



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

Appeal Number: PA/02542/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12 May 2022**

**Decision & Reasons Promulgated  
On 15 June 2022**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**E H  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.**

**Representation:**

For the appellant: Mr M Symes and Ms A Nizami, Counsel, instructed by  
Duncan Lewis Solicitors

For the respondent: Ms S Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

## **Introduction**

- 1.** This is the re-making decision in this appeal following the error of law decision made by Upper Tribunal Judge Jackson, promulgated on 9 August 2021, by which she concluded that the First-tier Tribunal had erred in law and that its decision should be set aside. Judge Jackson's decision is annexed to this re-making decision and the two should be read together.
- 2.** The appellant is a citizen of Bangladesh, born in 1981. He came to the United Kingdom in 2007 as the spouse of a British citizen. In December 2008, the appellant was convicted of murdering his wife, for which he was sentenced to life imprisonment with a minimum term of 12 years. Deportation proceedings were instigated, in response to which the appellant made an asylum claim in 2015, based in essence on a claimed risk from his wife's family. This claim was refused in 2018, with the respondent issuing a certificate under section 72 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). An interview and further submissions followed and a supplementary decision letter was issued in 2019.
- 3.** By the time the appellant's case went before the First-tier Tribunal, he was claiming to be at risk on return to Bangladesh because (i) his wife's family would harm him (ii) he was a convert to Christianity and (iii) he was bisexual. No Article 3 medical claim was put forward at that stage. Article 8 was relied on in what was described as a "subsidiary argument" to the protection claim, it be said that very compelling circumstances existed.
- 4.** Judge Jackson's error of law decision deals in comprehensive detail with the findings made by the First-tier Tribunal and the errors of law committed. To summarise the material aspects of Judge Jackson's decision, she found that the following findings from the First-tier Tribunal decision were to be preserved:
  - (a) the appellant had rebutted the statutory presumption under section 72 of the 2002 Act (with the consequence that he was entitled to the protection of the Refugee Convention);
  - (b) the appellant was a genuine convert to Christianity;
  - (c) the appellant was not gay or bisexual and even if he were, he would choose to live discreetly on return to Bangladesh for reasons other than a fear of persecution;
  - (d) there were no very compelling circumstances to outweigh the very strong public interest in deporting the appellant.
- 5.** Following the error of law decision, further evidence was provided on the appellant's mental health. The appellant asserted that this gave rise to two additional issues in his case: first, that he was a member of a particular social group and would be at risk in Bangladesh because of discrimination shown by society to those suffering from mental health conditions; second, that his removal would violate his rights under Article

3, both in terms of appropriate treatment in Bangladesh and the risk of suicide. These two issues were deemed to constitute a “new matter” under section 85 of the 2002 Act. The respondent proceeded to consider the issue and gave consent for it to be determined by the Upper Tribunal. A supplementary decision letter dated 7 April 2022 was issued, in which both claimed risks were rejected.

- 6.** Having regard to the foregoing, the live issues to be addressed at the resumed hearing appeal are therefore:
- (a) whether the appellant would be perceived as being gay or bisexual if he was removed and whether this would place at risk, having regard to the principle set out in HJ (Iran) [2010] Imm AR 729?
  - (b) whether the appellant’s conversion to Christianity would put him at risk, having regard to the principle set out in HJ (Iran) [2010] Imm AR 729 (that principle applying to matters of religion: see WA (Pakistan) [2019] EWCA Civ 302)?
  - (c) whether the appellant’s acknowledged mental health conditions present a risk of persecution?
  - (d) whether the appellant’s wife’s family would present a risk to him?
  - (e) whether the appellant could obtain sufficient state protection in respect of any risk, or whether he could internally relocate?
  - (f) whether the appellant could make out an Article 3 case in light of AM (Zimbabwe) [2020] Imm AR 1167, including whether the appellant could demonstrate a risk of suicide.
- 7.** Article 8 is no longer in play.

### **The evidence**

- 8.** I have been presented with a good deal of documentary evidence contained in the respondent’s original appeal bundle (under cover of letter dated 26 March 2019), the appellant’s main bundle (indexed and paginated 1-411) and his consolidated supplementary bundle (indexed and paginated 1-330). In addition, the appellant filed and served an updated letter from the appellant’s treating psychiatrist, Dr R Din, dated 19 April 2022.
- 9.** The appellant’s bundles contain two psychiatric reports by Dr Michael Shortt dated 23 December 2019 and 5 January 2022, together with two country reports from Dr Ashraf-ul Hoque, dated 13 January 2020 and 5 January 2022.
- 10.** I was referred to certain passages in the respondent’s CPIN on religious minorities and atheists, published in March 2022.

- 11.** The appellant, who now prefers to be known by his Christian name, John, attended the hearing remotely (he remains in hospital on account of his mental health conditions), but did not give evidence, based on opinions expressed by Dr Shortt in his most recent report. Notwithstanding this, I have had regard to the appellant's two witness statements contained in his bundles.
- 12.** A witness appeared remotely on the appellant's behalf, Reverend Dr Geoffrey Burn. He relied on letter on 23 July 2019 and witness statement dated 5 January 2022. He confirmed his regular interactions with the appellant over the course of time, together with his knowledge of the appellant's faith and its practice. In the witness' opinion, the appellant's faith defined who he now was in the world and it was inevitable that he would proclaim his faith to others. It was significant that the appellant no longer went to Muslim prayers - this would stand him out. The appellant had, to the best of the witness' knowledge, experienced problems whilst in prison on account of his conversion and it is likely that these would be exacerbated if he lived in Bangladesh.

### **The parties' submissions**

- 13.** Mr Walker and Mr Symes both made helpful oral submissions (with the latter also relying on a detailed skeleton argument), which are a matter of record. I intend to address relevant arguments put forward when considering the various elements of the appellant's case, below.

### **Findings and conclusions**

- 14.** There are a number of different heads of claim in this appeal. In assessing the evidence and reaching my findings of fact and conclusions, I have of course viewed the evidence and the parties' respective submissions in the round.
- 15.** Although the appellant did not give evidence before me, I have treated him as a vulnerable witness in the sense that his written evidence (particularly his latest witness statement) should be viewed through the prism of vulnerability by virtue of his mental health conditions.
- 16.** I have borne in mind the proposition that an individual may be untruthful about one aspect of their claim, whilst truthful about others.

### ***The sexuality issue***

- 17.** The first protection-based issue can be dealt with relatively briefly.

18. There is a preserved finding of fact that the appellant is not gay or bisexual. That represents a significant, although not insurmountable, obstacle to this aspect of his protection claim. As HJ (Iran) made clear at paragraph 82, the fact-finding tribunal's first task is to ask itself whether the individual is gay, "or that he would be treated as gay by potential persecutors in his country of nationality."
19. Judge Jackson left open the possibility that the appellant might be perceived as being gay or bisexual with reference to the evidence of him having been allegedly called a "lady-boy" by (apparently) his siblings and wife (see paragraph 40 of her decision). That evidence is contained in the appellant's first witness statement. Judge Jackson noted that the First-tier Tribunal had not specifically addressed this aspect of the evidence.
20. In my view, there are real difficulties with this evidence. The appellant's evidence surrounding his claim sexuality was firmly rejected by the First-tier Tribunal for detailed reasons set out at 56-65 of its decision. The reference in the witness statement to being called a "lady-boy" is situated in amongst other parts of his evidence on the claim sexuality which were plainly found to be untruthful. I note too, the First-tier Tribunal's observations that the witness statement made no mention of his siblings having used that term, although this had apparently been said elsewhere.
21. Having regard to the evidence as a whole, I do not accept that the appellant was ever called a "lady-boy" by his mother, siblings, or anyone else. I do not accept that any other pejorative or insinuating terms were ever used.
22. Mr Symes has quite properly not sought to suggest that the appellant in some way "looks" gay or bisexual such that members of the public in Bangladesh might perceive him to be so. Any attempted reliance on insulting tropes or stereotypes would have been an unattractive standpoint.
23. I conclude that the appellant is not gay or bisexual, nor is it reasonably likely that he would be perceived as such in Bangladesh. It follows that the HJ (Iran) analysis goes no further than the very first question posed in paragraph 82 of the judgment.
24. This aspect of the appellant's case is, and always has been, an untruthful embellishment. I remind myself that this is not fatal to his overall credibility, something recognised by the First-tier Tribunal in its findings, and again by Judge Jackson. I have, however, factored in the untruthful nature of the sexuality claim as a consideration when assessing the appellant's evidence as a whole.

