



IAC-FH-CK-V1

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

Appeal Number: AA/03843/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 11 December 2015**

**Decision & Reasons Promulgated
On 15 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**SUMAN RIAZ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Malik of Counsel instructed by Thompson & Co Solicitors

For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

Background

1. This is an appeal against a decision of First-tier Tribunal Judge Cockrill promulgated on 19 August 2015 in which he dismissed the Appellant's appeal on asylum and human rights grounds against a decision of the Secretary of State taken on 16 February 2015 to remove the Appellant from the UK following the rejection of her application for asylum.

2. The Appellant arrived in the United Kingdom on 20 September 2014 with a visitor's visa and then applied for asylum on 29 September 2014. She was interviewed on 15 October 2014 and her application for asylum was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 16 February 2015, and the immigration decision that is the subject of this appeal was then taken in consequence.
3. The Appellant appealed to the First-tier Tribunal. The First-tier Tribunal dismissed her appeal for the reasons set out in his determination.
4. The Appellant then sought permission to appeal to the Upper Tribunal which was granted on 16 September 2015 by First-tier Tribunal Judge Pooler.

Consideration: Error of Law

5. In support of the Appellant's application for asylum she submitted at her asylum interview a First Information Report ('FIR') dated 14 September 2011. This was a report making allegations against members of the Appellant's family by individuals who were said to be militants and connected to the Taliban. The Appellant's case is based on a fear of persecution as an Ahmadi Muslim from, amongst others, other Muslims who promote a different version of Islam and, it is said, seek to visit violence upon members of the Ahmadi community whom they consider to be blasphemers or apostates.
6. Alongside the FIR and its translation, the Appellant also submitted a letter from a lawyer based in Lahore dated 13 December 2011 which purported to confirm the authenticity of the FIR based upon a visit that it was said had been made to the issuing police station for the very purpose of confirming whether or not the FIR was genuine. The FIR and the lawyers' letter had been used previously by members of the Appellant's family in successful applications for asylum in the UK.
7. In the context of the current case it is apparent that the Respondent sought her own verification of the FIR, and in consequence a document verification report ('DVR') was produced dated 18 December 2014. A copy of this report is on file: in summary it indicates that an immigration liaison adviser in the British High Commission at Islamabad made a telephone enquiry of the issuing police station and received responses to questions to the effect that there was no record of a report that matched the contents of the report submitted by the Appellant, and on that basis the examining officer concluded that he or she was satisfied to a high degree of probability that the FIR was not genuine.
8. Although that DVR is dated 18 December 2014 and the RFRL in this case is dated 16 February 2015, for reasons that are not apparent there is no reference to the attempt to verify the Appellant's document in the RFRL. The FIR is addressed in the RFRL and the Respondent concluded "*little*

*weight can be placed on your FIR in support of your claim applying **Tanveer Ahmed**" (see paragraph 30).*

9. The Respondent's conclusion was essentially based on the matters set out at paragraph 29 of the RFRL - extracts from a Canadian Refugee Board document recording various examples of false documents having been produced and the wide availability of such documents, including FIRs in Pakistan. In other words, the RFRL does not say in terms that contact was made with the issuing authority who had confirmed that the document was false, but rather says that because such false documents are widely available in Pakistan little weight can be put on the particular document that the Appellant produced.
10. Nor was the DVR included in the Respondent's appeal bundle filed with the Tribunal and served on the Appellant. The Respondent's bundle is on file: in the usual way it sets out a number of annexes of documents and, as I say, the DVR is not included.
11. On the face of the Tribunal's file it is not immediately apparent when or how the DVR came to be on the Tribunal file, and indeed no particular reference is made to its, as it were, 'provenance' in this regard in the decision of the First-tier Tribunal. Ms Everett has helpfully been able to tell me having checked the minute of the Presenting Officer who had appeared in front of Judge Cockrill that it would seem that the Presenting Officer became aware of the DVR being on the Secretary of State's file on the day before the appeal hearing and made an attempt to contact the relevant caseworker. This was unsuccessful. Nonetheless authority was sought from a Senior Presenting Officer and the Presenting Officer was told that she should produce the DVR at the hearing. It would appear in such circumstances that the DVR was indeed first produced by the Secretary of State on the morning of the hearing before Judge Cockrill.
12. I pause to note that whilst there is no reason to doubt that, and I accept the version advanced by Ms Everett, that the Judge's Record of Proceedings is absolutely silent on the circumstance of the DVR being served on the morning of the hearing and, as I have already indicated, his decision otherwise says nothing about the timing of its production.
13. The Appellant has at various stages in these proceedings been represented but she was without representation at the First-tier Tribunal appeal hearing itself. In such circumstances, and bearing in mind that it is not suggested that the DVR was ever served on the Appellant or her representatives prior to the hearing, at best she would have become aware of it on the morning of the hearing. In her grounds in support of the application for permission to appeal it is asserted that the Appellant had no knowledge of the DVR even at the hearing. In granting permission to appeal Judge Pooler did suggest that the Appellant might want to consider whether to file evidence on this issue: however no such evidence has been filed.

