**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: AA/06397/2012

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Determination Promulgated** |
| --- | --- |
| **On 3 September 2013** | **On 24 September 2013** |

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**S A**
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms C Litchfield instructed by Jinnah Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REMITTAL**

1. This appeal is subject to an anonymity order by the First-tier Tribunal pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

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2. The appellant is a citizen of Pakistan born in January 1984. He arrived in the United Kingdom on 23 October 2008 with a valid student visa. His leave as a student was extended on a number of occasions, ultimately until 30 May 2012. On that date, he applied for asylum. On 22 June 2012, the Secretary of State refused to grant the appellant asylum under para 336 of HC 395 (as amended). On that date also, the Secretary of State decided first, to refuse to vary the appellant's leave to remain in the United Kingdom and, secondly decided to remove him by way of directions under s.47 of the Immigration, Asylum and Nationality Act 2006.

3. The appellant appealed to the First-tier Tribunal. In a determination dated 10 August 2012, Judge Boardman dismissed the appellant's appeal on asylum humanitarian protection and human rights grounds. On 8 May 2013, the First-tier Tribunal (Judge Hemingway) granted the appellant permission on the following grounds:

> "5. The determination is certainly very full with respect to its setting out of the relevant history, points of contention and evidence. However, it is arguable that the Judge erred in his assessment of credibility by impermissibly requiring independent corroboration and by seeming to reject aspects of the Appellant's evidence solely on the basis of the lack of it."

4. Thus, the appeal came before me.

**The First-tier Decision**

5. Before the First-tier Tribunal, the appellant was not legally represented. At para 7 of the determination, Judge Boardman noted that the Tribunal had received a letter from the appellant's solicitor on 24 July 2012 (that is approximately two weeks before the hearing) enclosing witness statements for the appellant and his wife but stating that they would not be attending the hearing and that the appellant was to represent himself. That was, indeed, what occurred at the hearing on 6 August 2012. The appellant indicated that he was ready and prepared to represent himself.

6. Before the judge (as in his application for asylum), the appellant claimed that his family was the subject of a land dispute in Pakistan with a number of his relatives. This dispute had begun in 1989 and they wished to take possession of his family's land which was in his father's name. The appellant claimed that the relatives had registered a number of First Incident Reports (FIRs) against him between November 2003 and August 2005. The appellant produced those FIRs at the hearing. The appellant claimed that he had been detained by the police as a result but had been released when it was determined that the accusations made against him were false. The appellant also claimed that on a number of occasions weapons had been fired at his home and in 2005 his mother had been hit in the head and arm when shot at and had been taken to hospital. He also said that on one occasion his mother and brother were attacked and beaten and his brother's leg was broken. The appellant said that he had

registered an FIR in one incident or had tried to do so in another but nothing had been done by the police.

7. In support of his claim, the appellant submitted, as I have already indicated, a number of FIRs and also statements and letters in support from his mother, his sister-in-law and friends. At the hearing, the appellant also sought to rely upon x-rays of his mother and brother and hospital and doctors' reports which, he said, supported his claim that they had been injured. However, those documents were not found in the Tribunal's file nor in the respondent's bundle or HOPO's file. The appellant told the First-tier Tribunal Judge that these documents had been sent to the respondent by the appellant's solicitors. The appellant told the judge that he did not have copies of the documents.

8. Before the judge, the Presenting Officer (on behalf of the Secretary of State) conceded that the FIRs were genuine (see para 60b of the determination). Further, the judge accepted in para 68 of the determination that the appellant had had difficulties in the past with his family and that there had been accusations to the police by the appellant and his family as evidenced by the FIRs. Despite the acceptance of the FIRs and the acceptance by the judge that the appellant had had problems with his family, the judge nevertheless went on to find, giving detailed reasons in para 69 of the determination, that it had not been established that the appellant had in the past, or would be in the future, at risk of serious ill-treatment or of being killed (as he claimed) by a relative as a result of a land dispute within his family.

