



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/11921/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 15 May 2017**

**Decision & Reasons  
Promulgated  
On 31 May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE A MONSON**

**Between**

**SW (BANGLADESH)  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Ms R Head (Counsel instructed by Lawrence Lupin Solicitors)

For the Respondent: Ms K Pal (Specialist Appeals Team)

**DECISION AND REASONS**

1. The Appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Sweet sitting at Hatton Cross on 13 November 2016), dismissing his appeal against the decision of the Secretary of State to refuse his protection and human rights claim which was brought on the basis that he was a Christian convert; that he would be perceived as gay in Bangladesh (although he was heterosexual); and that he faced a real risk of serious harm on account of being involved in a family property dispute and because of his unusual sexual preferences.

2. On 23 March 2017, the First-tier Tribunal Judge Osborne granted the Appellant permission to appeal for the following reasons:
  - “2. The Grounds assert the Judge failed to make a finding on a relevant matter. The authenticity of the Appellant’s conversion to Christianity was a matter of dispute in the appeal. The Judge found the Appellant was not a genuine convert to Christianity. The Appellant also submitted that he had changed his name which was a necessary step in his conversion to Christianity. The documentary evidence clearly demonstrated the Appellant had formally changed his name. The Judge failed to make a clear finding as to whether the Appellant would be perceived as a Christian upon return to Bangladesh. Notwithstanding the Judge’s finding that the Appellant was not a genuine convert to Christianity, the Judge should have considered whether the Appellant would be perceived as such in the light of his change of name. The Judge made a finding which was inconsistent with the medical evidence. The psychiatric report included a clear opinion that the Appellant has developed a serious psychosexual order of paraphilia. The evidence also confirmed the Appellant suffered with PTSD. Although the Judge found the medical evidence was not recent (it dated from 4 November 2014 and 15 September 2015) there is no indication that the disorders from which the Appellant suffers are likely to subside as the medical evidence suggests the conditions are likely to be long term. The Appellant has not yet undergone treatment and therefore his conditions continue. The Judge failed to consider the impact of the Appellant’s removal in the light of his serious psychiatric condition.
  3. In an otherwise careful, succinct, and focused decision and reasons, it is nonetheless arguable that the Judge failed to make a finding upon whether return to Bangladesh the Appellant would be perceived as a Christian due to his having changed his name from his previous Muslim name to [SW]. It is clear from the Appellant’s statement that the genesis and use of the Appellant’s name is an issue to be decided in the appeal. It was arguably an error of law that the Judge failed to do so. Additionally, it is arguable that the Judge should have considered the impact to the Appellant’s removal in the light of his serious psychiatric condition.”

### **Relevant background facts**

3. The Appellant is a national of Bangladesh, whose date of birth is 22 February 1986. On 18 June 2006 he applied for entry clearance as a student, and he was granted entry clearance in this capacity. He entered the United Kingdom shortly thereafter.
4. In August 2008 he changed his name by deed poll to an English name. On 11 January 2009, he was baptised by the Reverend David McConkey at St Mark’s Church in Swindon. The Appellant’s student visa ran until 31 December 2009. He overstayed, and was encountered in 2013 working illegally. The Appellant claimed asylum, following his arrest.
5. As summarised in the subsequent refusal decision, the Appellant’s claim was that while growing up in Bangladesh, he had been subjected to sexual abuse by his aunt. Since coming to the UK, he had converted from Islam to Christianity. Between 2009 and 2012 he had received five to six threats on his telephone and via email from his cousin, I, who was connected to Jamaat Islami and who had become aware of his religious conversion. His uncle, I’s father, and cousin threatened his mother in person about this in 2009. The Appellant also received death threats from the same paternal uncle in relation to a property dispute.