### ***The religion issue***

25. The second protection issue is of far greater significance than the first.

- 26.** It is a preserved finding of fact that the appellant is a genuine convert to Christianity. That of itself permits him to progress beyond the initial stage of the HJ (Iran) analysis.
- 27.** In my judgment, it is important to view the appellant's faith in its proper context. Plainly, he has not been a Christian from birth: he was raised as a Muslim. By definition, he has renounced Islam in order to adopt a new faith. I note that at paragraph 2.4.9 of the CPIN, the respondent accepts that religious conversion "can be viewed as apostasy", a position supported by country evidence cited later on in the document:
- "4.8.1 Leaving Islam is seen as shameful or apostasy, and can also be considered blasphemous by Islamic extremists. Professor of Law, Javaid Rehman, who investigated 'the uses and abuses of certain interpretations of Sharia law and the Quran', wrote in a 2010 publication:
- 'Apostasy (also known as Ridda) occurs when a Muslim (by his words or actions) renounces and rejects Islam. Rejection or criticism of the All Mighty or His Prophet is perceived as an insult to Islam, offensive and routinely regarded as blasphemous... Blasphemy connotes the insult of God or Prophet Mohammad and other revered figures in Islam, and can be committed by believers and non-believers alike. Apostasy from Islam and blasphemy against Islam therefore remain (and have always remained) unacceptable.'
- 4.8.2 The SR report 2016 detailed findings on the prevalence of religious conversion in Bangladesh, and the consequences for those who convert:
- 'Religious conversions are generally rare and, when they do occur, mostly take place in the context of interreligious marriages. However, conversions have also occurred outside such marriages, in particular from Buddhism to Christianity or from various religions to Islam. On occasion, Muslims have converted to Christianity or to the Baha'i faith.'
- 28.** Reverend Burn emphasised the significance of the appellant being a convert in his oral evidence. Whilst not an expert witness as such, his evidence was relevant in so far as it addressed the factual position. He corroborated the appellant's account of having experienced actual threats and hostility whilst in prison on account of his conversion and the highly adverse view taken of this by certain other Muslim inmates.
- 29.** What is also borne out by the evidence is the fact, as I find it to be, that the appellant regards his new faith as of cardinal importance to his identity: as Reverend Burn put it, "it defines how he lives in the world." The witness' evidence, when seen in conjunction with that of the appellant, provided a credible basis for finding that the latter would not be "discreet" about his Christian faith, to the extent that that term suggests being secretive or otherwise less than forthcoming. I find that the opposite is the case. There is a very distinct likelihood that the appellant would in fact, or at least would wish to, openly profess his faith and speak of it to others, whether expressly prompted or not and whatever the fate of the

audience might be. That is in keeping with not simply his evidence and that of Reverend Burn as to the future, but also with what has already transpired. I accept that the appellant did communicate with Muslim inmates whilst in prison and that this involved the profession of his newly found faith. I also accept that the appellant declined to attend Friday prayers whilst in prison and that he would not attend any mosque in the future. The appellant's stated intention to change his name to "John Abraham" is, I find, genuine, having particular regard to the supportive evidence on this point provided by Reverend Burn.

- 30.** There has been no challenge to the evidence that the appellant wrote about his faith in a hospital newsletter and that this was done as a means of proclaiming his Christianity to a wider audience. I find that this event occurred and accept the intention behind it.
- 31.** For the sake of completeness, I find that the appellant's family were, and are reasonably likely still to be, intolerant of his conversion, particularly when placed together with the fact that his wife was a member of the extended family. It is plain that he would not simply be refused any support on return, but that he would face outright hostility. In saying this, I note that finding of the First-tier Tribunal that the appellant might be able to have relied on some support from his mother was not preserved by Judge Jackson. On the evidence before me, any meaningful support would be unlikely in the extreme, given the patriarchal nature of Bangladeshi society and the open hostility displayed by male family members.
- 32.** Bringing all of the above together, I find that the appellant is not only a convert to Christianity, but that he will also be perceived as an apostate by Bangladeshi society at large, or at least a significant proportion thereof, and that the open profession of his faith will inevitably result in his identification as such.
- 33.** In so finding, I reject Mr Walker's submission that only priests and those in similar positions would speak openly about faith and conversion. Apart from a lack of evidence to support that assertion, the credible evidence before me points instead to the findings I have made. For the avoidance of any doubt, the finding of the First-tier Tribunal that the appellant would not be "compelled" to openly express his faith was not preserved by Judge Jackson and I have had the benefit of additional witness statement evidence from the appellant, together with powerful oral evidence from Reverend Burn.
- 34.** What then of the position of Christian converts/apostates who would openly profess their faith in Bangladesh? I turn first to consider the country information contained in the respondent's March 2022 CPIN. The Bangladeshi Constitution purports to protect freedom of religion (4.1.2). I have already quoted evidence relating to the adverse view of apostasy and the rarity of religious conversions. Evidence indicates that whilst some progress has been made at a governmental level, real problems remained as regards implementation and protection of religious minorities (see, for

example, 5.1.1-5.1.8 and 8.1.1). The position of Christians is addressed in section 6.4: there have been localised attacks carried out by Islamic militant groups across Bangladesh; converts to Christianity have been harassed and subjected to communal threats of physical violence; social isolation can ensue, particularly for Christian converts; and an NGO reported that the exceptionally small Christian population (less than 1% of the whole) faces persecution from Muslim communities and radical Muslim groups, including ISIS.

- 35.** The 2020 United States State Department report on international religious freedom, published in May 2021, cited sources which reported communal attacks against religious minorities throughout 2020.
- 36.** The Freedom in the World report 2019 acknowledged that religious minorities had the formal right to worship freely, but such groups “face harassment and violence, including mob violence against their houses of worship.”
- 37.** An article on the website Worldwatch Monitor, dated 1 March 2018, reported on an extremist Muslim group in Bangladesh who had specifically targeted Christian converts.
- 38.** The International Crisis Group report, Countering Jihadist Militancy in Bangladesh, dated 28 February 2018, detailed the nature and aims of particular groups operating within Bangladesh and targeted religious minorities.
- 39.** I turn to the expert reports from Dr Hoque, whose evidence has not been specifically challenged before me. I am satisfied that he is a suitably qualified expert, that he has had proper regard to the relevant principles regarding expert evidence, and has been made fully aware of the appellant’s case through the provision of material documents. I regard his reports as being sufficiently well-sourced. In all the circumstances, I place significant weight on his evidence.
- 40.** His 2020 report deals with the issue of apostasy and risk in some detail (paragraph 44-81). At paragraph 61, the author states that:
 

“The promotion of Christianity and apostasy in Bangladesh by someone who was born into a Muslim household, therefore, is a serious anti-social activity... If [EH] openly expresses his views (some of which are deeply critical of Islam), he will undoubtedly encounter problems from both the wider public as well as with law enforcement agencies. This is consistent with wider trends in the country.”
- 41.** Subsequent passages consider the various Islamist groups operating within Bangladesh country evidence to which I have already referred. The relevant section of the report ends with the following:
 

“Given these recent developments and communal tensions pertaining, [EH] professed fear of persecution on the basis of his conversion to Christianity is plausible and consistent with the evidence that the authorities are unable to



provide protection to those who are perceived as speaking or acting against Islam from Islamist litigants within the country.”

**42.** Dr Hoque’s 2022 addendum report reiterates what had been said previously. The author acknowledges that being a Christian convert does not necessarily lead to persecution and that not following Islam will not necessarily be a problem. However, Dr Hoque makes the distinct point that a Christian convert who self-professes his conversion “will most certainly arouse the wrath of most Muslims in any community he finds himself residing within” and that this “will result in everyday persecution, harassment), and even attempts at ending his life.” The report goes on to state that:

“... [EH] conversion will arouse anger and a desire on the part of most to reprimand him for violating sacred principles and undermining community cohesion... His safety, therefore, cannot be guaranteed by the state on return due to a lack of resources, endemic corruption, and a lack of will to do so on the part of state agents.”

