



IAC-AH-DN-V1

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

Appeal Number: AA/11782/2014

THE IMMIGRATION ACTS

**Heard at Taylor House
On 22nd October 2015**

**Decision & Reasons Promulgated
On 6th November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MR AMIAN AHMED
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S. Mahmood of Counsel

For the Respondent: Miss A. Holmes, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Bangladesh born on 5th February 1980. He appealed against a decision of the Respondent dated 11th December 2014 which had refused his claim for asylum and had given removal directions for his removal to Bangladesh. His appeal was dismissed by Judge of the First-tier Tribunal Coutts sitting at Hatton Cross on 9th April 2015. The Appellant appeals with leave against that decision and the matter therefore comes before me to determine whether there is an error of law

in the First-tier decision such that it falls to be set aside and the matter reheard. If there is not then the decision of the First-tier will stand.

2. The Appellant entered the United Kingdom lawfully on 21st November 2009 on a Tier 4 Student visa valid from 9th November 2009 until 13th April 2013. The Appellant's leave was curtailed by the Respondent as the Appellant did not have the finances to support his studies and on 21st May 2012 the expiry date on his visa was brought forward to 20th July 2012. The Appellant failed to comply with the terms of this leave and overstayed thereafter. On 24th June 2014 the Appellant was encountered by the Metropolitan Police and issued with a notice as an overstayer. On 24th July 2014 the Appellant made a claim to the Respondent for asylum which was refused by the Respondent on 11th December 2014. The Respondent served the Appellant with a notice of her decision to remove the Appellant. It was the Appellant's appeal against those decisions which gave rise to the present proceedings.

The Appellant's Claim

3. At paragraph 16 of his determination the Judge summarised the Appellant's case as follows:

"The Appellant's claim is based upon fear of violence from his uncle Mujeeb Ur Rehman who is the leader of a fundamentalist religious organisation in Bangladesh known as Jamat-i-Islami. He is also the patriarch of their family to whom everyone else defers without question. The Appellant's parents live in Bangladesh and he has two older brothers Anupam Rahman and Nirupam Rahmad one of whom Nirupam lives here. The Appellant has regular contact with his mother in Bangladesh but he has no contact with his father. The Appellant says that he joined the Bangladesh Communist Party initially as a student member and then as a full member from 1997. He was involved in raising awareness of environmental issues, drug misuse and socialism. This brought him into direct conflict with his uncle who said that communists were non-believers. His uncle also runs his own madrassah. The Appellant ignored his uncle's wishes and continued with his political activities. In 1996 he was attacked by followers of his uncle when he was walking on the street and they told him that he should listen to his uncle's wishes and he should stop being a member of the communist party. His mother reported the attack to the police but the Appellant says that the police are corrupt in Bangladesh, inefficient and they did not help him. After the incident his mother asked him to keep a low profile and the Appellant did so. However in 2000 the Bangladeshi government increased book prices for students and the communist party was angered by this and the Appellant became involved in demonstrations against this increase. He says that his uncle arranged for criminal charges to be laid against him; he was arrested by the police and tortured. He was eventually released on bail and there was a family meeting where his uncle pressured him into changing his views and stop opposing the Islamic faith.

4. There was a further incident when the Appellant intervened during a heated discussion between Hindus and Muslims in Dhaka to try and calm the situation down. His uncle's followers reported the matter to the uncle saying that the Appellant was supporting Hindus over Muslims. In

consequence the Appellant was attacked by his uncle's supporters and his hand was broken. The matter was reported to the police but they took no further action. The Appellant was then advised by family members to leave Bangladesh to save his life. The Appellant's uncle later told the Appellant's mother that he the uncle would kill the Appellant if he ever came across him again. The Appellant's brother Nirupam who lives in the United Kingdom does travel to Bangladesh to see their parents but says that his visits are limited and he is discreet while he is there.

5. The Appellant has started attending the Church of Jesus Christ of Latter Day Saints since arriving in the United Kingdom and is now a dedicated Christian of that faith. He was supported by his bishop in the asylum appeal. If returned to Bangladesh the Appellant said he would not be able to practise his Christian faith and would be killed by his uncle and the followers of Jamat-i-Islami. Whilst the Appellant was in the United Kingdom a fellow activist was killed by extremists in Bangladesh and the Appellant was afraid the same fate would befall him.

