IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005912
First-tier Tribunal Nos:
PA/55964/2021
IA/17857/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

MFA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. C. Rathbone, Broudie Jackson Canter Solicitors
For the Respondent: Mr. N. Wain, Senior Home Office Presenting Officer

Heard at Field House on 18 July 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. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Mackenzie, (the "Judge"), dated 18 September 2022, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse his protection claim. The Appellant is a national of Bangladesh who applied for asylum on political and religious grounds.

2. Permission to appeal was granted by First-tier Tribunal Judge Boyes on 12 December 2022 as follows:

> "2. The grounds assert that the Judge erred in respect of the evidence and has provided a copy of his representative's record of proceedings.
>
> 3. Permission is granted. The ground speaks for itself and there will need to be an examination of the transcript and/or the Judge's notes.
>
> 4. I grant permission on the remaining matters for completeness."

3. The Respondent provided a Rule 24 response. There is no objection in this to the Record of Proceedings submitted by the Appellant with the Grounds of Appeal.

The hearing

4. The hearing took place remotely using Teams. I heard submissions from Ms. Rathbone and Mr. Wain. I reserved my decision.

Error of law

Ground 1

5. Ground 1 asserts that the Judge adopted an unfair approach in relation to the Appellant's evidence of when he stopped practising religion. The Appellant's evidence was that he could not remember the exact date but he "thought" it was from 2016. He had not suggested that he knew with any certainty when it was and was guessing. However the Judge's approach to the evidence indicated that the Appellant was certain in his evidence. The Judge was relying on a misconstrued approach to this evidence to reach adverse credibility findings.

6. Ms. Rathbone submitted, with reference to [7] of the decision, that the Appellant's evidence was that he was not very good with dates. The Respondent had taken no issue with the Appellant's inability to state the year that he had joined the party and the Judge had taken no issue with this. However the Judge had condemned the Appellant for not being able to recall the date or the year when he finally stopped practising religion. On this basis it was inconsistent to say that the Appellant had given inconsistent evidence about the year that he stopped practising Islam, and it was an unfair approach to the evidence.

7. Ms. Rathbone referred to the Appellant's representative's Record of Proceedings, Q5 to Q8. At Q6 the Appellant was asked "you stopped practising in 2013?" He replied "not totally, gradually". At Q8 the Appellant was asked "when roughly did you stop entirely". He said that he could not recall the date and the time. "From 2016 I lost the belief". She submitted that the Judge had concluded that when the Appellant shaved his face was when he had stopped practising religion. She referred to Q5 where he said "In 2013 I stopped practicing religious. Shaved my face. Gradually my beliefs changed about my religion and general concept of life". She submitted that the Judge had not taken into account the answers to

the following questions where he had said that he had gradually stopped. She referred to Q103 of the asylum interview where the Appellant's answer indicated that he was not sure when he stopped.

8. Mr. Wain referred to the Rule 24 response and submitted that [37] accurately reflected the Record of Proceedings. He submitted that the Judge's findings were consistent with this. The Judge had used the Appellant's evidence to explain why there was a contradiction regarding 2013.

9. At [37] the Judge states:

> "If that was the only discrepancy in the appellant's evidence then the overall picture and conclusion reached regarding his credibility might well have been different. However, I found the appellant's oral evidence regarding his claimed atheism to be implausible and inconsistent. When initially asked, in cross examination, why he could not return to Bangladesh, he stated that in 2013 he had stopped practicing religion, describing having lost interest in it gradually. He then stated, when asked when he had stopped being religious entirely, that he could not remember the exact date, but thought it was 'from 2016'. This contradicts with the appellant stating in his asylum interview that he had continued to practice as a Muslim for a year or a year and a half after he started to doubt the religion (Q.103) and his oral evidence, in which he stated that he had stopped practicing religion in 2013 and had shaved his face. I formed the impression that the appellant was being deliberately vague in his evidence and I found this to undermine his overall credibility."