**43.** In terms of evidence put forward by the respondent, I note that the information quoted in the reasons for refusal letters in 2018 and 2019 is now relatively old and in any event does not run contrary to the overall picture painted by the sources in the latest CPIN. Nothing presented to me significantly undermines the body of evidence relied on by the appellant.

**44.** When bringing the expert and country evidence together to assess the question of risk on return, it would be artificial to leave out of account other relevant elements of the appellant’s case. In particular, the appellant’s mental health and any risk he may face in his home area from his wife’s family are material considerations because (a) the former will inform the way in which the appellant is perceived and treated by others and how he is likely to act (even if receiving medical treatment and even if his conditions do not reach the Article 3 threshold) and (b) the latter relates to where he is likely to be residing in Bangladesh. For reasons set out later in my decision, the appellant’s mental health is a significant issue and he is at risk in his home area and so would be having to attempt internal relocation.

**45.** Placed in its full context, I conclude that the appellant is reasonably likely to be at risk from non-state actors (in the form of individuals and/or groups holding strict or extremist Islamist views) from whom there would not be sufficient state protection in his home area. In essence, that risk is based on the following:

- (a) the appellant’s Christian conversion and perceived status as an apostate;
- (b) his open profession of that conversion;
- (c) the collective effect of the expert and country evidence;
- (d) the absence of any familial or social support;

- (e) behaviours, or perceived behaviours, resulting from mental health conditions which are reasonably likely to create, or at least exacerbate, significant hostility;
- (f) living in a place of relocation with which he would have no prior connections.

- 46.** Mr Walker's submissions took the line that the appellant could avoid any "problems" by being discreet and/or living in a Christian community. The first point runs headfirst into the HJ (Iran) principle. That the appellant would wish to openly profess his faith and it is abundantly clear that any "discretion" exercised by the appellant on return would only be a result of fear of the consequences of not doing so (see, for example his first witness statement at paragraph 19 and the latest at paragraph 23). Therefore, concealment by the appellant would not defeat his claim to be a refugee.
- 47.** In terms of seeking some form of sanctuary within a "Christian community", there are at least two objections to this course of action. First, the evidence to which I have been referred does not indicate that such unofficial communities are in some way immune from societal and/or extremist harassment and violence. Second, to require the appellant to reside within a community comprising a readily identifiable minority religious group to the extent that any risk could be avoided would, I conclude, be tantamount to concealment or discretion contrary to the HJ (Iran) principle. The appellant would in effect be shutting himself away from wider society and hoping (for that is what it would amount to) that he would be sufficiently safe.
- 48.** Given his overall circumstances, residence in such a community would not defeat his claim, whether because of the HJ (Iran) principle or otherwise.
- 49.** Having proceeded through the HJ (Iran) analysis, I conclude that the appellant succeeds in his appeal on the basis of his conversion to Christianity. The risk of persecution arises in his home area, whether or not in combination with the risk from his wife's family. The risk extends any place of relocation within Bangladesh. The problems identified in the expert and country evidence, in conjunction with the appellant's particular circumstances, are not geographically limited and the absence of state protection in the home area is very likely to extend countrywide.

### ***The mental health (particular social group) issue***

- 50.** It is accepted by the respondent that the appellant suffers from mental health conditions. It is also accepted that sufferers can face societal stigmatisation. However, the respondent has submitted that the appellant does not suffer from schizophrenia, could obtain appropriate treatment, and, if he remained compliant with medication, would not manifest behaviours which might attract adverse attention.

- 51.** By contrast, the appellant asserts that his mental health would significantly deteriorate on return, leading to behaviours which would stand him out and lead to a risk of “ill-treatment, ostracism and discrimination”.
- 52.** The expert evidence, which has not been challenged to any meaningful extent, clearly demonstrates that the appellant suffers from significant mental health conditions. Indeed, the fact that he remains in a medium secure hospital ward, pursuant to section 47 of the Mental Health Act 1983 is demonstrative of his current state of health.
- 53.** Having regard to relevant guidance set out in the case-law, including the recent decision in HA (expert evidence; mental health) Sri Lanka [2022] UKUT 111 (IAC), I attach very significant weight to the evidence from Dr Shortt and Dr Din. I am satisfied that they were both fully aware of their obligations and that these have actually been applied to their respective reports. Although GP records have not been provided, Dr Shortt had seen the CPA report from January 2021 and medical records from the relevant prison for the period August to November 2020. Dr Din is the treating clinician and has been able to provide important evidence from a position of in-depth knowledge.
- 54.** There is, I note, a difference between Dr Shortt and Dr Din in their diagnoses, with the former stating in his January 2022 report that the appellant suffered at that time from Mild Depressive Episode and PTSD (his 2019 report diagnosed Generalised Anxiety Disorder and Recurrent Depressive Disorder with a moderate episode). Dr Din has stated that a mild to moderate Depressive Disorder pertains, together with An Emotional Unstable Personality Disorder. She has not specifically referred to PTSD.
- 55.** Ultimately, I conclude that the specific labels attributable to the appellant’s mental health difficulties are of lesser importance than the overall effect of them, both in terms of his history and his prospects on return to Bangladesh.
- 56.** Dealing with the appellant’s past first, it is quite clear from the evidence as a whole that the appellant has a very significant history of what may be described as manifest mental health problems, albeit that the timeframe is relatively short (incidents of particular note having taken place only since 2020, although difficulties existed prior to then). I find that he has made two serious attempts at suicide, the first in early 2020 through an overdose of medication and the second in August of that year by hanging himself from a tree in a prison yard. In addition, the evidence demonstrates self-harming incidents and auditory hallucinations. Notwithstanding his current compliance with medication and close monitoring within the hospital setting, Dr Din reports that the appellant “remains very vulnerable to stress”, “is not in full remission” and gets “very distressed” when addressing the issue of removal. Her opinion, as of April 2022, is that there is “no doubt” that removal to Bangladesh would

adversely affect the appellant's already very fragile mental state, "therefore increasing his risk to his own health and safety" (report dated 19 April 2022). Dr Shortt is of the opinion that the risk of self-harm (including suicide) and/or increased intensity of auditory hallucinations would be "high" if the appellant were to be removed.

- 57.** What the above goes to show is that it is reasonably likely that the appellant would, if removed, be in a state of exacerbated stress and anxiety. This in turn would be reasonably likely to manifest itself in behaviours obvious to others and whether or not he was in receipt of relevant medication. The fact that the appellant does not suffer from schizophrenia is rather beside the point: it is the outward manifestation of mental health problems which would be significant.
- 58.** I now place these findings in the context of the claimed risk of persecution from non-state actors in Bangladesh (this is distinct from my consideration of the Article 3 claim).
- 59.** Country evidence contained in the respondent's CPIN, "Medical and Healthcare issues", published in May 2019, states that mental illness in Bangladesh is "highly stigmatised" (paragraph 9.1.2). The article in the British Journal of Psychiatry, published in 2021 and contained in the appellant's supplementary bundle, includes the following passage (with reference to a research article published in 2013):
- "High social stigma attached to mental illness also affects help-seeking behaviour. Consequently, mentally ill persons suffer in silence, with social isolation and discrimination... Widespread stigma towards the mentally ill in Bangladesh is attributable to superstitions surrounding causation of mental illness. Mental disorder is perceived to be a consequence of possession by evil spirits, as opposed to biological or psychological mechanisms, leading to neglect and abuse of those with mental illness."
- 60.** Dr Hoque's 2022 report addresses societal attitudes towards mental illness. Sufferers are perceived as being victims of sorcery or witchcraft and are commonly marginalised and often ridiculed. There is deemed to be "misfortune" attributable to the sufferer and ostracism may well occur. This evidence is consistent with country information.
- 61.** I am satisfied that, in light of the foregoing, the appellant can properly be treated as a member of a particular social group, namely those suffering from mental illness in Bangladesh. His mental health conditions cannot be changed and/or he will be perceived as being different by society and labelled with a distinct identity.
- 62.** As to whether he would be at risk of persecution, as opposed to discrimination/prejudice falling below that threshold, I would have found against the appellant were I viewing this issue in isolation. There is clearly discrimination and stigmatisation shown to those with mental health conditions, but all other things being equal, the evidence does not

demonstrate that this is reasonably likely to amount to persecutory treatment.