6. On return to Bangladesh, he would be perceived as gay because of his appearance and behaviour. He feared his paternal uncle in relation to the property dispute; he feared his cousins, Jamaat Islami and wider society in relation to his religious conversion; and he feared his aunt in relation to sexual abuse. He also feared wider society due to his uncommon sexual preferences and his perceived homosexuality.
7. On 10 October 2016, the Secretary of State gave her reasons for refusing the Appellant's protection and human rights claim. With regard to his conversion to Christianity, he said he changed his name because he had become Christian. However it was noted that since he changed his name by Deed Poll on 1 August 2008, he had also used his birth name in relation to his dealings with the NHS. If he had changed his name from a Muslim name to a Christian name out of genuine religious feeling, it was reasonable to expect him to use the same name consistently in all his dealings with public bodies in the UK since 1 August 2008, however he had failed to do so.
8. With regard to childhood sexual abuse, he claimed he was subjected to sexual abuse from the age of seven until the age of 16 by his maternal aunt. He also claimed that his aunt had made a video recording of the abuse which she had shown to others. This account was internally inconsistent and also ran counter to the background evidence which was that a woman who disclosed rape faced stigma and humiliation in Bangladesh. So it was not credible that his aunt had made a video recording of sexual acts with him which she had showed to others.
9. He claimed that, as a consequence of his childhood sexual abuse, he had developed a strong sexual preference for performing oral-anal sex on women. The Medico-Legal report which he provided said he had a serious psychosexual disorder which required treatment. But he had provided no evidence that he had engaged in a course of psychosexual treatment or that he was awaiting such treatment. He had provided photographs of himself with various young women, but these photographs were not accepted as evidence that he had engaged in any specific sexual practices with these women.

### **The Hearing before, and the Decision of, the First-tier Tribunal**

10. Both parties were legally represented before Judge Sweet. The Appellant was called as a witness, and was extensively cross-examined by the Presenting Officer.
11. He had chosen his new first name because it was a Christian name and the name of one of the twelve disciples of Jesus Christ. He had chosen his new surname because he liked the product associated with this name.
12. He had gone to a doctor about his health problems in 2013 after claiming asylum. He still took medication, which was Chinese herbal medicine. He could not get a prescription from a GP. He had not renewed his previous prescription, because it did not help him.

13. His last date with a girl had been 2013/2014. Before that he was with a Romanian girl for five years on and off. He did not want to get married to her. She was more like a friend. He did not tell his work colleagues that he liked girls in the way that he did.
14. In his subsequent decision, the Judge found at paragraph [39] that the Appellant's conversion to Christianity was not genuine but self-seeking, and effectively he was not an active Christian. Therefore he would not be at risk on return to Bangladesh in respect of this aspect of his claim.
15. At paragraph [40], the Judge referred to the medical evidence which included a medical report of Dr Worwood dated 1 October 2013, a report from the Helen Bamber Foundation of 4 November 2014, a report from Dr Nair, Consultant Clinical Psychologist, and a report from Annette Wade, CBT therapist.
16. The Judge took into account the Appellant had not reported his medical condition until 2013 after he was arrested as an overstayer and when he made his claim for asylum. He also observed that he had not made any effort to undergo further medical treatment or to provide any updated medical evidence in support of his claim. Although he accepted that his sexual deviation would be regarded as unusual on return to Bangladesh and adverse attention might be drawn to him, he held that there was no updated medical evidence to confirm his condition and there was no updated evidence that he would behave in an inappropriate way on return to that country.
17. On the issue of risk on return, the Judge further observed that the Appellant was unable to explain satisfactorily why his mother still lived with his aunt, if his aunt was as deviant as he claimed.

### **The Hearing in the Upper Tribunal**

18. At the hearing before me to determine whether an error of law was made out, I reviewed some of the documents which were before the First-tier Tribunal Judge, including Ms Head's Skeleton Argument and the Medico-Legal report from the Helen Bamber Foundation.
19. Ms Head agreed that she had not put forward a case that the Appellant faced a real risk of serious harm on return to Bangladesh on account of his mental health. She submitted that, having accepted that his sexual deviation would be regarded as unusual in Bangladesh, the Judge had not adequately explained why the Appellant would not behave in an inappropriate way so as to draw adverse attention to himself.

### **Discussion**

20. The case put forward by Ms Head in her Skeleton Argument before the First-tier Tribunal was that the Appellant would be at risk on return to Bangladesh as a genuine Christian convert: either he would be persecuted as a convert or he would not be able to practice his religion openly due to fear of persecution.

