



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000265

First-tier Tribunal No: PA/51418/2023
LP/01878/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 6 September 2024**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

**S R
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A. Radford, instructed by Turpin & Miller LLP
For the Respondent: Mr N. Wain, Senior Home Office Presenting Officer

Heard at Field House on 05 March 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity because the case involves a protection claim. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Upper Tribunal has been conscious of, and apologises for, the delay in promulgating this decision. The delay was in part caused by an unavoidable and fairly lengthy period of fitness absence, which was followed by a phased return to work.

2. The appellant appealed the respondent's decision dated 14 February 2023 to refuse a protection and human rights claim.

First-tier Tribunal decision (2023)

3. First-tier Tribunal Judge Hosie ('the judge') dismissed the appeal in a decision sent on 11 December 2023. The judge summarised the appellant's immigration history, including decisions made in relation to two previous appeals, on the basis of the same core claim, decided by First-Tier Tribunal Judge Greasley in May 2017 and First-tier Tribunal Judge Norris in March 2020 [6].
4. The judge acknowledged that the appellant sought to address the issues raised in the previous appeals by adducing two expert reports [7]. The first, was from Dr Biswajit Chanda, whose reports from May 2017, January 2018, and February 2020, said that he was formerly the Chairman of the Department of Law and Land Administration at the University of Rajshahi in Bangladesh and a PhD in Law candidate at SOAS, University of London. The second, was a more up to date report from Dr Ashraf-ul Hoque from March 2021. Dr Hoque's report said that he was the Assistant Professor of Social Anthropology at University College London. In fact, I note that only Dr Hoque's report was new evidence because the earlier reports of Dr Chanda were considered by the previous First-tier Tribunal judges.
5. The judge noted that the appellant had been resident in the UK since January 2010. In that time, he had travelled to Bangladesh several times, including for the marriage to his wife, who is from a Muslim family. In fact, she is the appellant's first cousin. She arrived in the UK on 01 March 2023 with entry clearance as a Skilled Worker [8]-[10]. The judge heard evidence from the appellant, his wife, and his brother [17].
6. The judge began her findings by taking the previous First-tier Tribunal decisions as her starting point [20]-[27]. Two previous judges had rejected the credibility of the appellant's claim to be at risk as an atheist. In 2017, Judge Greasley did not find the appellant's evidence that he was atheist or that he was attacked for his writings to be credible. He found that the appellant would not be at risk if returned to Bangladesh. At that stage, the appellant had returned to Bangladesh on three occasions [21]. In 2020, Judge Norris also rejected the appellant's claim to be an atheist. The judge did not accept that the appellant had been attacked because of his publications or that he would be at risk if returned to Bangladesh. On that occasion, the judge also noted that the appellant had not produce any evidence that was materially different to evidence that had previously been considered [22].
7. The judge in this appeal went on to consider Dr Hoque's report in some detail, quoting a number of relevant sections [28]-[35]. Dr Hoque considered that the fact that the appellant married his wife in an Islamic ceremony was not inherently implausible. The appellant was a 'cultural' or 'nominal' Muslim and was conforming to cultural practices. Dr Hoque went on to emphasise that Bangladesh could be described as a religious society although there is a significant proportion of the population who describe themselves as agnostic, humanist and atheist. The overwhelming majority of Bangladesh's Muslim population followed Sufism. Consequently, Bangladeshi Muslims are not only tolerant of other religions, but actively participate in non-Islamic religious festivals. The notion of apostasy is discussed in Islamic societies but its social and legal implications 'are far from homogenous and undisputed.' Dr Hoque went on to say that the penal code in Bangladesh does not accommodate apostasy laws *per se*. The appellant was

unlikely to be prosecuted by the state authorities so long as he does not publicly incite communal tensions through public propagation of inflammatory ideas and beliefs. The judge concluded her review of this evidence by noting that Dr Hoque confirmed that being an atheist is not against the law and that atheists enjoy the same rights and protection as everyone else in a secular but religiously plural country. Dr Hoque did not consider the appellant to be a high profile or prolific publicist. He also agreed that the FIRs were not proof of threats, only that there had been a report of threats.

