IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003262

First-tier Tribunal No: PA/01644/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 18 October 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

AI
(ANONYMITY ORDER MAINTAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Dr R Rashmi, Counsel; Longfellow & Co Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

Heard at Field House on 25th September 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the Appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant, a citizen of Pakistan, appeals against the decision of First-tier Tribunal Judge Thorne dismissing his protection and human rights claim promulgated on 5th June 2024. The Appellant applied for permission to appeal which was granted by First-tier Tribunal Judge Gumsley in the following terms:

> "1. The application for permission to appeal appears to have been made in time.
>
> 2. The grounds appear to have been professionally drafted.
>
> 3. Whilst the FtT Judge is not required to reference each and every aspect of evidence in the case, I am satisfied that it is arguable that the FtT Judge materially erred (if the report of the evidence given at the hearing is accurate)
>
> - in failing to have regard to the explanation given that the inconsistency in relation to the date of death of his brother was merely an error;
> - in failing to provide adequate reasons for rejection of the Appellant;'s core account as a whole;
> - in failing to give any reasons as to why a finding was made as to why there was sufficiency of protection and/or why internal relocation was a viable option;
> - in failing to consider the background material available, when assessing the case as a whole.
>
> 4. The Appellant is granted permission to appeal and argue all grounds as pleaded".

2. The Respondent provided a Rule 24 response dated 16th July 2024 opposing the appeal. In addition, the Appellant's Counsel filed a skeleton argument numbering seven pages dated 16th September 2024 which was filed, served and available to all parties and the Upper Tribunal prior to the hearing.

Preliminary Matters

3. Before the hearing the Appellant's solicitors had filed an application under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 which appears at pages 30 through to 36 of the composite bundle before me and annexes a First Information Report dated 9th October 2014 and a death registration certificate issued on 4th December 2014. The notice filed under Rule 15(2A) states only that the Appellant hereby applies for leave to "call fresh evidence previously not adduced", and claims that the evidence was "not available to the Appellant at the time of the previous hearing" and then states that "in the event leave is granted, the evidence will be produced in bundle form in accordance with the Rules". That notice is dated 12th September 2024 but was only uploaded to CE file on 16th September 2024 according to Counsel. I notice that the application claims that the evidence will be produced in bundle form, however the evidence is annexed to the application in any event and is in the bundle before me.

4. As a preliminary matter having seen the 15(2A) application, Mr Lindsay indicated on behalf of the Respondent that the application was resisted. In making the application I asked Dr Rashmi to take me through the aspects of the Procedure Rules which she was required to satisfy on behalf of the Appellant in order for me to be in a position to admit the evidence under 15(2A) that the Appellant sought to adduce. With that in mind, Dr Rashmi argued that the Home Office had published guidelines dated from 2022 which indicated that it would tolerate late evidence when assessing claims, that the alleged attack on the Appellant's brother was a traumatic experience for him and his family which left him in great distress and the delay could therefore be considered reasonable.

5. In terms of the timing of the asylum claim, refusal and the appeal which now comes before me by way of error of law, I note from the refusal that the protection claim was originally made on 7th November 2020 and was only refused three years later on 2nd November 2023 following which the Appellant appealed and the appeal came before the First-tier Tribunal and was heard by it on 28th May 2024 following which the Rule 15(2A) application was ultimately filed and served on 16th September 2024. Notwithstanding the reasons given by Counsel for the unreasonable delay in producing the material, I indicated via an *ex tempore* decision that I refused to admit the evidence under Rule 15(2A) for reasons, which I shall now pronounce in fuller form. I was not minded to admit the evidence of the FIR and the death certificate as there has in my view been unreasonable delay in the production of that material and I am not satisfied that the evidence could not have been obtained earlier by the Appellant with reasonable diligence and that it could and should have been submitted before the First-tier Tribunal.

