



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

Appeal Number: AA/03806/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 22 December 2014**

**Determination
Promulgated
On 8 January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**SHOAIB AWAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ashiq of Counsel

For the Respondent: Mr S Whitwell, a Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a Pakistani national born on 8 April 1968. The appellant travelled to the UK in 2002 and 2006. His most recent visit was in 2007 when he travelled with a visit visa valid until 14th March 2009. He worked illegally until 2011 when he was apprehended by police near Dover. He attempted to leave the UK. His visa had expired. He was therefore arrested and detained. Eventually the appellant was issued with a travel document by the Pakistani authorities with a view to return to his country

of origin. However, on 1 December 2011 he claimed asylum and he was given temporary admission to the UK on 14 December 2011.

2. The appellant claimed that his removal to Pakistan would not only breach his rights to a private or family life which he had formed in the UK under Article 8 of the ECHR but also that he was entitled to asylum here. This was based on a fear of persecution from a gang of four brothers who were related to him. They were alleged to have threatened him and extorted money from him. This was in his home village of Gujar Khan. The appellant claims that they killed his family members and other people and as such the appellant had a well-founded fear of persecution for a Convention reason.
3. However, the respondent considered that the appellant's claim was not based on a fear of persecution for a Convention reason but rather was based on a criminal matter and the appellant would be adequately protected from such criminal behaviour by the Pakistani police. Accordingly, the application was refused on all grounds on 2 June 2014. Annex A of that decision sets out the consequences. In summary, the respondent decided to remove the appellant as an illegal entrant and served notice of that decision on 3 June 2014.

The Appeal Proceedings

4. The appellant appealed to the First-tier Tribunal and that appeal came before First-tier Tribunal Judge Oakley (the Immigration Judge) on 10 July 2014. The Immigration Judge dismissed the appeal because he considered that the appellant's credibility had been seriously damaged by his failure to claim asylum until he was apprehended by immigration officials in 2011. The appellant claimed that his family were pursued by the Shia gang. The Immigration Judge accepted that there had been First Incident Reports (FIRs) into the alleged incidents involving the gang on the appellant's family. However, the Immigration Judge did not accept that the appellant was a target for gangs and some of the allegations made at the hearing were not made in the substantive asylum interview. Some of the "FIRs" may relate to genuine complaints, he found, but there could be a number of reasons why attacks had taken place and having considered the evidence given by the witnesses the Immigration Judge was not satisfied that he should attach weight to the witnesses. He concluded from the facts that both the appellant's and the other witnesses' evidence had not been credible.
5. The appellant sought permission to appeal on grounds settled on 24 July 2014. The grounds state that the Immigration Judge failed to consider or make findings on the relevant evidence, specifically, various affidavits, and made errors of fact or assessment or failed to give sufficient weight to documentary evidence of the FIRs.
6. Upper Tribunal Judge Grubb found that there were arguable merits in these grounds because it appeared to him that the Immigration Judge had failed to consider all the evidence in reaching his adverse findings. There

were a number of statements supporting the appellant's claim that he was targeted by the Ali gang. There was evidence that the family had been attacked and indeed had been targeted by that gang.

The Hearing

7. At the hearing I heard oral representations by both parties and received a written skeleton argument from Mr Ashiq, who appeared for the appellant. Mr Ashiq pointed out that before the First-tier Tribunal there was both the appellant's evidence and that of his two brothers' which detailed the attacks on his family. It seems that the Immigration Judge found at paragraph 39 of his determination that the appellant's family had continued to reside in the family home in the village where they had lived before. The Immigration Judge went on to find that there was "no evidence that they had been subject to any attacks" but this was in fact incorrect. Mr Ashiq also pointed out that the Immigration Judge had noted the appellant's sister had returned from Karachi to the village from whence the family had come and "experienced no problems". These findings were contrary to the evidence which was that there had been attacks since the appellant's departure for the UK. The Immigration Judge should have looked at the witnesses and given their evidence appropriate weight. It was accepted that it was open to him to reject their evidence but he had not considered it. Furthermore, the FIRs were not properly considered. They were, on the face of it, important documents in support of the appellant's claim.
8. In response, Mr Whitwell accepted that the Immigration Judge had not referred to the two affidavits in any, or any sufficient, detail in his findings. It was also accepted that the appellant had given oral evidence together with his two witnesses. Nevertheless, it was contended that the Immigration Judge had given clear and adequate reasons for dismissing the appeal.
9. Mr Ashiq said in reply that it was clearly an error for the Immigration Judge to find there was "no evidence" when there was some. This was not a "side issue", rather, it undermined the whole determination. The Upper Tribunal may feel the need to hear some oral evidence from the appellant and his witnesses before reaching a decision as to the correct weight to attach to this evidence. Mr Ashiq suggested the matter be remitted to the First-tier Tribunal for fresh hearing.