8. The judge said that she concurred with the findings made by the previous First-tier Tribunals that it was implausible that the appellant would participate in an Islamic marriage ceremony when he claims to be a publicly declared atheist. She seemed to infer that the appellant was still likely to be a Muslim otherwise it would not have been possible to enter into a traditional Islamic marriage [36].
9. Even though much of the evidence had already been considered by the previous Tribunals, the judge went on to consider what weight to place on it for herself. She concluded that, on his own evidence, the pamphlets were burned and any written material he wrote is now historic. The FIRs did not show that the appellant was in fact attacked by local Mullahs but only that attacks were reported. The fact remained that his family had remained in Bangladesh without any serious problems for many years thereafter. She also concurred with the previous judges that, even if there was any element of risk, it was localised. The appellant did not claim to have published on the internet [37].
10. The judge found that the timing of the threats was damaging to the appellant's credibility. The claimed threats to his wife took place in 2017, shortly after the refusal of the first appeal, yet the appellant's wife remained in Bangladesh and did not appear to come to any harm [39]-[40]. Similarly, further written threats were made in 2020, a few months after the second appeal was dismissed. The judge found the timing of the claimed threats to be material. She was not impressed by the evidence given by the witnesses. She found that their responses were vague and lacked detail [43]-[45].
11. Considering the preserved findings of the previous First-Tier Tribunals together with her own assessment of the evidence before her, she found that the appellant had failed to show to the required standard of proof that he was an atheist or that he would be at risk on return as a non-practising Muslim [46].
12. In the alternative, she went on to consider the arguments put in relation to *HJ (Iran) v SSHD* [2011] 1 AC 596 and *WD (Pakistan) v SSHD* [2019] EWCA Civ 302 at their highest [48]-[51]. She gave further consideration to Dr Hoque's report. He said that if the appellant engaged in candid discussion with practicing Muslims regarding his beliefs, this might provoke hatred and violent reactions, not just in conversation but in the wider community. The only way he could prevent this scenario would be to live a conventional life conforming to overarching social parameters, which are inherently Islamic in essence [49].
13. The judge did not accept that this would necessarily be the case. Not all Muslims in Bangladesh are practising. If Bangladesh is regarded as culturally and inherently Islamic, then the appellant had grown up there and had always lived there with the views that he has. There was no question that he and his family had been able to participate in society. Even if she accepted that liberal views might be frowned upon by some, the evidence showed that it was not reasonably likely that it would lead to serious ill-treatment by anyone other than an

individual non-state actor. In such circumstances, it had not been shown that he could not seek sufficient state protection and/or that it would be unreasonable or unduly harsh to relocate to another area [50].

14. For these reasons, the judge concluded that the appellant had not shown on the lower standard of proof that he had a well-founded fear of persecution as an atheist [51].

Upper Tribunal appeal

15. The appellant applied for permission to appeal to the Upper Tribunal on the following grounds:
- (i) The First-tier Tribunal misdirected itself in law in relation to the assessment of persecution with reference to the principles outlined in *HJ (Iran) v SSHD* [2011] 1 AC 595 and *WA (Pakistan) v SSHD* [2019] EWCA Civ 302.
 - (ii) The First-tier Tribunal gave inadequate reasons for finding that there would be adequate state protection and/or that it would be reasonable to expect the appellant to access internal relocation.
 - (iii) The First-tier Tribunal irrationally conflated the appellant with 'non-practising Muslims' generally.
16. First-tier Tribunal Judge Boyes granted permission to appeal to the Upper Tribunal in an order dated 25 January 2024.
17. I have considered the First-tier Tribunal decision, the documentation that was before the First-tier Tribunal, the grounds of appeal, and the submissions made at the hearing before coming to a decision in this appeal. It is not necessary to summarise the oral submissions because they are a matter of record, but I will refer to any relevant arguments in my decision.
18. The Supreme Court in *HA (Iraq) v SSHD* [2022] UKSC 22 reiterated that judicial caution and restraint is required when considering whether to set aside a decision of a specialist tribunal. In particular, judges of the specialist tribunal are best placed to make factual findings. Appellate courts should not rush to find misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently: see *AH (Sudan) v SSHD* [2007] UKHL 49 and *KM v SSHD* [2021] EWCA Civ 693. Where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account: see *MA (Somalia) v SSHD* [2020] UKSC 49. When it comes to the reasons given by the tribunal, the court should exercise judicial restraint and should not assume that the tribunal misdirected itself just because not every step in its reasoning is fully set out: see *R (Jones) v FTT (SEC)* [2013] UKSC 19. I have kept these considerations in mind when coming to my decision.

Decision and reasons

19. The first thing to note about the grounds of appeal, is that there is no direct challenge to the credibility findings made by Judge Hosie. In general, the grounds put forward arguments on the assumption that the claim is considered at its highest. However, the credibility of the appellant's claim to be at risk because he expressed views critical of radical Islamists has now been rejected by three First-tier Tribunal judges. Each of those judges heard evidence from the appellant,

were in a position to assess his credibility as a witness, and to assess the weight to be given to the supporting evidence.

