocktail bombs and stones. Between 2008 and 2009 there were numerous occasions when the appellant, along with many other party colleagues, was shouted at, pushed, spat on and verbally abused.
- 29.** On 1 February 2009 the appellant was in his shop with his father when the Awami League stormed his shop looting the money from the cash box, pushing his father and cutting the appellant's foot with a machete. The appellant was taken to the same hospital as a result of his injuries. During this time the Awami League would frequently visit the appellant's father's shop and forcibly steal items and money out of the cash box.
- 30.** I have considered this supporting evidence in respect of these attacks which include clinical notes from Dr Md Nuruzzaman from the Noorjahan General Hospital which were obtained by the appellant after he claimed asylum to support the account of what happened to him. The notes are

handwritten in English on the hospital notepaper. There is a contemporaneous note dated 20 March 2007 which records that the appellant attended the clinic following an assault, with an injury on his right small finger which states that his finger was bleeding. Similarly, a second contemporaneous note dated 1 February 2009 records that the appellant was a victim of assault with a cut injury by sharp weapons on his left heel. These notes are consistent with the appellant's description of the injuries he sustained and are also consistent with photographs that the appellant has provided of his injuries. There is a noticeable scar on his finger.

- 31.** Mr Kandola questioned why the reports were in English. I am in agreement with Mr Biggs that it is plausible that many of the doctors in Bangladesh are highly educated and would use English given the former colonial history of Bangladesh and I do not disregard the documents on this basis. I also agree with Mr Biggs that the medical evidence is entirely consistent with the appellant's consistent account of these two attacks. The appellant in his asylum interview and over five statements has consistently stated that he was attacked on these two occasions.
- 32.** The appellant also relied on a medical report dated 12 January 2020 prepared by a locum consultant psychiatrist, Dr Razia Hussain. The account given by the appellant to Dr Hussain was consistent with the appellant's account of being attacked in 2007 and 2009 which adds further weight to the fact that these events happened.
- 33.** Dr Hussain found at [7] that the appellant's clinical presentation was consistent with PTSD and her opinion is based on the evidence of the appellant's physical, mental and emotional symptoms. Dr Hussain's declaration and experience and qualifications are set out in the report and indicate that she is a professional on whose opinion weight can be placed. Dr Hussain's report is consistent with the guidance provided in **JL (medical reports - credibility) China [2013] UKUT 000145 (IAC)** but does not address the credibility of the account concluding only that the appellant is suffering from PTSD. The appellant's account was that this was caused both as a result of being attacked in Bangladesh but also as a result of his worries about being returned and that there has been a deterioration in his mental health since his asylum application was refused. I find that the report is evidence of the appellant's current mental state, that there are potentially more than one cause for this, but I agree with Mr Biggs that the report on the lower standard does indicate that the appellant has suffered some kind of trauma in the past which is consistent with his account of being attacked in Bangladesh. In summary, the consistency of the appellant's evidence in relation to the events in Bangladesh, the degree of detail that he provided and the conclusions of Dr Hussain indicate strongly to me that he is a credible witness when describing events that took place in Bangladesh.
- 34.** I have also had regard to the background material in the background material including the Country Information Policy Note, Bangladesh:

Opposition to the government dated January 2018 Version 2. This reports high levels of inter-party violence between the Awami League and the BNP, which occurs frequently during periods of heightened political unrest. At 8.1.1 it is said that student fronts are mostly responsible for political violence in Bangladesh which is consistent with the appellant's account in relation to the clashes that took place in 2007 to 2009 when the appellant was involved with the student wing of the BNP. Background material also refers to Awami League members and activists extorting BNP business owners. I find that the background material is entirely supportive of the appellant's description of events in Bangladesh, and given that the appellant's account of belonging to and being active for the Bangladesh National Party at a time leading up to and including the time when the Awami League took power, I find the appellant's account of being attacked entirely credible.

35. There has been a longstanding conflict between the governing Awami League Party led by Prime Minister Sheikh Hasina and the opposition, Bangladesh National Party (BNP) led by Khalida Zia.

36. The appellant claims to come from a wealthy family which owned shops in the local Amtali Bazaar. I note from the country background information that Bangladeshi society is characterised by 'clientelism'.

