



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

Appeal Number: PA/06242/2017

THE IMMIGRATION ACTS

**Heard at Field House
Heard on 22nd of January 2018
Prepared on 31st of January 2018**

**Decision & Reasons Promulgated
On 13th of February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MR SULEMAN MASIH
(Anonymity order not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Malik of Counsel

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Pakistan born on 15th of May 1988. He appeals against the decision of Judge of the First-tier Tribunal Chana sitting at Hatton Cross on 28th of July 2017 in which she dismissed the Appellant's appeal against a decision of the Respondent dated 10th of June 2017. That decision was to refuse to grant the Appellant international protection. The Appellants entered the United Kingdom on or about 31st of May 2011 with

a student visa valid from 17th of May 2011 until 29th of March 2014. His student leave was curtailed on 18th of May 2012 as the Appellant was not attending his college. On 12th of August 2014 he applied for residence in the United Kingdom on the basis of his relationship with an EEA national but this was refused by the Respondent on 10th of November 2014. On 10th of November 2015 he applied for leave to remain on the basis of his family and/or private life but this was refused on 2nd of September 2016. On 18th of November 2016 he made an appointment to claim asylum which was completed on 22nd of December 2016. It was the refusal of that application which has given rise to the present proceedings.

The Appellant's Case

2. The Appellant's case was that he feared a specific individual called Khan who was persecuting the Appellant because of the Appellant's Christian faith. The Appellant was born into a devout Christian family. At school and in college Muslim children would say that he was a Christian and would stop others from talking to him or sitting near him. At the end of 2009 his cousin had an altercation with a Muslim boy called Khan who hit the Appellant's cousin with his motorcycle. An hour later the cousin informed the Appellant of what had happened and the two went to speak to Khan and his group of Muslim friends. A fight broke out during which Khan threatened the Appellant and said he would not leave him alone. Two or three weeks after the fight the Appellant relocated to Lahore where he stayed until he came to the United Kingdom. He returned to his parents' home in Lahore regularly (before leaving Pakistan) but did not encounter any problems. The Appellant stated he could not return to Pakistan because he feared he would be killed by Khan and his associates because of his, the Appellant's, religion.

The Decision at First Instance

3. At [25] to [33] the Judge gave her reasons why she did not find the Appellant to be a credible witness and did not accept his account. The altercation between Khan, the Appellant and the Appellant's cousin [the Judge refers at [25] and thereafter to the Appellant's brother] happened in 2009. It was not credible that Khan would continue to pursue the Appellant and continue to ask about him for seven years when it must have been obvious to Khan that the Appellant was not in Pakistan because he had been unable to find him during those seven years. It was not credible that Khan would continue to visit the Appellant's parents and threaten them in those circumstances.
4. When asked to describe what the "huge incident" was that had happened in 2009 the Appellant's description was that his cousin saw Khan looking at Christian girls and his cousin tried to stop him. The Appellant said that a fight broke out and Khan hit the cousin. When he went up to Khan to ask him why he had done this Khan started to abuse the Appellant. The Judge did not consider this could be categorised as a "huge incident" such that Khan would pursue the Appellant for seven years. It was not credible that

the Appellant's relative would think that he could stop anyone looking at girls Christian or otherwise. It was not credible that the Appellant's parents would send the Appellant to Lahore and not his brother given that it was the relative who had started the fight with Khan. An FIR produced by the Appellant related to the cousin's relationship with a Muslim girl forced to convert to Islam. This did not assist the Appellant. The Appellant had never been accused of blasphemy and when asked about that the Appellant had refused to answer.

5. There was no credible evidence that the Appellant had ever evangelised in Pakistan or indeed in the United Kingdom. Christians in general were permitted to practice their faith, could attend church, could participate in religious activities and had their own schools and hospitals. The Appellant had lived in Pakistan for most of his life. There was no evidence that he and his parents suffered any serious harm other than the general discrimination endured by Christians in that country. The Appellant could internally relocate to live with his parents in Lahore and it would not be unduly harsh to live there or anywhere else in Pakistan. She dismissed the appeal.

