



Case No: C2/2019/0009

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE UPPER TRIBUNAL**  
**(IMMIGRATION AND ASYLUM CHAMBER)**

**[2019] EWCA Civ 1627**

The Royal Courts of Justice  
Strand, London, WC2A 2LL

Wednesday, 24 July 2019

**Before:**

**LORD JUSTICE FLAUX**

**Between:**

**THE QUEEN ON THE APPLICATION OF  
AS (BANGLADESH)**

**Applicant**

**- and -**

**THE SECRETARY OF STATE FOR  
THE HOME DEPARTMENT**

**Respondent**

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**Mr M Aslam** (instructed by **Chancery Solicitors**) appeared on behalf of the **Applicant**  
**Ms J Smyth** (instructed by the **Government Legal Department**) appeared on behalf of the **Respondent**

**Judgment**

**(Approved)**

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## **LORD JUSTICE FLAUX:**

1. The applicant seeks permission to appeal against the decision dated 14 December 2018 of Upper Tribunal Judge Allen at an oral hearing refusing the applicant's renewed application following an earlier refusal on the papers by another Upper Tribunal judge for permission to apply for judicial review of the decision of the Secretary of State dated 21 April 2018 refusing to treat the applicant's submissions dated 19 April 2018 as a fresh claim under paragraph 353 of the Immigration Rules.
2. The applicant is a citizen of Bangladesh, born on 7 July 1983. His leave to remain in the United Kingdom as a student was curtailed on 18 December 2014. He did not apply for asylum until nearly two years later on 9 November 2016. He claims that his removal to Bangladesh would breach his rights under Articles 2 and 3 of the European Convention on Human Rights. That application was rejected on 7 April 2017 on the basis that he had not shown a well-founded fear of persecution. The Secretary of State was sceptical as to whether he had genuinely converted to Christianity but was of the view that he would be provided by the Bangladesh authorities with protection and had nothing to fear if he were returned to Dohar.
3. The applicant appealed that decision to the First-tier Tribunal, which heard his appeal on 31 May 2017. The First-tier Tribunal judge in his decision promulgated on 25 August 2017 was not satisfied that the applicant had genuinely converted to Christianity given inconsistencies in his account and his inability to identify basic tenets of the Christian faith. He noted that the applicant had not been baptised yet, which was telling. The First-tier Tribunal judge found that, even if he had accepted the applicant's account of having converted to Christianity and being in fear of Islamic extremists, the applicant would not be at risk of persecution due to the availability of internal protection in Bangladesh, and he could relocate internally within the country. His appeal was dismissed.
4. I note at this point that the applicant has now produced evidence from the pastor of the Gateway Church in Ashford, Mr Graham Hall, that the applicant was baptised on 4 June 2017, four days after the First-tier Tribunal hearing, as he had said in his evidence was about to happen. However, no attempt appears to have been made to convey that information to the First-tier Tribunal judge prior to his decision being promulgated nearly three months later.
5. Permission to appeal was refused by the First-tier Tribunal judge on 24 November 2017 and by the Upper Tribunal on 24 January 2018. On 19 April 2018 the applicant provided further submissions to the Secretary of State. In those he provided evidence of his baptism on 4 June 2017 and asserted again that there was a real risk of persecution at the hands of Islamic extremists if he were returned to Bangladesh, given that they could not tolerate apostasy. He also relied upon the arrest of a Facebook friend of his who had been arrested in circumstances where there seems to have been some State concern about the commission of offences of blasphemy.

6. On 21 April 2018 the Secretary of State refused to treat those submissions as a fresh claim. The letter of refusal noted that his claim to fear persecution on return to Bangladesh due to conversion to Christianity had been considered by the First-tier Tribunal, which did not accept that he was a credible witness or that he faced any harm on return. The Secretary of State considered the evidence that was now put forward and whether it had been previously considered and whether, taking all the evidence now available together, there was a realistic prospect of success before an immigration judge and concluded that there was not.
  
7. On 23 May 2018 the applicant sought permission to apply for judicial review of that decision. That application was originally dismissed on paper, by Upper Tribunal Judge Coker on 4 October 2018, concluding that the Secretary of State's decision was plainly and rationally open to her. The Upper Tribunal judge incorrectly said that, in his further submissions, the applicant had said that he was baptised two months prior to the First-tier Tribunal hearing and provided no evidence of his baptism to the First-tier Tribunal or explanation for failing to inform the First-tier Tribunal. This was factually incorrect, although if what the Upper Tribunal judge meant was that he had been baptised two months before the First-tier Tribunal decision, that was correct and, as I have already noted, the applicant had failed to inform the First-tier Tribunal of his baptism between the hearing and the decision. It was this error by Upper Tribunal Judge Coker which was one of the matters which concerned me when I looked at this case on the papers earlier this month and caused me to call it in for this hearing. However, as Ms Smyth for the Secretary of State correctly points out, when it came to the renewal hearing before Upper Tribunal Judge Allen, which is the actual decision against which the applicant seeks permission to appeal, that Upper Tribunal judge did not commit the same error. Notwithstanding the submissions by Mr Aslam this morning that Upper Tribunal Judge Allen had in some way committed the same error, it seems to me, having looked at the decision, that that is simply not the case.
  
