



IAC-AH-SAR-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2021-001697
PA/02823/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On the 19th August 2022**

**Decision & Reasons Promulgated
On the 11th October 2022**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

**IA (BANGLADESH)
(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 his family. Failure to comply with this direction could lead to contempt of court proceedings. The reason is that the appeal includes a protection claim.

Representation:

For the Appellant: Mr M West, Counsel instructed by Lawmatic Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Bennett (“the FtT”), promulgated on 7th May 2021, by which he dismissed the appellant’s appeal against the respondent’s refusal on 12th March 2020 of the appellant’s protection and human rights claims.
2. The appellant claimed that he was an activist for the Bangladesh Islami Chhatra Shibir or “BICS”, in Bangladesh. He claimed that he had delivered a public speech in that country, in which he criticised the activities of the rival political party, the Awami League. Following this, he received phone calls, face to face threats, and was subsequently attacked.
3. In reaching her decision on his subsequent asylum claim, the respondent had noted the appellant’s entry to the UK on a student visa in 2010. He had then applied for leave to remain in the UK on the basis of his private and family life, which was refused in 2013. He did not claim asylum until 21st January 2020.
4. The respondent took issue with a number of aspects of the appellant’s account, including why he had not become a member of BICS despite being an activist for it; his lack of apparent knowledge of what was discussed in party meetings; his vagueness about the speech he claimed to have made in 2006, and the reason why he was only attacked years later, despite not having given any further speeches.
5. The respondent also noted that the BNP lost power in 2006 and it was not clear why, if he feared persecution from the Awami League, he remained in Bangladesh until 2010.
6. In summary, the respondent did not accept that the appellant had been an activist for BICS.
7. The respondent also noted Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and the appellant’s delay in claiming asylum despite his arrival in the UK in January 2010. He had not claimed asylum until 2020, years after the decision to refuse him leave to remain in 2013. The respondent similarly rejected the appellant’s claim by reference to Articles 2 and 3 ECHR and also noted that the appellant did not claim to have a partner, parent or dependent children in the UK. In respect of his private life, the respondent did not accept that there were very significant obstacles to the appellant’s integration in Bangladesh, nor were there circumstances outside the Rules justifying the appellant’s leave to remain in the UK. The respondent considered specifically any medical issues by reference to Articles 3 and 8 ECHR in connection with a urinary problem and a pain in the appellant’s wrist but concluded that these did not meet the test under those Articles.

The FtT’s Decision

8. The FtT reached what is accepted to be a lengthy decision, making detailed findings of fact. One of the grounds of challenge is said to be the excessive length and as a consequence, a lack of structure meaning that a reader is left unable to discern the reasons for the subsequent refusal of the appellant's appeal. I come on to discuss that ground together with the remaining grounds later in these reasons. In very broad summary, the FtT did not accept the appellant's general credibility, or that he had any involvement with BICS between 2002 and 2010. However, the FtT also considered the appellant's claim in the alternative that he had been a BICS activist and had suffered adverse interest in Bangladesh. The FtT reasoned that the claimed adverse interest was now more than ten years ago, and the appellant's former persecutors would not know of the appellant's return or have any inclination to persecute him. The FtT also concluded that were he returned to Bangladesh, the appellant would not pursue any political activities which would attract the attention of political rivals. Finally, the FtT concluded that as the claimed fear of persecution was from non-state actors, it was open to the appellant to relocate internally within Bangladesh.

