



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02618/2017

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice
On 8 October 2018

Decision & Reasons Promulgated
On 5 December 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

S K B
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr B Hoshi, Counsel instructed by Clifton Law Solicitors

For the respondent: Mr D Clarke, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse him international protection under the Refugee Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds. The appellant is a citizen of Bangladesh, a Hindu by religion and a former member of the British Armed Forces.

Background

2. The appellant came to the United Kingdom as a Tier 4 (General) Student Migrant in September 2009, and remained here on that basis, then as a Highly Skilled Post-Study Migrant until 9 October 2012, when he became exempt from immigration control as a member of Her Majesty's Armed Forces. He was discharged from the army after 9 months, on 4 July 2013, following an injury during training, as he was then unsuitable for service.
3. On 23 July 2013, the appellant applied for leave to remain on human rights grounds outside the Immigration Rules HC 395 (as amended), which was refused. An appeal to the First-tier Tribunal was dismissed. On 2 March 2015, he applied for leave to remain on family and private life grounds under the 10-year route which was unsuccessful. The respondent's refusal gave the appellant an in-country right of appeal, which he did not exercise.

The 2014 determination

4. The decision of First-tier Judge NMK Lawrence in September 2014 is the *Devaseelan* starting point. That Judge found that the appellant is a qualified veterinarian born in Bangladesh in December 1981, making him now almost 38 years old. His father was said to have been a civil servant in Bangladesh, and the appellant had access to education and employment while in Bangladesh.
5. The First-tier Judge held that as the appellant had never seen active service, but was discharged after just 9 months of training, the Armed Forces Covenant for support after service was not applicable to him. The appellant asserted that as a discharged British Armed Forces recruit, he would be at risk on return from extremists in Bangladesh, and that he would be subject to discrimination there as a Hindu.
6. The Judge dismissed the claims, but without making any credibility findings. He did not assess the appeal under Article 8 ECHR and made no anonymity direction.

Refusal letter on protection claim

7. On 2 September 2016, the appellant made the present protection claim, which was rejected in a refusal letter of 2 March 2017. The appellant's account was that following his discharge from the army in 2013, the appellant's family had been threatened in Bangladesh by a local gangster, cousin to the Ward Councillor, telling the family to pack up and leave Bangladesh and calling them traitors because he had joined the

British Armed Forces (Royal Army Medical Corps). The appellant feared return both on that basis, and because he was a Hindu.

8. The appellant asserted that the gangster wanted the family home and land, as part of a plan of ethnic and religious cleansing of the area, and that his parents were told that if the appellant returned he would be targeted and killed.
9. Three further attacks on family members were asserted, the first between July and October 2014, when he said that his father and family had been ejected from the family home and land, on fear of execution of the whole family, and one or two more attacks, on either or both of 10 May 2016 and November 2016. The account of what happened in May 2015 was that the family home was forcibly entered, his father was kicked and hit with sticks and the home vandalised. Photographs produced by the appellant were rejected 'due to previous inconsistencies' and because they were not originals. A photocopy of a press release from the Bangladesh Hindu, Buddha and Christian Unity Council (BHBCUC) with a certified translation was also rejected because it was not an original document and had the wrong logo on the letterhead. Other documents were rejected for similar reason. The fourth threat was considered to be internally inconsistent with the other accounts and the documents produced.
10. The respondent noted that there were internal inconsistencies in the appellant's account, in particular that the appellant's father was said to be both a 'civil servant' and a person who worked in the tax department. The respondent adopted the argument that the appellant had never 'served' in the British Army because he had not completed training. He considered other aspects of the appellant's account to be vague and inconsistent, in particular his pride in joining the army and that of his family, and that he had told family and friends who might have told others.
11. The appellant's religion was also rejected for lack of detailed knowledge of the religion. The only accepted fact was the Facebook threat. The respondent concluded that the appellant was not a Hindu, nor a former serving member of the British Armed Forces and therefore would not be perceived as such. There was no risk to him in the home area and even if there were, there was a sufficiency of protection, despite issues of corruption in the Bangladeshi police set out at length in the refusal letter.
12. The appellant then claimed to have received a threat on Facebook saying that he would be killed because he was a servant of the British army. He had blocked the sender, who was not known to him: the respondent considered this a one-off comment by a stranger unlikely to lead to any further trouble.
13. Further, the respondent considered that the appellant's fear was limited to his home area and that the people he feared would not be able to locate him elsewhere in Bangladesh. The appellant was an educated, healthy man who could reasonably be expected to re-establish himself in another part of Bangladesh and exercise his internal relocation option.
14. Articles 2, 3 and 8 ECHR were also rejected. That is the decision under appeal.