Analysis and Conclusions

10. The burden of proof rested on the appellant to show that it was reasonably likely his account was true. Documentary evidence is not required in asylum and human rights claims but any document that is produced has to be considered by the Tribunal and appropriate weight ought to be given to it.
11. The appellant gave oral evidence, called two witnesses and produced a number of documents. He claimed before the First-tier Tribunal that the

problems between the Ali family and the appellant's family began in 2001 and claimed that a number of FIRs had been lodged in connection with these incidents. The Immigration Judge considered the appellant's evidence and that of his witnesses but appears to have given inadequate consideration to the documentary evidence. It is that issue that is the principal basis for the present appeal.

12. I have carefully considered the findings, and in particular the finding at paragraph 39 of the determination that there was "no evidence" that the appellant's family had been subject to any attacks since his claim. The Immigration Judge also specifically noted that the appellant's sister had returned to the village, from whence the family came from Karachi, but had experienced "no problems".
13. It was clearly an error for the Immigration Judge to state that there was "no evidence" when there was such evidence. The question is whether that error was material?
14. Having carefully considered the matter, I have concluded that it was material because it may impact on the ultimate findings as to credibility and risk on return.
15. The question that now arises is what the Upper Tribunal should do about the identified error.
16. The Immigration Judge comprehensively rejected the credibility of the appellant's account. In particular, he noted that the appellant had been in the United Kingdom for four years before submitting any claim for asylum or human rights protection. He only advanced that claim when he was apprehended by immigration officials for working illegally in the UK. The respondent set out in her refusal the full immigration history which demonstrates that the appellant had been to the UK on a number of occasions prior to his arrival in 2007 travelling on his own passport with a visit visa. Indeed, he had travelled to the UK in 2002 and 2006. There was no indication on either of those occasions or on the subsequent occasion that he had any reason to fear persecution in his own country. There were a number of points that could have been made against the appellant's account. There were a number of other clear findings by the Immigration Judge which in my judgment should be allowed to stand and which need not be disturbed by the failure of the Immigration Judge to refer to the incidents involving the appellant's family since he came to the UK. He did not find that the FIRs showed that the appellant himself was the target and he did not accept the submission that the police had deliberately failed to act. In fact, the respondent clearly took the point, and the Immigration Judge accepted, that there was no evidence that the police did not regard such attacks seriously. The Immigration Judge did not accept that the gang attacks were "sectarian" nor that they were targeted towards the appellant or his family. There were, in fact, a host of reasons, why the Immigration Judge rejected the account.

17. The correct approach to the documents was set out in the case of **Tanveer Ahmed**, relied on by the respondent. The respondent is entitled to reject documents submitted in support of asylum claims without alleging fraud and submitting them to forensic analysis. It seems to me the respondent was entitled to attach little weight to these documents provided they were considered by her. The Immigration Judge would have been equally entitled to attach little weight to them. In my judgment having regard to the whole evidence in the case and the clear adverse credibility findings made by the Immigration Judge should be entitled to reject the appellant's case in its entirety.
18. The respondent also took the point that there was an internal flight alternative available to the appellant in Pakistan, although this appears not to have been considered by the Immigration Judge. A large number of individuals that claim asylum abroad return to Pakistan successfully reintegrate into that society. The appellant was a financially astute person, the respondent found, and there is no reason to suppose that he would not be able to reintegrate into Pakistani society. Consideration was given to every aspect of his case by the respondent and it seems that the respondent's decision was one with which the Immigration Judge wholeheartedly agreed.
19. Therefore, in conclusion, although there was a material error in stating that there was "no evidence" when there was such evidence, having carefully considered that evidence set against the Immigration Judge's other findings I am not persuaded to take a different view of the appellant's credibility than the First-tier Tribunal. The evidence left out of consideration was material in the sense that it may have affected the outcome of the case but ultimately my conclusion is the same as the Immigration Judge.

Notice of Decision

20. The decision of the First-tier Tribunal does contain a material error of law. In particular, the conclusion in paragraph 39 that there was "no evidence that the family had been subject to attacks" since the appellant's claim was plainly wrong. However, having considered the evidence of those attacks I do not consider it upsets the whole determination. Indeed, I substitute the Upper Tribunal's decision in relation to that evidence that it is not evidence to which any significant weight will attach and the overall conclusion remains the same.
21. Accordingly, the appellant's appeal is allowed to the limited extent indicated. I substitute the decision of the Upper Tribunal which is to dismiss the appellant's appeal on asylum and human rights grounds and to dismiss his claim for humanitarian protection. Accordingly, the respondent's decision to reject those claims stands.
22. No anonymity direction was made in this case.

Signed

Date

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

No fee was payable and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Hanbury