IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006413
First-tier Tribunal Nos:
PA/52486/2021
IA/07310/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 21 May 2023

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

Md A M R
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr R Spurling, instructed by City Heights Solicitors
For the Respondent: Mr C Nolan, Senior Home Office Presenting Officer

Heard at Field House on 6 April 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Bart-Stewart, who on 15 December 2022 refused the appellant's protection and human rights appeal. The appellant had appealed against the refusal decision of the Secretary of State dated 13 May 2021.

2. The appellant was born on 10 February 1983 and is a Bangladesh national. He entered the UK on 5 February 2010 on a Tier 4 Student visa valid from 28 January 2010 to 27 August 2012. His leave was extended to August 2015 but then curtailed to expire on 2 May 2015. His human rights application on the basis of his article 8 private life was refused on 9 February 2016 and he failed to report on two occasions and on 4 November 2016 was listed as an absconder. On 13 May 2020 he claimed asylum and had a screening interview. The appellant's documents before the decision maker include a witness statement, numerous Facebook posts and translations, news articles and a witness statement of YB, medical evidence and photographs.

3. The appellant claimed to fear persecution if returned to Bangladesh because of his political opinion. He said he was a member of the Chhatra Shibir the student wing of the Bangladesh Jamaat-e-Islami, an opposition party. He states he was introduced to the organisation in 1999 and in February 2000 he became an activist. In October 2001 he and two friends were attacked in the street by two people who belonged to the Chatro League, a wing of the Awami League governing party. He was badly beaten, suffered broken back discs and underwent surgery. He states he became a 'companion' for Chhatra Shibir in 2004 and secretary in his local area in 2006. He collected money donations from members, arranging meetings and recruiting new members. He states he attended many protests. Again in 2006 he was attacked during a protest attended by 200 people. The appellant's leg was injured by a thrown bottle.

4. On 3rd March 2009 he was stopped on his motorbike by a leader of the local Chatro League and was hit on the head and fell to the ground and was stabbed in the stomach. Subsequently, the police started to visit his house and the harassment led to his parents to moving their home to their home village. The appellant stayed with a cousin for eight to nine months before leaving Bangladesh for the United Kingdom.

5. The Bangladesh Jamaat-Islami Chhatra Shibir did not have an organised presence in the UK, but he supports them by attending meetings and demonstrations. He has attended many demonstrations outside the Bangladesh High Commission including in February 2018 (although he left before the violence occurred) and also attended a protest in 2020 at Altab Ali Park and had been posting on Facebook about political justice in Bangladesh since 2013. On one occasion he was threatened by a Jubo League leader. He fears the Awami League, Chatro League, Jubo League, law enforcement agents and the government intelligence in Bangladesh and that he would be killed on return.

6. The judge dismissed the appellant's appeal and the appellant appealed to the Upper Tribunal on the following grounds:

7. Ground 1. There was an error in the assessment of the evidence of the appellant's account of experiencing persecution in Bangladesh for his political activities.

8. The Tribunal's reasoning at [12] to [16] rejecting the appellant's account and political activity in Bangladesh failed to take adequate account of relevant evidence. The judge states at [12] "It is somewhat odd that Shibir is the student wing is explained in a local newspaper" contains a material misdirection. That was not odd at all, merely a translation. Chatro and the title of the Bangladesh political organisation denotes student wing.

9. The finding at [12] in relation to the appellant's injuries and treatments in 2001 "It is unclear what surgery was required or carried out but unlikely that the appellant would have only spent a week in hospital for what the letter suggests is removal of a ruptured disk and discharged with only medicine and told to rest" was flawed because it failed to take into account the medical records at page 85 to 90 where the surgery was described and it is wholly unclear why the Tribunal thought the surgery in question would require more than a week's treatment in hospital.

10. It was incorrect to state at [12] that "his recent witness statement he tries to give an explanation for the delay in treatment however this does not cover a timeline of three months from the claimed attack before his surgery". The appellant gave evidence in his witness statement at [12] to [13] that he visited a doctor "who offered physiotherapy treatment and provided me with a belt to support my back. He advised me to get further checks if the pain increases in the next six months". It was only after the pain worsened that he visited the hospital.

