



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/02425/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 13th September 2018**

**Decision & Reasons
Promulgated
On 12th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

**E M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Jaquiss (Counsel)

For the Respondent: Mr C Avery (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant's appeal against a decision to refuse his protection claim was dismissed by First-tier Tribunal Judge Sweet ("the judge") in a decision promulgated on 29th May 2018. The judge found the appellant's evidence and that of his spouse wholly lacking in credibility and concluded that the appellant would not be at risk of persecution or ill-treatment on return. He also found that there were no very significant obstacles to integration into Pakistan on return, for the purposes of the Immigration Rules ("the rules"),

and that there were no exceptional circumstances in the case, meriting leave under Article 8 of the Human Rights Convention, outside the Rules.

2. In grounds of appeal, it was contended that the judge erred in his credibility assessment. There was no engagement with the appellant's case that he had been living unlawfully in the United Kingdom and that his wife and youngest child had been kidnapped and held captive by loan sharks. His other children had fled and he was later told that they were in Dubai. In those circumstances, it was entirely to be expected that he and his wife would be unable to give precise details of their whereabouts. The apparent inconsistency between the appellant's claim that he had no family in Pakistan and his evidence, later, that his mother and seven siblings lived there required the judge to consider the appellant's specific evidence that there had been family conflicts, as a result of which he had no contact with any members since coming to the United Kingdom in 2005. The adverse inference drawn by the judge was unwarranted as it was understandable that the appellant should regard himself as having no family in Pakistan. So far as the date of kidnap was concerned, dates of 2009 and 2010 were given but, again, the judge erred in drawing an adverse inference without considering that the events described by the appellant occurred between eight and nine years ago.
3. The judge also erred in summarising the evidence about the loan or repayment agreement as equivocal. There was no proper basis for an adverse inference here either. The judge's finding that the evidence did not include a loan agreement document failed to take into account that the people the appellant described and feared would act outside the law and so the absence of full documentation was unsurprising. Overall, the adverse finding was not properly supported by adequate or sustainable reasons.
4. The unsafe credibility finding bore on the judge's conclusion that there were no significant obstacles to integration and no exceptional circumstances justifying leave outside the rules. The credibility finding was central to the outcome.
5. Permission to appeal was granted on 21 June 2018. There was no Rule 24 response from the respondent.

Submissions on Error of Law

6. Ms Jaquiss said that ground 2 stood or fell with ground 1. The loan shark aspect of the case was relevant to obstacles to reintegration. Paragraph 38 of the decision was key as it was there that the brief findings on credibility appeared. The appellant's case was that these were not sufficiently reasoned.
7. The judge found that the appellant and his wife were vague in their evidence regarding the whereabouts of their seven other children. He did

not explain how they were vague and his finding appeared not to take account of the appellant's evidence that he did not know where his children were and so, inevitably, what he said of their whereabouts would be vague. Paragraph 15 of the decision summarised the evidence the judge heard and contained a clear account that the appellant did not know where the seven elder children were, although he thought they were in Dubai in view of he was told. So far as the account of the presence of family members in Pakistan was concerned, paragraph 17 of the decision recounted the appellant's evidence about this. The appellant had no contact with his family after he left for the United Kingdom and there were conflicts. The judge might have rejected that explanation for what appeared to be an earlier, inconsistent account that he had no family in Pakistan but the decision appeared to show that the judge had not considered the explanation or dealt with it.

8. The appellant accepted that there was a difference between the account given in the screening interview and the later account, regarding the date on which his wife and children were kidnapped. He corrected himself in the later account. The important point was whether the event took place or not. The appellant was in the United Kingdom at the time and not present in Pakistan when the events unfolded.
9. The judge did not explain how the evidence regarding the loan agreement or repayment agreement was equivocal. At paragraph 20 of the decision, the judge summarised the evidence regarding the loan and the repayment document. Loan sharks would hardly prepare a formal agreement as they acted outside the law. The document at page 11 of the appellant's bundle recorded the terms of repayment. It was not sufficient for the judge merely to say that the evidence was equivocal. What was required was an explanation of how the appellant equivocated in his evidence.
10. So far as ground 2 was concerned, the assessment of the claim regarding loan sharks bore directly on whether there were significant obstacles to integration on return or not.
11. Mr Avery said that the decision was brief but that may well have reflected the lack of strength in the appellant's case. The key points were the claimed loan and the difference in the evidence regarding the date of the claimed kidnap. There was a significant discrepancy there, of a year. Kidnapping was a serious event, and the appellant might be expected to get the date right. The judge was entitled to conclude that the difference cast doubt on the appellant's credibility. The judge's comments on the nature of the loan were accurate and reflected the evidence. The details were very sparse regarding what happened with the loan and the judge was entitled to find that this was, of itself, an adverse factor. The lack of detail reflected how the evidence emerged and the judge was entitled to conclude that the protection claim was not made out.

Conclusion on Error of Law

12. The judge's reasoning appears in paragraphs 38 and 39 of the decision. Those paragraphs were preceded by a summary of the evidence. Paragraph 38 sets out the adverse findings on the vagueness regarding the whereabouts of the older children, the difference in the accounts about family members in Pakistan and the different dates regarding his wife's alleged detention and torture. In relation to each of these aspects, the appellant provided an explanation. The grounds draw attention to what he said and Ms Jaquiss developed the case in oral submissions. What is missing from paragraph 38 is the judge's engagement with each explanation, although it is apparent that he disbelieved the account overall. I accept Ms Jaquiss's submission that the finding that the alleged loan or repayment agreement was equivocal required some elaboration, so that the due weight to be given to the document might be clear.
13. Paragraph 39 deals with obstacles to integration on return. The judge records part of the appellant's immigration history and notes the presence of family members in Pakistan, the state of health of the appellant and his wife and the circumstances of their son here. However, if the adverse finding regarding the claimed risk from loan sharks is undermined, so too is the finding that there are no significant obstacles to integration.
14. In summary, I conclude that the grounds are made out and that the decision contains a material error of law. The decision of the First-tier Tribunal is set aside and must be remade. In a short discussion regarding the appropriate venue, both representatives agreed that extensive fact finding will be required and the credibility assessment remade. In these circumstances, the First-tier Tribunal is the appropriate venue.

Notice of Decision

The decision of the First-tier Tribunal is set aside. It will be remade in the First-tier Tribunal at Hatton Cross, before a judge other than Judge Sweet. The hearing will be de novo and no findings of fact are preserved.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell

8th October 2018

ANONYMITY

I make a direction prohibiting the identification of the appellant or any member of his family during these proceedings. This direction, made under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, shall remain in force until set aside or varied by a Court or Tribunal.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell

8th October 2018