IAC-PE-AW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: AA/07241/2015
AA/07244/2015

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 3rd November 2015	**On 20th November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

MR CHARLES ANAND MUKERJEE (FIRST APPELLANT)
MR SHAHZAD MUKERJEE (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr R O'Ryan - Counsel
For the Respondent: Mr Harrison – Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Mr Charles Anand Mukerjee a citizen of Pakistan born 12th January 1967. He appeals against the determination of First-tier Tribunal Judge Evans issued on 31st July 2015 dismissing on asylum and human rights grounds his appeal against the decision of the Respondent made on 8th April 2015 to refuse to grant asylum and to remove him from the United Kingdom. The first Appellant's son is dependent on his appeal.

2. On 27th August 2015 a First-tier Tribunal Judge granted permission to appeal. He said:

> "The grounds argue that the Judge, in assessing that there was a sufficiency of protection available to the Appellants, failed to take into account, or adequately engage with, the specific evidence that the police had failed to provide support to the Appellants in the past in Pakistan, failed to make findings on particular relevant issues/evidence and also failed to take into account the particular facts and evidence with reference to the viability of internal relocation. Having read the Judge's decision in its entirety and having given consideration to the Appellants' case as presented, I conclude that the grounds have arguable merit."

3. The Secretary of State provided a response under Rule 34 to the Grounds of Appeal submitting that the First-tier Tribunal Judge directed himself appropriately.

4. The grounds are rather verbose, but essentially the submissions are:

   (i) That Judge Evans erred in failing to resolve a conflict of fact on material matters. In particular he ignored evidence that a First Instance Report (FIR) making very serious criminal allegations against the Appellant had been filed and also failed to consider the fact that the complaint was wholly ignored by the authorities notwithstanding the concession of the Respondent that the account of the Appellant was generally credible. This issue was highly relevant to the issue of sufficiency of protection and the issue of whether the Appellant suffered persecution in the past. Reliance is placed in particular on paragraph 42 of the determination. The issue of the reliability of the FIR was challenged within the decision of the Respondent and so was an issue in dispute that the Judge failed to resolve.

   (ii) It is submitted that the Judge misdirected himself in relation to the issue of internal relocation. The Appellant had contended that the epilepsy of his son, its seriousness and unpredictability meant that the family could not reasonably be expected to relocate because they would not be able to access appropriate medical care away from a major urban centre. The Tribunal rejected this argument on the ground that Suneel (the family member who the Appellant claimed was persecuting him) would not necessarily be able to track the Appellant down. Judge Evans failed to consider the effect on the family of requiring them to relocate away from an urban centre.

   (iii) The Judge did not consider the fact that the Appellant is a committed Christian. He failed to consider how relocation would affect the ability of the family to practise their religion in Pakistan.

5. In oral submissions Mr O'Ryan submitted that inadequate findings were made about the FIR. He referred in particular to paragraph 47 about the sufficiency of protection available and the likelihood of the police helping him.

6. At this point I said that I agreed with Mr O'Ryan that there was no finding about the FIR and that this arguably was an error of law. I questioned however whether it is material given the other findings that were made and the Judge's attitude in general to the evidence. Mr O'Ryan said that with regard to sufficiency of protection Judge Evans restricted his discussion to physical harm. He said that the issue is the use of State apparatus corruptly by the Appellant's brother.

7. Mr O'Ryan then turned to the findings at paragraph 48 in which the Judge said that he did not accept that the illness of the second Appellant means that the Appellants' relative would be able to track down the Appellants, even if, as was accepted by the first Appellant, it might take him years to do so. It had been put to Judge Evans that the Appellants would be tracked down because Suneel brother would be able through his contacts and influence to identify the doctor who might be treating the second Appellant. Judge Evans said that even to identify the epilepsy specialists in large cities like Lahore and Islamabad would be a significant task and in any event he found that it would not be necessary for the Appellants to live in the city given that the evidence was that the second Appellant would be referred for tests every year to eighteen months. There is no reason why the Appellants could not live elsewhere and travel to a hospital in a city as necessary.

8. Mr O'Ryan also submitted that given that the first Appellant is a solicitor it is difficult to see how he would be able to make a living. Being a solicitor is not a private mode of earning a living. He would be known. People would know he was there.

9. The submission of Mr Harrison was that the Appellant is simply trying to re-argue the case. It is a simple disagreement with the findings of the Judge. Judge Evans made very strong findings in paragraphs 39 and 40. The Appellants' themselves are wealthy and have influence.

10. What the Judge said in paragraphs 39 and 40 was that he could find nothing political about the family feud and the only way in which it is related to politics is that Suneel now works for a Senator and it is said this gives him power that he would not otherwise have. There was no suggestion in any of the evidence before him that any threats had been made to the first Appellant which related to his actual or imputed political opinion and he was not made aware during the hearing whether the first Appellant is or is not a supporter of the PPP.

11. He concluded that neither Appellant is at risk for a Convention reason. He went on to conclude that they were not at risk of a breach of Articles 2 or 3 of the ECHR and gave sound reasons at paragraph 42 for this. He said:

> "First, the history of the family feud to date has not been marked by any violence. It is said that on two occasions Suneel travelled to the UK and made threats but the fact remains that he did not on either occasion even manage to speak to the first Appellant face to face. Secondly the emails do not contain clear threats of violence: rather they are obscene and

> incoherent tirades referring to the alleged theft of money belonging to Suneel and wishing the first Appellant ill in a rather hyperbolic way. They are also addressed primarily to the first Appellant's sister and not to the first Appellant himself."

12. He went on to say that if he is wrong about the threat posed there is a systemic sufficiency of State protection in Pakistan. He went on to consider background information that had been put before him by the Appellant's representative to support a submission that Suneel would by virtue of his position in the PPP be able to influence the judicial system corruptly so that it would not protect the Appellants from him and/or would prosecute him unjustly and corruptly. Judge Evans pointed out that the background materials referred to do not deal specifically with the ability of the PPP to influence corruptly the processes of the courts. Rather they indicate that corruption is a significant problem. Reliance was placed on **SA (political activists – internal relocation) Pakistan [2011] UKUT 30**. Judge Evans pointed out that the facts of **SA** are very different from the facts in the case before him as the Appellant was involved in a political party opposed to the PPP and his brother had been murdered quite possibly by members of the opposing party. The question in that case was whether the Appellant was at risk of persecution by the PPP because of his imputed or actual political opinion and there was a history of persecution by the PPP. This is not so in the Appellants' case.

13. I have considered all the submissions made and have thoroughly read the determination. I have already said that I accept that the FIR was not dealt with but I do not consider that to be material. No evidence on the relevance of the FIR was put before the Judge. In any event the findings made at paragraph 42 and set out above are crucial. These findings were justified on the evidence. A real risk to the Appellant had not been established. The Judge's findings in relation to the medical care required by the second Appellant were reasonable. There was simply no reliable evidence that the Appellants would be at any real risk of a breach of their rights under Articles 2 or 3 ECHR if they were removed. The Judge did not err in finding that no Convention reason was established. No significant reliance was placed by the Appellant on his religious beliefs.

Notice of Decision

I find that there is no material error of law in the decision of the First-tier Tribunal and that decision shall stand.

N A Baird
Deputy Judge of the Upper Tribunal

Date: 17th November 2015