Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03507/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 6th January 2015	**On 13th January 2015**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR SYED ZEESHAN HAIDER ZAIDI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Neale (instructed by HK Solicitors)
For the Respondent: Mr G Harrison (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant, a Pakistani national against a decision of the First-tier Tribunal (Judge Osborne) in which she dismissed his appeal against the Secretary of State's decision to refuse him asylum and to remove him to Pakistan.

2. Permission to appeal was granted by a Judge of the First-tier Tribunal on 5th August 2014. In granting permission to appeal the Judge said:-

> a. It is arguable that in regard to the issues of sufficiency of protection and likelihood of harm to a Shia Muslim, the judge failed to engage properly with the background country information adumbrated in ground one seeking permission;
>
> b. It is arguable that in regard to risk on return, the Judge erred in regard to the nature of the evidence given by the Appellant regarding attacks on his family at paragraph 43 of the determination
>
> c. The Gulshan /Nagre approach to Article 8 impliedly adopted by the Judge at paragraph 45 is arguably wrong in the light of MM [2014] EWCA Civ 985 paragraph 128.

3. Permission having being granted the matter came before me. My first task is to decide whether the First-tier Tribunal made an error of law and if so whether and to what extent the decision should be set aside.

4. Mr Neale relied upon and expanded upon the grounds and skeleton argument.

5. The facts of this case are that the Appellant was born in Karachi in 1976 and is a practising Shia Muslim. He first entered the UK in June 1993 with a visit visa and then returned to Pakistan. He came again to the UK in June 1994 when he was given leave as a working holidaymaker until 1996. He claimed that during that period he returned to Pakistan where he experienced problems with anti-Shia elements. He returned again to the UK in October 1996 and claimed asylum. That was refused and he returned to Pakistan.

6. The Appellant then claimed to experience three incidents of violence in Pakistan. On the first occasion he was shot at by unidentified gunmen outside his mosque. He says he made a complaint to the police but no action was taken. There was then a similar incident in June 1997 when he was again shot at when leaving the mosque and then again in 1998 he was shot at outside his home. He decided to leave Pakistan and entered the UK clandestinely in February 1998.

7. The Appellant remained unlawfully in the UK. He was arrested in December 2003 and served with from IS.151A. He lied to the authorities saying that he had arrived in September 2003. He claimed asylum which was refused in January 2004. Although he lodged a notice of appeal he did not progress it. He absconded and the appeal was dismissed in his absence.

8. He then travelled to Ireland and claimed asylum there. However, he was returned to the UK under the Dublin II agreement in March 2004.

He then became appeal rights exhausted. He remained in the UK unlawfully.

9. The Appellant claims that an uncle of his, who was a prominent member of the Shia community, was killed by militants in March 2013 in Karachi. The Appellant claimed asylum again in December 2013 claiming that he was at risk of persecution from non state agents. That was treated as a fresh claim and refused on 17 April 2014. It was his appeal against that decision which came before Judge Osborne in June 2014.

10. In his skeleton argument Mr Neale sets out his submissions as to why he says the Judge made errors of law.

11. The first ground is an assertion that the Judge failed to take into account relevant evidence or to give reasons for findings of fact that she made.

12. The ground refers to paragraph 39 of the determination where the judge found:-

> "In general terms I am satisfied that the police do take such matters seriously and had they done so in the Appellant's case they would have issued a First Information Report (FIR)".

The judge then on that basis found that the first incident in 1997 did not happen and the Appellant had not reported anything to the police. She did so on the basis that if the Appellant had reported such a matter to the police a FIR would have been issued. It is asserted that in making that finding the Judge made no reference to the substantial amount of country information that was before her which indicated that the police in Pakistan frequently did not take sectarian violence against Shia Muslims seriously. It is argued that while she was entitled to form a view as to the weight to be given to that evidence, she was not entitled to ignore it altogether. If she was going to attach little weight to that evidence she should have given her reasons for doing so.