The Grounds of Appeal and Grant of Permission

9. The appellant lodged grounds of appeal which are similarly comprehensive. They allege six arguable errors of law:
 - (1) Ground (1) - The FtT arguably failed to provide clear and comprehensible reasons and findings, given what the appellant claimed was a prolix and excessively lengthy 50-page judgment. The appellant also pointed out that it was without subparagraphs or headings, and were the appellant legally unrepresented, the confusing nature of the judgment would have been more prejudicial. At the hearing before me, Mr West confirmed that this was not a ground relied upon as disclosing an error of law but was rather the context in which the remainder of the grounds should be viewed.
 - (2) Ground (2) - The FtT had arguably failed to assess the supporting documents within the appeal. In particular, the respondent's Country Policy and Information Note ('CPIN'): documentation, Bangladesh, published in March 2020 was selectively quoted by the FtT at §28, specifically citations from the CPIN at §§5.2.1 to 5.2.4. §5.2.5 (not quoted) had indicated that notwithstanding concerns about the free availability of forged documents, the increasing use of biometric data collection had limited opportunities for fraud because of the ability of authorities to check suspicious identity documents. The FtT's subsequent conclusion at §29 that despite the numerous supportive corroborative information including newspaper articles, as well as correspondence from a local BICS chair "*must of necessity*" be treated "*with considerable caution*" was an error. At §32 the FtT had placed no weight on the letters, newspaper articles and responses to *sur place* activities on Facebook, without explanation. The FtT had failed to consider the evidence in the round.

- (3) Ground (3) – The FtT had referred to an earlier Tribunal judgment of Judge Batiste dated 31st January 2014 as undermining the appellant’s credibility at numerous paragraphs as set out in the grounds, specifically §30(b)(2), 30(c)(1)(ii), 30(c)(2) and 33(i)(2). It was at least arguably unfair for the FtT not to have given the appellant an opportunity to respond to the issues held against him, where the respondent had provided this post-hearing to the FtT and there had been no further response. Mr West elaborated at the hearing that there could be many reasons why, for example, the appellant may not have made a protection claim earlier, notwithstanding the dismissal of an earlier human rights appeal by a First-tier Tribunal Judge.
- (4) Ground (4) – The FtT had made arguably perverse findings in the judgment, in particular, at §§34 and 37 that the appellant would not be at risk on return because he would have to earn a living and would therefore devote himself to his work duties and would not have the time to undertake political activity (§34) and the Awami League members who had assaulted him would be 15 years older and would not have a recollection of him and would have matured (§37). These assumptions, particularly that the assailants would have matured, were entirely speculative.
- (5) Ground (5) – The FtT’s findings on internal relocation at §38 were arguably perverse. The findings that the appellant’s assailants in Bangladesh would not remember him were speculative, as was the assumption that they were non-state agents. The appellant’s appeal had always been on the basis that his persecutors were agents of the state, as affiliates of the Awami League. This was, after all, the ruling party in Bangladesh.
- (6) Ground (6) – The FtT had arguably imposed an impermissibly high threshold in its assessment of the protection appeal, by rejecting the Facebook and other *sur place* evidence, because of the prevalence of false documents in Bangladesh.

The grounds concluded that the FtT had arguably erred in failing to consider whether the appellant’s claims were well founded on the basis of adverse interest by his assailants in 2011, 2013 and 2018.

10. First-tier Tribunal Judge Bulpitt granted permission on 16th June 2021. The grant of permission was not limited in its scope.

The Hearing Before Me

11. I will not recite the representatives’ submissions save where it is necessary to explain the reasons for my decision. Mr West accepted that a number of the grounds had to succeed in the alternative, to demonstrate that the FtT’s decision could not stand. This was because the FtT had provided alternative reasons, in relation to both of which he had dismissed the appeal – on the scenario that BNP activities and sur place activities were contrived; and the alternative scenario that they were genuine, but the appellant would face no risk on return.

12. Mr West reiterated that the FtT's reliance on Judge Batiste's earlier decision, without allowing the appellant to respond, was a procedural error, and a material one in light of it being foremost in the FtT's findings in relation to the appellant's credibility. The further errors of discounting the documentary evidence including newspaper articles, correspondence from supporters and Facebook posts, without sufficient reasoning, was also material. It was not sufficient for the FtT simply to have grouped the newspaper articles together with the letters from supporters and the Facebook posts. The appellant did not rely upon court documents, as was sometimes commented upon in terms of the prevalence of false documents, but on newspaper articles which had specifically referred to the appellant. It was also not clear how the existence of fabrication was relevant to the Facebook material. The FtT had not considered the Facebook material in the context of objective evidence as referred to in the recent CPIN: journalists, publishers and internet bloggers, Bangladesh, January 2021, at §§5.4.1 and 5.6.1.