10. I have carefully considered this paragraph. I find that the Appellant did not say that he had stopped practising religion in 2013, with reference to the unchallenged Record of Proceedings. The Appellant said at Q5 that he stopped practising and shaved his face in 2013, and that gradually his beliefs changed. When asked at Q6 whether he had stopped practising in 2013 he clearly states "Not totally, gradually". At Q8 his answer is that he cannot recall the exact date and time when "roughly" he stopped entirely. I find that the Appellant has never indicated with certainty when he stopped practising religion, and that he does not indicate in his answers to cross-examination that he is certain. In particular he does not state that he completely stopped practising in 2013, which is the finding that the Judge has made at [37]. Taking the answers to Q5 to Q8 as a whole, the Appellant did not state that he stopped practising religion in 2013. I find that the Judge has made an error of law in the interpretation of this evidence.

Ground 2

11. Ground 2 submits that the Judge failed to consider material evidence. Ms. Rathbone submitted that the Judge had cherry picked the evidence at [36] with reference to the screening interview. The Appellant had given far more detailed information about his religion at 4.1. It was difficult to reconcile how the evidence given could be considered vague and inconsistent, and allow the conclusion that the Appellant had not renounced Islam. The Judge further omitted to engage with the Skeleton Argument at [31] where it was submitted that the Appellant had said that he had been "brought up" Muslim with reference to [76] of his witness statement. No reason had been given for omitting to consider this evidence. The Judge had preferred one answer at the screening interview to the rest of the Appellant's evidence.

12. With reference to [40] it was submitted that the finding that the state would protect the Appellant if he returned to Bangladesh was not supported by the country evidence provided. The Judge referred to the 2018 CPIN. This pre-dated

the introduction and application of the Digital Security Act. The Judge had been referred to voluminous country evidence that illustrated state supported persecution arising from the Digital Security Act. This was referred to in the skeleton argument. Ms. Rathbone submitted that it was not sustainable to consider country evidence which pre-dated this Act when considering risk to the Appellant. The findings were unsustainable.

13. With reference to [41] it was submitted that the Judge's reasoning that the Appellant's evidence was extremely vague was not supported by the evidence. The Appellant's online activity demonstrated criticisms of Islam. The Skeleton Argument set out the material evidence to which the Judge was referred. The Appellant's witness statement ran to 14 pages and could not be described as vague or lacking in detail. There were 37 pages of Facebook evidence in total.

14. In the Rule 24 response it was submitted that Ground 2 was a mere disagreement with the findings of the Judge. The Judge had considered the answers given at screening interview. He considered all of the evidence and did not accept it as credible. The finding was open to the Judge. With reference to state protection Mr. Wain submitted that the persecution referred to was from Islamic militants and not from the state. I was referred to the CPIN in the Appellant's bundle at pages 132, 151 and 152. This was consistent with the Judge stating that there was nothing in the evidence that showed that the state was not able and willing to offer protection. Regarding the Facebook evidence the Judge had explained at [41] why he found this evidence vague.

15. I have carefully considered [36] and [48] in relation to the evidence in the screening interview. [36] states:

> "In his screening interview on 13 September 2021, the appellant stated that his religion was Muslim (1.12). I note that he did go on to state, when asked for reasons why he could not return to his country of origin, 'I am also an atheist I do not believe in religion I write this in Facebook. This is has threatened life too.' (4.1). I do note and take account of the fact that the appellant did not at the screening interview have an interpreter, which he used for the substantive interview and at the hearing, nor a solicitor. However, he was able to give relatively detailed information in response to what he was asked, against a background of him having been, at that stage, over 13 years in the United Kingdom, both studying and working. I accordingly did not accept as credible the appellant's oral evidence, when asked why he had stated that he was a Muslim in the screening interview that he did not think he had understood the question and thought that he was being asked about his past."

16. Paragraph [48] states:

> "Although the appellant's solicitors submitted a number of proposed amendments / comments to the transcript of the substantive interview, there was no suggestion that the screening interview was incorrectly recorded or failed to set out the appellant's responses to what he was asked.

