



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

Appeal Number: PA/13569/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd June 2019**

**Decision & Reasons Promulgated
On 20th June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR. S.P.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Turner, Counsel

For the Respondent: Mr Tarlow, Senior Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

DECISION AND REASONS

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1. The Appellant, a citizen of Bangladesh born 11th September 1980, appeals with permission against the decision of a First-tier Tribunal (Judge J. C.

Hamilton) dismissing his appeal against the Respondent's refusal to grant his protection claim.

2. In summary the Appellant's claim is that as a convert to Christianity he would be at risk on return to Bangladesh, not only on account of his faith but also because he would be considered an apostate. It is accepted by the Respondent that the Appellant has converted to Christianity and become a member of the Baptist church. His claim therefore is that because of embracing Christianity as a Baptist, he would be at a heightened risk of being targeted by extremists on account of the evangelical nature of Baptist beliefs.
3. The FtTJ in reaching his decision heard evidence from the Appellant and two witnesses, one of whom was the Reverend Dr Woodman, the minister from the Bloomsbury Central Baptist Church who prepared the Appellant for baptism. He also heard remotely from Dr Hoque, a country expert witness called on the Appellant's behalf. He took into account and referred to a large amount of documentary evidence. This included the October 2018 CPIN report and the Report of a Home Office Fact-Finding Mission Bangladesh published September 2017, together with other pieces of background evidence, photographs and supporting statements confirming the Appellant's conversion to Christianity.
4. Having reviewed the evidence, the judge came to the decision that a return to Bangladesh for the appellant would not place him at a real risk of serious harm such as to amount to persecution. He dismissed the appeal in a decision promulgated on 25th January 2019.

Onward Appeal

5. The grounds seeking permission are lengthy and set out various criticisms of the FtTJ's approach to the evidence. The main criticism focuses upon saying that the FtTJ failed to have proper regard to the expert report when considering sufficiency of protection/risk on return. As part of that criticism, it is said that the FtTJ failed to apply the correct test in regard to persecution, failed to have regard to the principles in **HJ (Iran)** and failed to appreciate the nature of the Appellant's conversion.
6. Permission to appeal was granted in the following relevant terms
 - "2. Much of the grounds, though lengthy, have little arguable merit; for example, as to paras 21 - 30 of the grounds, whilst the Judge has considered murders at [50] and [52] within the context of the decision, it is not reasonably arguable that he has failed to consider other acts of harm short of murder; he has considered the question of risk and safety at [54] and [67 - 71]. His findings were open to him on the evidence before him and are not unreasonable or irrational and do not show that he has conflated persecution with or that he has applied the wrong test in relation to the question of persecution.
 3. However, the Judge does accept that "nosey neighbours" may lead to the identification of the Appellant as a Christian (as would his desire to

live an openly Christian life), and background evidence suggests that there is more hostility towards converts from Islam, who are seen as apostate. Even without the video evidence (and the Judge's findings on that at [55 - 59] were open to him on the evidence before him), it is just arguable that the Appellant may face persecution on return. As permission is granted on this ground, the Appellant is not precluded from relying on the rest of the grounds."

A Rule 24 response was served by the Respondent defending the decision.

7. Thus the matter comes before me to decide whether the decision of the FtTJ contains such error of law that it requires it to be set aside and be remade.

Error of Law Hearing

8. The grant of permission whilst observing that much of the grounds though lengthy have little arguable merit, nevertheless opened up the grant to allow argument on all grounds. Mr Turner began his submissions therefore by following the lines of the grounds saying that the FtTJ had made several critical errors. The judge had failed to have proper regard to the evidence of Dr Hoque and had applied the incorrect test in regard to persecution, failed to have proper regard to the principles of **HJ (Iran)**, failed to properly comprehend the nature of the Appellant's faith, failed in his consideration of sufficiency of protection and failed to give sufficient or proper reasons for his findings in respect of Article 3. In addition the FtTJ had made inconsistent findings regarding both the documentary and oral evidence.
9. Mr Turner's submissions continued saying the judge had conflated the issue of risk on return by reference only to the details in the expert's report outlining the relatively low number of Christian murder victims rather than addressing the heightened risk which the Appellant faced on account of his apostasy. The judge had failed to take into account and give correct weight to the issue of the video showing the Appellant's baptism. The video is in the public domain and the judge was incorrect in his approach when assessing Dr Woodman's response that the video would be taken off the internet in order to reduce the risk to the Appellant should he be returned to Bangladesh. The point was that the Appellant should not have to have the video taken off the internet because to do so offended the principles of **HJ (Iran)**. The judge did not address that point in the decision. The judge therefore failed to understand the impact of the video, which would represent a very public act of apostasy.
10. Mr Turner asserted that the judge had cherry picked part of Dr Hoque's report and had ignored other parts of it. The judge failed to address the question of whether the Appellant as an individual would be at risk on return. The judge proceeded on a false matrix and failed to appreciate that the Appellant is not simply someone who was born a Christian returning to Bangladesh, but is a Christian convert. With regard to Dr Hoque's report, Dr Hoque is an expert and a full reading of his report

clearly indicates that there is a real risk to this Appellant returning to Bangladesh.

