Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06880/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 January 2019	**On 31 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

MR MKA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Jorro, Counsel, instructed by OTS Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

The appellant, who was born on [~] 1983 and is a citizen of Bangladesh, appealed to the First-tier Tribunal against a decision of the respondent dated 11 July 2017 refusing the appellant's claim for international protection. In a decision promulgated on 11 June 2018, Judge of the First-tier Tribunal Frankish dismissed the appellant's appeal on all grounds.

It is the appellant's case that he is a secularist "blogger" and writer. The appellant studied in the UK between 2007 and 2012. It is the appellant's case in summary that whilst in Bangladesh from 2012 he wrote openly and critically about fundamentalist Islam and the culture of religious extremism and that he was, amongst other things, a deputy publisher and on the editorial board as an adviser of the Weekly Ropalidhara. It is the appellant's case that as a result of his published writings he received death threats and that on 16 May 2016 he was attacked by four or five men who beat him and cut him with a knife. The appellant wishes to continue his writing and public expression of his secularist, antifundamentalist beliefs and the appellant refers to evidence that other bloggers/writers have been killed in Bangladesh by Islamic extremists. The respondent rejected the appellant's claims to have produced secular writings and his claim to have been threatened and attacked by extremists. In the alternative, the respondent was satisfied that there was sufficiency of protection from the Bangladeshi authorities from Islamic extremists.

Judge of the First-tier Tribunal Frankish rejected the appellant's claimed attack as not credible and specifically rejected the supporting documents (paragraph [28]). The judge made a series of adverse credibility findings against the appellant and did not find that the appellant had suffered an attack as a result of his blogging activities. Although the appellant has a scar the judge considered that the causation could have been from many sources other than aggrieved opponents. The judge went on to make further adverse credibility findings in relation to the appellant's claim to have been threatened by phone. Although the judge accepted that the appellant had been active in blogging and commenting the judge considered that:

> "An examination of his work leads me to conclude that it excludes him from all three categories of the COIS guidance (there is no country case law guidance) on the subject, as set out at [26] above. 3.1.1 refers to offending the government, public minority or religious sensibilities. 3.1.2 refers to being seen as un-Islamic or secularist. The appellant falls foul of none of these. As the above analysis shows, the appellant has adhered scrupulously to his own position and his evidence ([11]) of being respectful of the religion of others. He is complimentary to Islam as being a religion of peace. He does nothing to indicate apostasy. He repeatedly invokes the values of the founders of Bangladesh. He merely criticises terrorists, especially Middle Eastern terrorists and the narrow curriculum of the madrassas. One blog appears in his bundle, dated 4 October 2016. In common with all the articles submitted by the appellant, nothing is contained therein to give offence or to be construed as anti-Islamic. Nothing in the expert report is referred to as susceptible to a contrary interpretation. Two death threats are recorded as being issued in response to which the appellant provides mild responses. Nothing could be said to encourage a fatal response in respect of the material produced by the appellant. The appellant's core value, the separation of religion and state, which he says is indeed the formal constitution of Bangladesh, is to be found in his Blog profile ([14] above). His respect for Islam as a peaceful religion is legion in his written remarks, as also stated at interview (question 26). I have rejected the claimed attack, the appellant has resiled from this being targeted or the result of being followed. I

> further conclude from the above analysis that the appellant has given no cause for offence and, accordingly, has given none. As to 3.1.3 of the guidance, the appellant is most certainly not at risk from the government. He has, as above, shown himself to be an emphatic supporter. As such, the guidance additionally shows an adequacy of protection if, contrary to my findings, the appellant has stirred up hostility against himself.
>
> …"

Grounds of Appeal

The appellant appeals with Upper Tribunal permission on the following grounds:

Ground 1

That the judge materially erred in making an adverse credibility finding in respect of the attack in that the judge failed to take material matters and evidence into account; failed to give reasons; unfairly held a supposed lack of corroborative evidence against the appellant's credibility whilst taking no account of the corroborative material that the appellant did produce; and that the judge unfairly misdirected himself as to the standard of proof in relation to a concession made in submissions;

Ground 2

In finding that there will be no real risk to the appellant on return to Bangladesh owing to his published writing and the commentaries, it was argued that the judge erred in failing to consider what the appellant's actions were and misunderstood the nature of religious politics in Bangladesh and misunderstood the background evidence and therefore had failed to take material matters accurately into account;

Ground 3

In his assessment of sufficiency of protection, the judge gave inadequate and insufficient reasoning and failed to take account of material background evidence.

