



IAC-AH-DP-V1

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

Appeal Number: AA/05433/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27<sup>th</sup> January 2016**

**Decision & Reasons Promulgated  
On 9<sup>th</sup> February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**MD RASEL SIKDER  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr F Habtemariam of Anglia Immigration Law

For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a decision of Judge A W Khan of the First-tier Tribunal (the FtT) promulgated on 15<sup>th</sup> July 2015.
2. The Appellant is a male citizen of Bangladesh born 10<sup>th</sup> October 1992 who claimed asylum on the basis that he feared persecution in Bangladesh because he had converted from Islam to Christianity.

3. The application was refused on 12<sup>th</sup> March 2015 and the Appellant appealed to the FtT pursuant to section 82 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act).
4. The FtT heard the appeal on 1<sup>st</sup> July 2015 and concluded that the Appellant would not be at risk if returned to Bangladesh, and therefore the appeal was dismissed on all grounds.
5. The Appellant applied for permission to appeal to the Upper Tribunal. It was contended that the FtT had erred by failing to assess the risk to Apostates in Bangladesh because the Appellant had converted from Islam to Christianity, and the FtT had only considered the risk of harm to Christians who had not converted.
6. It was also contended that the FtT had erred in considering the evidence that related to an attack upon the Appellant's mother in Bangladesh, which the Appellant contended was a result of her conversion to Christianity. The FtT had stated that a translation of a newspaper article could not be relied upon, and it was submitted that the FtT should have considered the original newspaper article which was in possession of the Respondent's representative, and in addition there was a Tribunal interpreter present at the hearing, who could have assisted with the translation.
7. Permission to appeal was granted by Judge Nightingale of the FtT in the following terms;
  - "2. The grounds argue that the Judge erred in considering the risk to the Appellant as a Christian rather than as a convert to that faith. The Judge also erred in failing to request the original of a document from the Respondent that he could not read or to avail himself of the assistance of the interpreter with any concern about translation.
  3. The Judge made a factual finding at paragraph 16 that the Appellant had been a Muslim. He also accepted that the Appellant had converted to Christianity. It is arguable that he fell into error by failing to consider the risk to Muslim converts to Christianity and limiting his consideration to the risk to Christians generally.
  4. It is also arguable (from paragraph 18) that the Judge should have requested the original newspaper article, and translation, from the Respondent's file at court if the Tribunal's copy was "blurred". It is arguable that the Judge should have addressed any concerns with the translation by use of the interpreter present at court. It is arguable that the Judge should also have requested the Respondent produce the hospital certificate referred to in the refusal letter if it had not been included in the Respondent's bundle.
  5. The grounds disclose arguable errors of law and permission is granted on all grounds pleaded."
8. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 contending that the FtT decision disclosed no error of law. The

Respondent noted that the FtT had found at paragraph 25 that Christians are not, in general, at risk of persecution, and had found at paragraph 26 that a sufficiency of protection existed in Bangladesh. The Respondent contended that the grounds were a disagreement with findings made by the FtT.

9. It was argued that it was for the Appellant to establish his claim, and the FtT was not obliged to seek to clarify the quality of documents placed before it. The Respondent noted that the Appellant had been legally represented.
10. Directions were subsequently issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FtT decision should be set aside.

### **The Appellant's Submissions**

11. At the hearing before me Mr Habtemariam relied upon the grounds contained within the application for permission to appeal and submitted that the FtT had erred by considering the risk to Christians in Bangladesh, rather than considering the risk to Christians who had converted from Islam, and therefore would be regarded as Apostates.
12. Mr Habtemariam submitted that the FtT had considered the evidence unfairly and had not considered the evidence in the round, and had not applied anxious scrutiny.
13. If the FtT had concerns about the translation of the newspaper article, then the assistance of the Tribunal interpreter should have been requested. The FtT should also have looked at the original newspaper article, which (according to paragraph 18 of the FtT decision) was confirmed to be in the Home Office file.

### **The Respondent's Submissions**

14. Mr Kandola commented that the file that he had contained a copy of the newspaper but not the original though this was not his main submission. Mr Kandola relied upon the rule 24 response and noted the finding made by the FtT at paragraph 20 that there was no credible evidence that the Appellant's father had threatened him and submitted that this was a fundamental finding.
15. It was submitted that the FtT had considered evidence about individuals who had converted to Christianity, and Mr Kandola referred to paragraphs 23 and 24 of the decision.
16. I was asked to note that the FtT had considered the Respondent's Operational Guidance Note on Bangladesh, and the Bangladesh Country of Information Report, and Christian converts were not regarded as being in a particular risk category in those documents. Mr Kandola pointed out that

the FtT had noted the absence of independent evidence from human rights organisations.

17. Mr Kandola stated that the Respondent's position was that the Appellant had always been a Christian, and therefore had not converted.
18. In relation to the newspaper article, it was submitted that the FtT was entitled to comment upon the quality of translation, and that it was not the role of the Tribunal interpreter, to translate documents. Mr Kandola submitted that there appeared to be no evidence that the Appellant's representative at the hearing had requested either an adjournment to obtain a further translation, nor had a request been made to use the Tribunal interpreter to translate the document. I was asked to conclude that the decision of the FtT should stand as no error of law was disclosed.