6. In dealing with the points made, firstly in relation to Dr Rashmi's reliance upon guidance published by the Home Office concerning its tolerance of late evidence, we are not dealing with the production of evidence to the Home Office but production of evidence which the Appellant seeks to rely upon as discharging his burden of proof in a Tribunal appeal. Therefore, the guidance or guidelines of the Home Office have no bearing upon the tolerance of late evidence under Rule 15(2A). In terms of the alleged attack on the Appellant's brother being traumatic and causing him and his family great distress thus causing delay in production of the 15(2A) evidence such that it could not have been produced before the First-tier Tribunal, I note from the evidence that the Appellant's brother is said to have been killed in 2014 and therefore whilst I am confident that the death would have caused a traumatic experience to the Appellant and his family, it has been approximately ten years since that death occurred and that death cannot therefore reasonably form a basis for why it has taken an undue portion of time and extensive unreasonable delay for this material to be produced now, and why it was not presented before the First-tier Tribunal. I am fortified in my view as when one looks at the refusal letter of 2nd November 2023, it is of note that on page 7 of that refusal letter [CB/74] that the evidence which was before the Secretary of State and was thus considered when deciding the protection claim <u>included</u> the two First Information Reports dated 9th October 2014 and 9th November 2015, the latter of which was included in the Appellant's Bundle (save for one page that was inexplicably omitted by the Appellant or his solicitors and which is again missing in the Composite Bundle produced for this hearing), and the former FIR of 9th October 2014 which was inexplicably not adduced by the Appellant or his representatives before the First-tier Tribunal but was plainly 'available' to him when he claimed asylum in November 2020 and therefore was also available to him with reasonable diligence from that point in time and at the

time of the hearing before the First-tier Tribunal and until date. Notwithstanding that the Respondent should have included this material in the Respondent's bundle provided by her before the First-tier Tribunal (I note that page 104 of the Respondent's bundle only includes one page of the two FIRs), it still remains correct that it was incumbent upon the Appellant and/or his solicitors to provide the evidence that he sought to rely upon, even where, and perhaps especially where, the Respondent had omitted that evidence from her bundle despite her having seen it previously and particularly as the burden of proof falls upon the Appellant to prove his protection claim to the lower standard. Therefore, I reject the application to adduce the new evidence as the evidence was not in fact new in part, and I was not persuaded that it could not have been provided sooner and placed before the First-tier Tribunal with reasonable diligence and effort being made by the Appellant and/or his solicitors. In addition, I reached this decision, also being mindful of the fact that the two documents in question would not in truth lend any material support to the grounds that were being advanced by the Appellant's solicitors which sought to challenge the judge's findings based upon the evidence that was before him, not the evidence that was not before him. For all of the reasons, I rejected the (allegedly) new evidence under Rule 15(2A).

Findings

7. At the close of submissions, I indicated that I reserved my decision which I shall now give. I do not find that there is an error of law in the decision such that it should be set aside. My reasons for so finding are as follows.

8. In respect of the first ground (namely that the judge erred in relying on a perceived inconsistency with respect to the passing of the Appellant's brother and the Appellant claiming that the reference to the death being a year ago was an error and that the brother had died in 2014), I asked Dr Rashmi to take me to the passage in the material before the First-tier Tribunal where the perceived inconsistency had arisen and where the judge had either misread or misinterpreted the materials as argued; however, she was unable to do so. Looking at the decision of the First-tier Tribunal at paragraph 7, I note in any event that the judge has included an excerpt from the refusal letter which includes the following text: "... You then go on to saying the last one was a year ago when your brother died (AIR2 Q 80). The FIR from 2014 mentions that your brother was killed and a report was filed. We have not held that against you as this was not questioned in the interview ...". Therefore it is clear that there was a discrepancy in the interview where the Appellant had mentioned that his brother died a year ago, however, the Respondent did not hold that against the Appellant. But, the first ground of challenge which mentions the brother dying a year ago is misconceived, as the First-tier Tribunal Judge is <u>not</u> referring to that instance from the Asylum Interview Record, but is referring to an inconsistency in the oral evidence before him, given by the Appellant, where the Appellant stated yet again that his brother died a year ago, as opposed to ten years ago. Therefore, I do not see any merit in Ground 1 as it was plainly open to the judge to make an adverse credibility finding based upon this stark discrepancy and inconsistency, made on not one, but two occasions, by the Appellant in relation to the timing of his brother's death.

