



Upper Tribunal
(Immigration And Asylum Chamber)

Appeal Number: PA/00455/2017

THE IMMIGRATION ACTS

Heard at: Field House
On: 2 November 2017

Decision and Reasons Promulgated
On: 24 November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MR S M S A
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr A Gilbert, counsel (instructed by Milestone Solicitors)
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their 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.
2. The appellant appeals with permission against the decision of the First-tier Tribunal Judge promulgated on 27 February 2017. She concluded that the appellant would not be at real risk of persecution in Bangladesh, either from the authorities or from anyone else if he were to return.

3. The appellant claimed that he was an atheist and that he had published anti-Islamic atheistic views. The Judge found that the appellant's published views on his Facebook and CEMB accounts are open to the public [32]. His beliefs would be recognised as insincere.
4. On 11 September 2017 Upper Tribunal Judge Perkins granted the appellant permission to appeal. He inclined to the view that the Judge was entitled to be sceptical about the depth and sincerity of the appellant's irreligious views. However, he was concerned that the Judge may have erred in concluding that his expressed views, however superficial or insincere, would not create a risk for him in Bangladesh. It was arguable that even if the Judge reached a permissible conclusion, the explanation in the decision and reasons was inadequate.
5. Mr Gilbert, who did not appear on behalf of the appellant at the hearing, adopted the grounds that he subsequently prepared in support of the permission application.
6. He submitted that the Judge erred in her approach to the assessment of whether or not there was a real risk of persecution on the basis of imputed religious views. Her findings at [34] constituted a material error. There the Judge held that the appellant's contributions did not fit the profile of a secularist and human rights blogger (academics, intellectuals) in Bangladesh who have drawn the adverse attention of fundamentalists and the authorities. She stated that:

“Given my findings of his lack of credibility there are substantial grounds to believe that he will not continue to blog if he was returned to Bangladesh. I also do not accept that he and his family have lost contact.”
7. He submitted that the finding that only contributions from academics and intellectuals and those of an academic or intellectual nature, have been persecuted, was unsupported by the background evidence. Nor did the general evidence about the behaviour of authorities and fundamentalists support a tendency to rational careful assessment of sincerity. There was evidence of a repressive, arbitrary regime, acting in the context of offences to religious sentiment. The Judge's presumption of a rational assessment was counter intuitive to the rest of the unchallenged evidence.
8. The Judge found at [32] that the appellant had since the end of December 2016 made himself a presence on the Internet in the UK, which was barely three months as at the date of hearing. There was scant evidence that his atheism had attained a level of cogency, seriousness, cohesion and importance such that he would be at real risk of persecution in Bangladesh by the authorities or non State actors [33].
9. Mr Gilbert referred to the evidence before the First-tier Tribunal, contained in a bundle consisting of about 250 pages. At page 104 there is reference to a rally regarding blasphemy laws and demanding death to atheists in Dhaka in 2013. An estimated 100,000 Islamists took to the streets calling for “death to the atheist bloggers.” Jamat called for a new blasphemy law with a death penalty. The prime minister noted that there are existing laws against the insult to religion which were enough to prosecute the bloggers.

10. Mr Gilbert referred to section 295A of the Bangladesh Penal Code which provides that any person who has deliberate or malicious intent to hurt religious sentiments can be imprisoned. This has been used in practice to prosecute and imprison atheists and secularist activists.
11. At page 105 there was reference to three men known for their writing on humanist, atheist and secularist topics who were murdered in 2015 in Bangladesh. This included a Mr Avijit Roy who was murdered on 27 February 2015. He was a blogger of great humanism, a proponent of secularism and a critic of Islamist fundamentalism.
12. Mr Gilbert submitted that within the framework of the evidence before her, the Judge had additional evidence which did not limit the persecutory treatment only to academics or intellectuals. This applied as well to Facebook bloggers.
13. The evidence before her included the article at page 144. An extremist Islamic group in Bangladesh listed 84 of such free thinking bloggers on a hit list. This was in 2013. Of those 84 named in 2013, ten bloggers have been brutally killed and three others seriously injured.
14. Mr Gilbert noted that that Judge correctly acknowledged at [29] that activities other than bona fide political/religious protests can create refugee status sur place – YB (Eritrea) [2008] EWCA Civ 390. The issue is whether the authorities would be likely to observe and record the claimant's activities, and whether they would realise or be persuaded that the activities were insincere. He referred to the various arrests or jailing of bloggers simply for "liking" a Facebook page and others for just "liking" his "like".
15. Mr Gilbert also referred to the appellant's Facebook activity which was produced in evidence. The findings at [33] that the appellant's beliefs would be recognised as "insincere" was inadequately reasoned. In Bangladesh the sincerity or otherwise of a publication would not be relevant to a successful prosecution. The question is whether he has deliberately acted. All that is required is that a person has deliberate or malicious intent to hurt religious sentiments. Intent "goes out of the window."
16. The approach of the government in prosecuting such people suggests that it does not act on the basis of rational assessment but rather in accordance with populist sensibilities.
17. On behalf of the respondent, Mr Avery submitted that the Judge has looked at the profile of the appellant as well as the circumstances prevailing in Bangladesh to see whether it would be likely that he would face difficulties.
18. The Judge conducted her analysis from paragraph 24-25. There she found that the great majority of his contributions amount to "likes" and "shares" of links about a range of issues including Islam, Donald Trump, God, Christians in Pakistan and so on.
19. She also acknowledged that they were accompanied by photographs of the appellant online [24]. She found that they had been read by between 50 and 198