20. No copy of Judge Greasley's decision appears to be contained in the bundle. Judge Norris summarised his findings in some detail in her decision in March 2020 [5.2]-[5.3]. Judge Greasley did not accept that the appellant had been threatened in 2011 because of any limited writings that might have criticised extremists. Largely, this was because the appellant had returned to Bangladesh on several occasions after the threats had been made. In the alternative, Judge Greasley found that even if the appellant had problems with local Mullahs, there was nothing to suggest that he could not relocate to another area of Bangladesh.
21. Judge Norris noted that the appellant maintained the same account. She summarised the account given in a witness statement prepared in 2019 [5.4]-[5.16], the details of his oral evidence [5.17]-[5.26], and noted corrections made in a supplementary report prepared by Dr Chanda [5.27]. The judge went on to make her own findings on the evidence. Much of the evidence had already been considered by Judge Greasley, but some post-dated his decision.
22. Judge Norris noted that some aspects of the account were implausible and highlighted various discrepancies in his evidence [6.3]-[6.31]. Having reviewed the evidence in detail for herself, the judge agreed with the concerns about the credibility of the appellant's account expressed by Judge Greasley [7.1]. She addressed Dr Chanda's reports in detail. She found that any fear that the appellant expressed about being identified elsewhere because his writings might have included his photograph were unfounded because, on his own account, the books were burned by the Mullahs and had not been reprinted. The local newspaper articles were only published in a paper copy and were not published online. She considered that it was 'highly unlikely' that the appellant would be identified elsewhere [7.2.1]. In any event, the appellant only claimed to have been targeted by a small number of people in his local area and could reasonably be expected to relocate to another area of Bangladesh [7.2]-[7.3].
23. Judge Norris noted that Dr Chanda was qualified to comment, but rightly reminded herself that it was not for an expert to make findings about the appellant's credibility. That was a matter for the judge who would take into account the evidence as a whole [7.4]. She accepted that Dr Chanda's opinion that the documents were authentic. However, that was all he could attest to. It was only evidence that reports might have been made to the police, not evidence that the alleged crimes were likely to have taken place. Judge Norris concluded that the appellant had failed to show anything materially different that might justify departing from the earlier findings made by Judge Greasley.
24. It is in this context that Judge Hosie considered the credibility of the appellant's account of events from 2005-2017 and what weight could be placed on the evidence produced in support of it. Three judges have now found that account to be unreliable.
25. Further submissions were made 23 January 2018, which claimed that the appellant's father had reported a complaint to the local police in July 2017 and his wife also did so in August 2017. After a period of several years without any difficulties, these incidents happened to have arisen only a few weeks after Judge Greasley dismissed the first appeal on 19 May 2017. It was open to Judge Hosie to find that the timing of these claimed events impacted on the credibility of the

account. The reports of threats made in 2017 has now been considered by two judges, both of whom rejected the account as unreliable.

26. It is in this context that Judge Hosie was considering the credibility of the new evidence put forward in further submissions sent on 12 April 2021, which included the report of Dr Hoque dated 03 March 2021 and copies of threatening letters that were said to have been sent to family members in November 2020. Similarly, it was open to Judge Hosie to find it damaging to the credibility of this account that, after another few years without any apparent problems, these threats spontaneously arose in November 2020, a few months after Judge Norris dismissed the second appeal.
27. This left the oral evidence of the appellant, his wife, and his brother, which the judge found to be vague and lacking in detail. She also considered the credibility of the appellant's account in light of the additional evidence provided by Dr Hoque, which she considered in some detail. Again, Dr Hoque could only comment in general terms as to whether the account seemed plausible in light of his knowledge of Bangladesh.
28. I observe that many of the questions asked of the expert by those instructing him were inappropriate because they were asking him to comment on matters that were beyond his remit as a country expert. For example, Dr Hoque was asked to comment on whether Judge Norris was 'correct' to find that little weight could be given to the letter that was said to be written by the Daily Matribhasha (pg.6 first (a)). He was also asked whether, in his opinion, the fact that the appellant had written articles 'indicate that he must genuinely hold these views.' (pg.6 first (c)). He was also asked to comment on whether Dr Chanda's description of the appellant as a 'Bangladeshi Muslim' and not as an 'atheist' 'is a valid credibility point.' (pg.6 second (b)). What weight to place on the evidence was a matter for the judge and not for a country expert.
29. Despite those instructions, Dr Hoque went on to write a well-balanced report. He made clear that there was no law prohibiting apostasy in Bangladesh although interpretation of the scriptures and the principles they hold are the subject of debate. As the judge noted, he said that there were high profile people who identified as atheists, humanists and communists. He pointed out that those who expressed their beliefs privately or even publicly were not likely to be at risk of persecution as long as they did not attack the legitimacy of Islam. It was only those who not proclaim their 'apostasy' and go on to criticise Islam and the Prophet Mohammed publicly, who would be 'highly likely' to encounter persecution (pg.9 at [31]). In those circumstances, it was his opinion that the authorities were unlikely to be able to provide effective protection. Dr Hoque went on to outline laws relating to blasphemy, which might be applied to publications that target particular communities or incite communal tensions. He also noted that censorship of journalists and media outlets on religious grounds was a common practice.
30. What is key, is that Dr Hoque's opinion that the appellant's 'life will be in serious risk should he return to Bangladesh as a perceived apostate and 'anti-Islam' activist /writer' was premised on the account taken at its highest. Even then, the appellant's account did not appear to go so far as that. The evidence contained in his witness statement is that he was critical of teachings that encouraged intolerance, hatred and anger, and eventually decided not to follow any religion. Nothing in the description of his fairly limited set of writings appear to be 'anti-Islam'. Indeed, the appellant said at [9] of his most recent statement