37. At 4.1.3 It is said

'Major political parties have strong organisations which operate in a hierarchical manner and follow well-planned command structures. They have student, youth, labour and women's organisations as well as professional groups and cultural organisations. These groups play a vital role in interest aggregation and mobilisation and help the party to provide political input for managing diverse interests. A culture of clientelism dominates all parties. Those who contribute money, provide muscle power or organise local-level support, enjoy benefits when the party comes to power. Those benefits include government contracts, access to jobs and business opportunities. The client groups help organise violence during blockades to help the political party to establish street superiority to pressure the Government. They contribute to the volatile political situation. Clientelism is pervasive in Bangladesh...'

38. I consider the appellant's claim against this background and in this context. I find that at the time that the appellant began supporting the BNP they were in power and that his family, including his father and brothers and extended family were all supporters of the party in power. I find it entirely plausible that as local business people who had benefitted from their political connections with the ruling party that their business should come under attack by the Awami League when that party won the elections and took power after January 2009. I also take note that the appellant, from the outset has claimed to be from a well-connected family. He was personally connected with members of his local party in his area and names these individuals in his asylum interview. Having viewed all of this evidence in the round, I am satisfied that the appellant has given a truthful account about events in Bangladesh prior to him coming to the UK

including the fact that he and his family were personally targeted by local Awami League activists and that he was heavily involved in BNP politics. I accept that a large part of the motivation for the appellant coming to the UK to study in 2009 was to escape from these political problems.

Events after the appellant came to the UK

- 39.** The respondent does not accept the appellant's account of events that have occurred since the appellant left Bangladesh and came to the United Kingdom. The primary objections for this revolve around objections to the supporting documents as well as the appellant's general credibility because of the late timing of his claim for asylum.
- 40.** I turn first to the appellant's consistent claim that his father died on 4 March 2014 and that his brother disappeared on 3 December 2014. The appellant's oral evidence was that after he left Bangladesh he was in contact with his mother and father over the telephone. His uncle had a telephone and he spoke regularly to his mother, perhaps two or three times a week. He also spoke to his father on occasion.
- 41.** I accept on the lower standard that the appellant's father is deceased on the basis of his oral evidence and the consistent evidence in his statements to this effect. The appellant's oral evidence was that he was immediately informed by his mother about his father's death. The appellant has provided a translation of a death certificate. The respondent objected to the fact it was in English. The appellant has now produced an original death certificate in Bengali. It is unclear why the death certificate states that the appellant's father died as a result of an 'Awami Terrorist ambush Kriya closed die of a heart attack'. This is a poor translation. There is also no credible reason provided why the certificate was issued on 14 August 2014 so many months after the death. I have concerns about the actual document. It is not plausible that a medical certificate would attribute a death to a political party, and I place little weight on the actual death certificate itself. In this respect I take into account Mr Kandola's submission that it is possible to obtain false documents with ease in Bangladesh. I also note however that just because the appellant has obtained a false document this does not necessarily mean that the underlying fact is not true, I have accepted that the family as a wealthy prominent BNP supporting family have been under pressure from Awami League and that their business has been attacked which may well have contributed to the appellant's father feeling stressed. Nevertheless, I also accept that it means that the appellant is prepared to obtain unreliable documents to support his claim and this must impact on the assessment of his credibility.
- 42.** The appellant's evidence is that he became aware that his brother had disappeared shortly after the event on 3 December 2014 because his mother informed him immediately. He believes that his brother disappeared because he was also politically active for the BNP. The documents in support of this event include a 'First Information Report'

made by the appellant's mother a few days after his brother's disappearance which states that his brother left the home in the morning of 3 December 2014, what he was wearing, and that he did not return. The respondent has not taken issue with this document and I find that this is more plausible, reliable and credible than the newspaper document. The First Information Report is made at a contemporaneous date and it is made by the appellant's mother, presumably because by that date his father was deceased. I am prepared to accept that since the appellant was active in the BNP and his evidence is that his family as a whole were BNP supporters, that his brother also played an active role in the BNP and this could be a reason for his disappearance. The Country Information and Background Report, according to Human Rights Watch Report of July 2017 quoted at 6.1.2 states:-

"Bangladesh law enforcement agencies have a long history of human rights violations. The ruling Awami League party took office in January 2009 with the promise to end such abuses. However, according to Odhikar, a Dhaka-based human rights organization, Bangladesh law enforcement agencies have since 'disappeared' over 320 people, including suspected criminals, militants, and, more recently, opposition members. Of these ... dozens remain [missing]."