The Respondent's Submissions

13. Mr Whitwell submitted that the FtT's decision, particularly §29, was not inconsistent with an assessment of all of the evidence in the round. In relation to ground (3), Judge Batiste had not considered a protection claim. Even if it were now said that there was a procedural error, the appellant had not provided any explanation for his failure to have claimed asylum earlier. It was also not correct that the appellant was not given an opportunity to ventilate the issues at the hearing. Grounds (4) and (5) were challenges to alternative reasoning so, as Mr West accepted, the appellant would have to succeed on one of these grounds. Ground (6) was simply a disagreement with the FtT's findings which were unarguably open to the FtT to reach.

Discussion and Conclusions

14. I remind myself first that it is not for me to substitute my view for what I would have decided for the FtT's conclusions. Similarly, the FtT will have had the benefit of detailed evidence in a way that I have not. The FtT can be assumed to have considered evidence before him even if he does not specifically refer to it. I am also conscious of what the Court of Appeal in the case of Volpi v Volpi [2022] EWCA Civ 464 referred to as "island hopping" between passages of evidence, disagreements with the weight to be attached to particular evidence and reference to specific phrases used by a judge, all of which the Court of Appeal observed are often hallmarks of disagreements with findings rather than true errors of law.
15. It is unnecessary for me to address whether ground (1) discloses any error of law, as Mr West accepts that it does not. I pause to observe that the grounds of appeal are put in highly critical terms to the extent that it is asserted that the judgment is so lengthy and unstructured as to be incomprehensible. I do not regard that criticism as justified. The decision is unquestionably lengthy but also goes on to make very detailed findings

of fact. It is not structured in a way that makes it incomprehensible and ultimately ends with conclusions drawn from those findings. But whilst the judgment may have benefited from subheadings, that does not begin to disclose any error of law.

Ground (2)

16. The caution urged by the Court of Appeal in Volpi has a bearing in relation to ground (2). The FtT commented on the concerns about the availability of fraudulent documents and at §29 he had concluded that there had been no improvement in the availability of false or fraudulent documents. However, he cautioned that:

“That does not mean that I must inevitably reject or discount the documents submitted on [the appellant’s behalf]. But insofar as they originate (or appear to originate) in Bangladesh I must of necessity treat them with considerable caution”.

That was a general statement and not one which rendered the FtT’s analysis of the specific evidence as flawed. By way of example, at §30(d), the FtT had analysed the Facebook evidence which the FtT regarded would have been more numerous and more detailed than disclosed, if the appellant were an activist. At subparagraph (f), the FtT had reached conclusions on the likely timing of Facebook material and the absence of any evidence that those seeking to persecute the appellant would have had access to the relevant pages of his Facebook account. The FtT also analysed at subparagraph (h) a letter from a supporter which contained nothing to the effect that the appellant had been raising funds for the party whilst he had been in the UK. At subparagraph (j), there was nothing in that letter about contacts with party leaders of BICS. At §32, the FtT explained why he placed limited weight on the newspaper articles and the Facebook postings given the prevalence of false documents, and the lack of reliability of correspondence from the appellant’s supporters. I do not regard ground (2) as disclosing an error of law. Rather, it is a disagreement based on the weight which the appellant asserts the FtT should have attached to evidence. In a detailed and nuanced analysis, the FtT was entitled to attach the limited weight he did and there was no absence of an adequate explanation.

