IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/07828/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 July 2015	**On 24 July 2015**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MUHAMMAD RAHEEL ASGHAR AWAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Wheeler [McKenzie Friend]
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan, born on 2 April 1995. He entered the United Kingdom on 25 July 2013 on a visitors visa valid until 19 December 2013.

2. On 16 December 2013 he sought a variation of his leave to enter or remain in the United Kingdom on the basis of his private life and of his desire to study.

3. The application was refused by the respondent on 23 January 2014. It was not considered that the appellant met any of the requirements of the Immigration Rules nor were there were any compassionate or exceptional

circumstances warranting the grant of leave outside of the Rules. Removal directions under 47 of the 2006 Act were made.

4. Of some significance in this particular case was the indication, contained in the refusal letter, that if the appellant wished to undertake studies in the United Kingdom it was open to him to make the appropriate application in the correct way.

5. It was also noted that the appellant in his application had contended that he was in fear of his life upon return. It was pointed out to the appellant in the decision that in such a situation it was open to him to make an asylum application. That should be made in person via an appointment at an asylum screening interview.

6. Neither of those suggestions seemingly were followed up by the appellant by any subsequent application.

7. The appellant sought to appeal against the decision of 23 January 2014, which appeal came before First-tier Tribunal Judge Berry on 23 September 2014. At that hearing the appellant was assisted by a Mckenzie friend, Mr Wheeler.

8. Notwithstanding the failure of the appellant to avail himself of the proper channels to bring an asylum claim, the judge considered both that aspect and Article 3 in the course of the determination. The judge concluded that there was no substance to the claims and therefore upheld the decision of the respondent dismissing the appeal brought under the Immigration Rules and under human rights.

9. The appellant sought to appeal against that decision to the Upper Tribunal. First-tier Tribunal Judge Simpson refused to grant permission and the reasons for that refusal were well set out in the decision of 24 November 2014.

10. The appellant sought to renew the application to the Upper Tribunal and it is in those circumstances that the matter comes before me, to determine whether or not there was a material error in the decision of the First-tier Tribunal Judge.

11. In that connection I note detailed submissions made on behalf of appellant prepared by Mr Wheeler, who also appears as his McKenzie friend before me. I note also the respondent's written submissions dated 13 July 2015.

12. Further documentation acquired subsequent to the hearing is contained in the bundle at pages 156 to 243, served pursuant to Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. This material was served under cover of that notice dated 5 May 2015.

13. Part of the grounds, contained in the original application for permission, was the complaint that the judge ought to have adjourned the matter in order for the appellant to have received legal representation. Criticism was also made that it would be wrong for the judge to find that the appellant had been at fault in failing to avail himself of the proper channels to bring

an asylum claim. It was contended that in those circumstances there ought to have been a recognition of a full asylum claim as well as a claim outside of the Immigration Rules.

14. Looking at the determination of Judge Perry arising from the hearing of 23 September 2014 I cannot find any specific application for an adjournment. It would seem to be clear that the appellant did not follow the procedure as he was invited to do so by the respondent in the Reasons for Refusal Letter. Nevertheless it is clear that the judge considered the case as presented by the appellant, particularly as to the risk on return. The judge heard from the appellant and also from his brother and has set out in the determination the nature of the claim.

15. In those circumstances I can detect little by way of criticism as to the Judge for those reasons. Indeed significantly they were not argued before me.

16. In essence the claim of the appellant is that he has had an abusive relationship with his father in the past and there came a time, particularly in 2013 when his father wanted him to marry a particular girl selected by him. The appellant refused and as a result was badly assaulted by his father. He reported the assaults to the police but they took no action. He moved in with his brother but since then his father has disinherited him, publicly announcing that fact in the press and issuing legal proceedings to confirm such matters.

17. The appellant claims that he remains at risk of further assault by his father and/or by the family of the girl.

18. Further it is contended that the way in which the father has expressed the matter in the press and to the court, particularly that the appellant has behaved in an unIslamic fashion towards his family and others, will expose the appellant to the charge of blasphemy were he to return and/or be at risk of action from others because of the perception of his blasphemy.

19. Criticism is made of the First-tier Tribunal Judge in his approach to the documentation that was presented. It is contended by Mr Wheeler in his detailed submissions that the Judge has failed to appreciate the real significance of the matter so far as the safety of the appellant is concerned and has fundamentally erred in the approach taken to the documentation itself.