- 43.** The USSD Report 2016 also states, "Targets of disappearances included individuals affiliated with opposition political parties". The background information also refers to violence before and after the national elections in January 2014 and in 2015 following the Awami League's decision to forcibly confine the leader of the BNP to a party office. The background material supports the appellant's account in that many opposition members have disappeared.
- 44.** While I am prepared to accept on this basis that the appellant's brother has disappeared because of his political activities, I have some doubts about the newspaper cutting which was placed in a newspaper on 15 December 2015, a year after the brother went missing. The appellant's explanation is firstly that his mother had made previous attempts to find him and this was a last resort. Later he stated somewhat inconsistently that his mother had put previous adverts in the newspapers but had not kept those earlier adverts. I am not entirely persuaded by this explanation, however, I find that the fact that the appellant's mother placed this advert in a newspaper does not displace the unchallenged evidence of the First Information Report in relation to the disappearance.

Remaining documents and court cases

- 45.** I also place little weight on the newspaper advert which proclaims the appellant's own difficulties in Bangladesh which is badly worded and vague. The appellant's oral evidence was that his mother had put this advert in the newspaper. I take into consideration the timing of the newspaper which is dated 10 January 2016, six days after the appellant made an appointment with the Asylum Screening Unit at Croydon. I find that this advert was placed at the request of the appellant by his mother

in order to provide evidence to support his asylum claim and I place no reliance on it.

- 46.** Similarly, I find that a letter from the appellant's mother dated 3 December 2015 has also been written in order to provide evidence in support of the appellant's asylum claim. It was written approximately a month before the appellant claimed asylum. His evidence is that he would speak to his mother on the telephone two or three times a week and this is the only letter that she wrote to him. I find that having said that, just because the appellant's mother deliberately wrote a letter setting out what had happened to the family to assist her son to evidence his asylum claim does not mean that the contents of the letter are not true. Having found that the Awami League was still in power, had won the elections in January 2014 and the background information set out above, it is not implausible that for example that the Awami League attacked and vandalised the appellant's family's shop in March 2014 and on 7 November 2015.
- 47.** I consider the evidence in relation to the alleged false charges against the appellant. According to the appellant, false charges were made against him in 2010 and 2012. The appellant is accused of forcefully entering a house, assault, snatching ornaments, breaking down furniture and threats. A charge sheet has been submitted in court and it is said that a warrant has been issued for the appellant's arrest. There is a second charge dated 2 June 2012 in respect of attempted murder. A second charge sheet was submitted on 18 September 2012. The First Information Reports and charge sheets have been procured in respect of these charges. Whilst the background information states that false charges are made against political activists, I find that these documents are implausible. Firstly, both charges were laid against the appellant after he had left Bangladesh. I can see no reason why political opponents would bring false charges against an individual who was not present in Bangladesh at the time that the charges were made or why the police would be looking for him when he was not in the country. I also note that these kind of documents are easily obtainable. I also take into consideration that despite the appellant's evidence that he became aware of these false charges in 2012 to 2013 that he took no steps to claim asylum at this time.
- 48.** Further, there is a letter from a Mr Dey who is said to be a lawyer from the Court Chamber, Manikganj, dated 24 October 2013. Mr Dey claims to have been instructed to "conduct and supervise those cases which was filed against you". The appellant was asked what the lawyer had done to assist the appellant to refute the charges? The appellant's answer was very vague. He states that his mother was dealing with this and is no longer alive. I do not find it credible that in 2013, at a time when the appellant's family was wealthy and still in possession of their shops, when both of the appellant's parents were alive, that if these false charges were real, that his parents would not have instructed lawyers to fight the charges by providing evidence that the appellant was out of the United Kingdom and therefore was not present when any of these allegations

took place. The appellant himself was asked if he had spoken to the lawyer himself and he said it was 'too expensive'. Given that the appellant was able to speak to his mother on the telephone and his parents were supporting him financially at this stage, I reject this explanation. I find that there is no good reason why he could have not got in touch with the lawyer himself in 2013-2014 if these charges were genuine. I also find that if the appellant had genuinely been charged with murder and assault that he would have sought advice in seeking asylum at this stage. I find the appellant's explanation for the actions taken by his family in respect of these trumped up cases to be inadequate.