that his writing 'was not anti-Islamic'. This is relevant although it must be recognised that the assessment of risk must be viewed from the eyes of the potential persecutor. It is possible that others might take a different view.

31. However, is clear from Judge Hosie's findings that she concurred with the previous two judges in rejecting the appellant's account of events [36][46]. By implication this included the rejection of the evidence given by the other witnesses, who repeated the same elements of the appellant's account and were not found to be impressive witnesses. It is in this context that I consider the grounds of appeal.
32. It is not arguable that the judge erred in her assessment of the principles in *HJ (Iran)*. The primary finding was that the appellant's account of being threatened by local Mullahs for having written what they considered to be inflammatory material was not accepted. It was open to her to take into account the fact that, on the appellant's own evidence, the pamphlets/books he says that he wrote over 13 years before had been burned and that the three articles that he says that he wrote in a local newspaper on the occasions he returned to Bangladesh in 2012, 2014, and 2015 were only published in paper form. Even if the account is taken at its highest, it seems that the appellant had not written any further articles in the eight years preceding the date of the hearing. The original writings had either been destroyed or had only been published in print in a local newspaper.
33. It could not reasonably be suggested that the appellant is a prolific writer or that it is a matter that he feels so strongly about that it forms an essential part of his identity. The judge had found that it was implausible that the appellant did not write in the UK out of fear, when he claimed that on each occasion he returned to Bangladesh he did not act discreetly and felt compelled to do so even though the risk were likely to be higher. The appellant's account of being targeted by local Mullahs and extremists was rejected by three judges for reasons that were with a range of reasonable responses to the evidence before them. For this reason, there was no basis upon which Judge Hosie could conclude that he might not write any further articles because of a fear of persecution. In my assessment, the judge gave adequate reasons for her findings in relation to the principles outlined in *HJ (Iran)*. Those findings were open to her to make on the basis of the credibility findings that she made.
34. The judge found that any writings were destroyed or only last published in print in a local newspaper as long ago as 2015. In the circumstances, it is not arguable that the judge needed to give any more detailed reasons to explain why it would be open to the appellant to relocate. The second ground is premised on the assumption that it should be accepted that the appellant was targeted by local Mullahs or extremists when that aspect of his account had been repeatedly rejected.
35. The second ground is also based on an assumption, that was not born out by the evidence, that the appellant is an outspoken or prolific writer who would attract the attention of other extremist wherever he went in Bangladesh. Three judges had rejected his claim to be an atheist. The most recent judge seems to have proceeded on the more likely assumption that he is a non-practising Muslim. This is also to be viewed in the context of Dr Hoque's evidence, which indicated that there is a significant proportion of the population in Bangladesh who describe themselves as agnostic, humanist, or atheist and that the majority of the population are likely to be tolerant of religious pluralism. Again, Dr Hoque's

opinion about the ability to relocate was premised on the assumption that the appellant's account was accepted.

36. The third ground takes issue with the judge's findings at [50] (see [13] above). This forms part of the judge's findings relating to the *HJ (Iran)* point, which I have already considered above. Again, the judge's decision must be read in the context of the fact that the key aspects of the appellant's account had been rejected. The judge's finding was well within a range of reasonable response to the evidence, which included the evidence given by Dr Hoque, that Bangladesh was, in general, a tolerant society where, in general, those who do not practice Islam do not face any problems. It was only those who express anti-Islamic views or view that might defame the Prophet Mohammed who are likely to be targeted by extremists. The third ground amounts to little more than a disagreement with the judge's finding.
37. For the reasons given above, I conclude that the First-tier Tribunal decision did not involve the making of an error on a point of law. The decision shall stand.

Notice of Decision

The First-tier Tribunal decision did not involve the making of an error on a point of law

The decision shall stand

M.Canavan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

06 September 2024