



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

Appeal Number: PA/03671/2015

THE IMMIGRATION ACTS

Heard at Field House

On 25 January 2018

**Decision &
Promulgated**

On 21 February 2018

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

**[M I]
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bahja of Counsel

For the Respondent: Mr L Tarlow, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. The appellant is a national of Bangladesh whose date of birth is [] 1987. He arrived in the United Kingdom as a student in 2005 and was subsequently granted further periods of leave to remain as a student. On 7 August 2013 an application for leave to remain was made outside the Immigration Rules which was refused on 31 August 2013 with no right of appeal. On 29 July 2015 the appellant claimed asylum on the basis that he is an atheist who fears the government and Islamic fundamentalists as well as his own family who have disowned him.
3. The respondent refused the appellant's asylum claim on 27 November 2015. The respondent accepted that the appellant is an atheist and that he had demonstrated a genuine subjective fear of persecution on return to Bangladesh. However, the respondent concluded that the appellant's fear is not objectively well-founded because there is a sufficiency of protection provided by the authorities in Bangladesh and he would be able to relocate within his country of nationality. The respondent considered that the appellant did not meet the requirements of the Immigration Rules with regard to family life as there was insufficient evidence of the claimed relationship and the couple had not been living together for 2 years. The appellant did not meet the requirements of paragraph 276ADE and there were no exceptional circumstances requiring consideration outside the Immigration Rules.

The appeal to the First-tier Tribunal

4. The appellant appealed against the respondent's decision to the First-tier Tribunal. In a decision promulgated on 31 August 2016 First-tier Tribunal Judge Kimnell dismissed the appellant's appeal. The Tribunal found that the appellant does not have a well-founded fear of persecution on the basis of his activity as an atheist blogger and that there is no state persecution of atheists in Bangladesh. With regard to Article 8 the judge found that there was insufficient evidence to show that appendix FM requirements were met. The appellant's representative at the hearing did not press that point but raised paragraph 276ADE(6). The judge found that there were no very significant obstacles very significant obstacles to the appellant integrating into Bangladesh. The judge considered that there was compelling reason to examine Article 8 outside the Immigration Rules as there is nothing of note in the appellant's case that is not catered for within the Rules themselves.
5. The appellant applied to the First-tier Tribunal for permission to appeal against the First-tier Tribunal's decision to the Upper Tribunal. On 3 October 2016 First-tier Tribunal Judge Osborne refused the appellant permission to appeal. The appellant renewed his application to the Upper Tribunal and on 16 November 2017 Upper Tribunal Judge Finch granted the appellant permission to appeal.

The hearing before the Upper Tribunal

6. There are two principal grounds of appeal. It is submitted that the judge's assessment of credibility was based on his disregard of material facts and evidence and on an unreasonable and erroneous conclusion on material submissions. The judge failed to have regard to **RT Zimbabwe and Others v Secretary of State for the Home Department [2013] 1 AC 152 [2012] UKSC 38** where the Supreme Court held that where a person was obliged to conceal his beliefs in order to avoid persecution that would amount to persecution and entitle a claimant to recognition of refugee status. Although not set out in grounds of appeal, in the appellant's skeleton argument submitted on the day of the hearing before me it is asserted that the judge was wrong to conclude that the state does not persecute atheists. The grounds of appeal also set out that the judge had failed to place sufficient weight on the witness evidence of Karen Beer the mother of the appellant's girlfriend. It was submitted that there are genuine difficulties for the appellant to return to Bangladesh to make a fresh application or for the British national partner to move to Bangladesh to continue family life with the appellant.
7. At the hearing before me the grounds of appeal with regard to Article 8 were not pursued by the appellant. Mr Bahja indicated that the appellant accepted that permission to appeal had not been granted on that ground of appeal. The central issue in this case therefore is whether the judge erred in the approach and conclusions on the asylum claim. Mr Bahja submitted that at paragraph 27 and 28 of the First-tier Tribunal's decision the judge has not considered appropriately the appellant's evidence. In the appellant's witness statement he indicated that the reason that he had undertaken some blogging in his pseudonym or in a different name was because he was afraid of extremists and the government. Reliance was placed on the case of **RT Zimbabwe** and it is submitted that the First-tier Tribunal erred in law by holding that given the appellant had not used his own name in some of the items submitted for publication the contribution that he makes as a blogger is negligible. The judge accepted, at paragraph 27, that the appellant had expressed his atheist and anti-fascist view albeit not in his own name. In his witness statement of 24 May 2016 the appellant set out his views about the need for international protection stating that he became a member of many pages and groups and commented on many issues surrounding Islam. The judge erred by failing to take into account the fact that the appellant cannot be expected to hide his view about atheism in order to be safe in Bangladesh and to assess the risk on return on that basis. The judge only took into account evidence which was recorded in the appellant's own name and failed to consider why the appellant hid his name in some of the publications. The appellant is an activist belonging to a group with 4,000 members, he writes blogs and encourages people to renounce their faith. At paragraph 10 the judge recorded the appellant's evidence indicating that the appellant will continue to express his view if returned to Bangladesh.
8. In the skeleton argument and at the hearing Mr Bahja submitted that the judge erred by concluding that the country material does not establish that there is state persecution of atheists. It is submitted that the judge

failed to consider the objective evidence regarding Bangladesh in a proper context. Reference is made to evidence contained at page AB/115 of the appellant's bundle with regard to a statement from the Council of Ex-Muslims dated 3 May 2016 in which the author describes the views of the Prime Minister. If the Prime Minister or Minister of Interior makes statements that bloggers should not hurt religious feeling otherwise the government will not take responsibility this makes the state complicit in attacks upon atheist bloggers. It is submitted that many bloggers who have been killed did not have a prominent profile examples are given of Nazimuddin Samad, Asif Mohiuddin and Sunnyur Rahman. It is the content of writing that a blogger a target of extremists or the government not their prominence.