- 49.** I note the ease with which false documents can be obtained in Bangladesh and I am not persuaded to the lower standard that I can place any weight on these documents which I find have been procured in order to bolster the appellant's claim for asylum. The appellant was adamant in his oral evidence that these cases are genuine and he has referred to them in his statements and I bear this in mind when assessing his overall credibility. Mr Biggs asserted that if I take a holistic view of the evidence that the appellant has always been consistent about these charges. However, I find that this is the most problematic part of his claim and I do not accept that false charges have been taken against the appellant for the reasons given above.
- 50.** Mr Biggs also submitted in relation to these documents that the authority of **MA (Bangladesh) [2016] EWCA Civ 175** should apply in that these documents were central to the claim and easily verifiable. Although I find that the court documents are central to one aspect of the appellant's claim, I do not agree with Mr Biggs' submission that these documents could be simply and easily verified. There are significant discrepancies with these documents and ultimately the burden is on the appellant to make out his claim for asylum.

The timing of the asylum claim

- 51.** I now turn to the timing of the asylum claim. Mr Kandola submitted that Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 applies. His view was that the appellant had given no clear reason why there was such a long delay in his claim for asylum and the delay in claiming asylum casts doubt on the credibility of the appellant's claim. There was indeed a significant delay between the appellant arriving in the United Kingdom in 2009 and his claim for asylum in January 2016, particularly when the appellant's consistent evidence is that he left Bangladesh as a result of the problems he was experiencing and because he was even then afraid of being attacked and harmed by the Awami League as a result of his political activities.
- 52.** With regard to the earlier part of the delay the appellant's evidence, which I accept, is that he had no need to claim asylum as he was lawfully in the United Kingdom as a student and he was waiting to assess how events developed in Bangladesh with the aim of returning to Bangladesh. The

difficulty comes in that the appellant's student visa expired on 31 May 2014. The appellant was asked repeatedly why he had not claimed asylum at that point. He was adamant that during this time he still had an appeal in relation to his student leave outstanding. There was no record of this before me. Mr Biggs submitted that there may have been other proceedings, for instance judicial review proceedings. It is clear from the chronology of the appellant's immigration history that at some point his student leave was curtailed but then reinstated as a result of proceedings which were not mentioned in the chronology and it is possible that the judicial review was outstanding at this time. I am satisfied that the appellant either had student leave outstanding or that he believed that he did so.

- 53.** The other reason that the appellant gave for not claiming asylum earlier is that he was intending to return to Bangladesh because he was waiting for the outcome of the 2014 elections. Elections took place in Bangladesh in January 2014. In the event the BNP boycotted the elections and the Awami League swept to power. As Mr Kandola submitted, this does not assist the appellant since he still failed to claim asylum for a period of two years after the elections instead submitting an application on the basis of his Article 8 private life outside of the immigration rules. His evidence in this respect was again muddled. At one point he stated that did not have a solicitor, but he then conceded that he had used his previous solicitor to make this application. After being asked repeatedly why he had not claimed asylum at the date of his application rather than putting in a human rights claim in which he had not mentioned his fear of return to Bangladesh, the appellant finally gave evidence that he had made this application because he had been advised by his representative that it would be better for him. I find that his explanations are muddled and that the late claim for asylum, particularly his failure to mention his fear of persecution when he made his human rights claim in 2015 does, to some extent, undermine his credibility. However, I agree with Mr Biggs that this is not determinative of the claim as a whole and is not sufficient to undermine the claim completely particularly as some of his evidence is supported by documentary evidence, is internally consistent and is plausible with the background material.
- 54.** Having considered all the evidence including his oral evidence that he did not want to claim asylum, I find that the appellant has been reluctant all along to claim asylum in the United Kingdom. He has consistently stated that he is from a wealthy family in Bangladesh and educated, that he had a good life there and that he has always intended to return and that he claimed asylum as a last resort after his application did not succeed because he had no other option. He was advised to claim asylum by his political friends. I find that he claimed asylum when he had tried all other methods of staying in the UK and when he felt he had no other option
- 55.** I turn to other objections by the respondent. The appellant has obtained a letter from the Bangladesh Nationalist Party from the Dalutpur Upazila. This is dated 5 September 2014 and on the face of it indicates that the

appellant was considering claiming asylum at that stage as he clearly had tried to obtain evidence of his political activities in Bangladesh. When asked about this the appellant stated that he wanted to obtain a letter from Mr Alam who was the President of the Dalutpur section and he knew him well because he might need to use this letter in future on his return to Bangladesh if he wanted to become involved in the party as Mr Alam was moving on. This does not sit well with the letter which states:-

“the present ruling party harasses him after filing several false cases against him. As per our advice, he is now residing in London with a view to get the higher education. The police force is searching him regularly due to remain a warrant order against him by the court. In this regard, it is not safe for him to come back in the country.”