9. Although the judge's reasoning is somewhat lengthy, it is helpful to set it out in full:

> "69. However, I find that:
>
> a. the contents of the FIRs are accusations only, and have not been independently verified by the police or anyone else
>
> b. indeed, the Appellant's own evidence is that although the police arrested him on the strength of at least one of the FIRs, they released him on learning that the accusations against him were untrue
>
> c. there is no independent evidence before me to corroborate the Appellant's evidence that his mother was shot by their enemies, that his brother's leg was broken by their enemies, or that his father was kidnapped by them, in that:
>
> - the references in at least one of the FIRs to the injuries to the Appellant's mother and brother are, again, accusations only, and not independent evidence that the events occurred
>
> - the statement by the Appellant himself in that respect (at page A23 of the Respondent's bundle) is by its very nature, not independent evidence

- the statement by [N A] in that respect (at page A29 of the Respondent's bundle) is not independent evidence as such, in that the Appellant's evidence is that [N A] is the Appellant's mother's brother

- the medical reports and x-rays referred to by the Appellant in that respect are not before me, despite the large number of documents in the Appellant's bundle, and I accept Mr Bond's statement that the documents were not in his papers either

- there is not even an FIR in relation to the Appellant's father being kidnapped

d. there is no independent evidence before me to corroborate the Appellant's evidence of any threats to his life while he was living in Pakistan, or during his period in the UK up to his mother's letter dated 10 May 2012, in that:

- the FIRs do not themselves contain any threats to his life

- there is no independent evidence before me of any threats to his life between 30 September 2005, namely the date of the last incident alleged in the FIRs and the statement of [N A] and the date when the Appellant left Pakistan, namely in October 2008

- there is no independent evidence before me of any threats to his life between his arrival in the UK in October 2008 and his mother's letter dated 10 May 2012, and I find that Appellant's evidence that he received threatening letters and messages between those dates but that the letters were stolen from his previous address and that he destroyed his previous Sim card to be entirely unpersuasive

e. although there is a reference in at least one of the FIRs and in the statements of the Appellant's mother (at pages A26 and 31 of the Respondent's bundle) to threats to kill her, the Appellant's evidence is that she is still living in the same place in Pakistan now, despite those alleged threats

f. the Appellant's assertion that the alleged threats to his life stem from a land dispute is unpersuasive, in that:

- he was only 4 or 5 when the 1989 incident referred to in the first of the FIRs allegedly took place

- according to the Appellant's own evidence the land referred to was not in the Appellant's name, but belonged either to the government or to the Appellant's father

- there is no independent evidence before me of any incidents concerning the land dispute between 30 September 2005, namely the date of the last incident alleged in the FIRs and the statement of [N A], and the date when the Appellant left Pakistan in October 2008

- the Appellant's mother, father and brother still live in the same place in Pakistan now, despite his father still owning the part of the land not owned by the government

g. the Appellant's evidence that he was in fear of his life when he arrived in the UK in October 2008 is inconsistent with:

- his failure to claim asylum on arrival in the UK, and, instead, his presentation to the immigration authorities on arrival of his student visa papers; I find the Appellant's explanation that he [had] been so frightened that he had not known the procedure to be inconsistent with his academic ability as demonstrated by his BA from the University of Punjab, and entirely unpersuasive

- his failure to claim asylum on any of the 3 occasions on which he then applied, in the UK, for an extension of his student visa; again, I find his explanation that he did not know the procedure to be entirely unpersuasive

h. the Appellant's evidence that he has received threats to kill him in the UK to be inconsistent with his admission that he has not reported any such threats to the police in the UK

i. I do not regard the letters and messages starting with the letter from his mother dated 10 May 2012 as independent evidence of any threats to the Appellant's life, in that:

- they are all from his mother, his sister-in-law, and his friends, who will quite naturally wish to support the Appellant's stated wish to remain in the UK

- they have all been written after the Appellant decided to apply for asylum in the UK, rather, as I find, than being evidence of a change of circumstances leading him to make the claim for asylum

j. I do not regard the evidence of [S A] as independent evidence of any threats to the Appellant's life, in that:

- she, as the Appellant's wife, will quite naturally wish to support the Appellant's case

- in any event, I find that it is clear from her evidence that her only knowledge of the substance of the Appellant's account is from what he himself has told her, and from the recent letters and messages, starting with the letter from his mother dated 10 May 2012

k. I find that there is no evidence before me that the Appellant is at risk from the police or any other authorities in Pakistan, in that, on his own evidence:

- the police in Pakistan released him after each arrest, on being informed that the accusations against him were false

- he has never been ill-treated by the police

l. I accordingly reject the Appellant’s account of having been, or of now being, at risk in Pakistan.”

