



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

Appeal Number: PA/12965/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 10 May 2017**

**Decision Promulgated
On 14 June 2017**

**Before
DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA**

Between

**MR JOWEL AHMED
(Anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr M Aslam of Counsel

For the respondent: Mr Whitwell, Senior Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Bangladesh born on 12 November 1989, appeals to the Upper Tribunal against the decision of the First-tier Tribunal Judge McIntosh dated 23 February 2017 to refuse his appeal against the decision of the respondent dated 4 November 2016 to refuse to grant the appellant asylum and humanitarian protection in the United Kingdom.
2. Permission to appeal was granted by First-tier Tribunal Judge Kelly on 23 March 2017 stating that it was arguable that adequate reasons were not

given in the decision for why the appellant would not be at risk on return to Bangladesh as it was “acknowledged” that the appellant was an atheist.

3. At the hearing, I heard submissions from both parties. On behalf of the respondent Mr Aslam submitted that it is clear from the decision which is very brief that adequate findings were not made. He said that no attempt has been made to assess the appellant’s risk of harm on return to Bangladesh. It is not clear whether the judge accepted that the appellant is a Muslim. He did not take into account the evidence that the appellant’s father has threatened to report the appellant to the police. The Judge has not applied the proper standard of proof.
4. On behalf of the respondent, Mr Whitwell relied on his rule 24 response and said that the grounds of appeal are 10 pages long. He stated that the grounds are predicated on the fact that the appellant is an atheist. The Judge was aware of the context at paragraph 31 to 33 of his decision that the claim was that the appellant claims to be an atheist and is at risk on his return to Bangladesh for that reason. The judge referred to background material submitted that atheist bloggers have been attacked and killed in Bangladesh. He also referred to an article in Wikipedia that although according to the constitution of Bangladesh, citizens of the country have freedom of religion, all kinds of religious discrimination is illegal but religious minorities and atheists are conspicuously underrepresented by the government and society in the country.
5. In reply Mr Aslam submitted that at paragraph 10 the Judge had applied too high a standard of proof when he stated in his decision at paragraph 10 that, “substantial grounds for believing” in humanitarian protection appeals must be demonstrated when it should have been a reasonable likelihood standard of proof. He submitted that the decision is fatally flawed.

Decision as to whether there is an error of law in the determination

6. I have given anxious scrutiny to the determination of the First-tier Tribunal Judge. He concluded that he did not find the appellant credible or his claim credible and dismissed his appeal. The appellant’s quarrel with the decision is that there was a lack of adequate reasoning for rejecting the claim and that the Judge placed too high the burden of proof on the appellant and a lack of findings on relevant evidence placed before the Judge. Mr Aslam submitted that the “substantial grounds” is not the correct standard of proof in humanitarian protection cases.
7. At paragraph 10 of the decision, the Judge set out the burden and standard of proof required for the appellant to succeed in his claim for humanitarian protection. “The Judge stated that the appellant has to prove that there are “substantial grounds” for believing that the appellant meets the requirements of the Qualification Regulations.

8. The standard of proof with regard to Humanitarian Protection, it is for the appellant to establish substantial grounds for believing that returning him will result in a real risk of him suffering serious harm as defined at paragraph 339C of the Immigration Rules and thus that he is entitled to Humanitarian Protection. It is in asylum cases the assessment of the appellant's evidence and his fears, is whether there is a reasonable likelihood that he has established a real risk of persecution.
9. Therefore, the Judge set out the correct burden and standard of proof paragraph 10 of the decision.
10. The Judge stated at paragraph 43 of his decision that Home Office presenting officer identified the issues in the appeal and accepted that if the appellant can prove that he is an atheist, he will be at risk in Bangladesh. This demonstrates to me that the issue before the Judge was very clear and given the respondent's concession, the only question in the appeal was whether the appellant is an atheist as claimed. The Judge found the appellant's claim that he is an atheist not credible and dismissed his appeal.
11. One of the Judge's reasons were based on the appellant's immigration history of the appellant. Which was that the appellant was granted leave to remain as a student in 2009 with a valid student visa until 2012. The appellant's leave was extended until 2016 but prior to this on 17 September 2015, his leave was curtailed. The appellant appealed against the decision curtailing his leave and on 5 January 2016 the appellant received a pre-action protocol response, upholding the decision. On 1 March 2016, the appellant was given notification for his removal from the United Kingdom and on 27 April 2016, the appellant claimed asylum.
12. This demonstrated to the Judge that the appellant only claimed asylum after removal notification was sent to him and was entitled to take that against the appellant's credibility under s8 of the Asylum and Immigration (Treatment of Claimants, Etc.) Act 2004.
13. The appellant claims that he ceased Islamic observations of attending the mosque and fasting and no longer considered himself a Muslim from November 2015 and told his family about his feelings and stated that his attendance at the mosque had ceased six months previous to his asylum claim. The Judge therefore was entitled to find that the appellant who had become aware as of November 2015 of the risks he faced from his family if returned to Bangladesh, did not claim asylum until 2016. The Judge was therefore entitled to take this against the appellant's credibility and the credibility of this claim.
14. The Judge also properly advised himself that section 8 is not the starting point of his assessment of credibility but a factor he takes into account in his overall assessment and referred to the case of **SM [2005] UKAIT 00116**.