63. However, I am not viewing this issue in isolation: this aspect of his protection claim must be seen in the context of his case as a whole. That includes the Christian conversion issue. For reasons set out previously, I have found that the appellant will be at risk on return by virtue of his conversion and the manner in which he react, or would wish to act. I am satisfied that wherever the appellant was to reside, at least two aspects of his personal circumstances would be reasonably likely to emerge: first, his Christian conversion; second, his mental health problems. It is in my judgment wholly artificial to separate these out, at least when taking account of the perception of the community in general and/or religious extremists in particular. In other words, the conversion is reasonably likely to be linked in the eyes of others to mental illness and *vice versa*. Thus, hostility and ill-treatment related directly to the former will have a material causal link to the latter.
64. On the particular facts of this case, I therefore conclude that there is a risk of persecution by virtue of the appellant's mental health conditions.
65. Having regard to the expert and country evidence as a whole, I find that the appellant could not obtain sufficient state protection. Internal relocation is not a viable option, essentially for the same reasons set out in respect of the Christian conversion issue. Just as the appellant's faith will follow him wherever he attempted to reside, so too will his mental health conditions and, even if in receipt of some treatment, relevant behaviours connected thereto.

### ***Risk from the wife's family***

66. The respondent has accepted throughout that the appellant received indirect threats from his wife's family in the home area. I find as a fact that such threats were indeed made.
67. I have little hesitation in finding that the appellant's wife's family wish him harm were he to return to the home area. The respondent has not sought to argue that the passage of time since the murder would have resulted in a complete dissipation of anger and, in any event, I would reject any such suggestion.
68. The unchallenged expert evidence from Dr Hoque provides a strong basis for concluding that there would not be sufficient protection for the appellant in the home area. In addition to his evidence, the respondent's assessment of country evidence in the CPIN entitled "Bangladesh: Actors of protection", published in April 2020, paints a bleak picture as regards corruption and effectiveness of the police and security forces (see paragraphs 2.3.1-2.3.15). Overall, I find that there would not be sufficient

state protection from genuine and serious threats to the appellant were he to return to his home area.

**69.** I conclude, however, that in respect of this distinct basis of claim, the appellant could internally relocate in order to avoid the risk from his wife's family. It is, I find, very unlikely that the appellant would seek to make contact with his own family, such that information of his whereabouts elsewhere in Bangladesh could be passed to his wife's family. Beyond that, I am willing to accept that that family has a presence in United Kingdom and probably a degree of influence in the home area. However, the evidence before me as a whole is not sufficient to show that the family has a reach beyond the home area (or at most Sylhet province).

### ***Internal relocation***

**70.** I have concluded that there is no internal relocation option in respect of the risks connected to the appellant's conversion and mental health conditions. Adopting a belt and braces approach, I propose to state conclusions on the alternative scenario that the two risks would be limited to the home area.

**71.** On a cumulative view of all relevant personal characteristics, relocation would be unduly harsh. I have taken account of the following factors:

- (a) the lack of familial or social support;
- (b) the religious conversion and problems that this would entail (even if not reaching the threshold of persecution);
- (c) the mental health conditions and societal stigmatisation (even if the appellant were to receive some form of treatment and the Article 3 threshold were not met);
- (d) a very significant chance of not being able to secure reasonable employment and/or accommodation by virtue of the conversion and/or mental health conditions;
- (e) the length of time he has been away from Bangladesh.

**72.** Thus, the appellant would be entitled to succeed in his protection claim on that alternative scenario.

### ***Article 3 medical issue, incorporating suicide risk***

**73.** Having reflected on the evidence and submissions, I set out my conclusions on the issue of suicide first.

**74.** The appropriate legal framework within which to analyse suicide claim following AM (Zimbabwe) has been helpfully set out in the recent decision

of MY (suicide risk after Paposhvili) [2021] UKUT 232 (IAC), the judicial headnote of which states:

Where an individual asserts that he would be at real risk of (i) a significant, meaning substantial, reduction in his life expectancy arising from a completed act of suicide and/or (ii) a serious, rapid and irreversible decline in his state of mental health resulting in intense suffering falling short of suicide, following return to the Receiving State and meets the threshold for establishing Article 3 harm identified at [29] – [31] of the Supreme Court’s judgment in *AM (Zimbabwe) v Secretary of State for the Home Department* [2020] UKSC 17; [2020] Imm AR 1167, when undertaking an assessment the six principles identified at [26] – [31] of *J v Secretary of State for the Home Department* [2005] EWCA Civ 629; [2005] Imm AR 409 (as reformulated in *Y (Sri Lanka) v SSHD* [2009] EWCA Civ 362) apply.

**75.** The well-known elements of the test set out in *J* are as follows:

“First the test requires an assessment to be made of the severity of the treatment which it is said that the applicant will suffer if removed. This must attain a minimum level of severity. The court has said on a number of occasions that the assessment of its severity depends on all the circumstances of the case. But the ill-treatment must ‘necessarily be serious such that it is ‘an affront to fundamental humanitarian principles to remove an individual to a country where he is at risk of serious ill-treatment’: see Ullah paras [38]-[39].

Secondly, a causal link must be shown to exist between the act or threatened act of removal or expulsion and the inhuman treatment relied on as violating the applicant’s Article 3 rights. Thus, in *Soering* at para [91], the court said: ‘Insofar as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing contracting state by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment’ (emphasis added). See also [108] of *Vilvarajah* where the court said that the examination of the Article 3 issue ‘must focus on the foreseeable consequences of the removal of the applicants to Sri Lanka ...’

Thirdly, in the context of foreign cases, the Article 3 threshold is particularly high simply because it is a foreign case. And it is even higher where the alleged inhuman treatment is not the direct or indirect responsibility of the public authorities of the receiving state, but results from some naturally occurring illness, whether physical or mental. This is made clear in para [49] of *D* and para [40] of *Bensaid*.

Fourthly, an Article 3 claim can in principle succeed in a suicide case (para [37] of *Bensaid*).

Fifthly, in deciding whether there is a real risk of a breach of Article 3 in a suicide case, a question of importance is whether the applicant’s fear of ill-treatment in the receiving state upon which the risk of suicide is said to be based is objectively well-founded. If the fear is not well-founded, that will tend to weigh against there being a real risk that the removal will be in breach of Article 3.

Sixthly, a further question of considerable relevance is whether the removing and/or the receiving state has effective mechanisms to reduce the risk of suicide. If there are effective mechanisms, that too will weigh heavily

against the applicant's claim that removal will violate his or her Article 3 rights."