17. In the Skeleton Argument at [31] it states:

> "R has asserted that A's credibility is damaged by A stating in his Screening Interview that his religion was "Muslim". In his witness statement A has asserted this is not what he said during his screening interview, that his full answer was that he said he had been brought up a Muslim [WS 76]. Support for this can be found from elsewhere in the screening interview where A stated "I am also an atheist I do

> not believe in religion I write this in Facebook. This is has [sic] threatened life too" [SIR4.1]."

18. The Appellant said in his witness statement at [76]:

> "In my screening interview I did not say that my religion at that time was Muslim, I said that I had been brought up Muslim but was not now."

19. I find that it is incorrect of the Judge to state that there was no suggestion that the screening interview was incorrectly recorded. The Appellant himself had stated this in his witness statement, and the Skeleton Argument made reference to it. In relation to the finding that the Appellant's evidence regarding his rejection of the Muslim faith was "vague and inconsistent", I find that the Judge has referred only to the screening interview, without reference to the fact that the Appellant had said that the screening interview was in any event incorrectly recorded, but has not referred to the other evidence before him including the witness statement. The Judge has gone on to consider the oral evidence but I have found above that at [37] he has made an error in his interpretation of that evidence. I find that the Judge has failed to consider all of the evidence in the round in relation to the Appellant's rejection of his faith.

20. In relation to [40] there is no reference to the background evidence apart from the CPIN. The Judge states "nothing in the objective evidence relied upon by the Appellant causes me to doubt that if the Appellant returned to Bangladesh as an atheist that the state would be able and willing to offer effective protection if there was any risk or threats made towards him." There is no reference here to what evidence he has considered, and given that in the Skeleton Argument there was reference to copious evidence which showed that the Appellant would be at risk, I find that the Judge has failed properly to take into account all of the evidence before him. It was incumbent on the Judge to consider this evidence and then decide the weight to be attached to it, but there is no indication that he has even considered this evidence. For example at [57] of the Skeleton Argument is the following evidence:

> "In a submission to the UN Human Rights Council, the International Humanist and Ethical Union states:
>
> *"Over the past few years there has been a pattern of vicious attacks specifically targeting Bangladesh's secular/atheist blogging community, which the state authorities seem either unable or unwilling to prevent." [AB 83]*
>
> *"The Government of Bangladesh … has taken the opportunity to reiterate that existing laws are sufficient to punish anyone who attempts to insult religion. Under the existing cyber laws in Bangladesh, a person can be jailed for up to 10 years if convicted of defaming a religion online." [AB 83]"*

21. This is evidence which was before the Judge that the Appellant would not have protection from the state, but the Judge has expressly stated that there was no such evidence before him.

22. The Judge concludes [41] stating:

> "I found the appellant's evidence, both in his witness statement and at the hearing, regarding his claimed political activities to be extremely vague and this undermined his credibility in my view."

23. I find, as set out above, that the Appellant's evidence in his witness statement which ran to 88 paragraphs over 14 pages cannot be described as "extremely vague". The statement contains details of his political activities in Bangladesh which has not been taken into account. I reject the submission made by Mr. Wain that this paragraph gives sufficient reasons for the Judge finding the Appellant's evidence to be vague given that there is no indication that he has properly considered the lengthy witness statement.

24. I find that Ground 2 is made out and that the Judge has failed to take into account material evidence before him. I find that this is a material error of law.

Ground 3

25. This submits that the Judge has given inadequate reasons with reference to [38], [43], [44] to [45], and [46]. With reference to [43] Ms. Rathbone submitted that there was no reason given for finding that the Appellant's attendance at demonstrations was rehearsed. The Rule 24 response submitted that it was clear why the appeal had been dismissed and adequate reasons had been provided within the body of the decision.

26. I agree with the grounds that it is not clear what point the Judge is making at [38]. This states:

> "I noted also that in the asylum interview the appellant stated that he had spoken to many' of his Bengali friends about his views about religion and they, in addition to his sister, had unfriended him on Facebook (Q.100). I find this difficult to reconcile with him then stating that he had not written directly on his Facebook page that he was an atheist, that there was no need to tell people 'they automatically they understand when I was practicing Muslim I used to get hundreds of likes on my Facebook but now I do not get' (Q.111). I note in the letter from the appellant's solicitor dated 16 April 2021, it is pointed out that the appellant was meaning that by explicitly criticising Islam, everyone will automatically understand and, because of this, the number of 'likes' that he received on his Facebook page decreased. I also find a further contradiction in the appellant's evidence in him stating that he had only told two or three friends directly 'because of fear it is not possible to tell everyone' (Q.110)."

