



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

Appeal Number: PA/00734/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 16th June 2017**

**Decision sent to parties on
On 26th July 2017**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

M I M

(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Shah, Solicitor, Taj Solicitors

For the Respondent: Mr D Clarke, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to,

amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

1. This appellant, a citizen of Bangladesh, appeals with permission against the decision of First-tier Tribunal Judge Bartlett dismissing his appeal against the Secretary of State's refusal of asylum, humanitarian protection or leave to remain on human rights grounds, as set out in her refusal letter of 11 January 2017.
2. The basis of the appellant's claim for protection is that he is a gay man and an atheist, with a blog and articles in his own name exposing both those circumstances, which carries the appellant's name and photograph. The appellant has a wife, but it is his case that he was forced to marry her in 2011 before coming to the United Kingdom, that she is aware of the blog and informed his family and friends that he is in fact gay, and writes an atheist blog, putting him at risk on return. The appellant has not divorced his wife: he says that he cannot afford to do so.

First-tier Tribunal decision

3. The First-tier Tribunal rejected the appellant's account as not credible and in particular, regarded the appellant's gay relationship as a fabrication. The Judge also rejected the applicant's claim to be an atheist, although the respondent (and the Judge) accepted that he had deserted Islam. At [29], the Judge said this:

"29. I accept that there is a blog on Blogspot called [appellant's name]. I accept that this has atheist writings and some anti-Islamic writings. However, I do not accept that the appellant is identifiable as the author of this blog. No evidence has been provided to me that his photograph has been linked to the blog. I specifically asked the appellant how he was identifiable as the author of the blog and all the appellant could refer me to was the details that he provided to the blog site to start the blog, and his email ID. Having seen some of the translations, I accept that in earlier blog post [sic] the appellant's name [name supplied] is set out at the start of a number of posts. However, I do not accept that these factors are enough to link the blog to the appellant, such that he would be a target from Islamic fundamentalists or others seeking to harm individuals who make statements critical of Islam. It has not been claimed that the appellant's name is exceptionally unusual and I consider that there are many individuals with the appellant's name in Bangladesh and it has not been claimed that the appellant's name is exceptionally unusual and I consider that there are many individuals with the appellant's name in Bangladesh and the Bangladeshi diaspora."

4. The First-tier Tribunal considered that the appellant would have the help of his family in reintegrating on return to Bangladesh. At [30] and [31], the Judge refused to accept the appellant's evidence that his deserted wife told his family, his friends and the police about the blog and found as a fact that the appellant's wife had not done so nor that she had disclosed

his sexuality. I have some difficulty with that finding but I note that at the end of [31], the First-tier Tribunal said this:

“Even on the appellant’s own evidence and taking his case at its highest that the family and the police were aware about the blog the police did not make any threats against him and were not upset by his blog. The appellant does not fear his family and they have not made threats against him despite [the] blog.”

5. At [33], the judge considered that the blog was just one among millions of blogs and there was no reason why it would be drawn to the attention of anybody who would cause the appellant harm. The First-tier Tribunal Judge did not accept that the appellant had lost contact with his family members and dismissed the protection claim on the basis that there was no risk in the home area and that as he did not hold the views or the orientation asserted no risk at all.
6. In the alternative at [37], the Judge considered that the appellant would be able to relocate to a different part of Bangladesh where there would be no risk. Finally, at [38], the Judge found that the Bangladeshi authorities would be willing and able to protect him to the *Horvath* standard both in relation to his atheism and by implication to his sexuality.

Permission to appeal

7. The appellant sought permission to appeal. The grounds for permission are somewhat diffuse. There was mention of hostility from the First-tier Tribunal Judge at the hearing, and of the Judge’s erroneous approach in equating the appellant’s beliefs with his matrimonial dealings with his spouse. At [5], the appellant challenged the credibility findings about his relationship in the United Kingdom. At [6]-[7] of the grounds, the appellant contended that the First-tier Tribunal Judge erred at [29] as to the absence of photographs, and at [9] in the grounds, the appellant relies on somewhat sparse country evidence that atheist writers have been murdered in Bangladesh for propagating atheist beliefs in lesser known mediums, arguing that, regardless of the number of followers which this particular blog may attract, the existence of the blog puts the appellant in danger. There was also a challenge to the First-tier Tribunal’s rejection of his sexual orientation.
8. Permission to appeal was granted on the following basis:

“2. Whilst the grounds, on the whole, appear to be little more than a disagreement with the adverse credibility findings made by the Judge, there is one aspect of the grounds which merits further consideration. Paragraph 6 of the grounds refers to newspaper articles which it asserts the Judge had failed to consider. Whilst these appear to be the documents referred to at [28] of the Judge’s decision, as there is mention of translations by Oriental Translation, it is possible that the Judge arguably confused these with the appellant’s blogs. There are photographs appearing in the documents on pages F21, F24, F28, F33 and F37 of the respondent’s bundle and it is not clear if these are of the appellant. If they are, the Judge may arguably have

erred in considering at [29] that there were no photographs linking the appellant to the articles, which may, in turn, arguably affect his overall findings. For these reasons, further clarification would assist and I therefore grant permission.”