The Decision at First Instance

6. The Judge found the appellant to be a credible witness and said that the Appellant was genuine in his fear that if returned to Bangladesh he would suffer ill-treatment from his uncle or his uncle's supporters. However that fear was in respect of non-state actors. There was no evidence that the Appellant would suffer persecution on account of his political opinions from the Bangladesh authorities. There was a sufficiency of protection in Bangladesh including a functioning police force and judiciary. There was no reason why if the Appellant had to return to Bangladesh he could not report any threats or incidents to the police and for these to be investigated in the normal way and the matter pursued through the judicial process.
7. In the past the Appellant's family had chosen this course of action when the Appellant had been threatened and attacked and there was no reason why they could not do so again in the future. The Appellant's brother was able to travel back and see their parents. The Appellant could return and live with them and be discreet about things as his brother was alternatively the Appellant could internally relocate within Bangladesh to an area not connected with his uncle or his uncle's followers. If he did so he would still be entitled to protection from the Bangladeshi authorities.
8. Whilst the Appellant's conversion to Christianity was accepted as genuine the objective evidence showed that there was freedom of religion in Bangladesh and no reason why the Appellant could not return there and continue to practise his Christian faith. The Appellant's conduct in overstaying and not making his asylum claim at the earliest opportunity had damaged his credibility but having considered the evidence in the round the Judge found that such damage was minimal. The Judge dismissed the appeal.

The Onward Appeal

9. In his grounds of onward appeal the Appellant argued that the Judge had failed to consider the objective evidence and current increase in religious extremism in Bangladesh. The Appellant had previously suffered violence at the hands of his uncle and his followers. His uncle had previously used the police when arranging for criminal charges to be laid against the Appellant as a result the Appellant was arrested by the police and tortured. The finding that the Appellant could seek protection from the police was contrary to the evidence before the Tribunal. Further the finding that the Appellant could safely relocate to a safe place in Bangladesh was not based on a cogent or reasonable analysis given the suffering the Appellant had endured at the hands of his uncle and the uncle's followers. Jamat-i-Islami was an extremist organisation with a nationwide network in Bangladesh. The Judge had also overlooked the evidence of violence against Christians. The conclusion that the Appellant could return and live discreetly was contrary to the principles laid down in **HJ (Iran) [2010] UKSC 31** where it was held that if a person returns to their country of origin and because of the dangers of living openly and carries on any homosexual relationship discreetly that person would be a refugee.
10. The application for permission to appeal came on the papers before First-tier Tribunal Judge De Haney on 9th June 2015. In refusing permission to appeal she wrote that a full and proper reading of the Judge's determination revealed the grounds of appeal to be little more than a disagreement with the findings of the Judge and an attempt to re-argue the appeal. Whilst the Judge did find the Appellant credible in the core of his claim he nevertheless found there was a sufficiency of protection and that the Appellant could relocate. Whilst the basis for those findings was brief a Judge could not be expected to deal with every minor point raised. Where a relevant point was not expressly mentioned the court should be slow to infer that it was not taken into account. There was no arguable error of law.
11. The Appellant renewed his application for permission to appeal to the Upper Tribunal on broadly speaking the same grounds. The application for permission to appeal came before Deputy Upper Tribunal Judge Chamberlain on 10th August 2015. In granting permission to appeal she wrote that the Appellant's grounds were arguable and merited a grant of permission to appeal. There was no comment on Judge De Haney's rejection of the grounds of permission to appeal.

The Hearing before Me

12. Counsel for the Appellant submitted that the Appellant's case was based on the Appellant's fear of persecution by both non-state and state actors. There was an interplay between the two who were working together. The Appellant came from a family of fundamentalists and his uncle occupied a high position in one of the banned parties in Bangladesh.