The Onward Appeal

6. The Appellant appealed against that decision noting that the Judge had erred at [2] of the determination by referring to the Appellant unlawfully entering the United Kingdom on 31st of May 2011 when in fact he had entered with a valid student visa. It was not unusual that an assailant such as Khan could pursue a sectarian vendetta against the Appellant seven years after their encounter. The recent threats to the Appellant's parents had been reported to the local police station and documented in court. The fear of serious harm which the Appellant had come from his religious faith as a Christian and it was not just based on his encounter with Khan in 2009. Sectarian attacks in Pakistan were not confined to evangelical Christians, they affected all Christians. Anyone who was not at Muslim was regarded as an infidel who should be subject to persecution. The Judge had failed to take into account the background material produced by the Appellant of attacks against Christians in Pakistan.
7. The finding that the Appellant's parents had not suffered harm was inconsistent with the Appellant's parents sworn statement that they were subject to a series of attacks. The Appellant had previously relocated to Lahore but had been found there by Khan and his associates. The Appellant's internal relocation options were restricted to a few minority Christian communities. The Judge had applied the wrong standard of proof and had relied too heavily on the Respondent's reasons for refusal.
8. The application for permission to appeal came on the papers before Judge of the First-tier Tribunal Brunnen on 30th of October 2017. Granting permission to appeal he wrote that whilst it was an error in the determination to state that the Appellant had entered the United Kingdom unlawfully it was immaterial to the outcome of the appeal. There was no

arguable error in the Judge finding that the Appellant was not at risk of harm simply because he was a Christian nor had the Judge applied an incorrect standard of proof.

9. What was arguable was the Judge's omission of the 2017 court petition of the Appellant's parents when considering whether it was credible that Khan would maintain his threats against the Appellant for seven years. It was also arguable that the Judge had failed to consider and make findings as to the evidence that Khan had traced the Appellant's parents to Lahore and failed to consider the effect of the Appellant's religion on the Appellant's ability to relocate.
10. The Respondent replied to the grant of permission by letter dated 20th of November 2017 arguing that the Judge's findings were open to her. Given the seven years between the incident involving Khan and the Appellant's asylum claim in 2016 the Judge was entitled to conclude that the claim that Khan was still harassing the Appellant's parents in Pakistan was not true or reasonably likely. The fact that the Appellant's parents had sworn an affidavit in July 2017 attesting to this was not material. There was no evidence that the parents had pursued Khan themselves. The Judge's findings had had regard to country guidance authority in relation to Christians in Pakistan and the background material. The Judge had not needed to recite this in order to have applied it appropriately.

The Hearing Before Me

11. At the hearing before me to determine whether there was a material error of law in the Judge's determination such that it fell to be set aside and the decision remade, counsel argued there were 3 brief points he wished to add to the grounds. The first related to the Judge's error when describing the Appellant's immigration history that the Appellant had unlawfully entered the United Kingdom in 2011. It was the Respondent who had alleged that the Appellant's leave was curtailed but it was for the Respondent to prove that a curtailment letter was served on the Appellant. There was nothing on which to base the finding that the Appellant was not attending college.
12. The 2nd point was that the Judge had failed to engage with the Appellant's evidence of the affidavit made by his parents that they had received threats from Khan. This was an error which was relevant to the issue of relocation.
13. The 3rd point was that the Judge had misunderstood who took part in the altercation in 2009. It was not the Appellant's brother it was the Appellant's cousin who was assaulted by Khan. This was made clear in the Appellant's witness statement and the Judge had erred in her description of the incident. The Judge also erred in stating that the Appellant said he returned home regularly. That did not mean that he returned to Pakistan, it meant that he used to go and see his family when he returned to live in Lahore and would stay for two to three days (see questions 123 and 124 of

the substantive asylum interview). Looked at as a whole there were serious errors in the determination which should be set aside and the matter remitted back to the First-tier to be re-decided.

14. For the Respondent it was submitted that there were no material errors of law in the decision. The Judge's findings were open to her on the evidence. The Appellant had put in a number of applications for leave to remain which had failed until finally he made an asylum claim. This delay undermined his credibility. He had, it was acknowledged, entered the United Kingdom lawfully not unlawfully. At [18] the Judge had recorded the Appellant's evidence that he could not go to the police because Muslims might accuse him of blasphemy. This was not supported by the Appellant's own evidence that his parents had gone to the authorities apparently to report the threats received from Khan.
15. Little weight could be placed on the petition of the Appellant's parents. The petition had referred to Khan and his friends attacking the parents' home and torturing the Appellant's family. That was not part of the Appellant's own case. The document was looked at by the Judge but she did not consider that it supported the Appellant's account. It was correct that the Judge had referred in her determination to the Appellant's brother being involved in the altercation with Khan but this was not a material error. The Appellant's case was that he relied on a one-off event which occurred in 2009 yet had never been accused of blasphemy. The Judge's finding at [25] that it was implausible that Khan would continue to visit the Appellant's parents was a finding open to the Judge when assessing the evidence.
16. In conclusion, counsel for the Appellant stated that the Judge had referred throughout at paragraphs [25] to [28] to the Appellant's brother being involved in the fight but the claim had nothing to do with the brother. It had only ever been that it was the Appellant's cousin who was involved. That was a material error of fact.

