

GA (_Risk-Bihari_) Bangladesh CG [2002] UKIAT 05810
HX49280-2001

IMMIGRATION APPEAL TRIBUNAL

Date heard: 15 November 2002
Date notified:.....20 December 2002.....
Before:-

MR M W RAPINET (Chair)
DR H H STOREY
MRS E HURST

Between

MR GALAM AZAM

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant, a Bihari from Bangladesh, has appealed with leave of the Tribunal against a determination of Adjudicator, Dr R Kekic, dismissing the appeal against the decision by the respondent giving directions for removal following refusal to grant asylum. Mr B Banerjee of Counsel instructed by Malik & Michael Solicitors represented the appellant. Miss J Sigley appeared for the respondent.

2. The Tribunal has decided to dismiss this appeal.

3. The basis of the appellant's claim was that he had been arrested 3 times in 1998, had had his shop burnt down in March 1999 by miscreants or terrorists and had then been attacked in March 1999. He claimed that if returned he would face further difficulties at the hands of the same miscreants or terrorists as well at the hands of the authorities.

4. The adjudicator accepted that the appellant was of Bihari ethnic origin. She made no finding on his claim to past arrests, but accepted he had become the targets from attacks from extortionists. She concluded that, since he had now lost his business and savings, these persons would no longer have an adverse interest in him. She did not accept his evidence that he had had a false case registered against him or that he had been pursued wherever he went. She did not think his position could be equated with that of most other Biharis in Bangladesh in that he was educated and had better chances of obtaining work.

5. The grounds complained that the adjudicator had wrongly disregarded the systematic attacks on the appellant by members of the Awami League and had failed to recognise that anti-Bihari sentiment is very grave in Bangladesh and that the government and administration instigate the miscreants and the police to persecute the Bihari people.

6. At the outset of the hearing Mr Banerjee sought to raise one additional argument first alluded to by the Vice President in granting leave. That concerned the appellant's nationality or lack of it. He contended that the appellant was stateless.

7. However, although being identified by the respondent as a national of Bangladesh, the appellant had not challenged this before the adjudicator and no nationality issue was raised in the grounds of appeal to the Tribunal. Furthermore, we cannot see that such a ground, even if we had been prepared to treat it as such, assisted the appellant in establishing his case either on asylum or human rights grounds. Even if he were accepted as stateless, he could still not succeed in his appeal unless he was able to establish a well-founded fear of persecution or treatment contrary to his human rights in his country of former habitual residence. As Mr Banerjee conceded, the appellant's country of former habitual residence was Bangladesh.

8. Mr Banerjee sought to argue further that if the appellant was stateless and without a passport the Bangladesh authorities would not accept him back. He referred in this connection to a 1999 determination of the Tribunal in the case of *Dubchenko* (21863). However, as the Tribunal has made plain in a number of cases, most recently in *Sensitev* (01/TH/01351) and *Pavlov* [2002] UKIAT 02544, if a country of origin will not take back a claimant, then he will not be at risk of persecution because in such a situation Home Office policy is that he will be returned to the United Kingdom.

9. Insofar as the grounds raised objections to the adjudicator's principal findings of fact, we do not think they have substance. The adjudicator gave sound reasons based squarely on the evidence for reaching her principal conclusions. The appellant claimed persons from the Emon/Iaman group whom he variously called miscreants, terrorists and also members of the Awami League had targeted him. However, as the adjudicator noted he had failed to produce any independent evidence to show that the Emon/Iaman group existed and he was unable to satisfactorily explain how the Awami League would have been complicit in the attacks made on him. The most the evidence established was that his attackers were extortionists.

10. The appellant claimed that his attackers targeted him not only in his home area but also in other places he moved to, i.e. Narajanganj, Rangpur and Iswardi. The adjudicator did not accept this because he found the appellant's account in this regard implausible and contradictory. He gave highly inconsistent accounts as to whether he had been traced to these places.

11. The appellant claimed that a false case has been registered against him. However, he had not mentioned this fact in his witness statement and had failed to explain why. It was also unclear why, if they had really wanted to press charges, the authorities would have released him when they did. Essentially, therefore, all the appellant had established was that he was of Bihari ethnicity, and that he had been targeted by extortionists who, among other misdeeds, had burnt down his shop.

12. The question then arises, do these facts establish that the appellant would have a well-founded fear of persecution?

13. Two observations are salient here. Firstly, the background evidence does not establish that all Biharis are at risk of persecution or treatment contrary to their human rights. The CIPU Bulletin of October 2002 on which Mr Banerjee placed some reliance, albeit noting certain difficulties faced by Biharis, states at paragraph 6.44 that they have not been persecuted nor do they have any reasons to fear persecution. It is true that in this same paragraph there is mention of them being considered by the US Committee for Refugees to be in "refugee-like circumstances", but that is primarily a reference to the conditions they have had to face inside Bangladesh as persons refused repatriation to Pakistan having declined Bangladesh nationality.

14. Secondly this same body of evidence makes clear that not all Biharis are in the same situation. The CIPU report informs us that whilst as many as 300,000 Biharis still live in various camps around the country, the total Bihari population is in the order of 500,000. Furthermore at paragraph 6.43 it is stated that some have moved out of camps and are living and working alongside local people.

15. These two observations assist us when we come to consider the facts of this particular case. The letter from the Stranded Pakistanis General Repatriation Committee (SPGRC) dated 12 July 1998 does make reference to the appellant living in a camp in Mirpur, Bangladesh and leading a miserable life. Since this letter makes no specific reference to the appellant's claimed difficulties arising from having set up a shop and been targeted as a result, we feel unable to place reliance on this document as evidence of his past difficulties. It does appear from this document, however, that he had lived in a Bihari camp up till 1998 and was officially recognised as a Bihari. His earlier status as a camp Bihari is confirmed by other documents. But whether, however, he remained living inside camp once he became a shopkeeper is less clear. When he described moving to other areas he made no mention of living inside Bihari camps in any of them. In any event, even if we had considered that he had always lived in camps, it was still the case that the appellant was unusual in several respects. One was that his name was common in Bangladesh and so would not distinguish him from other Biharis. Another was that he was educated. A further reason was that he had experience of working.

16. Bearing in mind these circumstances we consider that the adjudicator was fully justified in concluding that the appellant did not have a well-founded fear of persecution in Bangladesh nor of treatment contrary to his human rights. His proven ability to move around Bangladesh, to work and his good level of education would mean that he would not have to endure the same level of difficulties as camp-bound Biharis with no education and no familiarity with the wider Bangladesh society. Furthermore, as the adjudicator noted, he was young, fit and healthy and without dependants.

17. For the above reasons this appeal is dismissed.

**DR H H STOREY
VICE-PRESIDENT**