11. The findings at [13] to [14] in relation to the newspaper report that, "leaders of district Jamaat and Shibir went to the hospital to visit him and demanded the arrest and exemplary punishment for the terrorists who carried out the attack on him … is inconsistent with his claim that they do not go to the police for fear of false arrest" are flawed. There is no inconsistency between the public demand by local political leaders for someone to be held account and an individual's fear of approaching law enforcement agents directly. Nor is the failure to report the attack to the police inconsistent with the fact that the appellant's party won the elections. The background evidence was clear that enforcement agencies are aligned with the *governing* party not whoever wins *local* elections. See the September 2020 CPIN on Bangladesh political parties and affiliation at Section 2.5.3 – 4.

12. The Tribunal gave no adequate reasons for rejecting the appellant's account that he had played a leadership in his local party. His role locally was supported by testimonials from party officials in Bangladesh.

13. The Tribunal's finding at [16] that "there is no plausible explanation for the police going to his family home to look for him 10 years after he has left the country with the authorities knowing that he is in the UK" fails to take adequate account of the appellant's evidence in his witness statement, [39] to [42] that the reinvigoration of interest was explained by the February 2018 incident at the Bangladesh High Commission in London and the CPIN evidence of the significant increase in political repression in the context of December 2018 election and again see the CPIN on that point.

14. Ground 2. There were errors in the assessment of the evidence of the appellant's live witness. The finding at [28] to [29] that : "It is unclear how they could have been friends in such a short space of time" was not warranted by the witness's evidence which was that they had met in January 2009 as political colleagues as they were involved with the Chhatra Shibir in adjoining districts. The witness was not asked and did not suggest in evidence that they were friends in 2009, merely political colleagues. Whilst the Tribunal's comment at [29] that "His evidence added little but further doubt" is ill-founded.

15. Ground 3. There is no specified recognised qualification for status of an expert witness and Dr Nallet had sufficient experience and knowledge to prepare the report. It does not follow that a GP cannot have sufficient practical experience to provide expert evidence. In the instant case Dr Nallet had experience as her report showed. The Tribunal's criticism at [34] that her report "is far from objective … in several parts of the report she takes the role of advocate and/or country expert" are flawed for being wholly unexplained and unparticularised.

16. Ground 4. Errors in the assessment of the appellant's sur place activities. At [35] the judge rejected the account of a risk deriving from sur place activity as follows: "Having carefully considered all the evidence and in view of the serious credibility issues, I have doubt as to the genuineness of the appellant's sur place activity." This finding which goes to the core issues of credibility generally and the risk he would face on return from continuing political activity which he averted to in his oral evidence is insufficiently reasoned because the vague assertion that the Tribunal considered all the evidence is insufficient, in view of the fact that the determination contained no sign that the Tribunal assessed the evidence of sur place activity, and the appellant's supplementary bundle, which showed him taking part in online meetings with significant members of the Bangladesh political opposition. Secondly the findings related to serious credibility issues are flawed for the reasons stated above.

17. At the hearing, overall Mr Spurling submitted that there was a failure of anxious scrutiny and although each individual error did not on its own undermine the determination, cumulatively, the determination was flawed.

Conclusions

18. Ground 1 submitted there was an error in the assessment of the evidence of the appellant's account experiencing persecution in Bangladesh, and particular criticism was made of [12] to [14]. The reference to the newspaper was merely that it was "somewhat odd that the Shibir is the student wing was explained in the local newspaper". That, however, is not presented as a major credibility criticism. . I find the judge's cogent criticism of the explanation in the paper of a very obvious term did undermine the reliability of the article.

19. Nonetheless, as the judge says in the opening sentence at [12] in relation to the articles, that although they are from different publications, they all had the by-line "staff reporter", effectively suggesting that they are written by the same person. Further, as the judge states "those purportedly covering the period he is in the UK refer to him as the former Shibir leader". The judge recorded the appellant's description of his activities in Bangladesh and that did not include his activity as a 'leader'. It was clear that the appellant did not put forward that he was a leader but at best, secretary. Even so, the judge at best found him a low-level supporter and with no leadership position in Bangladesh.

20. In relation to the injuries, it is entirely open to the judge to say it was unclear what surgery was required in relation to 2001 to 2002; at [10] the judge recorded that the appellant asserted that in October 2001 he was assaulted, such that "discs in his back were broken". The medical evidence, which I was taken to, for this period stated, "Patient was admitted and complain of physical assault and examination revealed injury and pain at back of vertebral column" and in relation to treatment "under general anaesthesia ruptured spine removed".