Error of Law Discussion

Ground 1

It is the appellant's case that he was violently attacked by probable Islamist militants on 16 May 2016 following the publication by him of articles on 1 May and 3 May 2016 (at pages 99 to 101 and 96 to 98 of the appellant's bundle). In support of his claim the appellant produced, amongst other documents, two newspaper articles, one published on 22 May 2016 at pages 74 to 77 of his bundle and one published on 17 May 2016 at pages 81 to 82 of the bundle, which record that the appellant was attacked by a person shouting Allahu Akbar and injured. The article in the Daily Samakal describes a gathering of

bloggers and authors outside of the hospital where the appellant was taken and the grounds refer to the hospital discharge certificate at pages 70 to 73.

The grounds for permission to appeal concede that the First-tier Tribunal knew of the existence of these articles at [16] of the determination. The judge provided a comprehensive summary of the evidence before him from [5] to [25] of the Decision and Reasons. At [16] the Judge of the First-tier Tribunal noted that there were two articles referring to the attack on the appellant and that this attack was condemned. The appellant produced a 263 page bundle and it is trite law to suggest that the judge need not refer to each and every document in that bundle. Nonetheless, the judge demonstrated an extensive review of the evidence before him and it was clear he was aware of the nature and import of the different elements of that evidence.

Although the judge is criticised for not specifically referencing why he did not accept the articles which purported to corroborate the attack, the judge, whilst not specifically finding that the appellant was not attacked, found that this sort of scar could have been from any source other than from aggrieved opponents and that he had not shown that he had been targeted as claimed. Although the judge accepted that the appellant was a blogger/writer, the judge comprehensively rejected the appellant's claim.

In doing so, the judge took into account the evidence before him including background country information, the reports relied on by the appellant and the submissions and case law relied on. The judge was also reminded and cited the case of **Tanveer Ahmed [2002] UKAIT 00439**. At [28] the judge found as follows:

> "There are, additionally, numerous documents of a corroborative nature. I conclude that they have the air of a case built up to order on the grounds that, firstly, they lack direct testimony and rely upon what the appellant had to say and, secondly, do so very inaccurately with extensive inaccurate summaries of the appellant's own case."

Although the judge does not specifically cite from the two articles which reference the alleged attack, in going on to set out at [29], [30], [31], [32], [33], [34] and [35], the significant difficulties with the appellant's case, a fair reading of the judge's decision demonstrates that he considered all the evidence in the round and was satisfied that the appellant had not been attacked or threatened as he claimed and that it was a "case built up to order". There was no specific challenge to that finding. Neither was there any challenge to the judge's adverse credibility findings. This included, at [29], that the appellant's own wife, who was supposed to have lived through the difficulties with the appellant and had to keep moving house with him and would have been a powerful corroborative witness, was not called, and the judge noted that both the appellant's wife and the appellant were "in a muddle" as to where his wife was living. His statement dated January 2018 referred to his wife living with her sister in Dhaka whereas the appellant's wife left Bangladesh with a student visa on 11 September 2017 and was in the UK with the appellant.

The First-tier Tribunal also found the expert report to be "entirely at variance" with the core element of the appellant's case including recording that a secular man is not at risk but that "as an active critic of Islam and ardent advocate of radical secularism" the appellant faces "intolerable persecution, possibly death". The judge found that the appellant claimed neither to be a critic of Islam or a radical secularist and referred to what the appellant's articles actually said and also to what the appellant said in his witness statement, including: "I have nothing against any particular religion. I respect every religion equally and compassionately and I have never sought to offend anyone's religious beliefs."

The judge also considered that the appellant had support from the UK National Secular Society but found this to be unhelpful and irrelevant, and again, there was no challenge to either of these findings and the judge noted that the appellant joined within weeks of returning to the UK in August 2016. Although the letter from Mr Sanderson from the society referred to the appellant receiving threats and menaces and being assaulted in the street no source for this was referred to whatsoever and the judge found that this was nothing more than a repetition of what the appellant said. The judge noted that corroboration of the appellant's journalistic and blogger status was provided by Istishonblog and Bangladesh Press. However, the judge noted that despite the latter being dated 5 November 2016, three months after the appellant purportedly had to flee Bangladesh, no mention was made of this. Likewise, in the Weekly Ropalidhara, despite the fact that it was dated the day before the appellant left the country.

The judge made findings in relation to the appellant's request for a GD report. This was dated 16 May 2016 and the judge made findings that it was not explained how the appellant was able to make such a request on the day that he claimed to have had a severe beating for which he was admitted for several days. The appellant states in the GD report that "by listening their discussion I could realise they are following me". However, the judge noted that this was not what the appellant had said in interview (question 174/180) or in cross-examination, where he had said that he had happened by chance to alight from the bus by a roundabout and to go to a tea stall for refreshment. It was then that he happened to chance upon his assailants, who happened to be there. The judge noted that it was conceded in submissions that there was no evidence that the appellant was being followed and that the incident could have amounted to a random attack. The judge went on to find that this entirely undermined the appellant's case that the purported attack was instigated as a result of the articles that he published on 1 and 3 May. The judge went on to address that corroboration was not required but that it was open to him take into account in the assessment of credibility where such information might reasonably have been provided.