- 76.** The fifth point was reformulated by the Court of Appeal in Y (Sri Lanka) [2009] EWCA Civ 362 in the following terms:
- "... whether any genuine fear which the appellant may establish, albeit without an objective foundation, is such as to create a risk of suicide if there is an enforced return."
- 77.** The first matter to address is the severity of the consequences said to occur if the appellant were to be removed. A completed act of suicide would attain the minimum level of severity necessary to engage Article 3.
- 78.** Second, I am satisfied that there would be a causal link between the appellant's removal and the risk of suicide in Bangladesh. The appellant has made two serious suicide attempts in the recent past and has consistently expressed suicidal ideation connected to the prospect of being removed to Bangladesh. The medical evidence demonstrates that the appellant remains at risk and that removal would "no doubt adversely affect his mental state, therefore increasing his risk to his own health and safety." (Dr Din's Report of April 2022. Dr Shortt has stated a similar opinion: January 2022 report at paragraph 15.13 and 15.14).
- 79.** Third, Article 3 can still in principle succeed on the basis of a suicide risk.
- 80.** Fourth, on my findings, there is an objective risk of persecution throughout Bangladesh to the appellant by virtue of his conversion and mental health conditions. There is also a risk to him specifically in the home area from his wife's family. Thus, the appellant's subjective fears of returning are well-founded.
- 81.** Even if they were not well-founded, the appellant clearly holds a strong subjective fear and that remains significant in the analysis.
- 82.** Fifth, there is then the question of relevant medical treatment and any other forms of support in Bangladesh. As to the latter, I have concluded that there would not be any familial assistance. Indeed, the opposite is true. Nor would there be a social network in place: the appellant has been away from Bangladesh for a lengthy period and there is no evidence of any continuing friendships in that country. It is right that a Christian community may in theory provide some form of support. However, that could only be the context of an ongoing risk of persecution to the appellant, which such a community would be in no position to alleviate.
- 83.** The appellant is undoubtedly receiving good support in the United Kingdom. As set out in the evidence, this is in the context of a medium secure hospital ward with intensive monitoring by highly trained professionals. The (I assume, high) cost of this treatment is of course not being borne by the appellant.



- 84.** By contrast, the country evidence on the provision of appropriate treatment in Bangladesh indicates that this is at best very poor, if not entirely absent. The article in the British Journal of Psychiatry referred to previously highlights the inadequacy of healthcare for mental health conditions. Evidence quoted in the CPIN confirms the inadequacy of facilities and a system which does not function well. There is reference to some provision by the state and private facilities, with a MedCOI document from September 2017 stating that “treatment options” were available for PTSD and depressive disorders. The list of available medicines at Annex A of the CPIN (as of March 2019) lists only one of the four medications currently been taken by the appellant. The antipsychotic medication (Amisulpride) is not on the list.
- 85.** Whilst there is, I find, some very limited provision for the treatment of mental health conditions in urban areas, this does not defeat the appellant’s claim. This is because:
- (a) the appellant remains “very vulnerable” and subject to suicidal ideation even whilst in a specialised and safe environment in the United Kingdom;
  - (b) he has a history of genuine suicide attempts;
  - (c) removal to Bangladesh will undoubtedly significantly increase stress and anxiety, which in turn would lead to a significant deterioration in his mental health;
  - (d) he would have no familial or social support;
  - (e) it is extremely unlikely that he would be able to secure reasonable employment in the short to medium term;
  - (f) the appellant would have no source of funds with which to pay for initial and/or ongoing specialised treatment (the respondent has not relied on any return package. Even if a sum were available, this would only cover a limited time period);
  - (g) he is at risk from the community or sections thereof by virtue of his Christian conversion and mental health conditions;
  - (h) the current anti-psychotic medication is not apparently available in Bangladesh;
  - (i) it is highly unlikely that he would be able to access any level of treatment appropriate to his overall circumstances, even if such treatment were in principle available. At best, he might engage initially, but the overall impact of removal would be such as to prevent necessary consistent treatment, such as to sufficiently reduce the risk of suicide;
  - (j) the medical experts are clear in their opinion were the appellant to become non-compliant with appropriate treatment (in my view, it is immaterial whether that was result of non-availability of medication subjective fear of engaging with institutions/professionals): the risk of completed suicide would be real;

(k) it cannot be said (nor has it been) that the appellant should be subject to indefinite inpatient admission in a facility in Bangladesh in order to reduce the risk of suicide.

**86.** This is an exceptional case. The appellant succeeds on Article 3 grounds by virtue of a cumulative assessment of all relevant considerations, including protection issues, clear and unchallenged expert evidence, and the application of the very high threshold established by case-law.

**87.** In light of my conclusion on the suicide issue, it is unnecessary to deal with the more general Article 3 medical claim.

### **Summary of conclusions**

**88.** The appellant is a refugee and a person whose removal from United Kingdom would violate Article 3. He therefore succeeds in his appeal on these grounds.

**89.** It of course remains the case that he is a foreign national offender whose deportation is in the public interest. However, as result of my conclusions deportation cannot be affected.

### **Anonymity**

**90.** The First-tier Tribunal made an anonymity direction. It is appropriate for me to make such a direction as well, given the fact that the appellant's case involves protection issues.

### **Notice of Decision**

**91. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and that decision has been set aside.**

**92. I re-make the decision by allowing the appeal on Refugee Convention grounds and under Article 3 ECHR**

Signed: H Norton-Taylor

Date: 1 June 2022

Upper Tribunal Judge Norton-Taylor

### **TO THE RESPONDENT**

**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed: H Norton-Taylor

Date: 1 June 2022

Upper Tribunal Judge Norton-Taylor

**ANNEX: ERROR OF LAW DECISION**

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

Appeal Number: PA/02542/2019(V)

**THE IMMIGRATION ACTS**

**Heard at Field House (by remote video means)  
On 12<sup>th</sup> July 2021**

**Decision & Reasons  
Promulgated**

.....

**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

**EH  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Symes and Ms A Nizami of Counsel, instructed by  
Duncan Lewis & Co Solicitors

For the Respondent: Ms S Chuna, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no audio or visual difficulties during the course of the hearing. A face to face hearing was not held to take precautions against the spread of Covid-19 and as all issues could be determined by remote means. The file contained the papers mainly in hard copy, with the expert report being available electronically.
2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Henderson promulgated on 4 February 2020, in which the Appellant's appeal against the decision to refuse his protection and human

rights claim in the context of deportation dated 5 March 2019, with a supplementary decision letter dated 5 September 2019, was dismissed.

3. The Appellant is a national of Bangladesh, born on 2 February 1981, who entered the United Kingdom on 7 May 2007 as the spouse of a British national. On 1 December 2008, the Appellant was convicted of murdering his wife, for which he was sentenced to life imprisonment with a minimum term of 12 years on 12 December 2009. The Respondent served a notice of liability to deport on 6 March 2009.
4. On 18 February 2015, the Appellant made representations against deportation in the form of an asylum claim. These were refused in the Respondent's decision dated 30 August 2018. In summary, the presumption in section 72 of the Nationality, Immigration and Asylum Act 2002 applied such that he was excluded from the Refugee Convention and in any event, although it was accepted that the Appellant had been threatened by his wife's family in Bangladesh, this was not a fear of persecution for a convention reason and in any event there would be the option of internal relocation and a sufficiency of protection for the Appellant on return to Bangladesh. The Respondent considered the evidence of the Appellant's depression and noted that treatment was available in Bangladesh. The Appellant was excluded from humanitarian protection under paragraph 339C of the Immigration Rules. In relation to human rights, the Appellant had no family life established in the United Kingdom and had spent the vast majority of his time here in prison such that there was no significant private life either. Overall, there were no very compelling circumstances to outweigh the significant public interest in deportation of this Appellant.
5. The Appellant was interviewed and made further submissions, following which a supplementary decision letter was issued by the Respondent on 5 September 2019 dealing with the Appellant's further claims to be at risk on return due to his conversion to Christianity and because he was bisexual. The Appellant also maintained that he was at risk from his wife's family who were wealthy, had political links and power to find the Appellant in Bangladesh. The Respondent did not accept that the Appellant had any genuine desire to openly practice as a Christian in Bangladesh and as such would not face any adverse attention on return for this reason. Further, it was not accepted that the Appellant was bisexual or gay and all other matters covered in the original decision were maintained.
6. Judge Henderson dismissed the appeal in a decision promulgated on 4 February 2010 on all grounds. The First-tier Tribunal found that the Appellant had rebutted the presumption in section 72 of the Nationality, Immigration and Asylum Act 2002 and went on to consider the substance of his protection and human rights claims. In relation to the Appellant's religion, the First-tier Tribunal accepted that the Appellant had converted to Christianity but not that he had been rejected by his family for this reason, nor that he would in any event be at risk on return for this reason

as he would not be open about this in public or attempt to convert others to Christianity. In relation to the Appellant's sexuality, the First-tier Tribunal did not find that he was bisexual or gay, making a number of adverse credibility claims and noting that this aspect of the claim had been raised very late without any explanation and contained a number of internal inconsistencies. In any event, the Appellant had not been living as an openly gay man in the United Kingdom and there was nothing to suggest he would do so on return to Bangladesh. The appeal was dismissed on asylum and humanitarian protection grounds and under Articles 2, 3 and 8 of the European Convention on Human Rights, with a finding that there were no very compelling circumstances to outweigh the public interest in deportation.