13. The skeleton argument sets out some of that country evidence. The Immigration and Refugee Board of Canada is quoted as saying in January 2014 that several sources stated that government efforts to address violence against Shia have not been sufficient. That refers in particular to Lahore and Multan.

14. The skeleton then goes on with another quote that several top sources stated that militants targeting Shia Muslims act with impunity according to the Human Rights Watch Report from 2012. It is said that the government provided safe shelters to Sunni militant groups and the ruling party made alliances with members of the ASWJ party. It is said that although the government of the Punjab province

promises religious harmony, it effectively shields the culprits. It also said that the army, which is responsible for leading counter-terrorism efforts, maintains a "hands off" policy towards sectarian conflicts.

15. It goes on to record that several sources indicated that no one has been punished for violent attacks against Shia and that although a handful of suspects have been charged, none have been punished. Further quotes are set out from the country information, in particular Human Rights Watch World Report 2014, which is quoted as saying that Sunni militant groups such as the ostensibly banned Lashkar-e Jhangvi, an Al Qaeda affiliate, operates with virtual impunity across Pakistan and law enforcement officials either turn a blind eye or appear helpless to prevent attacks.

16. Thus the skeleton argument argues that the Government and authorities in Pakistan are both unwilling and unable to offer a sufficiency of protection to Shia Muslims. It is argued that this lends support to the credibility of the Appellant's account, in so far as it was plausible and consistent with country background evidence that the police would not necessarily have taken any action in response to the attack on the Appellant. It is argued that the Judge did not refer to any of that evidence in reaching her conclusions at paragraph 39 and 40 and that there is no indication in the text of the determination that she had taken it into account. She should have given clear reasons for rejecting that evidence or attaching little weight to it and did not do so.

17. The skeleton argument goes on to submit that at paragraph 40 the Judge relied on the fact that, according to the news article submitted on the Appellant's behalf, the police had carried out an investigation into the shooting of the Appellant's uncle. However, it is submitted, it does not follow from that that the police generally provide an adequate response to anti-Shia violence in the bulk of cases and repeats that the Judge did not engage with the volume of countervailing objective evidence indicating that the police do not in general take adequate action to protect Shia from sectarian violence. It is submitted that was a highly material error of law as it was of critical importance to the Judge's findings on the plausibility and credibility of the Appellant's account.

18. Secondly, it is argued that the evidence that the Judge did not take into account was also relevant to the question of whether there was a sufficiency of protection in Pakistan. It is acknowledged that the Judge briefly mentioned the objective evidence regarding the scale of anti-Shia sectarian violence at paragraph 34 of the determination when she concluded that there is nothing to indicate that the level of violence has reached the proportions of making it appropriate to grant humanitarian protection as a result. It is argued however that the Appellant had not suggested that the level of indiscriminate

violence in Pakistan is such that he should qualify for Article 15C protection. The submission made on his behalf was that he was at risk of being targeted by non state actors for a Convention reason, namely his religion as a Shia Muslim and the Pakistani authorities would not afford a sufficiency protection to the Horvath standard. It is submitted that the Judge did not consider adequately the question of sufficiency of protection in light of the country information.

19. The second ground asserts that the Judge erred by making a finding that was not based on evidence. The submission is that at paragraph 43 of the determination the judge misstated the Appellant's oral evidence. She said that the Appellant's parents and brother continue to live in Karachi and had not been involved directly in any violent incidents, when that was not his evidence. He had said that they had remained in Karachi but their house had been shot at and they had moved. It is argued that this was an error of law that was highly material to the Judge's conclusions about risk on return.

20. Before turning to the third ground which relates to the Judge's assessment of Article 8 I will deal with the first 2 grounds.

21. Despite the assertions in the skeleton arguments and Mr Neale's submissions to the contrary, what this Appellant is claiming in essence is that he is at risk because he is a practising Shia Muslim in Pakistan who is a high-profile member of his mosque. He has been shot at on three occasions in the past and an uncle of his has been killed.

