



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08762/2018

THE IMMIGRATION ACTS

Heard at Bradford
On 11 December 2019

Decision & Reasons Promulgated
On 31 December 2019

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SMIHP
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Bradshaw instructed by Duncan Lewis (Birmingham).

For the Respondent: Mr M Diwncyz Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Mensah promulgated on 5 August 2019 in which the Judge dismissed the appellant's appeal on protection grounds but allowed the appeal pursuant to article 8 ECHR.

2. Although the First-tier Tribunal decision header indicates an anonymity direction was not made it is clear that such an order was made at [2] and [40] of the decision.

Background

3. The appellant, a citizen of Bangladesh born on 1 January 1979, arrived in the United Kingdom on 20 September 2003. He did not claim asylum until 2 January 2018. Having considered the evidence the Judge sets out findings of fact from [15] of the decision under challenge.
4. The Judge accepts the psychiatric evidence that the appellant is suffering from schizophrenia and a depressive disorder leading to the finding at [36 – 37] in the following terms:
 - “36. However, I do find given his poor mental health and his conversion, he faces very significant obstacles to integration into Bangladesh under 276 ADE (iv). He has been in the UK for 15 years, he has been an active Jehovah’s Witness for about 1 ½ years. I accept his behaviour both in terms of his religious activity and his mental health would make integration extremely difficult and he would face stigma, isolation and rejection. I accept this would impact upon his mental health further and given his genuine fears of return, I accept the doctors conclusions that he is reasonably likely to become floridly psychotic, severely depressed, suffer auditory hallucinations and present a high risk of self-harm and/or suicide. I accept he wouldn’t be able to engage appropriately with medical services and it is reasonably likely his elderly parents will not possess the skills to assist him. I accept employment is not realistic in those circumstances.
 37. Given the rules are said to reflect the public interest I find his appeal also succeeds under article 8 on account of his private life. It is not proportionate to remove him because he meets 276 ADE (iv). I allow his appeal under Article 8.”
5. There is no challenge by the respondent to the above decision.
6. The appellant’s protection claim is based on a real risk he claims to face on return as a Jehovah’s Witness. The Judge finds at [18] that there are potentially two factors which might draw attention to the appellant the first is if it was found he is a convert and will behave in a way that would draw attention to his conversion through his religious behaviour and his mental health.
7. In relation to the question of the appellant’s conversion the Judge finds at [32 – 34]:
 - “32. I accept taking all the evidence together the appellant believes that he has converted to become a Jehovah’s Witness. In a sense it is irrelevant whether he is a genuine convert, or because of his lack of insight and irrational thinking he genuinely believes he has converted; because the position on return is going to be the same. If he believes he is a Jehovah’s Witness then it doesn’t matter if his reasons are irrational and confusing. He will return with a genuine

fear because of his belief in his conversion and this will have the impact as described by the Dr (as set out in detail above).

