



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/14112/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 24 July 2017**

**Promulgated**

**On 04 August 2017**

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**CG**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms C Warren, Counsel, instructed by Alex Bell Immigration Law

For the Respondent: Mr S Kotas, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of Judge of the First-tier Tribunal Cockrill (the judge), promulgated on 2 February 2017, dismissing the Appellant's appeal against the Respondent's decision taken on 8 December 2016 to refuse his protection claim.

**Relevant background**

2. The Appellant is a national of Bangladesh, date of birth 24 December 1987. He entered the UK on 12 March 2008 as a student and has

remained in the UK ever since. The Appellant was granted further leave to remain as a Tier 4 (General) Student, but this was curtailed by a decision dated 16 November 2013 such that it expired on 17 January 2014. An application made by the Appellant for further leave to remain as a Tier 4 (General) Student was refused on 27 March 2014. On 28 April 2016 the Appellant was served with notice of his liability to removal as somebody who required leave to remain UK but did not have it. On 9 June 2016 he claimed asylum.

3. The following is a summary of the Appellant's asylum claim. He is Hindu. The Hindu community in his home area (Chittagong) began to experience problems in October 2015 because a local Muslim councillor was set on transforming the local Hindu temple, which is on land owned by the Appellant's family and is also the site of his grandparents mausoleum (the Appellant's grandfather's ashes were contained in the temple), into a mosque. The Hindu temple is a place of special value to the Appellant, his immediate family and those who attended from nearby villages. The Muslim councillor is influential and is a member of the Awami league, the ruling party in Bangladesh. In a telephone to the Appellant's father in October 2015 a threat was made to kill the Appellant if he returned to Bangladesh unless money was paid. In December 2015 the Appellant's father was attacked requiring him to spend some days in hospital. Despite the attack on both the Appellant's father and the family home the police were not prepared to investigate and follow up on the matter. The Appellant claimed that the councillor and his brother have the power to take the temple but have not yet done so. The Appellant is not sure why they have not already done so but believes that if his father dies or leaves Bangladesh then the councillor will try and take the temple grounds. The Appellant believes he is at particular risk because he would be the one standing in the way of the councillor's plans.
4. The Respondent accepted the Appellant was Hindu but did not accept the Appellant's claim relating to the attack on his father. The Appellant was said to have given inconsistent answers in respect of the ability of the councillor to take the land and in respect of the targeting of his father. The Respondent also drew an adverse inference from the delay by the Appellant in claiming asylum. The Respondent considered that there would, in any event, be a sufficiency of protection available to the Appellant or, in the alternative, that he would be able to avail himself of the internal relocation alternative.

### **The First-tier Tribunal decision**

5. The judge set out a summary of the Appellant's claim and the reasons advanced by the Respondent for refusing the claim. The judge heard evidence from the Appellant and considered a number of background documents, including the country information and guidance (CIG)

document on Bangladesh relating to minority groups, published in March 2016.

6. Although the judge did not engage with the reasons given by the Respondent for finding the Appellant's claim incredible (and to this extent did not make clear credibility findings) the judge indicates, at [59] that he is prepared to accept as a matter of fact that the Appellant's father was attacked with a view to trying to pressurise him to force over the land. At [65] the judge appears to find that the Appellant could not go back to his home area because, as a member of a religious minority, he would face "serious difficulties" in stopping the actions of the local officials. At [67] the judge concludes that there had been "some exaggeration" of the potential risk faced by the Appellant on return because the Appellant's evidence suggests that the councillor and his associates are prepared to wait for the Appellant's father to die of natural causes, which may be some years off. At [68] the judge says that the Appellant "might find it tricky to return to his home area" for the reasons already given by him. It is not immediately clear from the assessment at [68] that the judge is satisfied that the Appellant would face a risk of persecution in his home area and that the authorities would be unwilling or unable to provide a sufficiency of protection.
7. From [68] to [72] the judge concentrates on the question of internal relocation. At [69] the judge states that, "... it should be open to [the Appellant] to be able to preserve his family land from unlawful interference when he is back in Bangladesh and in many ways he is better placed to do that than from the United Kingdom." The judge concludes that the Appellant could internally relocate and thereby secure his safety. At [70] the judge does not consider that the local councillor would track down the Appellant or that this is "particularly likely" to take place. At [71] the judge states that if the local authorities had really wanted to take over the piece of land in the temple than they could have done so. The councillor was not however prepared to go "that one step further" and take unlawful action by simply grabbing the land but had attempted to apply pressure to the Appellant and his father. At [72] the judge considers that the Appellant could return to Bangladesh and "... take all the appropriate steps to preserve the family land and the lawful ownership of his father, and in due course the Appellant himself would inherit the land perfectly lawfully and properly, including the temple." Having concluded that the Appellant was not entitled to international protection the judge dismissed the appeal.

### **The grounds of appeal and the grant of permission**

8. The grounds contend that the judge gave inadequate consideration to the issues of internal relocation and sufficiency of protection. The grounds relied on documents contained in the Appellant's bundle including an excerpt from Hansard quoting an MP who, in turn, relied

on a report from a UN Special Rapporteur on freedom of religion and beliefs report from 2015. It was submitted that the judge's conclusions that the Appellant would be able to preserve his family land if returned to Bangladesh was irrational as the father's attackers could attack again.

9. In granting permission to appeal judge of the First-tier Tribunal Page found it arguable that the judge failed to engage with the issue of internal relocation by failing to adequately consider the objective evidence adduced on behalf of the Appellant.