21. Ms Head did not advance an alternative case that, even if the Appellant was not a genuine convert to Christianity, nonetheless he would be at risk of being perceived as a Christian convert simply on account of him having adopted an English name.
22. In his witness statement of 24 November 2016, the Appellant admitted at paragraph 27 that he had stopped studying the Bible in 2008 - which was before he was baptised. He also admitted that one of his motives for changing his name and converting to Christianity was his attraction to white girls. He said at paragraphs 92 and 93 that he had come to the United Kingdom partly to study, but also he wanted to experiment with sexual activity with white girls. He thought white girls would be more attracted and interested in him if he was a Christian.
23. At paragraph [39] of his decision, the Judge accepted that the Appellant had been baptised on 11 January 2009 and that he had chosen his new first name because it was the name of one of Christ's disciples. But he observed that his attendance at church, by his own admission, had been extremely brief and fitful. The Judge also took into account his limited knowledge on Christianity which had been set out in the Refusal letter.
24. It is not argued by way of appeal to the Upper Tribunal that the Judge did not give adequate reasons for concluding in paragraph [39] that the Appellant's conversion to Christianity was not genuine, but was "*self-seeking*"; that he was not an active Christian; and that he would not wish to practice Christianity on return to Bangladesh.
25. Since he would not be practising Christianity on return to Bangladesh either openly or discreetly, it was not incumbent upon the Judge to consider whether a real risk of harm would arise simply because the Appellant chose to continue to refer to himself by an English name which includes as a first name the same name as one of the twelve Apostles. As it happens, the name chosen by the Appellant does not in fact precisely correspond to the name of the apostle in question, as is clear from the Judge's discussion of this issue at paragraph [39]. So the connection is tenuous at best. If the Appellant does not otherwise present as a Christian convert in Bangladesh through his conduct and behaviour, there is no reason to suppose that his chosen name will arouse suspicion that he is a secret convert to Christianity, particularly in a Muslim society where there would be no reason for people to have knowledge of the names of the twelve Apostles.
26. Moreover, in the light of the Judge's sustainable findings of fact, the Appellant's new name is not an essential part of his identity. It is not a genuine expression of a new religious faith. So it is reasonable to expect the Appellant to revert to his old name to avoid societal embarrassment in Bangladesh. As the Judge held at the end of paragraph [39], **HJ (Iran) and HT (Cameroon) [2010] UKSC 31** does not assist the Appellant.

*The Report of Dr Worwood dated 1 October 2013*

27. In his report of 1 October 2013, Dr Graham Worwood, lead Consultant Psychiatrist, reported to the Appellant's GP in Nottingham that the Appellant's presenting problem was that he could not form relationships in the way he would like with women and he felt persistently low at points and was struggling to sleep. He stated he found it impossible to have a normal relationship with a woman because he was only interested in engaging with them sexually in the way that he did with his aunt. He described a five year relationship with a Romanian girl in England in which he did this and he had also gone to prostitutes in London and in Nottingham who he had paid to be able to provide them with oral sex. He described being unable to get an erection unless he engaged in this activity. He also reported at times he ingested female faeces during the process and he reported that this gave him vitamins to make him feel healthy and positive. He reported feeling very happy and positive after being able to engage in this activity. When not doing this, the Appellant described that he felt quite low. In terms of physical issues, the Appellant described that he had erectile issues but otherwise his physical health was good.
28. He would always ask women if they wanted to engage in anal oral sex with him and he had never imposed himself on anyone to do this. He had no history of violence. He recently gave up smoking, and he did not drink any alcohol and did not take medication.
29. On a mental state examination, there was no formal thought disorder. There was no current suicidal intent or plans. There was no evidence of any delusions or psychosis. He was not worthless or hopeless. There was no obsessive compulsive behaviour. He appeared to have symptoms of PTSD, but cognitively he presented as grossly intact with no issues.
30. Dr Worwood asked the Appellant's GPs to prescribe the Appellant with mirtazapine, with the aim of improving his PTSD symptoms and insomnia. He did not feel that the Appellant presented a significant risk of violence or sexual assault others.

*The Medico-Legal Report based on an examination of the Appellant in November 2014*

31. The Helen Bamber Foundation Medico-Legal report bears two dates. At the front of the report, the date of report is given as 4 November 2014. But the statement of truth at the end of the report, made by Professor Muhammad Abou-Saleh, Consultant Psychiatrist, bears a date of 15 September 2015.
32. It appears that the consultant saw the Appellant in a consulting room at the Helen Bamber Foundation of 4 November 2014, and that the resulting report is based on that examination and upon medical records from 2013 and earlier in 2014.
33. He diagnosed the Appellant as having developed a serious psychosexual disorder of paraphilia, which is defined as any intense and persistent sexual interests other than sexual interest in genital stimulation or

preparatory fondling with phenotypically normal, physically mature, consenting human partners. For a form of diagnosis of paraphilia disorder, the behaviour must cause significant distress to the individual and/or to others.

34. With regard to treatment and prognosis, he said that the Appellant had good insight in his mental health problems and appreciated the need for treatment. He advised the Appellant to seek the help of his GP. He was currently on appropriate pharmacological treatment which needed to be continued for many months. More importantly, he would need specialist psychological treatment for his complex PTSD and chronic psychosexual disorder. The treatment was long-term and needed to be provided for many months. His mental health conditions were unlikely to improve without appropriate treatment. Moreover, his condition was aggravated by his uncertain resident status and the threat of his appeal being rejected and him being removed to Bangladesh.
35. In his view, there was a high risk that the Appellant's mental health would deteriorate if he was told that he had to return to Bangladesh such that there might be a real risk of him attempting to self-harm or commit suicide.

