



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/00034/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 31 August 2017

**Decision & Reasons
Promulgated**

On 01 September 2017

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**MUHAMMAD ABDUR RAHMAN
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Syed-Ali, of Counsel, instructed by Uzma Law Ltd.

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

DETERMINATION AND REASONS

1. The appellant challenges the determination of First-tier Tribunal Judge Rahman dismissing his appeal for protection. The determination was promulgated on 24 February 2017 following a hearing at Taylor House on 2 February 2017.
2. The appellant is a Bangladeshi national born on 17 December 1987. He entered the UK as a Tier 4 migrant in January 2010 and obtained an extension until 20 August 2015. On 24 August 2014, however, his leave was curtailed on the grounds that he had used deception to obtain leave. His article 8 representations were refused on 13 February 2015 and a judicial review application made to challenge the August 2014 decision proved unsuccessful in September 2015. On 4

January 2016, the appellant sought asylum; this was refused on 12 December 2016.

3. The appellant claims to be an atheist and a blogger and maintains he would be at risk because of that. The judge did not accept he was an atheist and found that he would not be at risk on return to Bangladesh.
4. The appellant obtained permission to appeal from First-tier Tribunal Judge Ransley on 11 July 2017 on five of the seven points he put forward.

The Hearing

5. At the hearing on 31 August 2017, I heard submissions from the parties. Mr Syed-Ali argued the judge had applied the wrong standard of proof having stated in his determination that he was not "*persuaded*" by the evidence. This meant that he had wrongly assessed the evidence and the entire determination was flawed. He submitted that although the judge had found the appellant to be unpersuasive and inconsistent he gave inadequate reasons for this and failed to identify any inconsistencies. The judge also erred in accepting the respondent's allegation of deception without having seen any evidence to support it. Mr Syed-Ali submitted this gave the appearance of bias. He submitted that the judge had failed to make findings on the consequence of the appellant having distributed his book among his friends and whether he would have to modify his behaviour to avoid persecution. Finally, he erred in his assessment of future risk.
6. Mr Whitwell submitted that the judge had properly directed himself at paragraphs 15, 16, 72, 75 and 84. The use of the word "*persuasive*" was a term of art and did not vitiate the determination where he had properly directed himself. Contrary to what was argued, the judge had given adequate reasons for doubting the appellant's credibility. The appellant claimed to be in hiding and yet was able to continue with his employment, visit his friends and leave Dhaka on his own passport. He had also delayed in making his asylum application. All these matters informed the judge's adverse credibility findings. There was nothing wrong in the judge preferring the respondent's evidence to the appellant's (at paragraph 83). In complaining about the absence of a finding on the risk to the appellant for having distributed his books, the appellant did not engage with the judge's finding that he was not an atheist but, in any event, the judge addressed the issue of the books at paragraph 80. On the issue of risk, the judge had considered sufficiency of protection and there was no rebuttal from the appellant against the country material relied on by the respondent. The grounds were essentially a disagreement with the outcome of the appeal and the decision should stand.

7. In response, Mr Syed-Ali submitted that the judge went wrong in paragraph 71, notwithstanding his self-direction at paragraphs 15-16. With reference to the appellant's ability to work and socialise, pending litigation does not halt life and even terrorists on wanted lists are able to cross borders. The appellant maintained that the authorities would not protect him. The judge relied on the respondent's assertions of deception without considering any documentary evidence. The judge's determination undermined the judicial process. A de novo hearing was sought.
8. At the conclusion of the hearing I reserved my determination which I now give.

Findings and Conclusions

9. Permission was granted on five grounds and I heard submissions on those. I now deal with each in turn.
10. The first complaint was that by using the word "*persuasive*" in paragraph 71, the judge applied the wrong standard of proof. This point might have carried force had the judge not properly self-directed himself at paragraphs 15-16, 72, 75 and 84. Given the single use of persuasive in paragraph 71, I am not satisfied that this is an indication that the wrong test has been applied. I also note that the judge was here referring to the appellant's explanation for why he had not adduced evidence earlier; he was not assessing the appellant's claim for protection.
11. The second complaint is that the judge failed to make adequate credibility findings and did not state why he found the appellant's evidence to be inconsistent (at paragraph 72). The finding that the appellant was inconsistent pertained to the explanation he had given as to why he had not provided supporting evidence from the owner of a radio programme whom he states knew he was an atheist. The explanations offered by the appellant are set out in paragraph 66 and are self-evidently inconsistent. Whilst I accept the judge could have made it easier for the reader by referring back to that paragraph when he made his observation at paragraph 71, a full reading of the determination makes it quite clear how he reached that conclusion. The criticism of the judge's adverse credibility findings, presumably on other matters, is also not made out as the judge sets out his reasons at length at paragraphs 75-82.
12. The third point made is that the judge accepted that the respondent had made checks at Sylhet Police Station with respect to the appellant's FIRs without having seen a documentary evidence verification report. This would have had merit had the judge found the documents to be false as the respondent claimed. However, he made

no such finding. He properly directed himself as to the consideration of the evidence (at paragraph 69). At paragraph 83, he noted the respondent's enquiries but made no finding that he agreed with them or that he relied on them. He took account of the evidence on the ease with which forged documents can be obtained. He reminded himself of the guidance in Tanveer Ahmed and it was only after consideration of the documents together with all the other evidence that he concluded that little weight could be placed on them. Far from showing bias, as Mr Syed-Ali submitted, the judge undertook a full assessment of all the evidence and concluded that he could not rely on the FIR documents. Given his other sustainable findings, this was a conclusion entirely open to him and was reached using the correct approach towards documentary evidence.

13. The fourth argument concerned the judge's alleged failure to make findings on the impact on the appellant of the distribution of his second book. This point is without merit as the judge did indeed make findings at paragraph 80. It was open to him to find, notwithstanding what is argued, that the appellant selectively distributed copies of his book to those he knew and trusted and it is speculative to argue that these would now openly be in the public domain and seen by others who would potentially seek to harm the appellant. Moreover, as Mr Whitwell pointed out, this had to be read in the context of the finding that the appellant was not an atheist.
14. Finally, it was argued that the judge's finding that there was a sufficiency of protection was against "*the wealth of material*" to the contrary. This material is not identified in the grounds and nor was it referred to in oral submissions by Mr Syed-Ali. The judge was entitled to rely on the country material cited in the respondent's decision letter to reach his conclusions on this matter.
15. The judge set out compelling reasons for rejecting the appellant's claim. The appellant's ability to remain in employment and to socialise with friends despite allegedly being wanted and in hiding, the many highlighted difficulties with the claim and the long delay before the appellant made his asylum claim and the circumstances in which he made it are all matters which the judge properly had regard to. His decision is reasoned and sustainable. It does not contain any errors of law.

Decision

16. The First-tier Tribunal made no errors of law and the decision to dismiss the appellant's appeal stands.

Anonymity

17. No anonymity order was made by the First-tier Tribunal. I was not asked to make one and, in any event, see no reason to do so.

Signed

A handwritten signature in black ink, appearing to read 'R. Keene' with a small dot at the end.

Upper Tribunal Judge

Date: 31 August 2017