9. Mr Tarlow relied on the Rule 24 reply. The findings at paragraph 27 to 30 are ones that were entirely open to the judge to make. He submitted the grounds are really a disagreement with the finding of the First-tier Tribunal. He referred to paragraph 30 where the judge recognises that a prominent blogger would be at risk but says that the appellant does not fit this profile. Mr Tarlow referred to pages 67 to 72 of the appellant's bundle which set out the on line posts by the appellant. Looking at the index of the bundle these are only blogs which amount to ten items. Based on that evidence the judge's conclusion is sustainable notwithstanding the reference to considering the evidence in the appellant's own name. The evidence amounts to very little whether in the appellant's name or in a false name. With regard to the state protection issue he relied on the Reasons for Refusal Letter.
10. Mr Bahja in reply referred to paragraph 67 of the bundle and made the point that the appellant joined as an atheist prior to leaving Bangladesh. He submitted that the blogs and the posts by the appellant amounted to very strong views that the appellant was against fascism and inferred from that that he was against Islam. He submitted that the statement from the Prime Minister was a clear indication that he supports Islamists actions against bloggers.

Discussion

11. The judge set out the background to the case and the appellant's evidence. At paragraphs 10 to 12 the judge set out the appellant's oral evidence given at the hearing. At paragraph 16 the judge set out:
 16. As regards the asylum appeal the facts are not really in dispute because the respondent has accepted that the appellant is an atheist. The asylum appeal turns on whether or not the appellant's subjective fear is objectively well-founded and whether there is a sufficiency of protection for an internal relocation option available.
12. From paragraph 18 onwards the judge considered the background evidence. At paragraph 18 the judge found:

18. The appellant stated at interview that he is fearful not only of Islamic extremists in Bangladesh but also the government of Bangladesh, however the country materials submitted do not establish that there is state persecution of atheists.
13. From paragraph 19 to 26 the judge considered in some detail the evidence contained in the appellant's bundle regarding the background material that demonstrates that non-state actors seek to kill and harm atheists. From paragraph 27 the judge analyses, against that background evidence, the appellant's own evidence. At paragraph 27 the judge set out:
 27. As to the appellant's own activity, he stated clearly in oral evidence that he is not an accomplished writer but he has submitted some items submitted in the name of Md Mazharul Tarek, one of which refers to joining atheists in Bangladesh in October 2009. He posted comments that he is against fascism.
 28. On the basis of the evidence in the appellant's name, the contribution he makes as a blogger is negligible.
 29. The Council of Ex-Muslims in Britain have written (page 73) supporting the appellant's case. They believe that the appellant has good reason to fear persecution but the letter is no more than a generalisation which adds nothing to the specific cases already referred to.
 30. The country evidence shows that a prominent blogger or activist may be at some risk but the appellant does not fit that profile. On the basis of his activity there is no real risk of harm. His parents have merely disowned him there is no evidence that they represent any harm to him. There is no state persecution of atheists, and the risk from non-state actors, which I acknowledge it does exist, is not a real or significant risk to the appellant on the facts of his case. He has no well-founded fear of persecution.
14. The judge decided this case on the basis that the appellant does not have a well-founded fear of persecution from non-state actors because he does not fit the profile of a prominent blogger or activist. However, the analysis and conclusions reached as to the appellant's profile appears to have been based solely on the evidence that was in the appellant's own name ignoring the evidence that was in a false name. There is specific rejection of that evidence. Rather the judge appears to have accepted that the evidence submitted was written by the appellant under a pseudonym. Given the need to consider asylum claims with anxious scrutiny, and although the evidence provided regarding the blogs under a pseudonym is not compelling, I cannot be sure that the judge would have arrived at the same conclusion had that evidence been taken into consideration. Alternatively, the judge could have made a specific finding rejecting that evidence but there is nothing in the determination that suggests this is the reason the judge did not consider it. This is a material error of law.
15. With regard to the grounds that the judge erred by failing to take into account the fact that the appellant cannot be expected to hide his view about atheism in order to be safe in Bangladesh and to assess the risk on

return on that basis this ground is misconceived. The judge was fully aware that the appellant would continue to express his views, hence the consideration of what his profile would be. There was no suggestion that the judge considered he would not be at risk if he kept his views hidden. On the basis of the low profile the judge correctly considered the risk on return on that basis.

16. The appeal on Article 8, either within or outside the Immigration Rules, was not pursued at the hearing before me. The decision of the First-tier Tribunal that the appellant does not meet the requirements of the Immigration Rules and that there are no reasons to examine Article 8 outside the rules therefore stands.
17. I find that there is a material error of law in the First-tier Tribunal decision. I set that decision aside pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 ('TCEA').
18. I considered whether or not I could re-make the decision myself. I considered the Practice Statement concerning transfer of proceedings. I am satisfied that the nature and extent of judicial fact finding that is necessary in order for the decision in the appeal to be re-made is such, having regard to the overriding objective, that it is appropriate to remit the matter to the First-tier Tribunal.
19. I remit the case to the First-tier Tribunal for the asylum appeal to be heard at the First-tier Tribunal at Hatton Cross before any judge other than Judge Kimnell pursuant to section 12(2)(b) and 12(3)(a) of the TCEA. A new hearing will be fixed at the next available date.

Decision

The decision of the First-tier Tribunal contained a material error of law. The case is remitted to the First-tier Tribunal at Hatton Cross for the asylum appeal to be re-heard before any judge other than Judge Kimnell. The First-tier Tribunal decision on the Immigration Rules and Article 8 stands.

Signed P M Ramshaw

Date 13 February 2018

Deputy Upper Tribunal Judge Ramshaw