13. The Appellant had posted on his Facebook that he was baptised as a result of which a fatwa had been issued against him. The uncle was using his position as a religious figure to do so. The fatwa was to the effect that the Appellant should be killed. There had been three main incidents which had affected the Appellant referred to in the determination. The uncle had arranged for false charges against the Appellant. There was no challenge to the credibility of the Appellant's account. The Appellant did seek the help of the police but that was not taken into account by the Judge. The police were in tandem with the uncle. Since the Appellant's conversion to Christianity his mother had been assaulted by the same uncle her hair had been pulled and she had been slapped.
14. At question 77 of his asylum interview the Appellant had said that he was in police custody for a month and seventeen days when they broke his hand and tried to take out an eye. The fabricated case he explained at question 85 of the interview was an allegation that the Appellant had stolen his uncle's watch and his uncle's wife's jewellery. The Appellant was not arrested at the demonstration. Later on the uncle withdrew the case against the Appellant (question 97 of the asylum interview). At question 104 the Appellant was asked why if the uncle's case against the Appellant was fabricated did the Appellant not complain to the police about the allegation? In Counsel's submission that was a bizarre question to ask as the uncle had arranged for the police to arrest the Appellant. The Appellant had made clear in his interview that the uncle had authority to issue a fatwa as he was in an organisation called Markajul Islam. In Jamaat Islam he was a local leader not like one of the members of Markajul Islam who could issue a fatwa. Jamaat Islam was a very powerful organisation with MPs in parliament. It was difficult for the Bangladesh authorities to ban that organisation.
15. Further there was objective evidence before the Judge that one of the Appellant's friends had been killed but that was not referred to in the determination. The death of the Appellant's friend showed that there was an insufficiency of protection. As evidence of the atmosphere in Bangladesh it was submitted that a minister had been sacked after comments made about the Haj. Bangladesh was not a safe country for anyone who was against the government. Minorities were at risk. The state was complicit in that. The problems which had occurred to the Appellant were before his conversion to Christianity but they were because the Appellant was not considered to be religious enough. As he had now converted to another faith he would be at even more risk. For the Appellant to pretend not to be who he was namely a committed Christian he would still be a refugee following the decision in **HJ (Iran)**.
16. For the Respondent it was submitted that there was no material error of law in the determination. What the Appellant had said about being in danger related to the fear of his uncle. The Appellant did not fear the state. At question 105 of the Appellant's interview he was asked: "So to confirm, your problems in Bangladesh are from your own family. You do not have any problems with any other individual or with the state. Is that

correct?" In response the Appellant had replied: "Yes it's my uncle and his followers". Thus everything in the Appellant's case was tied to the uncle not to the state.

17. The Judge had specifically considered at paragraph 28 of the determination that the Appellant could relocate and that knocked out the arguments made by the Appellant. It was inconsistent for the Appellant to say that his wife was able to move around but he the Appellant could not. At question 183 of the interview the Appellant had been asked "You have told me that your wife could solve her problems by moving to a crowded area away from your uncle. Is there any reason why you could not return to Bangladesh and live elsewhere to avoid problems with your uncle in a similar manner?" The Appellant had replied to that saying, "Because I am directly involved with some organisations and she isn't. And she is not converted to another religion so it's two different things". At question 176 the Appellant had said that his wife believed if she moved to another area then the influence of the Appellant's uncle and his followers "will not affect her and she will be better off". No-one would know the Appellant if he were to move elsewhere. Even if the Judge had erred in suggesting that the Appellant could be discreet living with his mother upon return, the alternative finding made by the Judge that nevertheless there was a sufficiency of protection if he moved elsewhere saved the determination. There was no reason why the Appellant should not internally relocate. The friend of the Appellant who was persecuted, he was a blogger whereas the Appellant was not and therefore the Appellant would not have the same exposure.
18. In reply Counsel for the Appellant argued that the Appellant had dealt with why his position was different from that of his wife's namely that he was involved with some organisations and she was not. One did not often have independent evidence of the death of a person known to an Appellant but that was the case here with the evidence of the death of the Appellant's friend Rajib. It supported the Appellant's case that there was an insufficiency of protection. The Appellant's answer at question 105 that his only problems involved his uncle and the uncle's followers had to be looked at in context. There was evidence that the Appellant had been arrested and bailed. The Appellant had given evidence about the protest he had taken part in. That had not been rejected. The Appellant was not arguing that the police had sought him out what he was saying was that his uncle was responsible.

Findings

19. The challenge in this case to the Judge's determination is essentially a reasons based challenge. The test is whether from reading the decision the losing party can reasonably be expected to understand why they have lost. Although the Judge broadly speaking found the Appellant to be a credible witness and accepted the Appellant's evidence that he feared an uncle and the uncle's followers, the Judge also decided on the basis of the background material that there was a sufficiency of protection in

Bangladesh. The Judge rejected the argument that the Appellant would be at risk as a result of his conversion in this country to Christianity. The Judge proceeded on the assumption that the Appellant's fear was of non-state actors the uncle and his followers. This was understandable given the Appellant's answer at question 105 of the interview that he only feared the uncle and the uncle's followers and not the state authorities.