## The Submissions

10. On behalf of the appellant, Ms Litchfield submitted that the judge’s adverse factual finding was legally flawed.

11. First, she submitted that the judge had failed to give proper weight to the FIRs given that they were conceded to be genuine. She submitted that the judge had been wrong to repeatedly doubt the evidence in the FIRs and given by the other witnesses on the basis that there was “no independent evidence before me to corroborate ...”. In one respect, she submitted that the judge had simply been mistaken, namely when in para 69c at bullet point 5 he stated that there was no FIR dealing with the appellant’s allegation that his father had been kidnapped. She drew my attention to a translation of an FIR at page 156 of the appellant’s bundle which referred to the accusation that the appellant’s father had been kidnapped. She pointed out there was also evidence in the statement of the appellant’s uncle at page 123 to that effect.

12. Secondly, she submitted that the judge had been wrong, as a matter of fairness, not to give the appellant an opportunity to obtain copies of the medical reports and x-rays given that they were not provided by the respondent and given the appellant’s evidence that they had been sent by his former solicitors to the respondent. She reminded me that the appellant was unrepresented and that this was relevant in assessing whether fairness required an adjournment. At the hearing before me, the appellant produced a number of documents which, Ms Litchfield on instructions informed me, were the original documents, copies of which had been sent to the UK and forwarded by the appellant’s (then) solicitors to the respondent.

13. Thirdly, Ms Litchfield submitted that the judge had wrongly rejected the evidence of the appellant’s family and friends simply on the basis that it was “self-serving” and not independent. She submitted that the appellant had provided as much evidence as he could to support his case and the circumstances were such that he would not necessarily be able to provide any further independent evidence beyond the FIRs.

14. Finally, in relation to the appellant’s refugee and humanitarian protection claim, Ms Litchfield submitted that the judge had misunderstood the appellant’s claim. The judge had failed to deal with the issue of whether the repeated false accusations and FIRs followed by detention by the police was itself persecution or serious ill-treatment. She pointed out that the appellant had been detained for two months on a false accusation. It was not, she submitted, sufficient for the judge to state that the appellant had not been mistreated whilst detained.

15. On behalf of the respondent, Ms Everett submitted that the judge had not erred in dismissing the appeal.

16. The judge was entitled to find that the FIRs only contained accusations and were not necessarily indicative of any action having actually been taken against the appellant in the past or the future.

17. As regards the "missing" documents, Ms Everett submitted that she did not have those documents and there was no proof that they had ever been sent by her solicitors to the respondent. She pointed out that the judge noted at para 7 that the solicitors had sent a witness statement.

18. Ms Everett accepted that it was perhaps unfortunate that the judge had used the term "corroboration" in the determination and she accepted that, in principle, there was no need for corroborative evidence in an asylum case. Nevertheless, the judge was entitled, she submitted, to take into account the absence of independent evidence which it could reasonably be expected to be available.

19. Ms Everett submitted that the judge had provided ample reasons for his adverse finding, many of which were not challenged in the grounds.

20. Finally, as regards the issue of the "constant harassment" of the appellant, she submitted that the judge had simply disbelieved the appellant and the police had not harmed him.

## **Discussion**

21. In my judgment, despite the length of the judge's reasons and the fact that a number of those reasons are not challenged, nevertheless the judge fell into error in a number of respects.

22. First, the judge's repeated reference in para 69 to there being "no independent evidence before me to corroborate" particular evidence raises the very real spectre that the judge was impermissibly seeking corroboration of the evidence of the appellant, his mother, other witnesses and the FIRs as a prerequisite to accepting that evidence. This has to be seen against the backcloth of the acceptance that the FIRs were genuine. They were not, as the respondent had asserted in her refusal letter dated 22 June 2012, forgeries. They were accepted as genuine documents either speaking to accusations falsely made against the appellant or (on the appellant's claim) truthfully made by him and his family against his relatives for actions taken as part of the claimed dispute over the family land. It is not entirely clear what "independent evidence" the judge was anticipating could reasonably have been provided by the appellant. Ms Everett is undoubtedly correct in her submission that the absence of evidence that could reasonably be expected is a matter which a judge can take into account in assessing the reliability of other evidence, in particular the appellant's (see TK (Burundi) [2010] EWCA Civ 40). However, here it is far from clear to me what that evidence might be. One possible category of evidence might be medical reports and documents supporting the claimed injuries to the appellant's brother and mother. The

appellant, of course, claimed to have such evidence and that it was sent to the respondent. That leads me to the second error by the judge.