9. The bundle before the First-tier Tribunal contained untranslated copies of blog posts, which did carry a photograph, and translations, which did not.

Rule 24 Reply

10. The respondent filed a Rule 24 Reply. She noted that the First-tier Tribunal Judge had not accepted that the appellant was an atheist, as he claimed. The Reply continues:

“... 4. The Judge has taken into account the relevant evidence that was presented with regards to appellant and has noted at [27] that the photographs the appellant provided had shown him with friends and nothing other than friendship was discerned from them. The Judge has taken note of the blogs provided by the appellant and indicated why he doesn't accept the appellant is identifiable (Determination [27]). It is not clear at this stage whether these are the same photographs referred to at [2] of the grant of permission to appeal and as such the Secretary of State reserves the right to address any issues raised on this point during the impending hearing. ...”

11. The Reply further asserts that the First-tier Tribunal's findings regarding the appellant's wife and family are adequate and 'take into account cultural sensitivities in terms of accessing the appellant's claimed account of his wife's actions'. Finally, the respondent considers that the First-tier Tribunal Judge came to sustainable conclusions about the appellant's shared accommodation and his rejection of the appellant's claimed sexuality.
12. That is the basis on which this appeal came before the Upper Tribunal for decision.

Upper Tribunal hearing

13. As far as the anti-Muslim, un-Islamic and/or atheist blogging which the appellant is said to have undertaken, the respondent did not accept this because of an error in the blog address that she examined. That was an error by the caseworker and the conclusion drawn was plainly erroneous. Mr Clarke now accepts that the blog exists and is publicly available. At the hearing today, Mr Clarke, who has the original colour photographs and the opportunity of seeing the appellant sitting in the court, accepted that the photographs in the untranslated documents in the bundle were those of the appellant.
14. It is clear, therefore, that the First-tier Judge made an error of fact as to the existence of those photographs on the blog, which is said to have had 3000 hits. The respondent now accepts that the First-tier Tribunal Judge's self-direction that the appellant's photograph was not linked to the atheist anti-Islamic blog posts, one of which is also strongly pro-LGBT, is

erroneous. The question remains whether that error of fact is sufficiently serious to amount to an error of law applying the *R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982* standard, I find that it is capable of being a sufficiently serious oversight, if material to the outcome of the appeal.

15. I approach the question of materiality on the assumption that had the First-tier Tribunal Judge directed herself properly in relation to the photographic evidence she would have accepted that the blogs did link the appellant's name and physical appearance to the things he wrote online. I also approach it on the now undisputed basis that there is at least one long post about gay rights and some evidence of the emergence of a homosexual narrative for this appellant in his home country. On that basis, it is at least possible that a judge properly directing herself would have reached a different conclusion as to the appellant's sexual orientation.
16. The First-tier Judge did not err in considering that there are likely to be thousands of such blogs and there is nothing in the material before me to say that this one has any particularly extended reach. The evidence before the First-tier Tribunal was that it had received 3000 hits: the First-tier Tribunal Judge considered that it would have been quite possible for the appellant to have made all those hits himself.
17. I asked Mr Shah to assist me by identifying the country evidence in the bundle which would have enabled a judge finding those facts to reach the conclusion that this appellant was at risk on return. There is some evidence of non-state actors causing harm both to atheist bloggers and to gays in Bangladesh, but no clear evidence as to the level of risk which this generates. The press articles included in the bundle relate to a narrow range of incidents
18. The appellant did not put before the Tribunal adequate country of origin evidence to support the claimed risk throughout Bangladesh to persons who are gay and atheist. I would have expected to see the full Home Office Country Report (not an excerpt) and the latest U.S. State Department Report. Having regard to the inadequacy of the country evidence which the appellant advanced, I consider that the First-tier Tribunal Judge would have been entitled to reach the same conclusion, that the risk did not meet the international protection standard. It follows that the error of fact at [29] is not material to the outcome of this appeal.
19. It remains open to the appellant to make further submissions directly to the respondent, supported by coherent evidence, but as far as this appeal is concerned no material error of law has been shown. I therefore dismiss the appeal.

Conclusions

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I do not set aside the decision.

Signed: **Judith A J C Gleeson**
July 2017
Upper Tribunal Judge Gleeson

Date: 25