



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05754/2014

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly
On 30 September 2015

Decision Promulgated
On 14 October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

SA

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K J Wood of Rochdale Law Centre

For the Respondent: Mr A Mc Vitie Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. An anonymity direction was made previously in respect of this Appellant and shall continue.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Mc Call promulgated on 6 November 2014 which dismissed the Appellant's appeal against a refusal of asylum on all grounds .

Background

3. The Appellant was born on 1 January 1982 and is a national of Pakistan.
4. On 24 May 2012 the Appellant came to the United Kingdom under a fiancé visa. He married his wife on 26 August 2012.
5. 27 March 2013 the Appellant applied to remain in the United Kingdom as a victim of domestic violence. The application was refused and the Appellant appealed. The appeal was withdrawn by the Appellant on 12 February 2014 and the Appellant applied for asylum on 17 March 2014.
6. The Appellant asserted that he and members of his family were assaulted and threatened both in the UK and in Pakistan. The Appellant asserted that his ex wife's family were behind the attacks and they were influential in Pakistan and had political contacts there. The police in Pakistan have refused to register their complaints. There was nowhere he could relocate.
7. On 1 August 2014 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons:
 - (a) It was not accepted that the reasons for the appellant fleeing from Pakistan engaged the convention.
 - (b) It was accepted that the Appellant was threatened by his wife and her family and was attacked by his ex wife's brother.
 - (c) In relation to the claim that the Appellant and his family had received threats from her ex wife's uncle MS and that his brother was attacked: this is accepted as the Appellant's account is vague and inconsistent which undermines the Appellant's overall credibility.
 - (d) No weight is placed on the documents produced as they were all uncertified.
 - (e) It is not credible that threats were issued to the Appellant's family in Pakistan when he was within reach of his ex wives family in the United Kingdom.
 - (f) The Appellant's failure to approach the authorities in Pakistan means that he has not given them the opportunity to assist and therefore there is no evidence they are unwilling to help.

- (g) The Appellant could internally relocate in Pakistan to Karachi or Rawalpindi. There was no evidence that the Appellant's ex wife's family had the means or the motive to pursue him elsewhere in Pakistan.
- (h) The Appellant's medical issues did not engage Article 3 or Article 8 as there was medication available and a functioning health service there.
- (i) The Appellant could not satisfy Appendix FM or 276ADE.
- (j) There were no circumstances that warranted a grant of leave outside the Rules.

The Judge's Decision

8. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Mc Call ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found :
- (a) It was accepted by the Respondent that the Appellant's brother in law was convicted of Affray and that the Appellant was the victim of that incident for which the sentence was a Conditional Discharge.
 - (b) It was accepted that the Appellant's brother and family had attempted to intimidate and threaten the Appellant before the trial.
 - (c) The Judge accepted that threats had been made to him and his family in the United Kingdom.
 - (d) While accepting that the Appellant and his former wife's family had been in dispute the cause of that had not been established to the lower standard and therefore the Judge did not accept that it arose out of his claim to have been the subject of Domestic Violence.
 - (e) The evidential basis for the sentence given to the Appellant's former brother in law for Affray had not been placed before the Judge. A conditional discharge was inconsistent with the claims made by the Appellant.
 - (f) The Judge accepted that during the course of the trial threats were made both in the United Kingdom and Pakistan by his ex wife's family to his family.
 - (g) He did not accept that the account of the attack on the Appellant's brother in Pakistan after the trial rang true.
 - (h) The Appellant had fabricated his account of a politician MR supporting his ex wife and family.

- (i) He did not accept that the Appellant's ex wife's family had influence or influential friends in Pakistan.
 - (j) The Appellant was not at risk of being investigated and arrested in respect of claims made by his wife that he raped her over two years ago.
 - (k) In respect of the Appellant's claim that his family tried to register a FIR the Judge examined the letters and documents in detail at paragraphs 34-38 and concluded that it was not credible that there would be no replies to any of the letters or evidence that they had in fact been sent and he did not find the documents reliable.
 - (l) He did not find the Appellant's account of why the marriage broke down rang true.
 - (m) There had been no recent incidents and he did not find it credible that if his ex wife's family still bore a grudge against him and were intent on harming him they would not do so when they had the chance.
 - (n) The medical evidence showed that the Appellant was recovering from the depression he had suffered.
 - (o) He did not accept that there had been further incidents since the Appellant's brother in law received the sentence of a conditional discharge.
 - (p) The Appellant's mental health problems did not engage Article 3 or 8 and the decision was proportionate by reference to Article 8 outside the Rules.
9. Grounds of appeal were lodged arguing that :
- (a) The Judge failed to take into account a material matter in that he made a finding that there was no continuing interest in the Appellant from his ex wife and her family when he had the evidence before him of the Appellant's sister S H who visited Pakistan after the trial and was threatened by men.
 - (b) The Judge failed to take into account all of the evidence before finding that the documentary evidence was unreliable.
 - (c) The Judge failed to take into account the acceptance of a significant portion of the Appellant's account when assessing whether the claimed problems in Pakistan were reasonably likely.
 - (d) The Judge misdirected himself as to the definition of domestic violence having accepted that the Appellant had been the victim of threats and feared for his personal safety as a result of his ex wife and her family's actions.

