Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07369/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20 February 2018	**On 27 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

M A R
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M West, Counsel
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh. He appeals, with the permission of the First-tier Tribunal, against a decision of Judge of the First-tier Tribunal Seelhoff, dismissing his appeal against a decision of the respondent Secretary of State to refuse his protection and human rights claims.

2. The judge found the appellant had not established to the lower standard that he would be at risk on return to Bangladesh because he had

witnessed a crime. His primary finding was that the account was untrue. He continued:

> "34. Even if the Appellant were telling the truth … about the pending case I would not accept that he would be at risk on return as a consequence of being a witness in these proceedings. The first thing that is apparent from the papers is that the police have been willing to investigate and prosecute the attackers. The second thing to note is that the assault in question is a relatively minor one, effectively young men beating up a local rival. The injuries described whilst unpleasant are not especially serious and this is the sort of assault case that might not necessarily result in prison time. The Appellant remained in Bangladesh for two years after the attack without ever being physically targeted himself and without being able to point to specific details of any threats being made against him. It is important to note that one of the people accused is said to be a distant cousin of the Appellant who knew his family. In those circumstances it seems likely that if the accused truly wanted to threaten the Appellant or locate the Appellant they would have been able to do so but they did not.
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> 35. I am not satisfied that the events that the Appellant claims to have witnessed would be considered to be serious enough to justify doing him serious harm to derail the proceedings particularly as he is just one of four witnesses in the case in addition to the victim. The Appellant's insistence that he is at risk in a situation like this actually undermines his credibility as it is not a rational inference from the facts of this case."

3. The judge concluded there was a sufficiency of protection for the appellant and he could live safely elsewhere in Bangladesh to avoid harm.

4. The second limb of the appellant's claim related to his activities as a "blogger". The judge found it was unlikely anyone could identify the appellant as the author of the posts he had made on Facebook. Nor was he satisfied the appellant had been threatened as a result of his posts.

5. Regarding article 8, the judge found the appellant could not meet the requirements of paragraph 276ADE(1)(vi) of the rules.

6. Permission was granted by Judge of the First-tier Tribunal Andrew to argue all ten points made in the grounds.

7. No rule 24 response has been filed.

8. I heard submissions from the representatives on the issue of whether the judge's decision was erroneous. Mr West relied on most of the ten points set out in the grounds. Mr Bramble then conceded the decision should be set aside and re-made. In the circumstances that the parties have agreed to this outcome, it is only necessary to provide brief reasons.

9. In my judgment, there is much to commend in the judge's reasoning and it may well be that another judge hearing the case will come to similar

conclusions. However, it is of fundamental importance to show that all the evidence has been considered and understood.

10. There is confusion in the judge's application of *Ahmed (Documents unreliable and forged) Pakistan* [2002] UKIAT 00439 Starred *(Tanveer Ahmed)* in paragraph 32 of the decision because the document verification report at annex F of the respondent's bundle appears to show the documents do relate to a real case, albeit the author of the report misunderstood the nature of the appellant's claimed involvement.

11. The judge's conclusion in paragraph 36 that the police would be able and willing to offer protection did not take into account the background evidence of police corruption and inefficiency. It may be that the judge meant to say that he had had regard to the background evidence cited in counsel's skeleton argument but, in the light of the police's actions already in the case, this was insufficient to show protection to the *Horvath* [2000] UKHL 37 standard was not available. However, the paragraph as worded does not make that clear.

12. The judge's questioning of the provenance of the posts the appellant claims he made on Facebook overlooked the fact the reasons for refusal letter accepted the appellant had submitted Facebook posts.

13. The judge's finding on the absence of threats to the appellant as a consequence of his posts was not made in the context of the background evidence cited in counsel's skeleton argument and overlooked the threat contained in the post copied on page 52 of the appellant's bundle.

Notice of Decision

The Judge of the First-tier Tribunal made a material error of law and his decision dismissing the appeal is set aside. The appeal must be heard again in the First-tier Tribunal by another judge with none of Judge Seelhoff's findings preserved.

An anonymity direction has been made.

Signed Date 21 February 2018

Deputy Upper Tribunal Judge Froom