- 56.** Mr Biggs submitted that this letter was consistent with the appellant’s evidence that he had left Bangladesh due to his political fears. However, I find that it undermines the appellant’s evidence that he was not intending to claim asylum at this stage. On his own evidence the appellant admits that he requested this evidence for himself and the information in the letter that there were court cases against him can only have come from the appellant. I find that the appellant requested this letter as a way of supporting his asylum claim. He was clearly contemplating claiming asylum by September 2014. I find that the appellant obtained the newspaper reports in relation to his own activities, the letter from his mother, the letter from the BNP, the court documents and the death certificate in order to bolster his claim for asylum. In general, I find that this documentation is unreliable, and I place little weight on this documentation. I find that the appellant’s propensity to produce unreliable documentation in support of his asylum claim casts light on his general credibility.
- 57.** However I note and take into account that just because an asylum claimant exaggerates one aspect of his claim or obtains dubious documents, this does not necessarily mean that the entirety of the claim is to be disregarded if there is other reliable and consistent evidence.

Activities for the BNP in the UK

- 58.** I turn to the appellant’s activities for the BNP in the United Kingdom. The appellant from the outset of his asylum claim has claimed to be active with the BNP in the United Kingdom. In his asylum interview he stated:-
- “Here in the UK I am involved with the voluntary unit of the BNP UK branch. I do attend all the meetings and party programmes. I am a member of the voluntary unit and I attend meetings at the Royal Regency in East London, Altab Ali Park in Whitechapel”.
- 59.** He confirms this in his initial statement in which he says that he has been involved with the local branch of the BNP in carrying out activities which are mainly attending protest meetings and demonstrations at various venues and raising awareness of political oppression within the community and wider world.

- 60.** The appellant has provided evidence of his involvement in politics in the United Kingdom in the form of a letter from Mr Nasir Ahmed the Convenor of the Bangladeshi Jatiyatabadi Schasebak Dal, dated 23 December 2015, who confirms that the appellant is a member of the Bangladesh Nationalist Party and that he has been working for the Bangladesh Shechchasebok Dol since his arrival in the United Kingdom in 2009. The appellant was able to point out Mr Ahmed in various photographs in which he was also present and I accept that this letter is a genuine letter. There is further evidence of the appellant's political involvement in the UK in the form of various photographs which are from 2016 until 2020, over a number of years. The appellant is seen attending annual events to commemorate the BNP founder, Ziaur Rahman's birthday, on 19 January 2016. The appellant is also seen attending a BNP conference in London on 25 February 2016, at a BNP event to protest against the political imprisonment of Shafique Rahman on 21 April 2016, event on 20 February 2016 participating in the BNP annual event celebrating Bangladesh Mother Language Day, attending a BNP seminar/programme at Stepney Green on 15 February 2016. There are also photographs of him taken in February 2019 at Altab Ali Park at a BNP annual meeting celebrating Bangladeshi "Mother Language Day". The appellant has produced more recent photographs of him attending a BNP event to commemorate Ziaur Rahman's birthday. On 19 January 2020 the appellant is pictured with the Vice-Chairman Mr Rahman and the President of the UK BNP, Mr Malik. The appellant's evidence was that he regularly attends the BNP offices in Whitechapel and is politically active in the United Kingdom.
- 61.** Given the respondent's acceptance that the appellant carried out historic BNP political activities in Bangladesh and the level of his previous involvement, I find on the lower standard that these photographs and letter as well as the appellant's evidence is sufficient to persuade me that he is currently politically active in the United Kingdom. When giving his evidence the appellant also came across as being very passionate about his political views referring repeatedly to the Awami League as 'thugs' and 'terrorists', stating that he would never abandon his political views for the rest of his life. I find that the appellant does have strong political views note least because of the damage that his political opponents have done to his family and that he has continued to be politically active in the United Kingdom.
- 62.** I asked the appellant why he had not brought anybody from the party to give evidence on his behalf and the appellant stated that he thought that he had already provided sufficient evidence and that he was mentally unwell and I accept this explanation. The appellant's evidence is that if he returns to Bangladesh he will be involved in politics and would become a General-Secretary. He would continue to be active even though his life was at risk. He would continue to participate in programmes, demonstrations and campaign for the release of the BNP political leaders who are in prison and speak out against the Awami League. I find that he would be more than an 'ordinary member or supporter' because he would

be an active campaigner, he has links with well known party officials and he would have a profile as he had before.