11. Mr Tarlow responding referred to the Rule 24 response which he relied upon. In summary he said that the FtTJ had clearly taken fully into account the evidence of Dr Hoque and given aspects of it considerable weight. The judge had looked at the situation not only in the Appellant's home area of Chittagong but also in Dhaka, in order to assess whether there was an internal flight option. The judge did not accept that there would be sufficient adverse interest in the Appellant returning to Chittagong to amount to persecution but in any event concluded that the Appellant could exercise internal flight by going to live for example in Dhaka where he would be able to exercise his faith openly. In simple terms Mr Tarlow submitted, the FtTJ took into account the expert's report but found the situation was not as bleak as the expert had opined and accordingly relocation was viable. The findings were fully open to the judge to make on the evidence which was before him. There is no misdirection and the decision should stand.
12. Mr Turner responded by reiterating that the FtTJ had failed to differentiate between born Christians and Christian converts, had not properly answered the questions raised in **HJ (Iran)**, and the decision was fundamentally flawed on whether the Appellant was at risk on return. At the end of submissions I reserved my decision which I now give with reasons.

Consideration

13. It seems to me that following Mr Turner's argument, essentially, there are two main strands to the criticisms made of the judge's decision:
 - the Appellant is an apostate and thus the judge failed to appreciate that this places him in a higher risk category from non-state actors; and aligned with this the authorities in Bangladesh do not provide adequate protection
 - the judge has failed to properly evaluate whether internal relocation would be a viable option.
14. It is clear that the Appellant's case is predicated on saying that he fears Islamic extremists/ostracism in the local community and that potentially he would be identified as someone who would stand out wherever he went because of being a Christian convert.
15. The FtTJ had before him a great deal of documentary evidence, which he sets out in [19] to [20], including not only Dr Hoque's report but also the Respondent's CPIN (2018) which in turn sources an Australian DFAT Fact-Finding Mission Report published February 2018.
16. I find the judge identified the competing arguments before him [42] and [43] and was well aware of what the issue before him was, namely that

the Appellant would be returning as an apostate rather than someone who was born into a Christian family. I find Mr Turner's assertion that the judge failed to understand this concept, and as a result failed to properly evaluate the risk on return, is not made out. There are numerous references in the decision to the Appellant's status as a Christian convert which indicate that this factor was very much at the forefront of the judge's mind.

17. The main challenge raised by Mr Turner in essence came down to saying that the judge did not properly address Dr Hoque's expert evidence in that he disagreed with parts of it. The expert's report formed the core basis of the Appellant's claim. Dr Hoque reached several conclusions including that the Appellant may be targeted by Islamic groups in Bangladesh due to his apostasy and would face intolerable persecution, possibly death, should he return to Bangladesh. This situation results not only from his known apostasy but also because as a member of the Baptist church he is enjoined to promote Christianity and thus is perceived as an active critic of Islam. In Dr Hoque's opinion the law enforcement agencies in Bangladesh do not possess the resources to be able to provide sufficient protection to the Appellant in that Islamic organisations operate with relative impunity due to widespread institutional corruption. Moreover organisations such as ICS are known to resort to fatal violence against those whom they perceive to be enemies of Islam, particularly those who through their actions or words express criticism of Islam.
18. Mr Turner's argument was that the FtTJ had ignored material parts of Dr Hoque's report and that anyone reading this report would be bound to conclude that the Appellant was at real risk and thus the FtTJ had formulated his assessment on a false matrix.
19. I find that the judge did not agree with all of the conclusions reached in Dr Hoque's report. He did not accept that the state would not provide effective protection for Christian converts and therefore they were at heightened risk from Islamists. In other words the judge did not accept that the Appellant was at such a heightened risk as Dr Hoque's conclusions set out. His reasons for this I find, are set out by reference to the documentary source material which he had before him and are contained in paragraphs [6], [61] and [62] of the decision.
20. In reaching this conclusion, the judge acknowledges that the DFAT Fact-Finding Report contains negative reports about the police being Muslim themselves, with instances of corruption and colluding with Muslim community leaders to grab land illegally from Christians. However the judge concluded that there was insufficient evidence for him to conclude that this behaviour was endemic, systematic or institutionalised within the police force. The FtTJ noted at [60] that there was a rapid action battalion created and committed to combatting political Islam. When Dr Hoque was asked to comment on the Dhaka Tribune Report of the arrest of two JMB militants plotting to kill converts, it is recorded by the judge that Dr Hoque did not say much beyond making it clear he did not change his opinion.

