



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12199/2017

THE IMMIGRATION ACTS

Heard at Field House
On 24 May 2018

Decision & Reasons Promulgated
On 6 June 2018

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

AAS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Akhtar, Counsel instructed by Buckingham Legal Associates
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a national of Pakistan, has permission to challenge the decision of Judge A Hussain of the First-tier Tribunal (FtT) sent on 26 February 2018 dismissing his appeal against a decision made by the respondent on 9 November 2017 to refuse his protection claim. The basis of the appellant's claim was that he was gay and when his family learnt of that and had to cancel his engagement with the girl they had arranged for him to marry, her family attacked his father and brother, injuring his brother. The appellant's family has now publicly disowned the appellant. The judge did not find that the appellant had given a credible account either as regards his sexual orientation

or the family events he recounted. In his decision the judge addressed the evidence produced by the appellant in the form of a First Information Report (FIR) and the evidence produced by the respondent in the form of a Document Verification Report (DVR) finding the FIR to be false. The judge addressed these matters at paragraphs 21-23 as follows:

- “21. As a result of the claimed attack on the appellant’s brother, a First Information Report (‘FIR’) was lodged. This is the document used to commence criminal proceedings. It indicated that the attack took place on 9 May 2015 where the appellant’s brother was struck in the chest and other parts of his body with continuous fire. The shooting resulted in the appellant’s brother being ‘injured’, a conclusion that is surprising but I make no more of it.
22. The Secretary of State has produced a Document Verification Report which, following enquiries of the station record keeper showed that the FIR number and the date of the incident relate to a different incident on a different date and showed to a high degree of probability that the document was not genuine.
23. The appellant takes issue with the DVR and invites me to place little or no weight on it. Having considered it in the round, I am satisfied that the DVR carries significant weight. This is because the incident took place in May 2015. The appellant was on talking terms with his father at least until the end of 2015 yet when questioned, he makes no mention of any discussions around the incident or the injuries suffered by the appellant’s brother or his health and well-being. Equally significantly, if ever there was a time for the appellant to have been convinced that he needed protection, it was following this incident, yet he did not make his asylum application until May 2017 preferring to make applications to extend his student visa instead where no mention of these issues was made. The reliance on what I am satisfied is a non-genuine FIR significantly undermines the appellant’s credibility.”

2. The appellant’s grounds level two main challenges, it being said that the judge erred in (1) failing to make a specific finding as to whether the FIR was a forgery; and (2) in applying unduly harsh standards to his assessment of the appellant’s evidence and failing to keep an open mind.
3. I am grateful to both representatives for their submissions. Ms Akhtar developed hers by reference to a lengthy skeleton argument.
4. Ground 1 contends that since the respondent had alleged that the FIR was fraudulent the judge should have addressed this issue, bearing in mind that in respect of such allegation the burden lay on the respondent. This ground further argues that since at paragraph 23 the judge said he was satisfied the FIR was “non-genuine”, he himself simply accepted the respondent’s allegation without independently examining it.