- 63.** Having found that the appellant would continue to be politically active in Bangladesh and that he would hold a position in the party, I find that he would be at risk in his local area. I also find that as an active campaigner, if he were to relocate elsewhere in Bangladesh, he would also be active for his party and that he would be at risk in the other areas as the agent of persecution is the state himself. I take into account that the appellant has previously been a victim of persecution. He has been attacked and assaulted as a result of his political views and I find that these actions amount to serious harm. I therefore find that paragraph 339K of the immigration rules applies. The political situation has not changed in Bangladesh since the appellant left, indeed the Awami League has more power and continues to carry out acts of persecution against political opponents with impunity on a larger scale than when the appellant was living in Bangladesh.
- 64.** Since I am not persuaded that the charges against the appellant are real, I do not find that he would be at risk of being prosecuted on trumped up charges. I add that even were he to be charged that he would be in a good position to defend these charges given that he was out of the country when the alleged crimes took place.
- 65.** For all of these reasons I find that the appellant has shown that he faces a real risk of serious harm on return to Bangladesh as a result of his political opinion and that he is entitled to protection in line with the Refugee Convention and Article 3 ECHR.

Notice of Decision

- 66.** The decision of the First-tier Tribunal was set aside.
- 67.** The appeal is remade and allowed on asylum and Article 3 ECHR grounds.

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 R J Owens

Date 28 February 2020

Upper Tribunal Judge Owens



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

Appeal Number: PA/08274/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 6 September 2019**

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE OWENS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR RI
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr I Jarvis, Home Office Presenting Officer

For the Respondent: Mr J Plowright, Counsel, instructed by Law Dale Solicitors

DECISION AND REASONS

- 1.** RI is a national of Bangladesh born in 1986. The Secretary of State appeals against the decision of First-tier Tribunal Judge Sweet allowing RI's appeal on protection and human rights grounds. Permission to appeal to this Tribunal was granted to the Secretary of State on 30 July 2019 by Resident First-tier Tribunal Judge Appleyard.
- 2.** The protection claim advanced before the First-tier Tribunal ['FtT'] was that RI has a well-founded fear of persecution in Bangladesh because of outstanding false charges against him in Bangladesh, on account of his activities for the Bangladesh National Party ("BNP") in the UK and because

since he has arrived in the UK, his brother has been abducted by an opposition party

3. RI entered the United Kingdom on 20 October 2009 as a student. He subsequently applied for leave to remain on the basis of his family and private life. He claimed asylum on 29 January 2016.
4. The Secretary of State rejected RI's account for want of credibility and refused to grant him asylum. When the matter came before the FtT there were two matters in issue; first, was the account given by the appellant true? If so; did the facts of his claim lead to a well-founded fear of persecution in Bangladesh? The burden in respect of both matters lay with RI and the lower standard of proof applied in respect of each. The FtT concluded at [64]:

“Applying the lower standard of proof, and with some concerns as to the appellant’s overall credibility, I have however concluded that the appellant is at risk on return in view of his activities on behalf of the BNP, and the charges which remain pending against him.”

The Grounds of Challenge

5. The Secretary of State submits that the decision of the FtT is flawed in the following material respects:

Failure to give adequate reasons and resolve conflicts in the evidence.

It is said that the Secretary of State had raised numerous issues in relation to the RI's credibility both in the refusal letter and at the hearing and that the FtT, having recorded the oral evidence given in cross-examination and having acknowledged that there were inconsistencies in the evidence, then failed to go on and state what weight was attached to which evidence, how that affected the analysis of the RI's credibility or making findings based on that analysis.

The grounds point to various evidential issues such as whether the charge sheets and court documents are genuine or not; to the fact that these documents indicate that RI is no longer wanted by the authorities; to an absence of findings about the level of RI's sur place activities in the United Kingdom and whether this would attract any adverse risk to him; as well as to the failure to engage with the reasons RI gave for the six year delay in claiming asylum.

RI's Defence

6. RI did not submit a Rule 24 response, although his representative did make further submissions in response to a direction by Resident First-tier Tribunal Judge Appleyard that he was proposing to use his power of review under Rule 35 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 to set aside the FtT's decision and order

the appeal to be re-heard by the FtT. RI's main argument is that whilst the FtT's reasons are very brief, the informed observer would be able to understand why the appeal was allowed. It is said that the determination is adequately reasoned in accordance with MK (duty to give reasons) Pakistan [2013] UKUT 00641.