9. Turning to Ground 2 and the argument that the judge erred in rejecting the core of the Appellant's case without giving adequate reasons other than inconsistency, I note from the grounds that there is no reference whatsoever to any passage in the judgment where there is an inadequacy of reasoning (or even

where the core of the Appellant's case is assessed) so one could see the allegedly offensive passage for themselves. Therefore, I asked Dr Rashmi to point me to the passage in the judgment where the judge has ostensibly failed to provide adequate reasons. In response she directed my attention to paragraph 20 of the decision. Having been given time to read the paragraph once more, I asked Dr Rashmi to indicate which passage of the paragraph was insufficient and what evidence perhaps was not considered by the judge or where the reasons were inadequate; and in reply, Dr Rashmi argued that the inconsistency could be due to the Appellant's memory issue and that it was irrational for the Appellant to say his brother died ten years ago as opposed to merely a year ago. Notwithstanding that this argument related more to Ground 1 than Ground 2, considering paragraph 20 for myself I do not find that there is any inadequacy or insufficiency of reasoning given by the judge in that the judge has placed a great deal of importance upon the Appellant's memory of the timing of his brother's death, and I find that this was open to the judge to do and was a reasonable step that any judge might be minded to make, and in any event I note that Dr Rashmi did not point to any piece of medical evidence which the judge had perhaps failed to take into account which indicated that the Appellant's memory loss was such that he had an inability to recall dates. I also note for the sake of completeness that there was no plea before the First-tier Tribunal that the Appellant should be treated as a vulnerable witness, nor was there any self-direction by the First-tier Tribunal Judge that the Appellant should be so treated in considering the case. The only piece of evidence that Dr Rashmi was able to refer my attention to was page 130 of the composite bundle and question 84 of the second Asylum Interview Record where in questions 82 to 84 the Appellant struggles to remember the year that events happened, and when asked the question by the interviewer "I am struggling to understand how you can't remember the year any of this happened?", the Appellant replied that:

> "I am very forgetful now my memory is not very good, because I had this gas problem and I am on medication for that, so what happens whenever I have burning and I'm having some gas in my stomach it goes to my mind, my brain, and it becomes foggy and I don't have the complete sense of the things and the doctor has also told me this, that the gas does affect my ability to use my brain. This was so long ago I can't even remember things that happened one week ago".

Notwithstanding this answer, as I say, no medical evidence was pointed to by Dr Rashmi that was before the First-tier Tribunal that the judge failed to take into account, and I also note that the next question and answer in the Asylum Interview Record which Dr Rashmi did not point to discloses that at least at that time, when asked whether the Appellant had received a diagnosis for the memory issue, the Appellant responded that he was yet to go see his doctor and that he had been chasing an appointment. Therefore I do not find that any error of law is revealed by Ground 2 and that the judge's reasons given at paragraph 20, as pointed to by Dr Rashmi, demonstrates an adequacy and sufficiency of reasoning.

10. In relation to Ground 3 and the argument that the judge erred in concluding that the Appellant would in any event not have a sufficiency of protection and that the judge failed to take into account the weight of evidence which indicated that the state was unable to protect citizens from honour killing and land disputes, again given that the grounds contained no reference to any of the evidence that was before the First-tier Tribunal, I was compelled yet again to ask Dr Rashmi, to

point me to the evidence that was before the First-tier Tribunal which demonstrated that there was an insufficiency of state protection in relation to honour killing of men, the Appellant being a man. Dr Rashmi referred me to five instances in the Appellant's bundle which she suggested may have established an insufficiency of protection in Pakistan to men who were the subject of honour killing. The first reference was to pages 45 to 50 of the composite bundle which contains a news article from a website called thediplomat.com and a news article dated 28th July 2022 which stated in a subline (as opposed to the headline) "While most victims of crimes committed in the name of protecting family honor are women, men too fall prey to this horrific practice". In the course of the article there is only one other reference on page 47 of the bundle penultimate paragraph to men being the subject of honour killings where it is said "According to Amnesty International, honor killings are 'committed predominantly against women and girls.' But men too fall prey to this custom as was the case in the Kohistan video murders". I note that no link has been provided to either any evidence from Amnesty International or the Kohistan video murders and therefore there is no material in supplementation of this brief paragraph and the subline at the start of the article, to demonstrate that men are subject to honour killings to the extent that this may put the Appellant at risk on return to Pakistan, let alone that there is also an insufficiency of state protection that may extend to the Appellant more generally.