The judge took into consideration that the respondent had confirmed that the GD report had been investigated by a representative from the High Commission attending Badda police station in Dhaka and it was confirmed that the GD report was not genuine. Although in the skeleton and in oral submissions Mr Jorro referred to the fact that there did not appear to be an

actual verification report provided by the respondent, there was no challenge to this finding in the grounds for permission to appeal and the judge made findings that were open to him in respect of this evidence. This included that despite the appellant's legal connections from his work and that he had a lawyer friend and was aware that the respondent did not accept that the GD report was genuine the appellant's "sole riposte to the respondent's investigation is that the investigation was wrong". With the connections that the appellant claimed to have, it was open to the judge to find as he did, at [34], that there was no reason why the purported investigating officer, a Mr S I Karim, could not have been approached directly to explain.

The judge undertook a comprehensive assessment of the evidence before him and, considered in the round, I am not satisfied that any error, material or otherwise is disclosed in his treatment of that evidence as it is clear that the judge found the claimed attack to have been a case to have been 'built to order' and such must necessarily include the two articles that reference the attack. The fact that the judge did not specifically mention these articles in making the series of adverse findings that he did in respect of the corroborative evidence produced cannot be a material error.

Mr Jorro submitted that the judge was unfair in his treatment of the concession made in submissions: the judge recorded that it was conceded that "there is no evidence the appellant was being followed and the incident could have amounted to a random attack". Although it was suggested in the grounds and in submissions that the judge reversed the standard of proof in that just because it could have been a random attack does not mean that it could not have been (**Demirkaya v SSHD [1999] Imm AR 498 507**, per Stuart-Smith LJ) that is to misconstrue the judge's findings.

The judge, who had correctly directed himself as to the burden and standard of proof, at [2], took into consideration that it had been conceded that there was no evidence that the appellant was being followed despite the fact that the appellant had previously stated "by listening their discussion I could realise they are following me". This was completely inconsistent with his claim that he, by chance, happened to get off a bus and go to a tea stall and happened, again by chance, upon his assailants, who happened to be there. That is not to reverse the burden of proof but rather the judge took into consideration that the appellant's evidence was inconsistent. It was the inconsistency of the appellant's evidence considered in its entirety, rather than the concession in itself, which led to the finding that the appellant had not suffered an attack as a result of his blogging activities. The judge was pointing out the inconsistency between the appellant claiming that the attack was being targeted as against his evidence that he had been set upon after getting off a bus and coincidentally meeting his attackers. It was not the case that the concession in itself led to this finding. Ground 1 fails to establish any error of law.

Ground 2

It was the appellant's case that the judge had either failed to properly and fully read or consider the appellant's articles and the background material, or had

reached an irrational and untenable conclusion at [37] (as set out above), that the appellant had given no cause for offence and accordingly has given none. This finding has to be considered in the context of all the evidence, including of the inconsistencies and inaccurate evidence that the judge addressed in some considerable detail.

This included the fact that the judge found, and again, as noted above, there has been no challenge to that finding, that the expert report was 'entirely at variance' with the core element of the appellant's case. The judge set out what was said in the July 2017 COIS Report in relation to Bangladesh: bloggers and journalists, and went on at [27] to note that there were a number of reports in the appellant's bundle, including one relating to the demise of Bangladeshi bloggers; the judge also records in some detail the background information before him, as well as considering the documents produced on the appellant's behalf and his expert report.

The judge at [22] to [25] sets out in some detail the flavour of the appellant's blogs and articles. This includes that the appellant believes imams and madrassas should be engaged in improving education, producing employment and that unemployment was a breeding ground for terrorists encouraged by Middle East extremists. The judge also notes that the appellant's articles refer to Islam being a religion of peace which should not be linked with extremism and endorses the British anti-radicalisation policy. The judge fully refers himself to "other articles in a similar vein" and that the appellant enquires how militancy has been imported and further considers other samples of the appellant's work.

This leads the judge to the conclusions he reached, which were available to him, that the appellant did not fall foul of any of the categories referred to in the respondent's COIS guidance, which the judge sets out at [26], that some critics of the government, including journalists, publishers, social medias and bloggers, have been subjected to surveillance, harassment and intimidation. The COIS goes on to set out, in the policy summary, that:

> "… However not all journalists or internet users expressing views critical of the government are subjected to such treatment and each case must be considered on its facts with the onus on the person to demonstrate that they would be at real risk of serious harm or persecution on return.
>
> 3.1.2 Online activists, journalists and publishers have also been targeted by militant Islamist groups for material seen to be secularist, atheistic or 'un-Islamic'."