Ground (3)

17. I do, however, accept that there was an error of law in relation to ground (3). I accept Mr West’s submission that the FtT’s consideration of Judge Batiste’s decision was referred to at an early stage in the FtT’s assessment of the appellant’s credibility, at §2 and 3 as to the absence of any claimed fear of persecution or mistreatment in Bangladesh and subsequently in §§30 and 33. At §30(b) and (c) the FtT conducted a detailed analysis of the likelihood that the appellant’s solicitor would not have advised him to bring a claim of asylum at the time and the only realistic conclusion was that the appellant had not given a true or realistic account of the advice that he had received. At §30(c)(6), he concluded that *“the damage to the*

appellant's credibility by reason of the above matters" is substantial. It is unnecessary in this context to refer to the remainder of the subparagraphs as it is clear that the FtT's analysis of the timing of the appellant's subsequent claim for protection in the context of Judge Batiste's earlier decision substantially undermined the appellant's credibility. It is accepted that the copy of Judge Batiste's decision was not sent until after the hearing by the respondent and the appellant was not given any opportunity to respond to the fact of that judgment. In the circumstances, unless I was satisfied that the challenges to the alternative reasoning, on grounds (4) and (5) did not succeed, the FtT's assessment of credibility, which is central to this case, is fundamentally undermined.

Grounds (4) and (5)

18. Both are challenges on grounds of perversity, and I am very conscious of the high bar in relation to perversity challenges. Nevertheless, I am satisfied that the FtT's reasoning in the alternative, which was based on the assumption that the appellant's claims to have been a BICS activist were true, was perverse. I do not accept that no Tribunal could find that the appellant would no longer be at risk. Rather, the reasoning which was perverse, on the evidence before the FtT, was that the appellant would not face risk on return either because he would devote himself to working, rather than political activities; or his assailants would not remember him, would have matured, or were not state actors or associated with the political party in power. The FtT's finding that the appellant might otherwise have to earn a living and would therefore devote himself to the duties of his employment and would not have time to undertake political activities, as per §34, does not engage or explain with how it is that many people both work and, for example, regularly engage in social media, or political activity of the kind on which the appellant seeks to rely. Similarly, I accept that it is speculative and impermissibly so for the FtT to conclude that purely because his assailants would have "matured" (§37(a)(2)) they would now longer wish to engage in political violence. I accept the criticism that the FtT failed to explain why, if his assailants were aware of his return, for example, through his social media postings, that they would be less motivated in seeking to persecute him. I also conclude in relation to ground (5) that the central focus of the appellant's claim is that he was persecuted by state actors, associates of the Awami League government. The FtT's conclusion that the appellant could internally relocate on the basis that he was persecuted by non-state actors is, on those assumed facts, perverse.

Ground (6)

19. I do not accept that this ground has merit. The challenge centres on the FtT's assessment of the Facebook evidence. It criticises the FtT's concerns about the lack of identification of those threatening the appellant on Facebook, in the context of false and contrived documentation. That was

a permissible consideration for the FtT and did not impose an impermissibly high evidential burden. In reality, it is a challenge to the weight placed by the FtT on particular evidence, with which the appellant disagrees.

Conclusions

20. On the above analysis, it was accepted that if there were flaws in the FtT's reasons on grounds (2) (3) or (6), the FtT would also have to have erred on grounds (4) to (5) for the errors to be material. Whilst I am not satisfied that the FtT erred in respect of grounds (2) and (6) which I regard as disagreements with the FtT's findings, I am satisfied that the FtT materially erred on ground (3) in relation to reliance upon Judge Batiste's earlier decision without allowing the appellant to respond. I regard as perverse the findings outlined in grounds (4) and (5). These errors are material and the FtT's assessment of the appellant's credibility is not safe and cannot stand. In those circumstances I regard it as inappropriate to preserve any findings, however detailed, by the FtT.

Disposal

21. With reference to paragraph 7.2 of the Senior President's Practice Statement and the extensive fact-finding, this is a case that has to be remitted to the First-tier Tribunal for a complete rehearing.
22. The remittal shall involve a complete rehearing of the appeal. All aspects of the claims must be addressed.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside.

I remit this appeal to the First-tier Tribunal for a complete rehearing.

Directions to the First-tier Tribunal

This appeal is remitted to the First-tier Tribunal for a complete rehearing with no preserved findings of fact.

The remitted appeal shall not be heard by First-tier Tribunal Judge Bennett.

Anonymity directions apply.

Signed J. Keith

Date: 9th September 2022

Upper Tribunal Judge Keith