First-tier Tribunal decision

15. The First-tier Judge made an anonymity direction, which I continue. He found that the appellant was at risk in the home area:

“32. The issue of protection in this case arises first in relation to the appellant returning to his family home where I find that his family members have been attacked in relation to land appropriation from a Hindu family and a threat made against the appellant for joining the British army. As stated above, there has been a rise in the number of such extremist attacks against religious minorities and it is said that ‘the authorities have visibly failed to ensure the protection of those targeted’. It is said that the appellant’s family have complained to the police but not received any assistance and this is referred to in the recent letter from the Buddhist Christian Unity Council. Taking these factors into account, I find on the lower standard of proof that the appellant is unlikely to be provided with sufficiency of protection on return to his home area.”

16. However, the Judge found that the appellant had lived away from his home area, in another part of Bangladesh, for 5 years during his veterinary studies, and a further 5 years before coming to the United Kingdom. He had a married sister in Sylhet who could help him resettle, and would have the benefit of having learned English and worked in the United Kingdom. His sister had not had any problems with the actors of persecution, suggesting that their reach was geographically limited.

17. The Judge rejected the account of risk from the Facebook threat: the appellant had added the person as a Facebook friend when asked to do so, and had blocked him after the threatening remark. In so doing, he went behind a concession made by the respondent that the Facebook threat had occurred, albeit the concession was limited to the existence of such threat, and that ‘this was a one-off event by a stranger and that the appellant had had no further trouble with this individual since blocking him’. The appellant had not been identified on social media by anyone else for such threats.

18. The Ward Councillor from his home area had not been shown to have the reach, or the inclination, to pursue the appellant away from his home area. The appellant could access sufficiency of protection by internal relocation and the appellant had not shown that there would be very significant obstacles to his reintegration in Bangladesh, nor any exceptional or compelling circumstances for which leave to remain should be given outside the Rules.

19. The appeal was dismissed and the appellant appealed to the Upper Tribunal.

Permission to appeal

20. The appellant sought permission to appeal on the basis that the First-tier Judge had erred in going behind the respondent’s concession that the Facebook threat occurred; and that his assessment of the reasonableness of internal relocation did not take account of the general risk to Hindus set out at [32], which was occurring across the nation.

21. Permission to appeal was granted on both grounds.

Rule 24 Reply

22. There was no Rule 24 Reply. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

23. The appellant's solicitors filed a skeleton argument expanding on the two grounds of appeal set out above. The appellant claimed that he was at increased risk because there was a significant rise in attacks against religious minorities, including Hindus, throughout Bangladesh, and would be at additional risk because of his brief service as a member of HM Armed Forces, which would become known, wherever he went. As regards the concession, given the general credibility finding in relation to the appellant, it ought to have been accepted (see *Kalidas* (agreed facts – best practice) [2012] UKUT 327 (IAC) at [35]).

24. In oral submissions, Mr Hoshi covered the same ground.

25. For the respondent, Mr Clarke accepted that the originals of the newspapers had been produced at the hearing and that the accounts therein were found to be reliable, but it was a local not a national newspaper. He accepted that going behind the concession on the Facebook threat was a plain error of law but that contended the person from whom the threats emanated had been a stranger and once blocked, had never been heard from again. There was nothing to suggest that the Facebook aggressor knew where to find the appellant in real life.

26. The 2017 threats on Facebook were also accepted but it was questionable how the 2013 Facebook threat could undermine the internal relocation findings in relation to the threat in the home area. The aggressors appeared to have a very limited reach.

27. For the appellant, Mr Hoshi responded that the newspaper might have a limited, or a wider circulation and that should have been weighed when considering internal relocation. The first and second Facebook threats could not be separated and should be regarded as a continuing risk throughout Bangladesh: as the second group of threats had not been properly weighed, there was a material error of law in relation to the assessment of risk throughout Bangladesh.

28. I reserved my decision.

Analysis

29. It is common ground that there is an error of law in relation to the concession on the 2013 Facebook threats. I have examined the copy of the appellant's Facebook page which has a picture of him with all his army buddies, in uniform, as the profile picture, and another picture of him in uniform appears to have been posted recently. His schools have been set out, including that he studied veterinary medicine in Sylhet. I note that Sylhet has a population of over 500,000 people, according to Wikipedia, and

800,000 in the metropolitan area. It was open to the First-tier Judge to find that Sylhet was an internal relocation option for this appellant, and there are, of course, other large cities in Bangladesh if the appellant is fearful there.

30. The appellant has blocked the person who made the threats in 2013 and they have not recurred. He can do the same with relation to the 2017 threats. It also remains open to him to remove the army pictures from his Facebook page or even to take down the page itself. I do not find that the error made by the Judge in going behind the concession is material, on the evidence.
31. As regards the generalised risk to Hindus in Bangladesh, the First-tier Judge was entitled to prefer the most recent country of origin information as summarised in the respondent's *Country Policy and Information Note Bangladesh: background information including actors of protection and internal relocation* [January 2018] to the 2016 reports relied upon, and to decide that there was sufficiency of protection for the appellant elsewhere in Bangladesh (see [33] in the decision).
32. There is no material error of law in the decision of the First-tier Tribunal, which I uphold.

DECISION

33. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Date: 30 November 2018

Signed

Judith AJC Gleeson

Upper Tribunal Judge Gleeson