33. I also accept as a professed convert and Jehovah's Witness he would feel it necessary to evangelise and this would be unacceptable behaviour in a strict Muslim family. Albeit, I am not satisfied there is any reliable evidence it is reasonably likely the family would not help him further.
 34. Mr Farrell argued having mental health problems doesn't mean a person cannot genuinely convert and I accept that proposition. However, given the appellant's lack of reliable reasoning for converting and his limited knowledge of basic elements of Islam and Christianity, there is a paucity of reliable evidence regarding his conversion. This would normally have led to his explanations being given negative weight and potentially to his claim being rejected. I have taken the view that while they negate any rational reason for conversion and this potentially could have led to his claim being dismissed, given his mental health I don't consider this negates whether he holds a genuine belief."
8. At [33] the Judge confirms her acceptance that the appellant genuinely believes he is a convert, that he would not be capable of engaging in appropriate treatment in Bangladesh for his mental health, will feel it necessary to evangelise which will be unacceptable behaviour in a Muslim family, and will be at high risk of suicide or self-harm, but dismissed the protection claim.
 9. The appellant sought permission to appeal asserting that the Judge whilst clearly having considered the expert report of Dr Hoque "inexplicably ignored the overwhelming bulk of the expert evidence".
 10. The appellant argues that in his expert report Dr Hoque stated the following:
 - i. Although there are no explicit laws against blasphemy, the penal code does criminalise 'acts intended to outrage religious feelings' which can lead to 2 years imprisonment [31].
 - ii. The appellant will not be prosecuted as long as he does not publicly propagate his ideas and beliefs [30].
 - iii. Extremist organisations may become aware of the appellant's opinions and activities; if they do, the appellant's life will be in serious risk as a perceived apostate and convert to Christianity [32].
 - iv. Islamist organisations 'pose the highest threat' to the appellant's life and combined with the ubiquitous taboo that apostasy invokes will make the appellants residence in Bangladesh untenable [32].
 - v. The promotion of atheism and apostasy in Bangladesh by a person who was born a Muslim is a serious antisocial activity. If the appellant openly expresses his views, he will undoubtedly encounter problems from both the wider public and the authorities [35].
 - vi. Islamist organisations pose the greatest threat to the appellant's life [57].
 - vii. Extremist Islamic organisations are part of the political mainstream in Bangladesh; such organisations or individual members become aware of the appellant's renunciation of Islam, will become the target for extrajudicial killings [38].

- viii. Any public criticism of Islam leads to attacks on the charge of producing unIslamic works and opinions [39 – 40]
 - ix. Since 2013, 25 people have been targeted and brutally killed. The numbers targeted had significantly accelerated in 2016 [44].
 - x. The government has come under intense pressure from Islamic groups to seek out and reprimand those perceived to be spreading anti-Islamic polemic [48].
 - xi. In 2016, the demographics of those killed for their religious beliefs include not just those who were activists but also a tailor, a Sufi Muslim, a monk, a shoe trader, a priest, a college teacher and a farmer [49].
 - xii. Elements of the Islamic far right pose the biggest threat to the appellant [53].
 - xiii. If the appellant were to express or promote his views in Bangladesh, this is highly likely to be encountered by extremist Islamic groups or their affiliates. In those circumstances, the appellant is likely to face violence and/or fatal vigilante reprisals given the highly inflammatory nature of the appellant’s views on Islam [54].
 - xiv. Since 2017, there has been an increase in Islamic attacks specifically on Christian converts [57].
 - xv. Though much of the population is religiously tolerant and there are people who describe themselves as agnostic, humanist and atheist, they do not encounter problems because ‘they have not publicly defamed or disrespected Islam’ [63].
 - xvi. The only way in which the appellant can avoid being attacked is to adhere to conventional life in which he conforms to inherently Islamic social parameters [64].
 - xvii. It is not difficult to locate people in Bangladesh, particularly those who behave in a suspicious or unorthodox way [65].
 - xviii. There is no sufficiency of protection [42, 51, 59].
11. Permission to appeal was granted by a judge of the Upper Tribunal on the basis it was arguable the First-Tier Tribunal did not properly consider the risk to the appellant were he, as was accepted, to seek to proselytise on return, by reference to the experts report at [57] to [58] and [64] to [65].
12. At [58] Dr Hoque writes:
- “58. Given these recent developments and communal tensions pertaining to the current political climate in the country, [SMIHP] professed fear of persecution on the basis of his conversion to Christianity is plausible and consistent with the evidence that the authorities are unable to provide protection to those who are perceived as speaking or acting against Islam from Islamic militants currently operating within the country.”
13. At [64 – 65] Dr Hoque writes:
- “64. On the other hand, concealing his true beliefs may pose a threat to [SMIHP] life in the long term if the curiosity of the locals pushes them to probe him on his political and religious beliefs. If [SMIHP] engages in any form of candid discussion with any practising Muslim regarding his beliefs, this may indeed provoke heated and violent reactions not just by those involved in the conversation, but also members of the wider community. Moreover, dissemination of his beliefs will be an inevitable outcome of any conversation of this type, given the gravity and highly controversial nature of them. The only way [SMIHP] can prevent this scenario is if he lives a

conventional life, conforming to overarching social parameters, which, in Bangladesh, are inherently Islamic in essence.