27. At [43] the Judge states that he found the Appellant's oral evidence to be rehearsed. He states:

> "I did not believe the appellant's oral evidence that he had attended meetings and rallies, including a demonstration in London against the Prime Minister and her government. I found this evidence to be rehearsed, the appellant stating without being asked that he could have had photos taken showing him at these events, but it had not been his intention to claim asylum originally."

I find that there is inadequate reason given for this finding. The Appellant either was or was not present at the meetings etc, but the Judge has simply found that his evidence was rehearsed without giving reasons as to why he finds this to be the case.

28. In relation to the attack which the Appellant claims was made on him when in London, the Judge finds at [45] that his evidence again was vague and concluded that the Appellant had fabricated this evidence. In relation to [46], I find that this is ambiguous as at [43] the Judge appeared to find that the Appellant had not

attended demonstrations as claimed. In [46] he appears that he may have accepted it. He states:

> "I do not find, having considered all the evidence before me in the round that the appellant would be at risk of persecution in Bangladesh on account of his political views, either expressed by his online activity or any demonstrations that he might have attended some years ago."

29. I find that this ground is made out with particular reference to [38] and [43].

Ground 4

30. This ground submits that the Judge has applied a higher standard of proof with reference to [39]. The Judge rejected that the photographic evidence supported the Appellant's claim to have renounced Islam yet the screenshots provided showed the Appellant shaven with alcohol. It was submitted that the Judge's conclusion at [39] was perverse and indicated a higher standard of proof had been applied. It was difficult to reconcile how a devout Muslim would go to such measures as to shave himself and be photographed drinking alcohol to create an impression that he had renounced his religion. Islam did not allow photographs of one's face and that it was simply not consistent that these social media posts were made to bolster a false asylum claim.

31. Mr. Wain submitted that the Judge consistently referred to the lower standard at [27], [33] [64] and [65]. Ms. Rathbone in response submitted that, although the Judge had directed himself, on a consideration of the decision as a whole the application of the standard of proof was higher than the lower standard.

32. The Judge states at [39]:

> "I have given careful consideration to the various screenshots taken from the appellant's Facebook page and photographs he has submitted. These do not, in any way, alter my conclusion that the appellant has not given an honest account regarding his claimed atheist beliefs. I find the screenshots and photographs to be self-serving, produced in an effort to bolster an otherwise weak asylum claim."

33. I find that the Judge has given no explanation for why he finds the screenshots and photographs showing the Appellant, with his face shaved, with alcohol, are self-serving given that the Respondent's case was that the Appellant was still a practising Muslim. I accept that the Judge has referred to the correct standard of proof at [27] when setting out the legal framework, and again at [33]. While he has referred to it at [64] and [65] this is in his conclusion, after he has considered all of the evidence. I find that [39] does not indicate that the lower standard has been applied given that what the Judge is effectively finding, although he has not set it out in detail, is that a devout Muslim would go to these lengths in order to bolster his asylum claim.

34. I find that the grounds are made out, and that the decision involves the making of material errors of law.

35. I have carefully considered whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade. I have taken into account the case of Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

"(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.

(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal."

36. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b). I have found that the decision involves the making of material errors of law. I find that no findings can be preserved given that the credibility findings are affected, and given that the Appellant's case in relation to his atheism has not been properly considered. Consequently, given the extent of fact finding necessary, it is appropriate for the appeal to be remitted to the First-tier Tribunal to be reheard.

Notice of Decision

37. The decision of the First-tier Tribunal involves the making of material errors of law.

38. I set the decision aside. No findings are preserved.

39. The appeal is remitted to the First-tier Tribunal to be reheard.

40. The appeal is not to be listed before Judge Mackenzie.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
30 July 2023