Findings

17. This is a reasons based challenge to a determination which dismissed the Appellant's appeal against refusal of international protection. There are three main points made by the Appellant. The first is that the Judge erred in describing the Appellant as entering the United Kingdom unlawfully in 2011. That was not found by the First-tier to be an arguable error of law upon which permission to appeal should be granted and I would agree with that point. The Judge does not for example at a later stage in the determination base any findings or assessment of the evidence on allegation that the Appellant entered the United Kingdom unlawfully. She should be taken to know that the Appellant did in fact enter the United Kingdom lawfully and that this is merely a mistake.
18. The 2nd point is that the Judge failed to engage with an affidavit or petition sworn by the Appellant's parents. The difficulty with this document was

that it conflicted with the Appellant's own case as was pointed out in submissions to me by the Presenting Officer. The argument is that by not dealing in terms with the petition she materially erred by failing to take into account relevant evidence. The Judge was aware of the existence of the petition because she referred to it at [18] and was aware at [25] that the Appellant's claim was that his parents were being threatened. The problem with this is that this document did not support the Appellant's claim because it referred to matters which were not in the Appellant's case. If the Appellant's parents had been tortured as the petition claimed it is reasonable to have expected the Appellant to have mentioned such claims.

19. The Judge was assessing the claim on the basis primarily of what the Appellant said his case was. He did not refer to the alleged torture and it was not incumbent on the Judge to consider in her determination each and every piece of evidence that was put forward where (as here) that evidence did not assist the Tribunal because it conflicted with the Appellant's own case. Indeed, when the Appellant prepared a supplementary statement dated 24th of July 2017 four days before the scheduled hearing before the First-tier, he made no mention of the claim that his parents had been tortured referring only to threats against him by Khan who was said to have visited the Appellant's parents address, somewhat coincidentally on 12 July 2017, twelve days before the hearing. The Appellant's statement is also rather curious because it refers to repeated threats and assaults from Khan. In fact, there was only one incident upon which the Appellant was ever relying and that was the incident in 2009.
20. What the Judge had to decide was whether the claim that the Appellant's parents had suffered from Khan was at all credible. That the Appellant had put forward a document from his parents saying they had been threatened did not take matters significantly further if that document on its face was unreliable which it was in this case. The Judge did not find it credible that Khan would continue to visit the Appellant's parents and threaten them. That was a conclusion which was open to the Judge on the inconsistent evidence put forward by the Appellant.
21. The 3rd objection taken by the Appellant is that the Judge muddled the identities of who had been involved in the 2009 incident referring to the Appellant's brother when it was in fact the Appellant's cousin. That was acknowledged by the Respondent to be an error but not a material error. I agree with that submission. What was at the core of the claim was whether there had been any incident at all in 2009 involving the Appellant. There was no evidence from the Appellant's cousin of the alleged incident. The Judge was in a position of only being able to assess the Appellant's account of the 2009 incident which contained a number of difficulties. Not least was the Appellant's exaggeration of it by describing it as a "huge incident". The Judge's concern was that such a relatively trivial incident would not still be the catalyst for persecution seven years later. That too was a conclusion which was open to the Judge on the evidence before her.

22. The cause of the incident was relatively trivial, that the Appellant's relative wanted to stop Khan from looking at Christian girls and the result was a fight in which Khan hit the Appellant's relative and verbally abused the Appellant. It does not even appear that the Appellant was physically harmed in this incident. There was no evidence that Khan had pursued the cousin for seven years or any other period of time which if that relative had been the instigator of the incident might have been more credible. Instead the Appellant claimed that Khan had continued a vendetta for seven years arising out of this relatively trivial incident. It was a matter for the Judge to assess whether that claim is at all plausible. She decided it was not and there is no material error of law in that conclusion.
23. Whilst it was an error to refer to the brother and to make the comment that the Appellant's parents would also have been concerned for the brother's safety, it was not a material error since it did not go to the core of the claim. The Judge gave adequate reasons why Christians were not at risk per se and permission to appeal was not granted on that basis. The Judge also adequately addressed the issue of relocation. It followed from her conclusion that the Appellant was not at risk that he could go to live in Lahore or anywhere else. There was no material error of law in that conclusion either. Overall the grounds of onward appeal and submissions amount to no more than a disagreement with the Judge's findings which were open to her on the evidence. I therefore dismiss the Appellant's onward appeal against the determination.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

I make no anonymity order as there is no public policy reason for so doing.

Signed this 8th of February 2018

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Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

No fee was payable and I have dismissed the appeal and therefore there can be no fee award.

Signed this 8th of February 2018

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Judge Woodcraft
Deputy Upper Tribunal Judge