Discussion and Findings

Ground 1: Failure to give adequate reasons.

7. It is trite law that the task of the FtT is to engage with the evidence, resolve material issues in dispute and give adequate reasons for factual findings (see MK).
8. Mr Jarvis elaborated on the grounds, which set out numerous occasions where it is said the FtT failed to evaluate evidence such as discrepancies in the court documents, discrepancies in letters provided in support of RI' appeal and the timings of events. Ultimately, it is submitted, the FtT failed to resolve matters in dispute such as whether the court documents submitted by RI were genuine.
9. At [63] it is said:

“There are indeed inconsistencies in respect of the appellant’s evidence, many of which were raised by the Presenting Officer, and I place particular weight on the appellant’s failure to claim asylum until 2016 – over five years after he arrived in the United Kingdom.”
10. The FtT goes on to state:

“The challenge to the previous Tribunal Judge’s determination of April 2017 related to his assessment of credibility, and the Upper Tribunal had confirmed that this was ‘a difficult case to resolve’.”
11. Mr Jarvis submits that the FtT did not evaluate the evidence, resolve the issues or give adequate reasons for the findings. Indeed, he submits that there is a complete lack of findings in respect of several material issues. He also points to the lack of adequate reasons given for why the FtT did not find that the six-year delay in claiming asylum had an adverse impact on the RI's credibility in line with Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 or JT (Cameroon) v Secretary of State for the Home Department [2008] EWCA Civ 878.
12. Mr Jarvis also pointed to a failure to apply the principles in RT (Zimbabwe) [2012] UKSC 38. The FtT pointed to some evidence of RI undertaking activities in the United Kingdom but failed to assess the nature and level of those activities and make findings to what extent RI would carry out those activities if returned to Bangladesh. There was a lack of adequate reasons and a lack of findings in respect of this important issue. The FtT also failed to make findings in relation to the Secretary of State's submission that the Court documents themselves appeared to indicate

that RI was no longer at risk because he had been released. These issues were not resolved.

13. Mr Jarvis also pointed to the fact that the Resident Judge of the First-tier Tribunal had also indicated in his preliminary notice that in his view, there was a material error of law.

14. Mr Plowright's position was that the FtT had heard evidence over two days and that the evidence was meticulously recorded at [16] through to [42], including the cross-examination of the witness and the submissions. It is clear that, having heard all of the evidence that the FtT had taken into account all of these issues in relation to the inconsistencies in the evidence when stating at [63] and [64]:

"63. Looking at the matter in the round, I have to consider this case on the lower standard of proof. There are indeed inconsistencies in respect of the appellant's evidence, many of which were raised by the Presenting Officer, and I place particular weight on the appellant's failure to claim asylum until 2016 - over five years after he arrived in the United Kingdom. This is despite the fact that he was made aware of the false charges against him in 2012. The respondent accepts that he was involved in BNP activities in Bangladesh (when he was General Secretary of the Student Wing). There has also been evidence of his activities on behalf of the BNP in the United Kingdom, and he stated in oral evidence that he last attended a meeting last week with the Vice Chairman of the BNP UK Party. There is also some photographic evidence of his activities at demonstrations and meetings in 2017. The challenge to the previous Tribunal Judge's determination of April 2017 related to his assessment of credibility, and the Upper Tribunal had confirmed that this was 'a difficult case to resolve'.

64. One of the issues in RT (Zimbabwe) [2012] related to an individual being at risk of persecution on the ground of political imputed opinion, and whether there was a real and substantial risk that the appellant might be persecuted on return. Applying the lower standard of proof, and with some concerns as to the appellant's overall credibility, I have however concluded that the appellant is at risk on return in view of his activities on behalf of the BNP, and the charges which remain pending against him."

15. Mr Plowright's submission was that in accordance with UT (Sri Lanka) [2019] EWCA Civ 1095 the Upper Tribunal should approach the facts and findings of the FtT in the recognition that that FtT has specialist expertise. The Upper Tribunal should not confuse disagreement with the decision with a finding of an error of law. Mr Plowright referred me to R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority [2013] UKSC 19. The Appellate Court should not assume too readily that the

Tribunal misdirected itself just because not every step in its reasoning is fully set out in it. Mr Plowright's submission was that the reasoning was 'tolerably clear'.