22. The First-tier Tribunal Judge set out the Appellant's case in paragraph 9 of the determination noting that he was born and brought up in the city of Karachi and had been educated to degree level. She noted his claim to be a regular worshipper at the mosque and he helped organise meetings and distributed leaflets. She then set out the three incidents when he claims he was shot at and that the police failed to take any action. She noted at paragraph 15 that when asked why he believed he was being specifically targeted, he said it was because he was an activist at the mosque. The Judge then, from paragraph 23, set out the Secretary of State's case as contained in the refusal letter. Her findings begin at paragraph 25 where she first sets out the law and submissions made to her. In particular, at paragraph 32 the Judge referred to AW (Sufficiency of Protection) Pakistan [2011] UKUT (IAC) which specifically referred to sufficiency of protection and earlier in the determination [24(vii) and (ix)] she set out a quote from AW in which Lord Bannatyne said that there was not a general insufficiency of protection in Pakistan and that an individual would have to demonstrate characteristics that put him specifically at risk. The Judge then went on to note that the issue for her was whether this Appellant could demonstrate individual circumstances which make

him a particular target for individual attention. In that she was correct.

23. The Judge at paragraph 34 did refer to the background information and correctly interpreted that as meaning that there had been an increase in violence against Shia in recent times. While she has dealt with the country information briefly, she has summarised it accurately.

24. The Judge then goes on at paragraph 35 to consider why this Appellant thinks that he would be singled out in particular over and above other Shia Muslims and notes his claim is that he is a high-profile member of his mosque and identified as such. She noted at paragraph 36 that in fact 25% of the population in Pakistan are Shia Muslims and that apart from helping to organise meetings and distributing leaflets there was nothing else in his claim to suggest that he had a high profile or had come to the attention of any militant group. The fact that he had been shot at (but not hit) does not demonstrate that he was more than a random target because of his religion – not that he was singled out. The fact that he is a practising Shia Muslim, does not raise him above the ordinary. The Judge also noted that there was no evidence from Pakistan or from the mosque in Pakistan to help his case even though he was in regular contact with his family in Karachi.

25. At paragraph 37 the judge noted, as indeed she was required to do by s.8 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, that there were other matters which adversely affected this Appellant's credibility. The first of these the Judge noted was his demonstrated willingness to deceive the authorities in the UK as to the length of time he has been here. She particularly took into account the fact that he came to the UK in 1998, on his evidence fleeing persecution, yet did nothing until he was arrested in 2003. She did not accept his explanation that he was "confused" particularly as he had previously claimed asylum in 1996. She did not accept that he was ignorant of how to go about claiming asylum.

26. At paragraph 38 the Judge dealt with the Appellant's claim of return to Pakistan and the incidents when he said he was shot at. At paragraph 39 the Judge makes her adverse credibility findings based on the lack of a FIR. That is challenged in the grounds and skeleton argument on the basis of the background information that the police are unwilling or unable to assist in such sectarian violence. Being unwilling to punish the offenders or being unable to keep control of sectarian violence is not the same thing as refusing to record a complaint by issuing a FIR. The evidence in the country information and indeed set out in the skeleton argument does not indicate that the police do nothing but rather they have little enthusiasm for taking meaningful action. The evidence talks about a number of people

being charged albeit not punished and as the judge correctly pointed out she was provided with evidence that the Appellant's uncle's murder was investigated. The Judge also attached weight to the fact that despite apparently being shot at on three occasions by more than one assailant at close range he was unhurt. Her findings are sustainable and based on the evidence and are not contradicted by the country information relied upon by the Appellant.

27. It is clear from paragraph 41 where the Judge sets out her overall conclusions that she was singularly unimpressed by this Appellant. He had an extremely poor immigration history, had deceived and lied to the UK authorities, he failed to seek to regularise his position until he was arrested and his claim as to what had taken place in Pakistan did not have credibility. Those findings on the facts of this case and with this Appellant's background are findings that the Judge was entitled to make.

