Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/06365/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 January 2018	**On 25 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

M S J
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Saldanha, Duncan Lewis & Co Solicitors
For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh born on 10 December 1990. He first came to the United Kingdom with a Tier 4 Student visa on 28 September 2009 and was subsequently given further leave to remain on that basis until 30 November 2017. However, the college at which he was studying, the London School of Law, had its licence revoked on 3 June 2015, thus the Appellant's leave was curtailed from 20 December 2015. The Appellant claimed asylum two days later on 22 December 2015. The basis of his claim is that whilst in Bangladesh he was involved in the Awami League Party from 2007 but subsequently whilst in the UK he

formed his own party in October 2015 called the People's Voice Bangladesh. He also returned to Bangladesh for a visit in 2014, when he claims that he was followed and that he would be at risk if he returned due to his activities on social media in the form of blogs on YouTube and Facebook posts. The Respondent refused his application in a decision dated 7 June 2016. The Appellant lodged an appeal in time against that decision and his appeal came before Judge of the First-tier Tribunal Hanbury for hearing on 1 June 2017.

2. In a decision and reasons promulgated on 19 June 2017, the judge dismissed the appeal, essentially on the basis that he did not find the Appellant's claims to be plausible and in any event he did not accept that the Appellant's blogging activities, whether before or after he left Bangladesh, would put him at risk either from the Bangladesh government or individuals. This latter reference is in relation to the fact that the Appellant is now an atheist and takes an anti-Muslim stance.

3. An application for permission to appeal was made to the Upper Tribunal on the basis of four grounds. The first ground submitted that the judge had erred materially in law in failing to consider whether, even if the Appellant had acted in bad faith, this would place him at risk on return to Bangladesh *cf.* Danian [2000] Imm AR 96 per Lord Justice Brooke. This relates to [25] of the decision where the judge held *"I am not satisfied that the appellant is a frequent blogger but if he has become one since he came to the UK this has been to generate an online presence which he would not otherwise have had."*

4. The second ground asserted that the judge erred in failing to take account of material evidence, in particular, that set out in the Appellant's bundle of his online activity going back to 2012. Reference was made there to the detail of some of that evidence which includes the fact at page 315 of the Appellant's bundle that the Information, Technology and Telecommunications Minister in Bangladesh had blocked the Appellant's facebook page, which had not been referred to by Judge Hanbury and it was submitted had thus not been considered by the judge in rejecting the Appellant's fear of persecution on this basis.

5. The third ground was concerned with the manner in which the judge approached the evidence. It is the case that regrettably the Appellant's previous solicitors served a 750 page additional bundle on 26 May 2017 which was four days prior to the hearing on 1 June, however this had only been received by the Tribunal the day prior to the hearing and by the Presenting Officer on the day of the hearing itself.

6. At [6] of his decision the judge stated *"given the size of the bundle and lack of a clear order I explained to Mr S later in the hearing that I would only consider those documents which I was specifically referred to"*. Mr S's explanation for the late service of the documents was that he had been ill. It is unfortunate that he did not seek permission in advance to serve such a bundle so late. However, ground 3 asserts that the judge then went on in his findings to give consideration to evidence to which he was

not specifically referred and relied upon that evidence as part of his negative credibility assessment in respect of the Appellant (see e.g. [20]).

7. The fourth ground of appeal took a point in respect of the findings on consistency between the Appellant's interview and his oral evidence and noted that the asylum interview was conducted through an interpreter and over Skype and that the error in any event was very minor and was not material to the basis of the claim given it confirmed when he left the Awami League and did not relate to his activities as a blogger.

8. Permission to appeal was granted by First-tier Tribunal Judge Robertson on 19 September 2017 in relation to grounds 1 to 3 on the basis:

> *"It is not clear from the decision, given the Judge's decision to only consider evidence that he was specifically referred to at paragraph [6], which of the evidence with regard to the Appellant's online activities was considered by the Judge and which was disregarded in his assessment of risk on return. If the Respondent's representative was unable to deal with all the evidence provided on the day, in view of the size of the bundle, it was open to him to request an adjournment. Permission to appeal is granted."*

9. The Rule 24 response dated 31 October 2017 states that the Home Office are not able, due to a temporary resource issue, to provide a full response but asserts that the grounds have no merit and are merely a disagreement with the adverse outcome of the appeal, that the judge had considered all the evidence available and came to a conclusion open to him on the evidence.

Hearing

10. At the hearing before me I heard submissions from Mr Saldanha on behalf of the Appellant. He relied on his grounds of appeal and also took me through the evidence cited in those grounds of appeal, which primarily stemmed from the Appellant's facebook account and the attitude of the Bangladeshi government towards those who seek to use social media for political means.