20. At the hearing a number of documents were presented. In general terms the documentation that is central to the claim was considered by the Judge at paragraphs 35 to 40 of the determination.

21. Two newspaper articles were relied upon, the first as published in the Daily Pakistan Islamabad on 29 November 2013.

22. The text of that as translated reads as follows:

> “Notice of disinheritance.

> I disinherit my son Muhammad Raheel Asghar Awan from my moveable and immovable property due to his disobedience. In future I will not be liable for his acts and promises. Muhammed Aksar Malik Aawam, of [address].

23. The other article seems to be in the Daily Din Rawalpindi. It is not translated but Mr Wheeler accepts it is in similar terms.

24. Such articles provide little indication of any anti-Islamic conduct but rather giving the indication that the father does not want any further to do with his son. The Judge considered those documents at paragraph 39 but did not find that they were evidence that the appellant would be subjected to cruelty or inhuman or degrading treatment were he to be returned to Pakistan.

25. The next document, and one which upon considerable reliance is placed, is that to be found at pages 45 to 47 of the bundle and purports to be a suit for a declaration and permission injunction filed in the court of the Senior Civil Judge in Islamabad.

26. It appears that the father is a law abiding citizen whereas his son, the appellant, is disobedient, disloyal, unfaithful, untrustworthy and not obeying the golden order of Shari regarding respects to the elders in Islamic society. It goes on to say that the appellant is naughty, mischievous and ill disciplined, although what he is supposed to have done is not expressly stated. Essentially the purpose of the proceedings is to disassociate the family from the appellant and to declare that the appellant has no entitlement to the assets and properties of the plaintiff and family.

27. The document concludes as follows:-

> "Prayer
>
> It is therefore, respectfully prayed that this Honourable court very graciously be declared the assets and properties belonging to the plaintiff has no concern with anyone else especially defendant No. 2 and declare to the effect that the plaintiff will not be held responsible for any act of the defendant No 2 with anybody else, the plaintiff has dissociated with the defendant No. 2
>
> A decree for permanent injunction to refrain the defendant No. 2 from entering into any type of acts with anyone and the plaintiff will not be held responsible for the said act of the defendant No. 2."

28. That is briefly considered by the judge at paragraph 38.

29. The Judge is of the impression that this document is a translation of an original Urdu document but the document has not been placed into evidence. It is said that the Judge is incorrect in that assumption because this is a document that is a copy of the original in English. As already conceded by all parties the judge was in error on that matter.

30. However the Judge goes on to comment that there are no supporting court documents to evidence that such a suit has been filed or processed or determined and accordingly gives little weight to that document.

31. The Judge went on to consider other documents which are relied upon, in particular the legal opinions received from A Zahoor Ellahi and another from Chaudhary Nazir. The Judge highlights in paragraphs 34 and 35 of the determination shortcomings in relation to those documents. Although they purport to come from lawyers there are no headings to the letters and no CVs for the witnesses. The document from Ellahi is undated. It seems to be an uncritical acceptance of the appellant's account. Similar criticisms were made of the second. It seems to me that those criticisms are properly to be made.

34. The Judge also noted the affidavit of the appellant's sister and her general comment “he may be persecuted”. The judge finds that affidavit to be speculative and adding very little to the case.

35. Looking at the documents cumulatively, which the judge is entitled to do in the overall case as presented by the appellant, I find that the judge’s comments and approach, particularly having regard to **Tanveer Ahmed** were properly to be upheld. It is suggested on behalf of the appellant by Mr Wheeler that had the judge properly appreciated the nature of the suit for declaration and permission injunction as not being a translation but a copy that would or could have made a material difference to the approach taken.

36. Looking at the comments of the judge overall I do not find that reasonably likely to be the case.

37. The document referring to the behaviour of the appellant as being dissident to Sharia law is the document claimed to have been filed at the court in Islamabad. There is no indication as to what has happened to that document, whether there has been a hearing or whether there needs to be no hearing or merely a note filed as to the injunction. The two newspaper articles do not speak in any terms as to any disobedience to Sharia law. It is difficult therefore without more to understand how it would be that the wider public would be alerted to the behaviour of the appellant, particularly where at no stage, even within the court documents, does that behaviour seem to be clarified in its nature.

38. As to the claim that the appellant’s father is seeking him to do him harm, such seems to be in strange contrast to the expression by the father that he does not want anything further to do with his son. It is said by Mr Wheeler that in effect the filing of the law suit by the father is a means to bring the appellant back into the family in obedience to marry. It is difficult without more to envisage the situation of the potential bride of the appellant wishing to marry an individual who has been so publicly described as disobedient and acting in breach of Islamic principles. The judge has considered those documents at face value and could find no

basis to conclude a continuing interest in the appellant by the family. It seems to me that is a reasonable approach to have been taken.