21. I find it is plain that the judge has tested the evidence in this regard and given greater weight to source material than the expert's report. That he is permitted to do because the matter of what weight to place on each piece of evidence is one solely for the judge. In coming to this conclusion, the judge drew strength from the background evidence which, in the 2017 report, indicated that the state had provided security for churches which must of necessity include those who have converted. Thus the judge concluded that looking at matters holistically it could not be said that the state would not provide adequate protection for the Appellant.
22. So far as criticism is made of the judge's findings concerning the video evidence, Mr Turner's submission was to the effect that the judge had misunderstood the import of the video evidence. The video evidence denotes a very public act of apostasy and as such it was this exposure which would inevitably result in a heightened risk to the Appellant from extremists. The Appellant should not have to hide the video as this would offend the principles in **HJ (Iran)**. I find the judge did consider this point, finding that the perceived risk did not add significantly to the claim. Again drawing on the source material before him, this is a finding that was open to the judge to make. The Home Office Fact-Finding Report 2017 reported that baptising converts was not a problem for traditional churches like the Roman Catholic and Baptist [54]. He noted from the source material that in 2002, four hundred converts were baptised in the Baptist Church in a single ceremony. The judge acknowledged that Dr Hoque's report was that Christian converts kept safe by remaining quiet about their belief but equally, the judge found that if the situation in Bangladesh were so bad that a vast number, if not the majority, of Christian converts routinely had to hide or deny their faith in order to remain safe, it would be reasonable to expect such a widespread problem to have been reported more prominently [53]. This led him to the conclusion that the video evidence would not place the Appellant at a heightened risk as contended.
23. The FtTJ accepted that the Appellant's best friend in his home area and the local Imam were aware of the Appellant's conversion, and that connections within the community might disseminate this information further [65, 69]. Nonetheless I find that the FtTJ has given proper consideration to the question of the Appellant returning to his home area. He set out that Dr Hoque referred to the Appellant's home area of Chittagong generally being a very conservative area, but equally did not identify any specific difficulties that Christians or Christian converts had experienced there. There was evidence from the Appellant that the local Imam had criticised him but equally the Appellant's own account referred to the many Christian friends he had made in Chittagong. In addition he had attended Christian schools both at primary and secondary level. Further, the Appellant is supported by his mother who accepts his conversion. In conclusion the FtTJ acknowledged that the Appellant may face an increased risk in his home area as a result of some knowledge about his conversion but determined that this is insufficient for him to "conclude it elevates the risk sufficiently for me to find he would be at

‘real risk’ of serious harm or discrimination amounting to persecution” [67-71]. This is a conclusion that was open to him to make.

24. The next criticism made of the decision centred on what is said to be the judge’s lack of reasoning in his consideration of internal relocation. I find this ground is also not made out. The FtTJ considered relocation elsewhere in Bangladesh and noted that the Appellant was well educated, in general good health and that there is a substantial Christian community in Dhaka, including a Baptist Church. The FtTJ noted at [27] that Dr Hoque disagreed with the conclusion drawn in the October 2018 CPIN that in general internal relocation was feasible for those at risk from non-state actors. The FtTJ preferred to accept the evidence of the CPIN report and concluded that the Appellant could relocate to Dhaka or another urban centre, aided by support from his mother and the local Baptist church [73-74].
25. Drawing all these strands together the FtTJ made a finding that although he accepted that there may be some risk for the Appellant in that no-one can be guaranteed a risk-free existence, nevertheless even applying the lower standard of proof, the Appellant had not reached the threshold of showing that a return to Bangladesh would amount to persecution.
26. I find that the decision was carefully prepared and one in which the judge stated specifically that all the evidence had been considered. The judge directed himself as to the correct assessment in cases of this nature and I find all matters were brought to account in the round following a logical analysis with a clearly structured approach. The judge focused on the central elements of the Appellant’s history contained in the expert’s report. He explained why he did not accept certain elements of that report. Generally speaking the weight to be given to the expert’s evidence is a matter for the trial judge. A judge’s decision not to accept expert evidence does not involve an error of law on his part provided that he approaches that evidence with the appropriate care and gives good reasons for his decision (**SS (Sri Lanka) v SSHD [2012] EWCA Civ155**). I find this is the approach taken by the FtTJ. In essence, his reasons were that he preferred the evidence provided from the CPIN report and the source material.
27. For all the above reasons, I conclude that the judge’s findings were ones which were open to him to make on the evidence before him. They cannot be characterised as irrational or perverse. It follows therefore that the decision of the FtTJ contains no legal error capable of vitiating the decision. The Appellant’s appeal fails and the decision of the FtT stands.

Notice of Decision

The decision of the FtT promulgated on 25th January 2019 contains no material error of law. The decision stands.

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. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

C E Roberts

Date

15 June 2019

Deputy Upper Tribunal Judge Roberts