23. At the hearing, the appellant sought to rely on x-rays and medical reports in relation to injuries he claimed had been suffered at the hands of his relatives by his mother and brother. Those documents were not available at the hearing. The judge dealt with this at para 46 of his determination as follows:

> "He had produced all the necessary evidential documents, including his mother's x-rays, hospital reports, and the doctor's report. When I said that the only medical documents in the papers before me were those concerning his wife's pregnancy, the Appellant said that he had submitted to the Respondent x-rays and medical reports about the injuries inflicted on his family in Pakistan by their enemies. When I said that no such documents were in the Respondent's bundle or in the Appellant's bundle, he said that he had given them to his solicitors and asked for them to be sent on to the Respondent. I asked if he had copies. He produced an iPhone on which he said there was a doctor's report about his brother [G M]. I indicated that I was unable to admit evidence that was available only on an iPhone. Mr Bond said that there were no such medical documents in his papers."

24. The appellant was unrepresented at the hearing, his solicitors having only withdrawn approximately two weeks earlier. The judge was, in my judgment, required to proceed cautiously given what the appellant was saying about these documents. It was, of course, a matter which only became apparent to the appellant at the hearing. He would have no reason to believe, if the documents had indeed been sent to the respondent, that they would not be available at the hearing until it was discovered at the hearing that they were not available. The appellant did attempt to rectify the absence of the documents by asking the judge to look at a report in relation to his brother that was on the appellant's iPhone. Even if the judge was correct (and I express no concluded view on this) that the evidence on an iPhone was not admissible, he was on notice that there was a medical report that the appellant wished to rely upon. The judge did not give the appellant an opportunity to produce that report in an admissible form on the assumption (which is not *a fortiori* correct) that it was inadmissible simply because it was only available on the appellant's iPhone. That did undoubtedly present practical difficulties at the hearing both for its perusal and retention by the judge and the respondent's representative but, if relevant, as a matter of fairness the appellant should have been given an opportunity to produce it in a more accessible form. Indeed, I have considerable unease in the judge's decision to proceed without more, given that the appellant was unrepresented and taken by surprise in finding that relevant documents that he wished to rely upon were not available. As I have said, those documents were, I was told by Ms Litchfield on instructions, now available in their original form. The risk that the appellant was unfairly denied an opportunity to produce relevant evidence is only emphasised by the judge's repeated reliance upon the fact that the appellant had failed to provide any "independent evidence" to corroborate his account. It was

evidence of that very type which the appellant was potentially denied an opportunity to produce before the judge.

25. Whilst I accept, as Ms Everett submitted, that the judge gave a number of other reasons for not accepting that the appellant was at any risk from his relatives as a result of a land dispute, I cannot be satisfied that the judge would necessarily have reached the same conclusion despite the errors that I have identified. In particular, the unfairness to the appellant in denying him an opportunity to produce the relevant supporting evidence (which the judge went on to count against the appellant in assessing his credibility) warrants, in my judgment, that the First-tier Tribunal's decision be set aside.

26. In the light of that conclusion, it is not necessary for me to determine whether the judge misunderstood the nature of the appellant's case and that part of his claim was that the constant harassment by his relatives leading to FIRs and detention was persecution or serious ill-treatment in itself. That aspect of the case, if it is relied upon, will be a matter for the judge rehearing the appeal.

27. Both representatives indicated that if I accepted Ms Litchfield's submissions that the judge's decision could not stand, there would have to be a *de novo* rehearing and that the appeal should be remitted to the First-tier Tribunal. That, in my judgment, is the correct approach applying paragraph 7.2 of the Senior President's Practice Statement given the nature and extent of the fact-finding required.

28. Ms Litchfield also challenged the judge's adverse decision in relation Art 8. In particular, she submitted that the judge had been wrong to find that there was no interference with the appellant's family or private life (in paras 75 and 76 of the determination respectively) and that therefore Art 8 was not engaged. In effect, the judge had failed to consider the issue of proportionality. That submission undoubtedly has merit in relation to the appellant's private life although it has less force in relation to his family life given that his wife and child could return to Pakistan with him. Albeit with some hesitation, I am satisfied that the judge's decision in relation to Art 8 cannot stand and should also be remade by the judge at the remitted hearing in the First-tier Tribunal.

## Decision

29. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of an error of law. That decision is set aside.

30. The appeal is remitted to the First-tier Tribunal (to be heard by a judge other than Judge Boardman) *de novo* in relation to the appellant's claim to asylum or humanitarian protection and under Art 8 of the ECHR.

Signed

A Grubb
Judge of the Upper Tribunal