5. I do not consider ground (1) withstands scrutiny. I would readily accept that the judge did not set out matters relating to the FIR and DVR with any rigour. And did not expressly address the allegation of forgery, specifically treating the burden of proof as resting on the respondent. However, I fail to see it would have made a material difference had the judge done so. Clearly the respondent's allegation was supported by evidence in the form of the DVR. That evidence was sufficient to discharge the evidential burden. It was then for the appellant to rebut it. Yet there is no indication that the appellant took any steps in response to receipt of the DVR to obtain any evidence in rebuttal. This failure was particularly significant in this case because the principal point made in Ms Akhtar's grounds in an attempt to rebut the allegation was that the FIR did not purport to be the only report, as it describes itself as "Report no. 3" and thus this document "may not have been recorded as the FIR dealing with the incident described by the Appellant". That was of course a possible explanation for the discrepancy identified in the DVR, but one that required substantiation. None was offered nor was any mention made of any attempt to obtain it. When describing in his asylum interview how he came to receive the FIR the appellant did not suggest there were any particular difficulties in obtaining access to it from police headquarters: see Q138.
6. The grounds also argue that the judge simply adopted the respondent's view that the FIR was non-genuine/fraudulent without any independent examination. Whilst it is true that at paragraph 23 the judge focuses on whether the DVR rather than the FIR can carry weight, the contents of this paragraph is almost all devoted to the judge's reasons why the appellant's reliance on the FIR significantly undermined his credibility. Two points in particular were made. The first that if there had been an incident in which the appellant's brother had been shot and injured (as the FIR proclaimed), that would have been something that would have come up in the appellant's frequent conversations with his father at least until the end of 2015, yet the appellant's account of these conversations made no reference to this subject. The second point was that if the appellant had learnt about this incident in May 2015, he would have realised he needed protection, yet he made no asylum claim until May 2017. Thus the contents of paragraph 23 show that the judge did give his own assessment of the DVR. Ms Akhtar sought to argue that neither reason given by the judge is valid, but in my judgement both were within the range of reasonable responses.
7. In the skeleton argument that the appellant's representative put before the judge it was argued that there were significant shortcomings in the DVR evidence that the judge should have addressed (the fact that it was unsigned and gave no details of the person who made the checks and the length of the calls, the name of the person spoken to nor the details of the matching FIR). However, these shortcomings were not such as to prevent the DVR discharging the evidential burden.
8. Ms Akhtar also argues that the judge failed to address the evidence identified in the skeleton argument before the FtT judge showing that police in Pakistan are known to

destroy evidence and may not give accurate information over the phone and that FIRs do not provide an accurate record of cases. In my judgement it was not incumbent on the judge to engage specifically with this evidence since it was pure speculation to suggest the DVR in this case did anything other than check their records.

9. Ms Akhtar contends that the judge failed to acknowledge that the FIR passed the low threshold for establishing reliability in that it was detailed and includes a statement of verification and signature of the statement by the complainant. However, on the strength of the DVR evidence, there was no basis for the judge accepting that the details given and the signature were reliable.
10. The other main difficulty I have with ground (1) is that whether or not the document in question was described as “non-genuine” or fraudulent or simply unreliable, it is very clear that the judge did not treat it as determinative of the issue of credibility. Nor did the judge fail, as alleged in Ms Akhtar’s skeleton argument to follow the guidance given in **Tanveer Ahmed** [2002] UKIAT 00439 requiring judges to consider whether, even if the documents were false, the appellant’s story could be true. The judge expressly noted at paragraph 9 that his task was to make a holistic assessment and at paragraph 32 said that he had taken “everything in the round”. The treatment of the FIR/DVR was only part of a wide-ranging assessment made by the judge of the appellant’s evidence. Ms Akhtar did not seek to argue afresh that the judge erred in dealing with other aspects of the appellant’s evidence – and properly so, since permission had only been granted on ground (1) and the judge who refused permission had said that ground (2) amounted to a mere disagreement with the judge’s findings. But in any event I am quite satisfied that the judge’s other reasons for finding the appellant’s account were ones reasonably open to him. The appellant had given inconsistent evidence about when he first told his father he was gay; about whether he had had sexual relationships with his two UK friends; and whether he had told his fiancée he was gay. The appellant had not given a plausible account of why he considered he had not started to live openly in the UK as a gay man until the beginning of 2015 (on his own evidence he and his two friends had been visiting gay clubs since 2012). The judge also gave sound reasons why he attached little weight to the photographic evidence and why he could not accept that Mr F S (who supported the appellant financially) was an independent witness.

Notice of Decision

11. For the above reasons I conclude that the appellant’s grounds fail to identify a material error of law in the judge’s decision and accordingly that decision shall stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of

his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: 5 June 2018

A handwritten signature in black ink that reads "H H Storey". The letters are cursive and connected, with a distinct loop at the end of the word "Storey".

Dr H H Storey
Judge of the Upper Tribunal