15. The Judge also did not find credible that while the appellant claimed that he questioned the validity of Islam while he lived in Bangladesh in 2005/2006 but when he came to the United Kingdom in 2009, he continued to attend the local mosque even though there was no pressure on him to attend. The Judge was entitled to find not credible that the appellant who claims he cannot return to Bangladesh as an atheist, would come to this country and continue to attend mosque and continue other Islamic practices. The Judge found that this goes to the credibility of the appellant's claim that he has become an atheist. This was the sole issue in the appeal which is whether the appellant is an atheist or not.
16. The quarrel with the Judge is that he did not give many reasons for finding that the appellant is not an atheist. There do not always have to be many reasons given for the Judge to make a sustainable finding on the evidence. In this case the Judge gave sufficient valid and sustainable reasons for not finding appellant credible or his claim credible.
17. Given that the Judge found that the appellant is not an atheist for valid reasons he found that the appellant does not have any desire to publicly preach about his lack of belief of Islam. The Judge at paragraph 41 stated "I am not convinced that the appellant has any particular desire to publicly preach about his lack of belief in Islam or in any other religious belief." This is a clear misdirection as to the standard of proof because the Judge does not need to be convinced of anything. However, in the context of this decision, I find that it is not a material error which infected his findings that the appellant is not an atheist. It follows that if the appellant is not an atheist, inevitably he would not preach atheism, if returned to Bangladesh. On the correct standard of proof, the Judge would have found the same.
18. The Judge questioned why the appellant would tell his family in Bangladesh after 2014 that he is an atheist and that he is no longer attending the mosque or fasting. This date coincides with the appellant's leave to remain being cancelled. The Judge was entitled to find that when the appellant had no leave to remain in the United Kingdom, he decided to tell his family about his purported atheism even though he claims that he was aware of it since 2005/2006. The Judge found that the appellant must have known that by telling his family in Bangladesh, he would not be able to go back to that country, which was a way of achieving his objectives of not returning to Bangladesh. I find that the inference is inescapable that the appellant asylum claimed asylum to frustrate removal.
19. The Judge made an error when he stated that there is "no corroborative evidence," of the appellant speaking about atheism to his family and close friends. I read the Judge as saying that the appellant could have brought evidence from one of his friends to say that he has told them he is an atheist. The Judge is entitled to find that the appellant by not providing evidence which would have been relatively easy for him to obtain, the absence of some easily obtainable evidence, goes to his credibility. I find that it is not a material error of law in the context that the Judge used it.

20. The Judge notes at paragraph 38 that his father said he will report him to the police if he returns to Bangladesh. The Judge was entitled not to believe this evidence that the appellant would be arrested on his return to Bangladesh. The Judge considered it and gave cogent reasons for rejecting it.
21. Similarly, the Judge he was entitled not to believe that the appellant's claim that he was thinking of starting a blog about atheism. This indicated to the Judge that the appellant is attempting to mould this case around existing background that atheist bloggers have been arrested in Bangladesh, and not the other way around. If the appellant wanted to write a blog and given that he became disenchanted with Islam in 2005/2006, no credible reason was advanced by the appellant for why he has not done so earlier given that he has been in this country since August 2009.
22. The question I now must ask myself is whether these reasons given by the Judge were sufficient to dismiss the appellant's claim. The Judge was entitled to find that the appellant was not an atheist or that he was genuinely in fear of returning to Bangladesh for that or any other reason whatsoever.
23. I find from the reasoning of the Judge for dismissing the appellant's appeal is unassailable. I find that no differently constituted Tribunal would reach a different conclusion, on the evidence in this appeal.
24. I find that no error of law has been established in the First-tier Tribunal decision. I accordingly uphold that determination I dismiss the appellant's appeal.

Decision

I **dismiss** the appellant's appeal

Dated this 12th day of June 2017

Signed by,

A Deputy Judge of the Upper Tribunal

.....

Mrs S Chana