



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13400/2017

THE IMMIGRATION ACTS

Heard at Field House
On 11 July 2018

Decision & Reasons Promulgated
On 24 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR M K D
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Shrestha, Counsel instructed by E1 Solicitors
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Bangladesh, born on 1.1.89. He arrived in the United Kingdom on 27 November 2010 with a student visa valid to 30 June 2013. He was subsequently granted further leave to remain but was encountered by the police working illegally and on 27 September 2017 was arrested working illegally and detained. He claimed asylum on 30 September 2017. His claim was processed through the DAC and refused on 29 November 2017.

2. His appeal came before First-tier Tribunal Judge Housego for hearing on 3 April 2018. In a decision and reasons promulgated on 18 April 2018 he dismissed the appeal. An application for permission to appeal, made in time, asserted that the Judge erred materially in law:

- (i) in taking as his starting point that the Appellant is an economic migrant and placing disproportionate weight on the Appellant's conduct in the UK;
- (ii) in confusing various aspects of the protection claim, having accepted at [28] that the Appellant is a Hindu;
- (iii) in failing to consider the Appellant's profile and writing activity as a Hindu;
- (iv) in failing to provide any reasons for finding the Appellant could internally relocate;
- (v) in making an adverse credibility finding on the basis that the Appellant failed to mention in interview that he is an atheist when the Appellant's claim was made on the basis that he is a Hindu;
- (vi) in failing to give adequate reasons for attaching no weight to the report from the Metropolitan Police and the hospital report corroborating the claim;
- (vii) in failing to consider the claim in the context of the objective and background material showing a risk on return due to the treatment of minorities in Bangladesh;
- (viii) in concluding that the Appellant has no private life in the UK and in failing to consider whether there would be significant obstacles to his return to Bangladesh.

3. In a decision dated 15 May 2018, permission to appeal was granted by First tier Tribunal Judge Kelly on the basis of (v) above only.

4. A rule 24 response dated 11 June 2018 was lodged by the Respondent, asserting that there was no material error in the Judge's approach to the evidence and it was clear that he was well aware of the basis of claim and the Appellant's claimed activities and it was the Appellant who relied on evidence from atheist publications.

Hearing

5. At the hearing before me, Mr Shrestha submitted that permission to appeal had been granted on the basis that the unexplained reference to atheism at [30] of the decision demonstrates that the Tribunal fundamentally misunderstood the Appellant's case, which centred on him being a Hindu.

At [28] the Judge found the Appellant to be a Hindu. The Judge's finding at

[30] is wrong: see q.113 of AIR "*we faced a lot of problems in our area during our puja.*" This is a Hindu festival. The Appellants fear is from local political leaders and Islamic extremists, which he said belong to different political parties - the BNP and Awami League.

6. The Appellant does not say either at question 13 that he was an activist for the BNP. He fears the BNP. The Judge having found that the Appellant is a Hindu should have gone on to consider the evidence which shows that Hindus are persecuted. At AB 90 is a blog post by the Appellant comparing Allah is being an inspiration to a rapist. Mr Shrestha submitted that the Judge has determined the case on the basis of the Appellant being an atheist not a Hindu.

7. In his submissions, Mr Duffy stated that there are several paragraphs where the Judge notes that the basis of the claim is that the Appellant is a Hindu see [18] at A2. At [28] the Judge finds the Appellant is a Hindu; at [42] "Atheist in Bangladesh" refers to A1: 92. The Appellant introduces the confusion by introducing the concept of atheism and this publication. The Appellant may also have been atheist.

8. In respect of [30] it is just one paragraph in 25 paragraphs which deal with credibility. He acknowledged it does not reflect what is said in q.113. However, it is an error of fact but it is not material in light of the credibility findings at a whole. The Judge is aware the Appellant's claim is based on Hinduism.

9. There was no reply by Mr Shrestha.

10. I reserved my decision, which I now give with my reasons.

Findings

11. I have concluded that there are material errors of law in the decision of the First-tier Tribunal Judge in the following respects:

11.1. The Appellant's case has been consistently put forward in his screening and asylum interviews and at the hearing before the First-tier Tribunal on the basis that he is a Hindu who was targeted by Islamic extremists. At no stage did he claim to be an atheist, however, he sought to rely on a publication "Atheist in Bangladesh" in which one of his blog posts was published. I find that the Judge may have become confused as to whether the Appellant was a Hindu and/or an atheist [30], [42] and erroneously held against him the fact that he did not state in his substantive interview that he was an atheist when it was never his case that he is an atheist.

11.2. The Appellant also mentioned in his asylum interview that he did "write-ups" regarding torture and used to write against the government and the law and against the extremists parties [Q & A 14]. See also Q41 and Q & A 71. The interview was conducted in Bengali and I consider that his can properly be read as blogging or writing and publishing comment adverse to the government and Islamic extremists. At [38] the Judge considers the Appellant's claim to have engaged in blogging activity but finds that his credibility is adversely affected by the Appellant's response in cross examination to the question as to why there was a long gap of 18 months

between posts and only 5 blog posts that he had other blogs not produced in evidence but then backtracked on that answer. This finding was open to the Judge. At [52] the Judge rejected the Appellant's account that he had received threats on account of the blog posts "*given the other difficulties with credibility of the evidence of the appellant, I do not find the evidence of the appellant as to those threats reliable.*" However, I find that the Judge materially erred in this respect in that he failed to consider whether the fact the blogs exist and have been published would in any event give rise to future threats or persecution of the Appellant if returned to Bangladesh.

11.3. I further find that the Judge erred in failing to place any weight on the Appellant's evidence that there was a court case against Artifur Rahman, the editor of "*Atheist in Bangladesh*" and the Appellant himself and other contributors in light of email correspondence that there was a such a court case and a copy of the complaint sheet and translation. Whilst the Judge was entitled at [45]-[48] to place weight on the fact that there was an absence of any other evidence from Artifur Rahman directly, despite an adjournment request to obtain such evidence, I do not consider that this is sufficient reason not to engage with the evidence that was before the Judge as to an ongoing Court case and to make a clear finding on this evidence.

12. Whilst permission to appeal was granted only in respect of Ground (v) above I find that the points at [11] above are Robinson obvious and/or were raised in the grounds of appeal to the Upper Tribunal and have merit. Despite the fact that the Judge made further adverse credibility findings I consider that his decision as a whole cannot stand in light of the errors identified above, which go to the centrepiece of the claim.

Decision

13. For the reasons set out above, I find material errors of law in the decision of First-tier Tribunal Judge Housego. I set that decision aside and remit the appeal for a hearing *de novo* before the First-tier Tribunal.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman
2018

dated 14 August