people. One of his posts entitled “Religion is a Deadly Poison” read like an academic essay [25].

20. Mr Avery submitted that the finding at paragraph [34] that the appellant did not have a significant profile was thus entirely proper. He submitted that it is a question of assessing the evidence as to whether hardliners would take action. It cannot be asserted that the evidence is such as the description in YB (Eritrea). The government in Bangladesh is not acting in the same way. The government has taken action against those whom they think appropriate.
21. Her assessment of the risks and the likelihood that he would be affected on return is sustainable.
22. Mr Gilbert in reply submitted that the evidence before the Tribunal as set out at [8] is that his mother told him in January 2016 to return to marry a cousin. When he told her that he is an atheist she threatened to kill him if he returned. Bloggers have been killed for writing against religion. People will know he is an atheist because he will not fast or attend mosque. He will have to be open to them. He cannot be a Muslim again. He will continue to blog there.
23. He submitted that this indicated the 'chilling effect' on the appellant's beliefs having regard to a hit list of bloggers. The government responds to public complaints. He submitted that there is a pattern. The consequence is that they are mostly not willing to put their heads above the parapet. The Judge was too narrow in her finding regarding risk that would result.

Assessment

24. I have referred to the Judge's findings at [34]. There is force in Mr Gilbert's contention that the Judge incorrectly limited the category of persons who would draw the adverse attention from fundamentalists and the authorities. This does not only apply to secularists and human rights bloggers, who are academics and intellectuals in Bangladesh.
25. Although the Judge made findings regarding the appellant's lack of credibility she did accept at [32] that the appellant had expressed anti Islamic sentiment, having made himself a presence on the internet in the UK. She found this on the basis that his CEMB and Facebook accounts are open to the public.
26. I have had regard to the relevant background evidence produced in the appellant's bundle, some of which I have already referred to, regarding the potential difficulties to atheist bloggers.
27. In the appellant's Facebook entries before the Judge there were several examples of anti Islamic sentiment. At page 53 there was reference to brainwashed and indoctrinated persons from birth. Islam is not a religion, it is a brainwashing cult advocating death, paedophilia, domination and genocide to all others. The Koran should be banned from the face of the earth.
28. At page 54 there is a blog which the appellant “likes” describing the historical Muhammad as in fact an ambitious terrorist, criminal and murderer – his entire life was based on victimising innocents and indulging in violence, carnage and

massacre. There are further examples at pages 56 and 57. The prophet Muhammad was referred to as a robber.

29. At page 58 there is a reference to 'nice things' about being an atheist. There is a post by the appellant at page 66 referring to intellectual killings by religious fundamentalists which has a thousand year history. Ahmad Rony 'made a wonderful video on this killing'. The link is given.
30. At page 74 there is a photograph in which Islam and Islamisation are described as terrorist and terrorism, two bodies, one name. There is a post at page 76 which the appellant "likes" where there is reference to Buqba mocking Muhammad in Mecca and writing derogatory words about him. Muhammad ordered him to be executed. The prophet coldly stated that hell would look after his children. At page 102 there are photographs produced which are said to include the appellant as well.
31. The blogging and Facebook entries by and "liked" by the appellant are provocative and anti Islamic.
32. The evidence thus pointed to bloggers, who are not only academics or intellectuals in Bangladesh, who have been at risk of serious harm. This includes ten bloggers who were murdered by non State agents who track persons down by poring over Facebook comments and secular websites – pages 138-9.
33. The Judge has not properly assessed the potential risk to the appellant (which would not be based upon his sincerity or otherwise), from fundamentalists and the authorities who would seek to crack down on those who are perceived as expressing anti Islamic sentiment.
34. I accordingly find that the decision of the First-tier Tribunal contains an error on a point of law. I set aside the decision. I have had regard to the Senior President's guidelines relating to the remitting of cases to the First-tier Tribunal. This will be a complete rehearing requiring detailed findings of fact.

Notice of Decision

The decision of the First-tier Tribunal Judge involved the making of an error on a point of law. It is accordingly set aside.

The appeal is remitted to the First-tier Tribunal (Taylor House) for a fresh decision to be made before another Judge.

Anonymity direction continued.

Signed

Date 23 November 2017

Deputy Upper Tribunal Judge C R Mailer