21. I am not persuaded that the judge ventured beyond his permitted remit in terms of expertise in stating it would be unlikely "that the appellant would have only spent a week in hospital for what the letter suggests is a removal of a ruptured disk". If someone has their spine removed, as stated in the medical evidence, a stay of one week only in hospital is quite obviously incredible.

22. As Ms Nolan pointed out, the timeline given by the appellant from the claimed attack before he had surgery was also out of kilter with the appellant's account.

23. In his witness statement, he states that in fact he was taken to hospital immediately following the attack where he stayed for two weeks but there were no records of that, whereas there do appear to be records from three months later. Notwithstanding that, I agree with Ms Nolan that the timescale appears to be merely six weeks. Moreover, the judge was entitled to make criticism of the timeline and comment on the extent of the injury, particularly as the appellant proceeds in his witness statement at [18] to state after his operation he could not leave the house for six to seven months. The appellant's evidence is that on the one hand he had a broken back and 'spine removed' and yet the judge was being asked to accept evidence that the appellant initially merely visited a physiotherapist which explained the time delay. The judge was entitled to make criticism of this evidence.

24. In relation to the third claimed attack in March 2009, there was no criticism in the grounds as to the fact that the judge referred to the wrong clinic, but the judge also criticises the appellant's account which differs from that of the newspaper article dated 5 March. The evidence was not just rejected on this point alone.

25. I also find it was open to the judge to observe that the leaders of the district Jamaat and Shibir went to the hospital and demanded the arrest and exemplary punishment for the terrorist who carried out the attack and yet the appellant's claim was that they do not go to the police. Mr Spurling submitted that it was consistent with the CPINs that they would not go to the police but declare this in the newspaper but that ignores the point that a declaration in a newspaper would no doubt put them in even more fear of false arrest.

26. Overall, in relation to the injuries, the judge states that there is "no further reliable evidence of these claimed injuries and surgeries" and merely a GP letter dated 11 January 2021 that the appellant had been seen with low back pain and been given medication. It is correct that there is no indication from the GP or elsewhere, and evidence reasonable to obtain, that the appellant has had surgery.

27. The medical report makes a reference to the scar at his spine level which is said to relate to the operation he had to have as an emergency following the first attack when one of his vertebrae was crushed and compressed, but makes no reference to having a section of the spine removed and further does not add this scar to the photos. There is no explanation of why not. In my view, it was entirely open to the judge to criticise the medical evidence produced in relation to Bangladesh and no error is made out.

28. It was open to the judge to conclude that the appellant was only a low-level supporter of Chhatra Shibir when he was in Bangladesh. It was equally open to the judge to conclude that the appellant had no leadership position nor that the

claimed assaults in October 2001 and March 2009 occurred and that he may have been injured in the 2006 protest, but he accepts he was not a target.

29. It should not be forgotten that the background to this claim was that the appellant in his asylum interview asserted that he fled to the UK in 2010 (and indeed the judge refers to this at [35]) but he makes no mention of any activity in the UK in a statement he makes five years after he arrived, but more tellingly failed for ten years to claim asylum. Additionally, A M under whose direction the appellant is said act, did not attend the hearing, nor did any of the appellant's siblings. These witnesses, if they had attended, as the judge reasonably and cogently points out, would know about his claimed activity both in Bangladesh and the UK and know about whether the family home had been visited by the police and whether the brother was being sought by the authorities.

30. As the judge also states, in relation to the police going to the family home, the evidence that could have been provided, that is from his family members, was not and not even a statement was produced. Again that was evidence which the appellant could reasonably obtain. Further the letters from Bangladesh refer generally to the appellant being attacked but no specific details are given and as the judge states at [14] "Given how serious the last attack was this omission undermines the credibility of the account". As the letters from Bangladesh were thus undermined, it was open to the judge to criticise their claims that the appellant was a "political leader holding the position of party fund secretary".

31. The judge at [16] also pointed out the contradictions in the appellant's evidence as to whether the police had visited his parents' house.

32. The judge also makes a sound finding at [17] that whilst the appellant claimed in a witness statement of 29th April 2015 in support of a human rights claim that he was a supporter of an opposition party in Bangladesh he 'does not make any reference to being attacked and injured or being sought by police in Bangladesh'.

33. The judge was clearly aware of and specifically referred to the background evidence in relation to 'active student wings of the various political parties' at [15] and there is no material error in the approach to the evidence couched in the background material or the approach overall to the evidence.