### **The appeal**

7. The Appellant appeals on seven grounds as follows:

- (i) that the First-tier Tribunal failed to follow the guidance in HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31 when considering the Appellant's conversion to Christianity by failing to consider the risk to the Appellant as such, which was supported by expert evidence, and asking itself the wrong question as to whether the Appellant would be compelled to publicise his conversion;
- (ii) that the First-tier Tribunal failed to resolve a conflict of evidence as to the risk on return to the Appellant, the expert giving evidence that he would be with the opposite conclusion reached in the decision without any reasons for departing from that evidence;
- (iii) that the First-tier Tribunal erred in giving weight to an immaterial matter as part of its reasoning as to risk on return as a Christian convert, namely that there had been a Papal visit to Bangladesh;
- (iv) that the First-tier Tribunal erred in its assessment of risk to the Appellant from his wife's family by (i) requiring corroborative evidence where none was required; (ii) failing to consider the Appellant's credibility in relation to his wife's family's influence; (iii) failing to understand that the Appellant had not specifically recorded a particular phonecall for evidential purposes but that all phonecalls from prison are recorded; and (iv) failing to consider the inter-connected family relationships (the Appellant's wife was his cousin) and whether the Appellant could therefore be located from within his own family;
- (v) that the First-tier Tribunal failed to make clear findings on the Appellant's sexuality;
- (vi) that the First-tier Tribunal failed to consider whether the Appellant would be perceived to be a gay or bisexual man on return to Bangladesh and if so, whether he would be at risk for that reason;

- (vii) that the First-tier Tribunal failed to consider the option of internal relocation within Bangladesh.
8. Permission to appeal was originally granted only on the fourth and seventh grounds of appeal, but following a *Cart* Judicial Review and further decision of the President and the Vice President of the Upper Tribunal, it was confirmed that all grounds are within the scope of this appeal.
  9. At the oral hearing, on behalf of the Appellant, the written grounds of appeal were relied upon in full with further oral submissions on the same. In relation to the first ground of appeal, it was submitted that the test in HJ (Iran) required a decision on how someone would behave on return and if discretely, assess why they would behave in that way. In this appeal, the First-tier Tribunal accepted that the Appellant had genuinely converted to Christianity and there was evidence before the Tribunal from Rev. Burn that the Appellant encourages others in their faith with the Appellant stating in his evidence that he would continue to do so on return. In these circumstances, it was insufficient in the decision to find that the Appellant had not shown he would be publicly explicit about his religious views or seek to convert others to Christianity upon his return (paragraph 54) and that he had not established that he would be evangelical or feel obliged to publicise his conversion on return to Bangladesh (paragraph 104). The evidence of Rev. Burn was relied upon to the extent that it made no reference to any evangelical or proselytising tendencies (paragraph 104).
  10. The second ground of appeal was said to overlap with the first to some extent, in that there was evidence before the First-tier Tribunal in the expert report as to the risk to a convert or apostate in Bangladesh; evidence from Rev. Burn that the Appellant had suffered hostility from Muslims in prison and evidence that news of the Appellant's conversion had leaked in to his community in Bangladesh (the evidence from his family on this point not being rejected by the First-tier Tribunal). In these circumstances, the First-tier Tribunal had failed to take into account all of the evidence to make the wider assessment required.
  11. The third ground of appeal concerned the reliance of the First-tier Tribunal on evidence of a Papal visit to Bangladesh in contrast to a lack of reference to other material submitted by the Appellant as to the risk to Christians which painted the opposite view.
  12. The fourth ground of appeal concerned the First-tier Tribunal's assessment of risk from the Appellant's wife's family in Bangladesh, which did not contain any clear findings on whether they had the requisite influence to find the Appellant. The decision instead focused on the witness evidence not being corroborated (which was not necessary) and whether it contained hearsay evidence or was admissible. In addition, there was supporting evidence in the expert report that the

Appellant's family may will be able to track someone like the Appellant if they had the finances to do so.

13. The fifth ground of appeal concerns the assessment of the Appellant's sexuality by the First-tier Tribunal. Mr Symes accepted that there were a number of adverse points about the Appellant's claim, but that some, such as his failure to explain his full sexual history to others were matters upon which the Appellant could not reasonably have been expected to do. It was unfair for the First-tier Tribunal to expect matters disclosed to another person or covered in the written statement to exactly match the answers given in the Appellant's asylum interview.
14. In paragraph 63 of the decision, it was submitted that the First-tier Tribunal should have shown greater care on the substance of the claim rather than relying on specific labels or distinctions about a person's sexuality and this paragraph lacked sufficient reasoning for the conclusion that the Appellant was not gay or bisexual for this reason. Further, in the following paragraph, the First-tier Tribunal relied too heavily on discrepancies in the Appellant's account in circumstances where he had adopted his written statement but this did not claim to be comprehensive.
15. In relation to the sixth ground, Mr Symes highlighted the evidence referred to in paragraph 56 of the decision that the Appellant was called a 'lady-boy'; with such evidence of the Appellant coming across as effeminate not rejected by the First-tier Tribunal but not considered as to whether this was a risk on return despite expert evidence that there were problems in Bangladesh for such people.
16. Finally, Mr Symes accepted that the final ground of appeal is not free-standing and only becomes relevant if one of the other grounds is successful and the Appellant is found to be at risk on return to Bangladesh for at least one reason. Further, the points made in relation to family contact may be relevant due to the medical evidence that the Appellant's mental health may worsen by social isolation or having to cut ties with his family.
17. On behalf of the Respondent, Ms Chuna made the following submissions. In relation the Appellant's religion, it was submitted that the grounds of appeal amounted only to disagreement with the findings of fact made by the First-tier Tribunal. In particular, there is no contradiction in paragraph 104 of the decision as speaking to prisoners is not the same as evangelising; there is a difference in the degree of encouragement and promotion of religion. The opinion in the expert report refers to the promotion of religion and propaganda of which there may be censorship, particularly if perceived as going against Islam or being political; but the Appellant's activities were not akin to this and he is not therefore at risk consistent with the expert evidence.



18. In relation to the Appellant's claimed risk from his family, it was submitted that the First-tier Tribunal had properly considered the evidence before it, including of threats received and that the Appellant's mother and brother were still willing to keep in touch with the Appellant even after his conversion to Christianity. It was open to the First-tier Tribunal to reject this part of the claim for the reasons given in paragraph 65, in particular relying on the evidence of the family willingness to engage with the Appellant. Overall the evidence was appropriately considered holistically, in the context of the claim and the expert evidence. The fact that the family are willing to engage undermined the Appellant's claim as to risk from his family, who would be able to support him against the wider community in conjunction with the measures in place to protect minorities. The expert report focuses more on risk from the family rather than the community, stating that it was normally a family who looked to the wider community for support if not engaged.
19. As to the Appellant's claimed risk from his wife's family, it was accepted that if the Appellant seeks to find his own family, this could lead to him being found given that it is all essentially one large extended family. As such, it may be that the Appellant may have more limited contact with his family than he would otherwise, but there is no reason not to have any contact given there is a sufficiency of protection available to him. The First-tier Tribunal balanced the risk and considered the protections against it available to the Appellant and reached a lawful conclusion that was open to it on the evidence. Again it was submitted that the grounds of appeal amounted to disagreement with the findings and no more.
20. In relation to the fifth ground of appeal, it was submitted that the issues considered by the First-tier Tribunal were ones of consistency about the Appellant's claim and the intrinsic expression of self which was the relevant context in which to evaluate the claim. It was noted that the probation officer, who had the role of supporting and assessing the Appellant was not aware of the Appellant's sexuality and it was open to the First-tier Tribunal to draw an adverse inference about the Appellant's failure to engage with others on this subject until very recently. Further, in circumstances where the Appellant has been open about some experiences, it would be reasonable to expect that there would be greater disclosure of others and no reason why some but not all would be shared. Overall, the First-tier Tribunal considered the evidence in the round and in context.