20. Although the Appellant had complained about ill-treatment at the hands of the police, the question was whether if the Appellant was in danger again from the uncle and his followers the Appellant could expect a sufficiency of protection from the police. This standard does not require an absolute level of protection which it is impossible for any state authority to guarantee. However Bangladesh has a functioning police force and the Judge's view was that it was reasonable to expect the Appellant to turn to the police for protection. That at the end of the day was a matter for the Judge on the basis of all of the background material.
21. A line of authorities including **Bagdanavicius [2005] EWCA Civ 1605** and **AW Pakistan [2011] UKUT 31** held that even if there was a systemic sufficiency of protection an Appellant might still show a fear of persecution where the authorities were unlikely to provide the additional protection the particular circumstances of the Appellant required. It was open to the Judge to conclude that there was a systemic sufficiency of protection in Bangladesh in the light of the background material which (inter alia) showed that Bangladesh had a functioning police force. What the Judge had to decide was whether the risk of persecution would arise in the future upon the Appellant's return in the light of the Appellant's particular circumstances. As **AW** makes clear particular account must be taken of past persecution if any in deciding whether there are good reasons to consider that such persecution and past lack of sufficient protection will not be repeated.
22. Whilst the Appellant could point to an individual who had been killed in Bangladesh for blogging (something which the Appellant himself has not done) even the evidence which the Appellant had submitted to the First Tier Tribunal was that the Bangladesh authorities had subsequently arrested a man over the murder of a blogger described as an atheist. As the Judge correctly pointed out there is freedom of religion in Bangladesh and the Appellant would have no reason to fear the state authorities as a result of the Appellant's Christian beliefs. If the Appellant wished to express his Christianity openly it would be possible within Bangladesh even if it were not possible in the Appellant's home area where he says his brother behaves discreetly on visits back to Bangladesh. I do not see that that would offend the principles laid down in **HJ (Iran)** which are more properly directed towards the issue of whether it is possible at all to express one's faith or one's sexual orientation.
23. In coming to the conclusion that the Appellant could relocate the Judge was also making an inference that the uncle and his followers could not operate outside their local area to further harass the Appellant. This too is

grounded in the Appellant's own answers in his interview that the uncle's membership of Jamat-i-Islami was very much a local one. Any fatwa issued against the Appellant would of course have no legal effect and it is difficult to see how it could be argued that the state authorities would in any way enforce such a fatwa. That there are extremists in Bangladesh is not of itself in dispute the issue which the Judge had to decide was whether there was a particular risk to this Appellant based on the Appellant's personal factors. Given that the Appellant's expressed fears were of his uncle and his uncle's followers, it was open to the Judge on the evidence before him to conclude that the Appellant could safely internally relocate away from these non-state actors to an area where there would be a sufficiency of protection. In the light of the Judge's conclusion on this point the Appellant could not successfully argue that the Bangladesh authorities would know or ought to know of particular circumstances likely to expose the Appellant to risk of ill treatment (see **Bagdanavicius** at paragraph 55 (15)).

24. The Appellant was not wanted by the police, there were no outstanding charges against him, false allegations made by the uncle had been dropped by the uncle. In those circumstances I see no error of law in the Judge's decision that the Appellant could safely internally relocate upon return. The Judge did not in terms refer to the death of the Appellant's friend but the Appellant's wife was able to evade the uncle and his followers suggesting that the reach of the uncle and his followers was geographically limited. As Judge De Haney correctly observed in refusing permission to appeal it was not necessary for the Judge to rehearse every piece of evidence before him but the fact that the determination did not refer to all of the evidence did not mean that the Judge had ignored it. The Judge specifically stated in his determination that he had looked at all the evidence in the round and I see no reason to disagree with that comment. That being so there was ample evidence before the Judge that the Appellant could safely relocate internally and it was open to the Judge to come to that conclusion which he did. The Judge adequately explained why the Appellant's appeal was dismissed. I find that there was no error of law in the determination and the determination at first instance should stand.

Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal.

Appellant's appeal dismissed.

I make no anonymity order as there is no public policy reason for so doing.

Signed this 5th day of November 2015

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Deputy Upper Tribunal Judge Woodcraft

TO THE RESPONDENT
FEE AWARD

As no fee was payable there can be no fee award in this case.

Signed this 5th day of November 2015

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Deputy Upper Tribunal Judge Woodcraft