11. At [18] and [19] of the decision of the First tier, the judge held *inter alia* as follows:

> *"18. The Appellant is probably a politically interested and educated individual but I find he has an inflated perception of his own importance and he has not given a truthful account of his political involvement."*
>
> *19. Apart from a large number of uncollated documents printed off the internet and Facebook the Appellant has provided little in the way of tangible evidence to back up his assertion he was regarded as a threat by the Awami League Party."*

12. It was submitted that this finding was somewhat stark in that the judge was clearly saying there were a large number of documents which did provide tangible evidence in support of the appeal and the judge's self-direction at [6] is undermined by his finding at [19] and also at [20] where the judge found that it was relatively easy to generate a profile online and he was sceptical as to whether the facebook entries were truly attributable to the Appellant. It was submitted that it was all the more incumbent on the judge to consider the material evidence and make clear findings on that evidence and the manner in which the judge had approached the evidence was contrary to the relevant jurisprudence *cf.* Nwaigwe (adjournment: fairness) [2014] UKUT 00418 and ML Nigeria [2013] EWCA Civ 844 as well as [72] of the Practice Directions.

13. In her submissions, Ms Ahmad sought to rely on the judgment of the House of Lords in AH Sudan [2007] UKHL 49 at [30] where their Lordships made reference to the expert Tribunal and the fact that such decisions should be respected. She submitted that the judge did look at all the material evidence, including not only the facebook posts at [20] but the news reports which were referred to by the judge at [25]. She also sought to rely on the decision of the Court of Appeal in Muse [2012] EWCA Civ 10 at [33] in respect of the reasons and she submitted that it was not necessary to provide reasons for every finding but only in respect of the main issues in dispute. She submitted there was no satisfactory evidence before the judge that the authorities in Bangladesh are interested in the Appellant or that he has a well-founded fear of persecution from them. She submitted the findings made by the judge at [25] were open to him and that the news articles referred to therein do not show that someone with anti-Islamic sentiments has a well-founded fear of persecution on return to Bangladesh, but simply show that the authorities are monitoring certain bloggers. She submitted there was no material error of law.

14. In his response Mr Saldanha stated it was clear with reference to [30] of AH Sudan that there had been a misdirection in this case. The judge had before him a 750 page bundle, but states that he is not going to consider this evidence, however then later goes on to consider the evidence in order to make a finding against the Appellant. In respect of the decision in Musa at [33] Mr Saldanha accepted that the judge is not required to address every piece of evidence when giving his decision, but equally it was not acceptable to ignore material evidence, particularly when there was a large amount of such material evidence. He further submitted there may have been some confusion by the judge on the basis that in addition to the 750 page bundle there was also a short bundle of news reports separate from that bundle which appears to be that referred to at [25].

Notice of Decision

15. I find there are material errors of law in the decision of First-tier Tribunal Judge Hanbury, essentially for the reasons set out in grounds 1 to 3 of the grounds of appeal. I accept the premise of ground 1 of the grounds of appeal and Ms Ahmed did not attempt to argue that the decision of the Court of Appeal per Brooke LJ in Danian is anything other than binding.

Thus even if a person who is a refugee *sur place* has acted in bad faith, if his activities in the host country give rise to a risk of persecution on return, then he is a refugee regardless of the fact the activities were carried out in bad faith.

16. It is clear from the judge's decision in this case that despite his findings at [20] and [25] that the Appellant had essentially created a profile online in order to generate an asylum claim, he failed to go on to consider even in light of that finding whether this would cause him to be at risk of persecution.

17. The judge went on at [25] to find there was no satisfactory evidence that the authorities in Bangladesh treat dissenters sufficiently harshly to justify a finding of persecution and that the Bangladesh police would attempt to protect the Appellant if he was subjected to threats by non-state agents. The difficulty with this finding is that there was a large amount of evidence before the judge attesting both as to the Appellant's extensive activities on social media since 2012 and evidence in the bundle of what the judge referred to as the bundle of news reports of the murder of secular bloggers in Bangladesh: see, for example, the article in the Guardian dated 7 August 2015 and the article reported in the Telegraph on 22 October 2015 in relation to a different person entitled "*Third secular blogger hacked to death in Bangladesh*".

18. It would appear that, due to the late service of the background evidence and the extensive nature of that evidence, the judge failed to engage with this evidence sufficiently and to reach his findings on the Appellant's credibility in the light of that evidence, some of which (see for example page 315) was specific to the Appellant and the fact that his facebook account had been blocked by the Information Technology minister in Bangladesh. In the light of this evidence, I find that the error is material because had the Appellant's credibility been assessed in the light of this evidence, a different outcome would have been possible.

19. For these reasons I find material errors of law in the decision of the First-tier Tribunal and I remit the appeal back for a rehearing *de novo* by a judge other than First-tier Tribunal Judge Hanbury.

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 their 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: Rebecca Chapman Date: 24 January 2018

Deputy Upper Tribunal Judge Chapman