*The Appellant's account of his current state of health*

36. In his witness statement for the appeal hearing, the Appellant said that he had been taking Chinese herbal antidepressant tablets for the past four or five months. He found that they made him feel better. But sometimes they did not help him. He was not sure whether the same tablets were available in Bangladesh, because he did not have depression in Bangladesh.
37. At paragraph [89] of his witness statement, he said he feared for his safety and future in Bangladesh. He continued:

"Another reason I could not live in Bangladesh is that due to my sexual preferences it would be too difficult."
38. The Appellant went on to explain that he needed to have oral-anal sex with white girl. In Bangladesh there were no white girls and so he would not be able to have sex with them. He did not have attraction to Asian girls.
39. The report from Professor Abou-Saleh laid the foundation for a potential claim under Article 3 and/or Article 8 ECHR on mental health/suicide risk grounds. But as Ms Head confirmed to me in the course of oral argument, she did not advance such a case on the Appellant's behalf, recognising that the evidential threshold for the maintenance of such a claim was very high.
40. Instead, the case which was advanced on the Appellant's behalf was that he would be liable to face persecution in Bangladesh as someone who openly suffered from a serious psychosexual disorder. At Paragraph 37 of

her Skeleton Argument, Ms Head submitted that the Appellant's unusual sexual preferences would "*without doubt*" draw adverse attention from the general public and also from extremist groups. The Appellant could not live openly as he chose in Bangladesh without putting himself at real risk.

41. At the time of the hearing before Judge Sweet, two years had elapsed since the Appellant's last examination by a consultant psychiatrist. I consider that it was open to the Judge to find for that reason alone that his condition was not shown to be as bad as it had been assessed two years earlier, particularly when the Appellant reported that the Chinese herbal medicine that he was taking was of some help in managing his depression.
42. For the same reason, it was open to the Judge to find that there was not a real risk that he would behave "*in an inappropriate way*" on return to Bangladesh so as to attract adverse attention, as there was no updated medical evidence to show that he could not manage his psychosexual disorder, despite not having undergone the therapy and counselling recommended by the Consultant Psychiatrist in November 2014.
43. As I explored with Ms Head in oral argument, the Appellant's evidence was that he had pursued his sexual preferences discreetly in the UK, and only with consenting adults. It was not part of his account that his sexual activity had caused distress to others: the distress was only to himself. Although he did not fear persecution in the UK, his evidence was that he did not openly discuss his sexual preferences or act in a way which drew attention to his sexual preferences.
44. So while adverse attention might be drawn to the Appellant on return to Bangladesh if his sexual preferences became a matter of public knowledge, there is not, and was not, any reason to suppose that the Appellant would be any less discreet in Bangladesh about his sexual preferences than he was in the UK.
45. Ms Head raised with me the potential difficulty that the Appellant would encounter in Bangladesh in finding prostitutes to answer his sexual needs. However, since his sexual needs are said to reflect a psychosexual disorder, the difficulty in gratifying them in Bangladesh is not a matter which engages the Refugee Convention.
46. The thrust of the Medico-Legal report was that the Appellant needed treatment to cure him of his psychosexual disorder, and it was not part of the Appellant's case before the First-tier Tribunal that he would not be able to access psychiatric treatment for this disorder in Bangladesh. The case was solely put on the basis that, while the disorder was untreated, the Appellant would be liable to persecution as a sexual deviant.
47. As I have rehearsed above, there was in fact no evidential platform for the proposition that there was a real risk of the Appellant drawing attention to himself as a sexual deviant on return to Bangladesh, even if his condition remained as diagnosed by the Consultant Psychiatrist in the Medico-Legal report of 4 November 2014.



48. In conclusion, for the reasons given above, I find that the decision of the First-tier Tribunal does not contain a material error of law. The Judge has given adequate reason for finding against the Appellant, bearing in mind the way in which the case was put on his behalf, and the Appellant's own evidence that, with regard to his sexual preferences, his apprehension on return was not that his sexual preferences would become public knowledge, but that he would find it very difficult to pursue them.

**Notice of Decision**

49. The decision of the First-tier Tribunal does not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

**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  
Deputy Upper Tribunal Judge Monson

Date: 27 May 2017