### **Findings and reasons**

21. In this decision I deal with the First-tier Tribunal's decision in three parts corresponding to the three reasons why the Appellant claimed to be at risk on return to Bangladesh, grouping the grounds of appeal together accordingly. I also note at the outset that despite being a very detailed and thorough decision in many respects, the First-tier Tribunal's decision is difficult to follow at times because of its structure. The decision deals

first with the Appellant's claim, by head of claim and includes some of his evidence in relation to each. There is then a section about the evidence and findings of fact together, broken down in to subsections for the different heads of claim; which includes primarily the Appellant's own evidence rather than all of the relevant evidence to that particular head of claim and deals separately with the other witness evidence, the expert evidence and other objective evidence. Finally, there is then a relatively lengthy conclusions section, which returns to each matter separately, with some repetition in findings but also different reasons given. Whilst as recorded in the First-tier Tribunal decision that the appeal was complex and lengthy with claims and evidence being pursued and produced in a piecemeal fashion; there was perhaps a clearer and more logical way in which the evidence and then the findings could have been more coherently presented.

22. I deal first with the Appellant's conversion to Christianity, which was accepted by the First-tier Tribunal as genuine but it was not found that he would be at risk on return to Bangladesh as a result. The evidence and findings of fact in relation to the Appellant's conversion are contained primarily in paragraphs 47 to 54 of the decision. So far as these paragraphs include actual findings as opposed to recitation of the evidence, these appear to be limited to (i) that it was implausible that the Appellant had waited six months to tell his family about his conversion whilst waiting to speak to his solicitor; (ii) that the Appellant's family had not rejected him as an individual due to his conversion and his mother and brother were willing to keep in touch with him; and (iii) in paragraph 54 as follows:

*"54. I accept the appellant has established that (on the lower standard of proof) he has converted to Christianity. However, I do not accept that the appellant has established that he would be rejected by all of his family or that he would be subject to torture/death because of his religious conversion if he returned to Bangladesh. I also do not accept that the appellant has shown that he would be publicly explicit about his religious views or seek to convert others to Christianity upon his return."*

23. From what follows before, there is sufficient reasoning for the conclusion in relation to the Appellant's family which was open to the First-tier Tribunal to find; but there is a lack of any explanation or reasons at all for the finding that he would not be at risk on return due to his conversion, nor that he would not be public about his views or seek to convert others to Christianity. These matters are not expressly referred to in the preceding paragraphs and there is no consideration of the background country evidence or expert evidence on this point until later in the decision (and then only a brief reference to the expert report in paragraph 88 on this point). At this point the decision reads as if final conclusions have been reached before the evidence is considered holistically and in the round.

24. The First-tier Tribunal returns to conclusions on the Appellant's conversion to Christianity in paragraphs 104 to 106 of the decision as follows:

*"104. I have accepted that the appellant has established on the lower standard of proof that he has converted to Christianity. This is supported by evidence from Rev Burn. However, I do not find that the appellant has established on the lower standard of proof, that he would be evangelical with regard to his practice of Christianity or that if he were to return to Bangladesh he would feel obliged to publicise his conversion. Rev Burn makes reference to the appellant encouraging others in their faith but made no reference to any evangelical or proselytising tendencies.*

*105. Further, I have not accepted the appellant's evidence that he would be wholly rejected by his family if he returned to Bangladesh, nor that he would be subject to torture because of his conversion to Christianity. I have expressed my views concerning the appellant's credibility on these points (see Evidence and Findings of Fact above). The appellant's family may well fear social consequences from his conversion, but his mother and one elder brother have indicated a willingness to keep in touch with the appellant.*

*106. The evidence of the expert report and the objective evidence to which I was referred suggest that the appellant would face a risk of harm if he openly expressed his Christian views, however, I have found that the appellant has not shown that he would be compelled to do so. The appellant is not a refugee on this ground."*

25. These stated conclusions however go little further than the findings and conclusions already reached in paragraphs 47 to 54, with the same positive finding of conversion and restatement of the same finding and reasons in relation to the Appellant's family. However, what is contained in these paragraphs still fails to provide any explanation or reasons for the two other findings that the Appellant would not be public about his faith and would not face a risk of harm due to his conversion. The reference back to views on the Appellant's credibility as to his risk of torture because of his conversion does not assist as the earlier section does not expressly deal with this at all.
26. Whilst there is some further reference to evidence and whether the Appellant would openly express his Christian views or whether he would be evangelical; the findings on this are not entirely clear; nor is the test or evidence that the First-tier Tribunal has had regard to in reaching its conclusion. It may be the case that there is a question of fact and degree between encouraging others in their faith and evangelising; but if there is, the First-tier Tribunal has not explained this and it is not clear whether this was or was not a reason for the finding that there was no risk due to his conversion. In any event, the real issues are whether the Appellant would be at risk as an apostate and/or as a Christian convert (with or

without evangelising) and whether he would live openly as a Christian. The finding on the former is entirely devoid of reasons, particularly given the expert evidence referred to risk as an apostate and/or Christian convert per se which was known at least to family and some in the Appellant's home area. The background evidence in this case is different to, for example some other countries where conversion to Christianity itself does not put a person at risk, but evangelising may do so. The distinction is not necessarily relevant in the present appeal.

27. It is also not entirely clear whether the First-tier Tribunal equated an open expression of Christian views in paragraph 106 with evangelising in paragraph 104 or whether these were separate and distinct considerations. There is in any event no assessment of why the Appellant would not openly express his views even if there was a legitimate finding that he would not on the evidence (which is in doubt given the lack of reasons for rejecting the evidence before the Tribunal on this point). The lack of clarity in the reasons and findings is not helped by the lack of self-direction as to the appropriate questions to be asked. The First-tier Tribunal appropriately refers to the test in HJ (Iran) in paragraph 100 of the decision, but only in the context of the Appellant's claim based on sexual orientation and not in the context of his claim to have converted to Christianity to which this approach has equal application.
28. The second ground of appeal is more appropriately characterised as a finding that is inconsistent with the evidence rather than a failure to resolve a conflict in the evidence (there not being any conflicting evidence identified before me). In any event, for the reasons set out above, there are material errors of law in the First-tier Tribunal's assessment of whether the Appellant is at risk on return to Bangladesh as a Christian convert; with a failure to follow the approach set out in HJ (Iran), a failure to consider the evidence in the round before reaching a conclusion and a failure to give any or any adequate reasons for the conclusions reached which at least in some respects are contrary to the evidence before the Tribunal without reasons for rejecting the same.
29. The third ground of appeal is a more minor point as to the assessment of risk to Christian converts which adds little if anything of substance to the errors of law already found. Whilst it may be that reference to a Papal visit to Bangladesh is not a particularly good reason for finding that there is not a risk on return to Christian converts (particularly as this is unlikely to be relevant at all to the issue of apostasy); this is clearly not a significant reason relied upon by the First-tier Tribunal in its reasoning, if at all. The reference to the Papal visit is in paragraph 92 of the decision, dealing with other objective evidence and sets out, at least to some extent, that there is competing evidence about the risk to the Christian community per se. This paragraph only goes so far as to suggest that some facts suggests a lack of risk but it is not a clear finding and not one that is relied upon in the other more

substantive parts of the decision on the Appellant's conversion dealt with above.