- (e) The Judge failed to take into account the abuse and threats suffered by the Appellant at the hands of his wife and her family in the assessment under Article 8.

10. On 2 December 2014 First-tier Tribunal Judge Kelly gave permission to appeal

11. At the hearing I heard submissions from Mr Wood on behalf of the Appellant that:

- (a) The Appellant's bundle at A15-16 that was before the Judge contained evidence of further adverse interest in the Appellant that post dated the trial and the Judge did not evidence that he had taken that into account.
- (b) The Judge was required to look at the documentary evidence in the round. He made a number of key positive findings at paragraphs 18-23 and these should have been taken into account in his assessment of the documents.
- (c) In finding it incredible that the Pakistani Police did not respond to so many documents he should have taken into account the background material as to their corruption and ineffectiveness.
- (d) The Judge's definition of Domestic Violence was flawed. He found that the Appellant feared for his personal safety and was a victim of crime at the hands of his brother in law.
- (e) If the Appellant was the victim of domestic violence then this could have been a compelling circumstance in relation to Article 8.

12. On behalf of the Respondent Mr Mc Vitie submitted that :

- (a) The Judge accepted a history of threats and prosecution by the Appellant's ex wife's brother for Affray and that his ex wife threatened the Appellant's sister to try and make the Appellant withdraw the prosecution.
- (b) What raised the Appellant's the issue of domestic violence to a claim for international protection was the claim that the Appellant was at risk on return to Pakistan.

(c) The Judge did not accept the Appellant's claim that he was at risk because his ex wife's family were influential themselves or because of a politician that the Appellant had never previously mentioned and the witness had never heard of.

(d) The Appellant did not mention the name of the politician until the hearing before the Judge.

(e) If the Appellant's claim to be at risk on return was rejected by the Judge his claim for protection and his inability to relocate all fell away.

(f) Even if the Judge failed to mention the continuing threats if he was not at risk on return the error was not material.

(g) In relation to the documents again if there was no risk on return the Judge was entitled to find them unreliable.

(h) While there was no requirement for evidence of physical violence for domestic violence this was irrelevant to the Appellant's claim to be at risk on return to Pakistan.

(i) In relation to the assertion that the Appellant's claim to have been a victim of domestic violence was not considered under Article 8 how could this be relevant. The perpetrators of this behaviour were in the United Kingdom not in Pakistan so how could this be relevant to the Appellant's private life in the United Kingdom.

13. In reply Mr Wood on behalf of the Appellant submitted:

(a) The Appellant had referred to the threat from his ex wife's uncle MS in the interview at Q90. The politician was a different individual so he had not changed the name – they were two separate individuals.

Finding on Material Error

14. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

15. I have considered the argument that the Judge both failed to take into account the evidence of the Appellant's sister that there was a continuing interest in the

Appellant in Pakistan and that this evidence would have made a material outcome to the decision.

16. I note that the Judge clearly recorded at paragraph 14, 21 and 26 that he had heard the evidence of this witness so it cannot on any analysis be argued that the Judge overlooked her evidence. I am satisfied that he is not required to set that evidence out in detail where it is clear that it has been considered where it is relevant to the facts in issue. The statement of the sister included the claim that her father tried to register a FIR in respect of an incident that post dated the conviction of the Appellant's ex wife's brother which is the evidence that it is suggested the judge specifically overlooked. The Judge considered in Paragraph 34 the evidence at pages 1-19 of the bundle which includes the claim of the 'post conviction' incidents including that of the sister and he did not find the documents reliable evidence in relation to this evidence. He was entitled to take to the view that he did not, having heard the evidence of the Appellant and his witnesses and taking into account the documentary evidence, find that the Appellant had satisfied the evidential burden of establishing that there was a continuing interest in the Appellant.