65. Furthermore, it is not difficult to locate people in Bangladesh, particularly if individuals act in suspicious or unorthodox ways. Bangladesh is a communitarian society where social participation in the local community is mandatory. Even if he is not initially recognised, [SMIHP] distinct regional accent (Dhaka/Feni) will be immediately identified, and he will inevitably be asked questions regarding his ancestral home (*desher bari*). Reluctance or refusal to answer questions of this nature will arouse suspicion. In such circumstances, it will be extremely difficult for [SMIHP] to maintain his anonymity."

Error of law

14. JW.Org in explaining who Jehovah's Witness are writes: *"We come from hundreds of ethnic and language backgrounds, yet we are united by common goals. Above all, we want to honor Jehovah, the God of the Bible and the Creator of all things. We do our best to imitate Jesus Christ and are proud to be called Christians. Each of us regularly spends time helping people learn about the Bible and God's Kingdom. Because we witness, or talk, about Jehovah God and his Kingdom, we are known as Jehovah's Witnesses"*.
15. Jehovah's Witnesses method of preaching is ordinarily by going door-to-door to people's homes on the basis of the belief that that method of making disciples is the model Jesus gave the church (Matthew 10:7, 11-13) as well as the example of first century Christians who spread the Gospel by going from house to house (Acts 5:42; 20:20). Jehovah's Witnesses also take very seriously the 'Great Commission' in Matthew 28: 19 to take the gospel to all nations.
16. Against this objectively verifiable background we have an appellant who has severe mental health issues who lacks the perception and judgement to enable him to understand the real risk that exists if he attempts to convert followers of Islam to Christianity; which he sees as his duty so to do.
17. It is accepted there was no specific examples of persecution of followers of the Jehovah's Witness faith before the Judge, but the organisation's own website consulted on 11 December 2019 confirms that in a population of 166,368,149 people in Bangladesh only 303 are described as Jehovah's Witness Ministers who teach the Bible, with only six congregations. As recognised by Mr Diwncyz this is clearly a minority group.
18. There is clear evidence that the appellant, as a genuine convert who will attempt to preach and convert others to the Christian faith. There is clear evidence that this is likely to create a real risk for the appellant, even if not immediately, as a result of his activities becoming known to either the Islamic extremists or those he is attempting to preach to; as a result of his views, words and statements being seen as being contrary to the interest of Islam. The appellant himself is a convert from Islam to Christianity which also giving rise to a real risk as a result of it being deemed he is an apostate.
19. I find to the lower standard applicable that a real risk is made out. Dr Hoque finds there is no sufficiency of protection available to the appellant a point not disputed by the respondent on the facts.

20. The only way the appellant could arguably avoid such a risk is not to attempt to preach or convert others contrary to his beliefs. As the only reason for doing so would be to avoid persecution or ill-treatment this will contravene established legal principles.
21. As noted by the Judge, the fact of the appellant's conversion together with his mental health satisfies paragraph 276 ADE (iv) as amounting to very significant obstacles to integration into Bangladesh. Such obstacles will obviously be the real risk of harm as a result of his conversion and evangelising. Persecution or ill-treatment as a result of the appellant's religious activities or views clearly engages the Refugee Convention.
22. I find that in dismissing the appellant's protection appeal the Judge has erred in law and set aside that element of the decision. I substitute a decision to allow the appellant's protection appeal for the above reasons.

Decision

23. **The First-Tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is allowed on protection grounds, the Judge's decision to allow the appeal pursuant to article 8 ECHR being a preserved finding.**

Anonymity.

24. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 12 December 2019