34. Against that background, it was entirely open to the judge to dismiss the appellant's account in Bangladesh as he did, and, make an adverse credibility finding in relation to the risk.

35. Turning to ground 2, and the assessment of the evidence of the appellant's live witness, the judge was quite clear that he criticised the witness because he found his evidence vague. As stated by the judge, the witness could not have known the appellant very long as they met in January 2009, but I do not take that to be a criticism pertinent to or undermining the evidence. When asked what political work the appellant did in Bangladesh at [49] the judge recorded that the witness said the appellant was actively involved with college students and:

> "When they were disturbances he helped the students and this was not liked by the Chatro League. He said that the appellant was student supporter and president of the local party. He made no reference to the appellant being the secretary or collecting money for the party or charitable donations".

The appellant had not claimed he was president. However, the chief criticism was that the evidence was vague, and that he gave a lack of detail in his evidence not because of how long he had known the appellant.

36. Ground 3. In relation to the assessment of the medical report, the Senior President of Tribunals Practice Directions of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, amended on 18 December 2018 [10] clearly explains the duties of the medical expert to those instructing. All relevant information concerning the appellant's case should be provided. That was clearly not the case but, moreover, at 10.3 the Directions state: "Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation" and at 10.4, "An expert should assist the Tribunal by providing objective, unbiased opinion on matters within his or her expertise and should not assume the role of an advocate". The grounds refer to the respondent's own policy document, medical evidence and asylum claims which states:

> *"Medical evidence prepared by other regulated experts with extensive experience in this field should generally be accepted, where details of their qualifications, training and experience have been provided, and it is clear that the evidence has been compiled using standards and a clear framework (for example, the Istanbul Protocol).*
>
> *Indeed at 10.5 an expert should consider all material facts including those which might detract from his or her opinion."*

37. There are numerous criticisms which can be made of this expert report, not least that it did not comply with the Istanbul Protocol and failed to set out whether any background information was provided, but notwithstanding, in my view, the judge was entitled to reject the report on the basis that it was undermined because the expert stepped into the role of an advocate, which tainted the report.

38. Although Mr Spurling criticised the judge's determination for failing to identify where the expert had stepped into the role of the advocate, a careful reading of the report makes it clear that the expert in that documentation stated:

> *"I believe the facts he gave me about the fate of the opposition in Bangladesh from being known in 2009 but becoming more prominent nowadays with the acquisition of total power of the current party leading the country and the absolute control over its citizens life and most particularly the ones they don't approve of in 2021.*
>
> *In that reality his life would be in danger if sent back over there."*

39. That comment was made without any supporting documentation, and strayed into a realm outside the expert's remit and it was open to the judge to conclude the expert stepped into the role of advocate. There was no reference to the appellant's medical records contrary to HA (expert evidence; mental health) Sri Lanka [2022] UKUT 111 (IAC). The judge's approach was entirely open to him.

40. Ground 4 asserted an error in the assessment of the appellant's sur place activities. It is suggested it was insufficiently reasoned. It is not for the judge to

set out every single piece of evidence and it is quite clear that the judge did consider the evidence in the round and gave sound reasoning.

41. There was clear engagement with the appellant's claimed activity in the UK since 2010 at [16] onwards. The extent of the appellant's following on Facebook was unsupported as the judge reasoned, and the posts on Facebook in the bundle attracted 'little to no interest'. Defects were identified in the letter of A B M [18] and the newspaper reports contradicted even the appellant's own evidence [19]. Many of the articles were 'in the same style' and the documents effectively unreliable. The judge specifically rejected the appellant's claim that his name would have been obtained by the High Commission from a document he signed bearing in mind the appellant did not even enter the Bangladesh High Commission building.

42. The judge did not consider that the appellant had a significant role in relation to sur place activities in the UK and the approach taken was entirely open to him. Although he accepted that the appellant had some engagement with the Chhatra Shibir in Bangladesh prior to arrival in the UK, the credibility issues in relation to his role then and now were subject to adverse credibility findings for the reasons given above and the conclusion that the appellant would not be at risk is not undermined by any material error of law either individually or cumulatively.

Notice of Decision

43. I find no material error of law and the decision of the First-tier Tribunal shall stand.

Helen Rimington

Judge of the Upper Tribunal Rimington
Immigration and Asylum Chamber

Signed 25th April 2023