17. In relation to the Judges consideration of the documentary evidence at paragraphs 34 -39 I am satisfied that the Judge has firstly self directed himself appropriately in paragraph 34 as to the applicable law. It is clear from the decision that he was considering the documents in the round together with all of the other evidence and therefore there was nothing wrong in his fundamental approach to documentary evidence. He gives a number of detailed, cogent and well reasoned explanations as to why he concludes at paragraph 38 that the documents are not reliable having considered the evidence at paragraph 33 of inefficiency and corruption in the Pakistani police. These are conclusions that were open to him and I am satisfied that Mr Wood is simply attempting to re argue the weight to given to the evidence before him.

18. The argument that the Judge failed to take into account the acceptance of a significant portion of the Appellant's account when assessing whether the claimed problems in Pakistan were reasonably likely has no merit given that his findings start with a detailed recital of all those facts that the Respondent

accepted at paragraph 18-23. Nevertheless the assessment of credibility must be read as a whole so I also note that in determining the issue of the Appellant's credibility that while there were matters that were accepted the Judge also took into account factors that reflected adversely on the Appellant's credibility: that there was a significant difference between what the Appellant claimed had happened, that he was the victim of an attempted murder which he had claimed to nurses and doctors resulted in his former brother in law being sent to prison and what actually happened which was that his brother in law received a conditional discharge for Affray. The Judge noted that in the light of the Sentencing Guidelines (and in the absence of any evidence as to the evidence before the Judge at the Crown Court) this sentence was inconsistent with the Appellant's version of events.

19. It was argued that the Judge erred in his definition of domestic violence. I do not accept that the Judge purported to provide a definition of domestic violence. He noted that this was a claim made by the Appellant. He noted at paragraph 24 that there was no evidence in respect of the claim from any source other than himself in the form of injuries, doctors notes or observations by another witness: nowhere does he state that these are requirements he is simply clarifying what evidence there is what evidence there is not. The fact that there was a dispute between the Appellant and his former brother in law in which his wife appears to have become embroiled was not determinative of the Appellant being the victim of domestic violence as the Judge found that the cause of that dispute had not been established before him.

20. The Judge made his findings in relation to whether the Appellant was a victim of domestic violence in the context of his findings in relation to credibility generally and having heard all the evidence he did not find the claims made by the Appellant were credible. In relation to issues of credibility I remind myself that the Judge had the advantage of hearing oral evidence from the Appellant. In Mibanga v SSHD [2005] EWCA Civ 367 Buxton LJ said this in relation to challenging such findings:

“Where, as in this case, complaint is made of the reasoning of an adjudicator in respect of a question of fact (that is to say credibility),

particular care is necessary to ensure that the criticism is as to the fundamental approach of the adjudicator, and does not merely reflect a feeling on the part of the appellate tribunal that it might itself have taken a different view of the matter from that that appealed to the adjudicator.”

21. I am also satisfied that in the context of the claim for international protection the Judge consideration of the issue of domestic violence even if wrong cannot have made a material difference to the outcome of the decision. The decision must be read as a whole: the Appellant’s claim was underpinned by his assertion that he was at risk on return because his ex wife’s family were influential and had a connection to an influential politician. The Judge gave a detailed, cogent and well reasoned explanation at paragraph 28 as to why he did not find the Appellant’s account of his ex Wife’s political connections was credible: that was in essence that the MP he described in oral evidence (MR) as being the person he feared had never previously been referred to him in the asylum interview as someone he feared and he had in fact mentioned an entirely different person and when his sisters were asked in oral evidence about MR they were unaware of his existence. I am satisfied that in the light of the very late disclosure of this person’s name and the fact that neither of his sisters had heard of him the Judge was entitled to conclude that the Appellant had fabricated his account of the influence of his ex wife’s family in Pakistan or their political connections.
22. In relation to the Judge’s alleged failure to take into account the Appellant’s claim to have been the victim of domestic violence in his assessment of the proportionality of the Article 8 assessment I am satisfied that having concluded that the Appellant had not met the evidential burden of establishing that he was a victim of domestic violence the Judge’s finding that there were no compelling circumstances to justify a grant of leave outside the rules cannot be in error.
23. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in headnote (1) : “*Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined,*

those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.”

24. I find that the reasons given were adequate and the Appellant cannot be in any doubt about why the appeal was allowed: the Judge did not find him a credible witness as to the central feature of his case which was that he was at risk in Pakistan from his ex wife’s family.

CONCLUSION

25. I therefore found that no errors of law have been established and that the Judge’s determination should stand.

DECISION

26. The appeal is dismissed.

27. Under Rule 14(1) the Tribunal Procedure (Upper Tribunal) rules 2008 9as amended) the Appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. An order for anonymity was made in the First-tier and shall continue.

Signed

Date 11.10.2015

Deputy Upper Tribunal Judge Birrell