21. The judge at [37] notes that 3.1.1 of the COIS policy summary refers to offending the government, public morality or religious sensibilities, and 3.1.2 refers to being seen as un-Islamic or secularist and that the appellant falls foul of none of these, and in the judge's findings the appellant's blogs show that he has adhered scrupulously to his own position of being respectful of the religion of others, including being complimentary to Islam.

22. The judge correctly recorded, at [30], that the appellant claims neither to be a critic of Islam nor a radical secularist. It is simply not the case, as suggested in the grounds, that although whilst acknowledging that the judge considered and set out details of the appellant's writings the judge had failed to properly and fully read and consider the appellant's articles and the background material. The fact that the appellant disagrees with the conclusions the judge reached does not in itself make that conclusion irrational and the judge gave adequate reasons for the findings he reached, including relying on the COIS. The COIS also

23. Although the grounds of permission to appeal refer again to the death of Bangladeshi bloggers and a university professor, the judge took this evidence into account, having cited these reports, including at [27]. Again, the judge's findings have to be considered as they were made, which was in the round, including in the context of what he found not to be a targeted attack. It was open to the judge in light of all the evidence to find that, notwithstanding that some other bloggers may have experienced difficulties, the appellant had given no cause for offence.

24 This also must be considered, as noted above, in light of the judge's findings that the appellant's evidence in relation to the claimed repeated threats did not accord with the fact that the police claimed to be unable to follow up threats from a private number whereas the appellant stated that in Bangladesh personal details are required in order to obtain such a phone and that is why the appellant continued to be threatened despite changing his phone. The judge also found that, and again there was no challenge to this finding, that this did not accord with the appellant's claim that he could be traced via his phone wherever he chooses to relocate. The judge gave adequate reasons that were available to him for not finding the appellant's account, of being threatened and attacked, credible and ground 2 amounts to no more than a disagreement with that finding.

Ground 3

Similarly, in relation to ground 3, the judge found in the alternative that, in the event that he was wrong, the appellant could avail of sufficient protection in Bangladesh. Given the judge's comprehensive consideration of the evidence before him, it was not necessary for the judge to set out what evidence he rejected or otherwise and there was no material error in the judge relying on what was said in the respondent's COIS Report of July 2017, including that if the threat is from non-state agents relocation to another area of Bangladesh may be viable and, more specifically, that where someone's fear of persecution or serious harm is from non-state actors effective protection is likely to be available and that the security forces have taken effective action against terrorist groups since 2015.

Although Mr Jorro referred me to section 7.2.5 of the same COIS Report which mentions several secular activists who had difficulty in accessing police protection I agree with Mr Melvin that that is to cherry-pick from the COIS (whereas the First-tier Tribunal judge summarised the overall conclusions of

the report). Indeed, the third paragraph of 7.2.5 itself, goes on to indicate that 'some activists did report having a more positive experience'. However, ultimately the COIS, having reviewed the evidence, concluded at 3.1.3 that there was likely to be effective state protection available, from non-state actors.

Although clearly there is nothing binding about the respondent's COIS, neither does the judge accord it such a status. There is nothing irrational however, particularly given that the 2017 report deals specifically with the position in relation to journalists, publishers and internet bloggers and considers information from a series of reports, in the judge taking into account in the round, the conclusions in that report, including as to sufficiency of protection. Although Mr Jorro pointed out that each case must be considered on its own facts, that is precisely what the judge has done in this case.

In support of his argument that the judge had failed to consider all the evidence, including as to sufficiency of protection, Mr Jorro set out a number of extracts from the background country information. A number of reports were highlighted at paragraph 14 of the original grounds, including at pages 188, 195, 201 to 202, 223 and 227 of the appellant's bundle. In reviewing those reports, I note that the Guardian article is dated June 2016, the Amnesty International Report is dated May 2016, the BBC article May 2016, with further articles dated April 2016, August 2015. None of the articles cited appear to postdate the COIS, which itself cites extensively from Amnesty International, the Guardian, BBC News, the U.S. State Department, New York Times and other reports, predominantly in 2016 and 2017.

The appellant through his representatives is now seeking to cherry-pick the evidence to suggest that the judge did not fully consider the relevant circumstances and background country information, including in relation to sufficiency of protection. However this challenge is not sustainable. Ground 3 is not made out.

Notice of Decision

The decision of the First-tier Tribunal does not disclose an error of law and shall stand.

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 Date: 24 January 2019

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

As no fee is payable I make no fee award.

Signed Date: 24 January 2019

Deputy Upper Tribunal Judge Hutchinson