28. However, even putting this Appellant's case at its highest; if the Judge had accepted his claim as credible, he could not have hoped to succeed. Even if the Appellant arranged meetings and distributed leaflets for his mosque and even if he had been shot at when leaving the mosque he would still not be entitled to asylum as a Shia Muslim from Pakistan. He is not a preacher and there is no supporting evidence that even if he was he would be at risk. He is a practising Shia Muslim and no more. The population of Pakistan is in the region of 150 million people of whom between 20 and 25 million are Shia Muslims. There is sectarian violence in Pakistan. However, whilst there is undoubtedly such violence, as the Judge pointed out and as was accepted on the Appellant's behalf, it has not reached the level to justify humanitarian protection and therefore unless there is something very particular about this Appellant, he could not possibly succeed on the basis of his religion.

29. There is nothing particular about this Appellant even taking his case at its highest.

30. It is pertinent at this point to compare the position of this Appellant with the position of Christians in Pakistan. They are far fewer in number and there have been highly publicised attacks on them. That notwithstanding, there has been a very recent country guidance case, AK & SK (Christians: risk) Pakistan CG [2014] UK UT569 (IAC) where it was held that while Christians are a religious minority who in general suffer discrimination it is not sufficient to amount to a real risk of persecution. They are permitted to practice their faith (as are Shia Muslims). That case also suggests that people may be at greater risk of e.g. facing blasphemy charges if they are marginalised and occupy low social standing. That does not apply to this Appellant who lived in Karachi and is educated to degree level. Christians, unless there is something specific about a particular Appellant to be assessed on a

case-by-case basis, are not entitled to asylum. That being the case there cannot conceivably be justification for finding that a Shia Muslim would be at risk of persecution and entitled to asylum.

31. This Appellant's asylum claim was quite frankly doomed to failure and the Judge did not make findings based on no evidence or leave out significant evidence. True it is that the oral evidence, as confirmed by the Judge's record of proceedings, was that his family had suffered violence, but the fact remains that it has not been sufficient for them to leave Karachi. If they did not deem it necessary even to leave Karachi, let alone Pakistan there is and was no reason why this Appellant could not have done likewise. The fact that the Judge has said that his family have not suffered violence is thus immaterial to the decision.

32. Finally, the third ground criticises the Judge's approach to Article 8 suggesting that Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 00640 (IAC) is no longer good law and that the Judge was required to carry out a far more thorough and detailed consideration of Article 8 under the ECHR than she did.

33. Article 8 case law and the relationship between the Immigration Rules and ECHR has been dipping and swaying over recent months about the necessity to carry out a proportionality assessment under the ECHR if an Appellant does not come within the Immigration Rules. The position we are in at present is that which ever way Article 8 is approached the end result should be the same. Where the Immigration Rules are a complete code (as in deportation) there is no justification for an additional consideration under the ECHR. Where they are not there may be a need to consider Article 8 outside the Immigration Rules if there is something in the factual matrix of the case not anticipated by or covered by the Immigration Rules.

34. In this case there is nothing in the facts concerning the Appellant's family or private life to justify a consideration outside the Immigration Rules and he does not come within either Appendix FM or paragraph 276ADE. The only matters that he can rely upon is the length of time that he has been in the UK, and most of that was unlawful and his claimed relationship with another gentleman of Pakistani origin who it is claimed is dependent upon him. He did not attend the First-tier Tribunal. There is nothing to merit a detailed consideration under the ECHR. The Judge was entitled to shortcut the procedure when it was a hopeless case. Had she taken four pages to set out Appendix FM, paragraph 276ADE then set out the five steps in Razgar [2004] UKHL 27 and considered proportionality, the only sustainable conclusion that she could have reached on the facts of this case is that removal is proportionate. While she has dealt with Article 8 briefly, it is not an error of law as the end result was inevitable.

35. For the above reasons I find that the First-tier Tribunal Judge did not make a material error of law and her determination shall stand.

36. The appeal to the Upper Tribunal is dismissed.

Signed Dated 9th January 2015

Upper Tribunal Judge Martin