39. The Judge has gone on in paragraph 40 to look at the issues of internal relocation and has found that that was properly open to the appellant.

40. The burden of the submissions, made in great detail in writing and expanded upon by Mr Wheeler before me, is to the extent that the judge had fundamentally misunderstood the nature of blasphemy and the potential effect of a declaration of blasphemy. The situation is far more volatile than the Judge has been prepared to recognise and the letters from the lawyers have sought to make that clear.

41. In that connection my attention was drawn to the Country Information and Guidance Report on Pakistan of 9 August 2013 to be found at pages 65 onwards of the original bundle presented before the Judge. My attention was drawn particularly to paragraph 19.33 of that report which highlights the misuse of blasphemy laws. It is said that the blasphemy allegations which are often false have resulted in the lengthy detention and occasional violence against Christians and others. It speaks of the filing of blasphemy cases being used to harass rivals in business or personal disputes.

42. The article goes on to speak of the consequences of a number of individuals who were the victim of charges under the blasphemy regulations and of the blasphemy cases which had been registered.

43. Mr Wheeler goes on to expand upon the situation, namely that vigilantes and extremists are often motivated upon hearing of blasphemy charges to take action into their own hands against the individual so accused.

44. The practicalities of this case, however, are essentially those that were highlighted by the Judge in the determination. There is no indication that the lodging of the document with the Court in Islamabad brings the matter into the public domain. There is no indication as to what is the process upon lodging that document as to whether or not if it is uncontested there is any further hearing on the matter other than a declaration from the court that is sought. That declaration indeed has not been produced. There is no evidence that the police have been called in to take any action against the appellant nor any suggestion that charges of blasphemy have been brought against him.

45. I merely repeat the comments which I have made before, that it is difficult to see simply from a statement of disinheritance that the events as purportedly described by the COI and by the lawyers would necessarily take place or are reasonably likely to take place.

46. It is difficult to imagine that anybody would remember two advertisements or notices put into a newspaper in 2013 were the appellant to return in 2015.

47. The detailed submissions as prepared by Mr Wheeler I have considered in detail but I do not find that the Judge has materially misunderstood the

nature of the case or reached findings upon it which were marred by legal error.

48. On the material that was presented before the Judge I do not find that there was such a misunderstanding of fact or an overlooking of any important matters as to constitute any error of law.

49. I am urged to consider the documents that have been produced under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. For some reason those documents were not provided to the Home Office Presenting Officer and in any event they all postdate the decision.

50. Were I to direct my mind to such documents the issue of credibility would immediately arise. Public notices of disinheritance would seem to have been filed at the weekly Ghairat of 12 November 2014. Also a very detailed denunciation in the same newspaper of 25 December 2014. There are other newspaper articles going into great detail concerning the appellant's behaviour and the humiliation caused by him to his parents. Leaving aside the issue as to whether a father who is a fervent follower of Islam would wish to parade the shortcomings of his son and of his failure to exercise parental guidance upon his son to the public at large is one matter. Of more concern, however, is that over a year has elapsed from the issue of the first notices to the second without any explanation as to why those second notices are now issued, other than they follow very shortly after the dismissal of the appellant's appeal before the First-tier Tribunal. Whether these are devices designed to boost an appeal which otherwise is unmeritorious is a consideration to arise. Further opinions by lawyers with CVs and headed notepaper have also been presented.

51. It seems to me that looking at those matters in the overall context of the case it cannot be said that they are uncontroversial or capable of belief in their own right, applying the principles in the case of **E&R**. It seems to me that the proper course is for the appellant to make application to the respondent for those matters to be treated as a fresh claim and for the response to be obtained as to whether that is the case or not.

52. However for the immediate purposes I do not find there to be an error of law in the decision of the First-tier Tribunal Judge. In that circumstance the appellant's appeal before the Upper Tribunal is dismissed.

53. The decisions of the First-tier Tribunal shall stand, namely that the appellant’s appeals as to asylum, humanitarian protection, the Immigration Rules and human rights stand dismissed.

Notice of Decision

The appeal is dismissed in all respects.

No anonymity direction is made.

Signed Date

Upper Tribunal Judge King TD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date

Upper Tribunal Judge King TD