### **The Appellant's Response**

19. Mr Habtemariam pointed out that the FtT had confirmed that the original newspaper article was in the Home Office file, and this was confirmed in paragraph 18 of the FtT decision. It was disputed that it had always been the Respondent's position that the Appellant had been a Christian rather than a convert to Christianity, as this had not been stated in the Respondent's reasons for refusal dated 12<sup>th</sup> March 2015.
20. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions and Reasons**

21. Dealing with the first ground of appeal, I do not find that the FtT materially erred by failing to consider the risk to Christian converts, and limiting consideration of risk to Christians who were not converts.
22. The FtT was aware of the basis of the Appellant's claim to have converted from Islam to Christianity. This is apparent from reading the decision as a whole, and the FtT specifically recorded the following as the last sentence of paragraph 2;  

"The Appellant feared that if he were removed to Bangladesh he would be killed because of his conversion."
23. In my view the FtT considered all the material submitted on behalf of the Appellant, and those documents are referred to at paragraph 5. The FtT considers background evidence at paragraphs 21-25. The absence of country guidance case law on the issue of risk is noted. It is clear that the FtT comprehensively assessed the Operational Guidance Note issued in September 2013, which deals with the treatment of minority religious groups and the FtT was entitled to conclude at paragraph 21 that;  

"... there is no evidence that in general, religious minorities are at risk of persecution at the hands of the Bangladeshi authorities because of their religious belief. However, there are incidents of violent attacks against

religious minorities in which the government has been slow to respond and has not provided adequate protection to the affected communities.”

24. At paragraph 22 the FtT went on to analyse the Bangladesh Country of Information Report of 31<sup>st</sup> August 2013 in relation to freedom of religion, and also specifically considered the articles contained within the Appellant’s bundle, in which some examples were given of people being beaten for converting to Christianity. This makes it apparent that the FtT did consider the position of converts.
25. The FtT went on, at paragraph 24, to note that there were no independent reports from Amnesty International, Human Rights Watch, or a US State Department Report. The FtT had to weigh up what weight to attach to the articles that had been produced.
26. The weight to be attached to evidence is to be decided by the Tribunal considering that evidence. I do not find that the FtT erred by neglecting to consider material independent background evidence. Mr Habtemariam was unable to direct me to any independent objective evidence in relation to the risk to Christian converts, that had not been considered by the FtT. The FtT found at paragraph 25 that there were incidents affecting Christians in Bangladesh, but there was insufficient evidence to show sustained and systematic persecution. In my view the FtT was entitled to reach the conclusion that Christians in general were not at real risk of persecution. The FtT had found at paragraph 20 that there was no credible evidence that the Appellant’s father had threatened him, and that finding has not been challenged.
27. I turn to the second ground of appeal which relates to the treatment of the FtT of evidence submitted to prove that the Appellant’s mother was attacked as a result of conversion to Christianity. I find that the FtT, although not making direct reference to Tanveer Ahmed [2002] UKIAT 00439, applied the well-known principles in that case, which are that in asylum and human rights cases it is for an individual claimant to show that a document on which he seeks to rely can be relied upon, and a decision-maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round.
28. The FtT confirmed that the original newspaper was not inspected, but this is not an error of law, as the original newspaper was not written in English. The FtT observed that the translation of the newspaper article at page 11 could not be relied upon, and it would appear that the translation does not comply with Practice Direction 8.2(b) of the IAC Practice Directions, which stipulate that a typed translation of a document signed by the translator, and certifying that the translation is accurate, must be provided, together with details of the identity and qualifications of the translator. I note that there appears to be another translation of the newspaper article at G3 of the Respondent’s bundle, which is handwritten, is not identical to the translation contained within the Appellant’s bundle, and which also does not comply with the Practice Direction. Therefore the FtT was entitled to

comment upon the quality of the translation, and it is not incumbent upon the FtT of its own volition to request the assistance of the Tribunal interpreter to translate documents.

29. The grant of permission refers to a hospital certificate and I find that the FtT erred in paragraph 18 in finding there was no evidence to show that the Appellant's mother sustained injuries which required hospital treatment. There is reference in the Respondent's refusal decision to an "illness certificate" of the Appellant's mother having been produced and a copy of this document was in the Respondent's bundle which was before the FtT, at D1. It is a handwritten note stating that the Appellant's mother was admitted to hospital on 25<sup>th</sup> November 2014.
30. Although the FtT erred in saying there was no evidence, I do not find this to be a material error, as the conclusion of the FtT at paragraph 19 was not that the Appellant's mother had not suffered some injuries, but that the evidence did not demonstrate that she was the victim of an attack because she had converted to Christianity. That finding, in my view, was open to the FtT to make.
31. In any event, the FtT went on to consider sufficiency of protection in Bangladesh, and found at paragraph 26, that objective information showed that the authorities do act, and that the evidence presented did not prove that a sufficiency of protection as a whole is not available in Bangladesh.
32. In conclusion, I consider that the grounds seeking permission to appeal, and the grant of permission, evidence a disagreement with the findings made by the FtT, but for the reasons given above, do not disclose a material error of law. Therefore the decision of the FtT must stand.

### **Notice of Decision**

The making of the decision of the FtT did not involve the making of an error on a point of law. I do not set aside the decision. The appeal is dismissed.

### **Anonymity**

No order for anonymity was made by the FtT. There has been no request for anonymity and the Upper Tribunal makes no anonymity direction.

Signed

Date: 29<sup>th</sup> January 2016

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date: 29<sup>th</sup> January 2016

Deputy Upper Tribunal Judge M A Hall