8. In refusing permission, the Upper Tribunal judge said this:

"In essence, the evidence before the respondent was the same as that before the judge in August 2017. The more recent evidence was that of the baptism and the letters from Mr Hall, but as the decision-maker noted, the more recent background evidence took matters no further than the judge's conclusion that even taking the claim at its highest, there was a sufficiency of protection for the applicant in Bangladesh, and internal relocation was reasonable. The decision is unarguably lawful."
  
9. The grounds of appeal are somewhat diffuse. They adopt the grounds of judicial review and include complaints about the findings of credibility made by the First-tier Tribunal judge, but that is not on any view a ground of appeal against the decision of the Upper Tribunal judge to refuse permission to apply for judicial review. The skeleton argument contends that the applicant has demonstrated a genuine, well-founded fear of persecution and that law enforcement agencies in Bangladesh are not

reliable. Again, those are all matters which seek to re-argue his original claim. In summary, the grounds of appeal to this Court range far and wide in relation to arguments concerned with the underlying merits of the original claim but do not focus on the only matter which can be the subject of an appeal to this court, which is whether the decision that I have just quoted disclosed some error of law.

10. Since the grounds of appeal were filed, the applicant has also produced a number of newspaper articles from Bangladesh which refer to Islamist extremists having physically attacked the applicant's brother because the applicant had converted to Christianity and had been critical of Islam. It was the existence of this material which also caused me to call this matter in. However, none of this was material which was before the Secretary of State at the time that the decision was made, so it cannot support a case that the Secretary of State's decision was *Wednesbury* unreasonable, let alone that the Upper Tribunal judge committed an error of law in concluding that the Secretary of State's decision was rational and lawful.
11. Before the Court today, the applicant has been represented by Mr Aslam, who has not previously been involved in the case and was not responsible for either the grounds of appeal or the skeleton argument. His submissions to the Court today have been helpful and focused. He has focused on one specific point in the letter of further submissions of 19 April 2018, in which he submits that one of the points that was made by the applicant was that a social media activist who was a Facebook friend of the applicant has been arrested by the Bangladesh police for having been critical of Islam in a way which amounts to at least arguably an offence of blasphemy. Mr Aslam makes the point that if what is now happening is that the authorities in Bangladesh are pursuing people for the offence of blasphemy, that puts a completely different complexion on the question whether this applicant would or would not face the risk of persecution or would be protected by the Bangladesh authorities upon his return to Bangladesh.
12. Interesting though that point is, as Mr Aslam fairly accepts, it is not a point that was raised in the grounds for judicial review and, as Ms Smyth rightly points out, it is quite clear that on applications of this kind, the court can only proceed on the basis of the grounds of judicial review that are put before the Upper Tribunal and, on the basis of those grounds, consider whether the Upper Tribunal's decision is one which can be said to disclose an error of law. Given that this point about blasphemy and the actions of the Bangladeshi authorities was not a matter which was raised in the grounds of judicial review before the Upper Tribunal, it seems to me to be completely impossible to use those new points to argue that the decision by the Upper Tribunal somehow discloses an error of law. As Ms Smyth said, the new material in relation to the attacks on the applicant's brother will be capable of forming the basis of further submissions by the applicant to the Secretary of State which the Secretary of State will consider provided that they are made in accordance with the proper procedure. It seems to me that this point about whether or not the Bangladeshi authorities are now seeking to arrest people for the offence of blasphemy is also a point that could be made in those further submissions. If Mr Aslam has now been instructed in this case, I have little doubt that proper, focused submissions can be made to the Secretary of State which the Secretary of State can then consider to determine whether or not they amount to a fresh claim for

the purposes of paragraph 353. However, so far as this Court is concerned, none of that is relevant to the question which I have to decide, which is whether or not there is there is any arguable basis for saying that the decision of the Upper Tribunal judge discloses an error of law. In my clear view there is no such arguable basis, and this application for permission to appeal must be dismissed.

**Order:** Application refused

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