- 16.** Having heard both of the arguments, I am in agreement with Mr Jarvis that there is a lack of analysis of the evidence in this decision and a failure to give adequate reasons for the FtT's decision that the RI is at risk of serious harm in Bangladesh. The Presenting Officer, in the closing submissions pointed to numerous difficulties with the oral and documentary evidence, including inconsistencies around the chronology of events, why the appellant did not mention false charges against him when first interviewed in respect of his asylum claim in 2016 several years after the charges had allegedly been brought, why supporting evidence from the BNP dated 5 September 2014 did not refer to the false charges, inconsistencies in relation to RI's evidence that he was living in fear and that police protection was not available in 2009 and yet that his father had felt able to lodge a police complaint at that time, as well as numerous other inconsistencies. I find that the FtT was aware that there were inconsistencies in the evidence because these are mentioned at [63] and [64] and yet the FtT failed to analyse the evidence sufficiently and grapple with the conflicts in the evidence.
- 17.** I take into account Mr Plowright's submission that the FtT has meticulously set out the evidence before the FtT. However the task of the FtT is not only to record the evidence but to engage meaningfully with it and explain what weight is given to which evidence and why. There is no specific finding in the decision as to whether the Tribunal accepted that the charges and false accusations were genuine or not, and also no specific findings on the extent of the RI's activities for the BNP in the United Kingdom and why such activities would have come to attention to the Bangladeshi authorities. Nor were there specific findings in respect of whether it would be reasonably likely that RI would continue to engage in these activities in Bangladesh. These are all relevant to the assessment of risk to RI in Bangladesh.
- 18.** In my view there is a complete failure to make findings on material issues. In this appeal, the lack of analysis of the evidence and the failure to weigh up and give findings on conflicting evidence goes well beyond a mere lack of explanation of the FtT's reasoning.
- 19.** I find that from [63] onwards it is as if the FtT, having set out all of the evidence and stated explicitly that the appeal was a difficult one, then failed to carry out the difficult task of resolving the issues in the evidence and making findings. Instead the FtT has brushed over those difficulties by concluding that on the lower standard of proof RI is at risk in Bangladesh.
- 20.** I find that the approach of the FtT is flawed. The reasons given for the findings that RI is at risk in Bangladesh are manifestly inadequate given the failure to engage with the contradictions in the evidence and make

findings on material issues.

- 21.** This is a material error of law because without a proper assessment of the evidence and findings in relation to what is accepted and what is not accepted and the extent of the appellant's political involvement in the UK, it is not possible for the FtT to make proper findings on whether there is a real risk to RI on return to Bangladesh.
- 22.** In this respect I note and take into account, that Mr Plowright acknowledged that the FtT's decision was a difficult to defend and that the FtT's findings were 'succinct'.
- 23.** I set aside the decision of the FtT on the basis that there has been a material error of law and I indicated my intention to do this to the parties.
- 24.** I then heard submissions by the parties of how to go on to deal with the remaking of the appeal. Mr Plowright submitted that it was appropriate to send the judgment back to the same Judge in order to give him an opportunity to amplify his reasons. He pointed to the authority of English v Emery EWCA Civ 605, where it is said that where the Judge who has heard the evidence has based a rational decision on it, the successful party will suffer an injustice if that decision is appealed, let alone set aside, simply because the Judge has not included in his judgment adequate reasons for his decision.
- 25.** I find that in this appeal, this approach would not be fair or in the interests of justice. This appeal can be distinguished from that in English v Emery because the decision is not rational. The FtT failed to engage with the conflicts in the evidence and make proper findings. The FtT could only make rational findings on risk, having made factual findings on the historical account and the current situation of the appellant in the context of the current situation in Bangladesh.
- 26.** I find that is fair and in the interests of justice for the appeal to be heard de novo in front of a different Tribunal. In my view, it is appropriate for this appeal to be dealt with by the Upper Tribunal. The appeal has been twice before the First-tier Tribunal and twice overturned. I have taken into account the Senior Presidential Practice Direction which suggests that where credibility issues are at large the appeal should normally be re-made by the First-tier Tribunal. Nevertheless, this is a matter for my discretion. This is clearly, as highlighted by two different FtT Judges, a difficult appeal. Two First-tier Tribunals have failed to give adequate reasons for their decisions. In these circumstances, given that this is the third time this appeal will be heard, I find it is appropriate for the Upper Tribunal to remake this appeal de novo.
- 27.** I therefore set aside the decision of First-tier Tribunal Sweet and I adjourn the appeal for remaking by the Upper Tribunal.

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

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Signed R J Owens

Date 11 November 2019

Upper Tribunal Judge Owens