### **Submissions at the error of law hearing**

10. Ms Warren expanded upon the grounds by submitting that the decision contains no satisfactorily clear credibility findings and that it is unclear what the judge's findings are in respect of the issue of the sufficiency of protection available to the Appellant. No consideration was given by the judge to the background evidence relating to ill-treatment of Hindus in other parts of Bangladesh I was invited to consider the CIG March 2016 report at section 6 and the executive summary. If, as the judge found, the Appellant would be able to assert ownership of the land from another part of Bangladesh, this was likely to expose him to the risk of ill-treatment as he would be easily traced. This was very likely to occur given the political connections of the councillor. Mr Kotas indicated that credibility had not perhaps been properly examined by the judge but that it was clear the judge took the claim at its highest and was entitled to conclude that the Appellant could move to another part of the country.

### **Discussion**

11. There are several aspects of this decision that are concerning. The Respondent has argued that the judge approached the appeal having taken the claim at its highest and that he was entitled to conclude that the Appellant could internally relocate. As I have already indicated there are no clear credibility findings in respect of all the credibility issues raised by the Respondent in her refusal letter. Although the judge indicated (at [59]) that he was prepared to accept as a matter of fact that the Appellant's father was attacked, the judge has not engaged with the reasons relied on by the Respondent in her refusal letter for finding the Appellant's account incredible. This included the timing of the Appellant's asylum claim (after being served with a decision notifying him of his liability to removal and after the Appellant had remained unlawfully in the UK for approximately 2 years) and what was said to be an internal contradiction in the Appellant's account. I appreciate that credibility is not in itself a valid end to the function of a judge's assessment, but a judge is obliged to determine whether an individual has given a credible account such as to entitle them to international protection.

12. At [67] the judge states that the "... truth in the situation is that there has been some exaggeration of the potential risk faced by this Appellant on return." It is not altogether clear what aspect of the risk facing the Appellant the judge found to have been exaggerated. At [71] the judge appears to suggest that the councillor was not willing to "... go that one step further" and take unlawful action by simply grabbing the land. The judge considers that if the councillor really wants to take over the land then he would have done so by now. This suggests that the threats to the Appellant and the temple are not as great as that advanced by the Appellant and that the threat was therefore 'exaggerated'. Nor is it clear that the judge has made material findings as to whether the authorities would actually be willing or able to provide a sufficiency of protection in Chittagong given that the Appellant fears a local councillor and member of the Awami league, the ruling party in Bangladesh.
13. The evidence before the judge indicated that the Hindu temple owned by the Appellant was a place of "special value" to him and his family. The Appellant's grandfather's ashes were contained in the temple and it was, accordingly, a family mausoleum. In his oral evidence, as recorded by the judge at [35], the Appellant said there was no way that he or his father would be prepared to sell the land with the temple on it. It was a matter extremely close to them because of their religious beliefs as practising Hindus. The judge emphasised the evidence relating to the religious and personal significance of the temple on family land. At [58] the judge noted that the Appellant himself was "in no way shape or form willing to part with the land and to sell it". This evidence suggests that the Appellant may have a strong link with the land and the temple and was not willing to see it transformed in the way sought by the Muslim councillor, and that this may compel the Appellant to maintain and assert his rights in respect of the family land even if there is a risk of serious ill-treatment in so doing. There was however no clear finding in this regard by the judge. Moreover, at paragraph 10 of his statement dated 10 January 2017 the Appellant indicates that his father decided to stay with a view to protecting the temple and the family land despite being advised by the Appellant not to do so. This suggests that the Appellant was not willing for his father to stay in the village if there was a high risk to him, and that he therefore may not be willing to face such a risk himself by asserting rights of ownership. I also note that, according to his interview, the Appellant lived for 20 years in Sylhet, a considerable distance from Chittagong, potentially indicating again that his link to the family land is not as strong as advanced by him. There has been no resolution by the judge in respect of these issues.
14. The judge indicates (at [69]) that it would be open to the Appellant to preserve his family land when he returned to Bangladesh, and at [72] the judge stated that the Appellant would be able to "take all the appropriate steps to preserve the family land and the lawful ownership of his father, and in due course the Appellant himself would

inherit the land perfectly lawfully and properly, including the temple.” The judge does not explain what “appropriate steps” the Appellant would be able to take if returns to Bangladesh and lives in another area. Presumably the judge was referring to legal steps that the Appellant could undertake in an attempt to ensure the family land was not taken by force and to resist any attempt to do so. If however the Appellant did undertake legal or other formal steps to protect the family land the judge has not considered the possibility that his contact details, including his address, may then become known as they may be required in formal or official documents. If this was the case then, despite the councillor only being local, and despite the Appellant’s fear being localised to Chittagong, it is possible that those intent on obtaining the land may attempt to target the Appellant wherever he is in Bangladesh. This is not a matter that was considered by the judge. Nor has the judge considered the background evidence contained in the Applicant’s bundle relied on by the Applicant to support his claim that he would be targeted wherever he relocated in Bangladesh as a result of his religion.

15. Having cumulative regard to all these factors I am satisfied that their impact is such as to render the determination unsafe. Given the absence of clear credibility findings and the unresolved factual issues identified above it is appropriate for the matter to be remitted back to the First-tier Tribunal to be decided afresh, all issues open, by a judge other than judge of the First-tier Tribunal Cockrill.

### **Notice of Decision**

**The First-tier Tribunal’s decision contains a material legal error.  
The matter is remitted to the First-tier Tribunal for a de novo hearing  
before a judge other than judge of the First-tier Tribunal Cockrill**

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant in this appeal 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.



3 August 2017

Signed

Date

Upper Tribunal Judge Blum