11. The second article pointed to by Dr Rashmi was that at page 52 of the composite bundle which is a Wikipedia article entitled Honour killing in Pakistan which mentions in its first sentence under the subheading Background that "Honour killing is an act of murder, in which a person is murdered for his or her actual or perceived immoral behavior". Dr Rashmi insisted that the reference to his in this sentence established that men were subject to honour killing in Pakistan. I note that there is no evidence in support of the sentence such as a footnote to an independent source or objective material which gives rise to the sentence at all. Dr Rashmi also relied upon a further sentence in a lower paragraph of the Wikipedia article on page 53 of the composite bundle under the heading "Cultural pressures for honour killing in Pakistan", which includes a sentence that reads as follows: "Honour is important for both women and men to uphold; women protect honour by modesty and men by masculinity". Dr Rashmi again insisted that this reference to honour being upheld by men by masculinity related to honour killing of men, however Dr Rashmi failed to note the following sentence in the Wikipedia article (albeit that none of this is supported by traceable sources and objective material) which states as follows: "The cultural perspective behind honour is that if a woman does something that the community perceives as immodest then the men in her family must uphold their masculinity and regain the family honour by murdering the woman". Clearly the reference to the honour of men here has no correlation whatsoever to honour killing of men but in fact men being the perpetrators of honour killing of innocent women in Pakistan. Finally in the same Wikipedia article on page 54 of the composite bundle Dr Rashmi also relied upon a final sentence under the heading "Complications in data", which stated that "Frequently, women and men murdered in honour killings are recorded as having committed suicide or died in accidents". This sentence does have a footnote apparently to it, however as with all the other footnotes the printout of the Wikipedia article is incomplete and instead of the solicitors printing out the fifteen pages of the article so that the footnotes can be seen and visited, instead only nine out of fifteen pages have been printed and the remaining six pages with references have been omitted from the appellant's bundle as is plain from the bottom of page 60 of the

composite bundle. Therefore even if this sentence was supported by a footnote which suggested that men are subject to honour killing it in any event is a bald statement which does not go to establishing that there is a real risk on return for this Appellant nor that there is an insufficiency of protection for him, for example given perhaps the sheer volume of men who are subject to honour killing in Pakistan in an area that he might have no choice but to return to and could not internally relocate away from. The final reference referred to by Dr Rashmi was page 62 of the composite bundle which contains an article from Amnesty International entitled "The authorities must end impunity for violence and abolish so-called village and tribal councils that prescribe such horrific crimes". I note from the web address of the Amnesty International article that it was published in November 2023. Dr Rashmi only referred me to two sentences in the extremely short article which numbers four pages but only contains two pages of text which seems to end after two pages of background commentary on page 62. In the first paragraph of that Background subheading and in the second paragraph under that subheading these are the following two sentences that Dr Rashmi sought to rely upon:

> "So-called 'Honour killings' are endemic in Pakistan, with 384 instances reported in 2022 alone, according to the Human Rights Commission of Pakistan ...
>
> Kohistan specifically has had similar previous incidents for example in 2011, 6 men and women were murdered on orders of the tribal council after a video of them dancing emerged. The brother of the victims was killed 7 years later by a family member for pursuing the case".

The first sentence does not appear to relate to men but relates to the total number of honour killings in 2022 in general and therefore it is impossible to know how many of the 384 deaths related to men, and moreover the second paragraph's two sentences which specify that six men were murdered in 2011 following a video of them dancing, I note that this is the sole mention of a reputable source of men being subject to honour killing that was before the First-tier Tribunal, however the material relates to the death of six men that occurred some thirteen years ago and was at the order and behest of a tribal council and that in any event the matter was taken notice of by the Supreme Court of Pakistan. Therefore this does not demonstrate that there is an insufficiency of state protection and in any event there does appear to be no lack on the part of the state in prosecuting those responsible for the honour killings, at least of the six men. Therefore in light of the above material which I have considered exhaustively there does not to appear to be anything in those six instances which demonstrates that there was an insufficiency of state protection such that the outcome of the appeal would have been any different.

12. Turning finally to Ground 4 and the argument that the background evidence supported the Appellant's evidence which was ignored, having already considered the material that was before the First-tier Tribunal as pointed to by Dr Rashmi, who made the best effort that she could with the instructions she was given and the material of her client, I am not persuaded that there is any merit in Ground 4 either.

13. In light of the above findings I do not find that there is any merit in any of the grounds and I do not find that there is any material error of law in the decision of the First-tier Tribunal.

Notice of Decision

14. The decision of the First-tier Tribunal shall stand.

15. The appeal to the Upper Tribunal is dismissed.

P. Saini

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

11th October 2024