Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/02045/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 June 2017	**On 22 June 2017**

Before

Deputy Upper Tribunal Judge MANUELL

Between
MR CHOWDHURY MONIRUL HAIDER
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Mr A Gilbert, Counsel (instructed by Milestone Solicitors)
For the Respondent:	Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by Designated First-tier Tribunal Judge McCarthy on 9 May 2017 against the decision and reasons of First-tier Tribunal Judge Sullivan who had dismissed the protection and human rights appeal of the Appellant. The decision and reasons was promulgated on 12 April 2017.

2. The Appellant is a national of Bangladesh, born there on 1 July 1989. He entered the United Kingdom on 17 April 2009 as a Tier 4 (General) Student migrant. His protection claim was made on 26 August 2016, after his application to remain on Article 8 ECHR grounds had been refused and certified on 23 May 2016. He claimed that he would be at risk on return from the authorities, extremists and his own family because he is a militant atheist. Credibility was the only issue as the country background evidence was not in dispute. Judge Sullivan found that the Appellant's claims were not proved to the lower standard: he was not an atheist and was not reasonably likely to have been identified or be identifiable in Bangladesh as an atheist blogger. Nor would the Appellant be reasonably likely to continue to publish such views on return.

3. Permission to appeal was granted because it was considered that the judge had arguably erred by concluding that the atheism claim was opportunistic. There had been independent evidence and it was arguable that the judge had not examined the evidence in the round.

4. Standard directions were made by the tribunal. A rule 24 notice opposing the onwards appeal was filed by the Respondent, dated 12 May 2017.

Submissions

5. Mr Gilbert for the Appellant relied on the grounds earlier submitted and the grant of permission to appeal. He submitted that the judge had paid too much attention to the Appellant's immigration history (i.e., his late asylum claim). The judge had taken too narrow a view of the Appellant's social media contacts, e.g., on Facebook where 100 contacts were shown. This was shown at p.69 of the Appellant's bundle: "100 friends". The languages

used by him were Bengali as well as English. The flavour of the debate was important, and the judge had missed that. The Appellant had provided evidence of threats received. There was a record of views and "likes", indicating the level of exposure or circulation, with links to YouTube and Twitter, and the GAAF website. The Appellant had followers. One of the points which the judge had missed was the ease of access to the Appellant's postings, and the significance of the threats he had received. The judge should have given more weight to the threats.

6. The judge had further erred at [21(b)] of the decision and reasons when considering the anti-Muslim cartoons which the Appellant had circulated. Again, too narrow a view had been taken. There had plainly been a misunderstanding by the Appellant's family who saw "drawing" cartoons as equivalent to "circulating" them. The judge had been wrong to make an adverse credibility finding based on an inconsistency between "drawing" and "circulating" cartoons.

7. The extent of the judge's misapprehension and restricted approach meant that none of the adverse findings could stand. The appeal to the Upper Tribunal should be allowed, and the appeal reheard in the First-tier Tribunal by another judge.

8. Mr Wilding for the Respondent relied on the rule 24 notice. The judge had been fully entitled to reach her adverse credibility findings, of no genuinely held atheist belief. There was nothing in conducting a microanalysis of the Appellant's posts on social media. The Appellant had made no attempt to contact the United Kingdom authorities about the threats he had claimed to have received. The whole of the Appellant's atheist story had no context: nothing had happened until his last application for further leave to remain had been refused. The discrepancies which the judge had identified were significant and they could not be explained away on the basis of linguistic misunderstanding. The privacy settings which the Appellant had selected for his Facebook had not been revealed, which was a further indication of the substance of the claim. There was no error of law and the decision and reasons should stand.

9. In reply, Mr Gilbert reiterated his submission concerning the cartoons. Anxious scrutiny had not been applied to whether there was a real distinction between drawing and simply posting, which

had the same effect. The Facebook settings were not material because messages could be received from "non friends", as had been shown.

Discussion – No error of law

10. At the conclusion of submissions the tribunal indicated that it found no error of law and that the determination was reserved. The tribunal's reasons now follow.

11. In the tribunal's view, Judge Sullivan conducted a meticulous analysis of the Appellant's claim, applying anxious scrutiny at every stage. The judge was careful to place the claim within the country background evidence, itself not in dispute, but nevertheless essential context: see [27] onwards of the determination. As Mr Wilding submitted, context was the very element missing from the Appellant's case. His supposed militant atheism cannot be traced further than the refusal of his application in May 2016, as the judge noted at [17] and [26] of the decision and elsewhere. It was proper that the judge took that into account when considering the timing of the protection claim, years after the Appellant's entry to the United Kingdom with the declared intention of returning to Bangladesh.

12. The judge's analysis of the Appellant's claim revealed it to be without substance, a façade created in the hope that a superficial view of the materials submitted would be taken. As to the "flavour" of the case, the Appellant's materials show an absence of any considered or reasoned position as to the existence or non-existence of a deity, which is not what would reasonably be expected from an educated man who claimed he had reflected before taking a conscience driven stance which he knew might be unpopular with his compatriots. The cartoons which he circulated or reposted are crude and deliberately offensive, repellent to any thinking person, regardless of their faith or beliefs. That is not intelligent debate, mere bigotry, and it reinforces the judge's view that the Appellant's declared atheism was simply a false claim for an ulterior motive. The judge was entitled to find that the Appellant's document stating that he had drawn cartoons conflicted with the Appellant's own evidence. Mr Gilbert's attempt to persuade the tribunal that this was simply a misunderstanding by the document's author is far from persuasive, as these were

documents submitted by the Appellant to advance his case and which he must be taken to have read and approved.

13. The judge's analysis of the effect of the Appellant's social media postings is irreproachable: see [18(g)]. Mr Gilbert's submission that the judge failed to take into account the possibility of wider access to fanatics and others was not well founded. The judge at [18] was recording the facts put forward by the Appellant which she accepted, not the consequences, which formed part of her subsequent "in the round" evaluation of the evidence as a whole, other parts of which she rejected as unreliable or worse. It must in any event be observed that the recorded degree of contact or exposure from the Appellant's social media activities was tiny: e.g., 100 contacts on Facebook, 938 views. Mr Wilding was in the tribunal's judgment right to point out that the Appellant had not taken any action to seek help from the United Kingdom authorities in relation to the threats he had received via social media, hardly the conduct of a person who considered that the threats were genuine or who was concerned to protect himself. Extremism and intolerance have raised their vile heads all too often in the United Kingdom, despite the best efforts of successive governments, so the Appellant had more than Bangladesh to think of, if he took the threats seriously.

14. The tribunal considers that none of the criticisms of the judge's decision and reasons has any substance or merit. The judge dealt comprehensively with a transparently false and abusive claim. The onwards appeal is dismissed.

DECISION

The appeal to the Upper Tribunal is DISMISSED

The decision and reasons of the First-tier Tribunal stand unchanged

Signed **Dated** 21 June 2017

Deputy Upper Tribunal Judge Manuell