30. Secondly, I deal with the First-tier Tribunal's assessment of the Appellant's risk on return from his wife's family, challenged in the fourth ground of appeal.
31. The First-tier Tribunal's decision deals with the Appellant's claimed threat from his wife's family first in paragraphs 4 and 43 to 46 of the decision; then in paragraphs 74 to 78 which deal with the witness evidence (upon which little weight was placed in the absence of any objective evidence to support his views); in paragraph 89 as to the expert evidence on this point (with the conclusion that the Appellant has not provided any evidence to support his claim that his wife's family have connections with the police force or the Awami league) and with final conclusions in paragraph 111 that as the potential victim of a revenge killing, the Appellant did not fall within a particular social group for the purposes of the Refugee Convention and in paragraph 112 that there was no reasonable likelihood of the Appellant being at risk of harm from his wife's family, the majority of whom live in the United Kingdom, such that he was not entitled to humanitarian protection.
32. In paragraph 44, the First-tier Tribunal found that it was implausible that the Appellant had thrown away a Bengali newspaper article and picture (showing his brother-in-law in the UK with his local MP) which he relied upon to show the extent of his wife's family's influence. It was noted that the Appellant had sought to record telephone calls with members of his family for evidential purposes and therefore not credible that he would have disposed of other evidence. The latter is a clear misunderstanding about the recording of the phonecalls which was done routinely by the prison during the Appellant's incarceration and available to him through those means as opposed to voluntarily recorded by him for the purposes of evidence. However, this misunderstanding relates to a relatively minor point in the context of the appeal and is not material. It is difficult to see how even if the evidence had been accepted, a photograph of a family member in the UK with his local MP of itself lent any support to the assertion of the Appellant's wife's family's claimed wealth, influence and political links with the Awami party in Bangladesh.
33. In paragraph 78, the First-tier Tribunal places little weight on the evidence of RT for the sole reason that there was no objective evidence to support the views given. There is of course no requirement for corroboration and there should have been a more general and standalone assessment of the witness' credibility for this evidence to be considered in the round. It may well be that there were other lawful reasons for little weight to be attached to this evidence, such as the lack of detail in the assertions made; which, when taken in the round with the other evidence may enabled the First-tier Tribunal to make a lawful finding that there was overall insufficient evidence to establish that the Appellant's wife's family in Bangladesh were not sufficiently wealthy or influential to find

him or carry out threats to him; but those were not the reasons given in the decision.

34. Separately, the Appellant appeals on the basis that the First-tier Tribunal has failed to expressly consider whether he would be traced in Bangladesh by his wife's family (even if they are not wealthy or influential) by contact or return to his own family given that they are in reality, one large extended family - the Appellant's wife also being his cousin. This is a matter raised in the expert evidence which is a separate point to those set out above as to risk from the Appellant's wife's family upon which findings were required but not made.
35. For these reasons, the First-tier Tribunal also erred in its assessment of whether the Appellant would be at risk on return to Bangladesh from his wife's family. That is unlikely to be material in relation to his asylum claim for the reasons given in paragraph 110 of the decision (which has not expressly been challenged) but is still relevant to his humanitarian protection claim and appeal under Articles 2 and 3 of the European Convention on Human Rights.
36. Thirdly, I deal with the First-tier Tribunal's assessment of the Appellant's risk on return on the basis of his sexual orientation, challenged in the fifth and sixth grounds of appeal.
37. The First-tier Tribunal's decision in relation to the Appellant's claimed sexual orientation is contained in paragraphs 9 to 14 as the initial basis of the Appellant's claim; in paragraphs 55 to 65 as part of the evidence and findings of fact section and in paragraphs 107 to 110 as to the conclusions on this part of the claim. In relation to the evidence section, the First-tier Tribunal gave a number of reasons as to why the Appellant was not found to be gay or bisexual, including the delay in making this claim (for which no plausible explanation was offered, the one as to confidentiality of submissions being rejected); and the lack of consistency between the Appellant's written statements, asylum interview and information he shared (or did not share) with others, including family, friends, Rev Burn and his probation officer about his claimed sexuality. It was also found that the Appellant had not been living openly as a gay or bisexual man in the United Kingdom and had not told his family or a close friend which was inconsistent with his evidence that others suspected this and called him 'lady-boy'; as well as indicating that he would not live openly on return to Bangladesh either. There was a further reference to an inconsistency between how the Appellant described himself, whether gay or bisexual in paragraph 63 but this does not contain any adverse findings as such, nor is it phrased in any way as a reason not to believe the claim one way or another but is more of a comment on what the Tribunal considers to be the more appropriate description of the claim. Later in paragraph 107 however the First-tier Tribunal does appear to rely on the difference in claim between being bisexual or gay as an inconsistency in his account.

38. In paragraph 107 onwards the First-tier Tribunal refers back to the earlier findings and adds additional reasons for not accepting the Appellant's claimed sexuality; which included a lack of evidence and confused descriptions. The First-tier Tribunal then found in the alternative, that even if the Appellant were gay or bisexual, he had not been open about his sexuality nor would he be on return to Bangladesh with particular reliance placed on the fact that this has not been disclosed to his close friend in the United Kingdom or any of his family and he would live discretely not because of a fear of persecution but so as not to cause distress or embarrassment to his friends or family.
39. I do not find any error of law on these findings made by the First-tier Tribunal, they are clear with adequate reasons being given when the relevant sections are read as a whole and were open to the Tribunal on the evidence before it. I do not find that the conclusions were in any way confused, nor is there any express or implied acceptance that the Appellant was gay or bisexual based on the discussion of whether the Appellant accurately described or labelled his claimed sexuality. It is reasonable to expect that the Appellant would set out his claim in full in his written statement and whilst there was no requirement or expectation on the Appellant to divulge his full relationship and sexual history to Rev Burn, it was open to the Tribunal to note that the more serious relationship had not been mentioned.
40. There is however an omission in the First-tier Tribunal's finding as to whether the Appellant would be perceived as gay on return to Bangladesh given the evidence that he had been called a 'lady-boy' (albeit this was allegedly by his siblings and wife rather than anyone in the wider community) which should, at least as a matter of completeness have been determined, even though it may not be material for the same reasons given in paragraphs 109 and 110 of the decision which have not been challenged. In any event, the decision of the First-tier Tribunal needs to be set aside for the errors already identified above and the resumed hearing provides an opportunity for this discrete point to be determined.
41. Finally, I turn to the seventh ground of appeal in which it is asserted that the First-tier Tribunal has erred in failing to consider the issue of internal relocation. As accepted by Mr Symes during the course of the hearing; this would only be relevant if there was an accepted risk on return to the Appellant's home area and the ground is at this stage, was entirely superfluous. There is no freestanding error of law on this ground on the basis of the First-tier Tribunal's findings; however, given the errors identified in those findings, when the appeal is remade this may be a relevant issue to determine if the Appellant is found to be at risk on return to his home area for any reason. For similar reasons, sufficiency of protection may also be an issue.
42. For the reasons set out above, the decision of the First-tier Tribunal contains material errors of law which require it to be set aside. Subject to

the following preserved findings of fact which were unchallenged or upon which no error of law was found, the protection issues in the appeal will be considered afresh. The following findings are preserved:

- The Appellant has rebutted the presumption under section 72 of the Nationality, Immigration and Asylum Act 2002.
- The Appellant is a genuine convert to Christianity.
- The Appellant is not gay or bisexual and even if he was, he would choose to live discretely on return to Bangladesh not because he feared persecution.
- There are no very compelling circumstances to outweigh the public interest in deportation and the appeal is dismissed under Article 8 of the European Convention on Human Rights.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

### **Listing Directions**

- (i) The appeal to be listed for a face to face hearing before any UTJ on the first available date after 1 September, with a time estimate of 3 hours. On the assumption that the same witnesses will give evidence as in the last hearing, a Bengali (Sylheti) interpreter is required. If this is not the case, the Appellant's solicitors should confirm what, if any, interpreter is required is soon as possible.
- (ii) Any further evidence the Appellant wishes to rely on is to be filed and served no later than 14 days prior to the relisted hearing. A written statement or updated written statement is required for any persons attending to give oral evidence to stand as their evidence in chief.
- (iii) If the Appellant is to give oral evidence, his solicitors are, as soon as possible, to make a request to the Upper Tribunal for any specific measures required to enable him to do so in light of the earlier acceptance that the Appellant be treated as a vulnerable witness.
- (iv) Any further evidence the Respondent wishes to rely on is to be filed and served no later than 14 days prior to the relisted hearing.
- (v) The parties are at liberty to file a skeleton argument, no later than 7 days prior to the relisted hearing.



**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 G Jackson

Date 2<sup>nd</sup> August 2021

Upper Tribunal Judge Jackson