14. Nonetheless I am prepared to accept that at least, subjectively, even if the DVR were served on the Appellant at the hearing, she did not have any understanding of it. This would be consistent with the circumstance of her having extremely limited English and not being in any sense a lawyer. I accept that it is likely that the contents of the grounds of appeal are based on the Appellant's instructions which reflect her understanding that nothing of significance was served on her at the hearing.
15. In those circumstances it seems to me it is not absolutely necessary for me to reach a firm conclusion on whether the DVR was handed directly to the Appellant or not, but I am satisfied that if it was given to her it is more likely than not that she did not understand it or its implication or have a full and proper opportunity to address it by obtaining further evidence.
16. I have already commented that the Judge's determination is silent on the apparent production of the DVR at the hearing: it seems to me that that silence is unfortunate, and in such circumstances it is not clear whether the Judge turned his mind to the issue of whether it was fair to proceed with the appeal hearing in circumstances where a lay person with no English was presented on the morning of the hearing (if the DVR was indeed given to her) with a significant document challenging an important aspect of her supporting evidence.
17. Further to that I make the following observations. The Judge refers to the DVR for the first time at paragraph 47 of his Decision, where he is summarising the evidence that was before him. He says that the report "*confirmed that the document analysed was not genuine*". Although I have had the benefit of seeing the DVR today and now understand its contents, its contents are not apparent on the face of the Judge's determination. I can identify nothing in the Judge's determination that sets out the basis of the conclusion of the DVR.
18. Further to this, although it was apparent that there was some exploration of the contents of the FIR during the appeal hearing - see in particular paragraph 49 of the decision where the Appellant was asked how she had come into possession of the FIR, and at paragraph 59 where reference is made to the persons named in the FIR - there is nothing in the Judge's Decision that suggests that the specific contents of the DVR were put to the Appellant for comment at all.
19. In evaluating the Appellant's evidence it is patently clear that the Judge was satisfied that the DVR demonstrated that the FIR was false: see paragraph 73. Moreover it is abundantly clear that the Judge placed very considerable weight on this circumstance when evaluating the Appellant's overall credibility. References are made to this at paragraphs 81 and 84 and then at paragraph 86 the Judge says this:

"I was very troubled to note that the Appellant has relied upon an FIR to try to give weight to her case to show adverse interest in her on the part of the authorities. That document has been examined and is found to be other

than genuine. It seems to me that evidence is extremely powerful in the context of this case.”

20. The Judge goes on at paragraph 87 to say: *“I recognise that there is some contrary evidence and that comes from the firm of lawyers but in the circumstances I strongly prefer the evidence obtained by the Home Office in the form of the document verification report.”* The reference to the ‘firm of lawyers’ is a reference to the letter from the Lahore advocate dated from 2011. Whilst in the abstract, and with the benefit of having seen both the DVR and the advocate’s letter, the Judge may well have been entitled to come to a conclusion that the DVR was to be preferred, nonetheless in circumstances where he has not spelt out the contents of the DVR it is not clear on the face of the Decision itself *why* the DVR was to be strongly preferred: indeed, as I have already observed, no indication was even given by the Judge as to the contents of the DVR.
21. Be that as it may, the Judge goes on at paragraph 88 to say this:

“It seems to me that if the Appellant has relied upon this false FIR, and I conclude as a matter of fact that she has done so, that strikes at the heart of her case. It tells me that she is someone who is other than truthful and reliable as a witness. Indeed I am concerned at the ramifications for others who have sought and gained refugee status on the face of it relying upon a false document, at least in part.”
22. At paragraph 92, emphasising yet again the reliance on the DVR, the Judge says: *“It seems to me though that what is of critical importance in this appeal is a proper appreciation that the Appellant has relied upon what I find to be a false document which she has used to try to bolster her case.”*
23. Finally in his concluding paragraph the Judge says:

“Finally, I consider that considerable weight needs to be attached to the document verification report concerning this FIR and that notwithstanding the support which the Appellant has gained from the Ahmadi and Muslim Association in this country and the observations that they have made about her, that in my judgment the Appellant’s credibility has been fundamentally affected by presentation of such a false FIR.”
24. It is difficult to see that the Judge has not in fact placed the very greatest amount of reliance upon the DVR and his finding that in consequence the FIR was false as being in itself determinative of this appeal.
25. In my judgment the approach of the First-tier Tribunal to the DVR was procedurally unfair. I am satisfied that the Appellant did not have a proper opportunity to consider the DVR. I am concerned that the Judge has not explained in his decision the circumstances of the production of the DVR, and has not overtly given any indication as to whether he turned his mind to the issue of fairness in proceeding with the appeal without the Appellant, who was unrepresented, having an opportunity to seek advice or consider the contents of the DVR. I am also concerned about the lack of clarity in the First-tier Tribunal’s decision as to the contents of the DVR. In

total these amount to material errors of law in that the Appellant was effectively deprived of a fair hearing of her appeal. That in itself would justify the setting aside of the First-tier Tribunal Judge's decision.

26. A further issue was raised in the grounds seeking permission to appeal in respect of the Judge's approach to supporting evidence from the Ahmadiyya Muslim Association UK. The Judge has made reference to the fact of such documents being before him at paragraph 45 of the decision.
27. There was during the course of the Appellant's application a letter submitted to the Respondent by the Appellant dated 5 October 2014 which is in a relatively standard form in which the AMAUK confirms that they have been contacted by the Appellant and that they are undertaking a process of verification. It is not immediately apparent to what extent that process was completed and placed before the Respondent's decision-maker, but by the time of the appeal there were letters dated 15 December 2014, 24 February 2015 and 23 July 2015 from the AMAUK.
28. The Judge has not at any point in the decision set out or given any particular detail as to the contents of those letters. I do not propose to set out in detail the contents now because they will in any event need to be the subject of further consideration in consequence of the decision I am making today. Suffice to say that in combination the AMAUK letters detail something of the Appellant's life and activities whilst in Pakistan. They provide a level of supporting evidence in respect of persecution of family members, and they also give details of the Appellant's conduct and circumstances in the UK - including specifically involvement with the Ahmadiyya Community and involvement with activities that might be termed proselytising.
29. It is not for me, at this stage, to make any findings in respect of those letters, but I note that their contents on the face of it go to support significant aspects of the Appellant's case. In particular it may be said irrespective of the issue of the FIR and the DVR that such documents might be germane to an evaluation of the core question identified by the Judge at paragraph 78 in these terms: *"What is central though to a proper appreciation of this case is really whether or not the Appellant was someone who wanted to preach, to proselytise or whether she was someone who really was quite content to keep her religious faith essentially a private matter."*
30. As I have said, the Judge introduces the fact of the existence of these documents at paragraph 45 of his determination. Having simply referred to the letters by date he then says: *"There was no representative though from that organisation at Taylor House to give any oral evidence."*
31. The next reference to the documents is at paragraph 61, which is recounting the Appellant's submissions and evidence. The Judge records that the Appellant made reference to the documents and that she had not

thought it necessary for an individual to come along from the AMAUK to give evidence in support of her appeal.

32. Under the First-tier Tribunal Judge's heading "*My findings and reasons*", I cannot detect any analysis of the contents of the letters from the AMAUK. Far less can I identify any findings in respect of those letters. Whilst the Judge has made reference to the supporting evidence in the concluding paragraph (paragraph 102 already quoted above), he does so, as I say, without any actual analysis of those letters and essentially considers that they are 'trumped' by the circumstance of the DVR.
33. I am not satisfied that the Judge was entitled simply to dismiss the contents of the AMAUK letters without any further analysis on the basis that he had concluded adversely in respect of one other document dated from 2011, and not relating directly to the activities of the Appellant, and given to the Appellant by family members. Any adverse finding in respect of the FIR was not in itself a sufficient basis to make it unnecessary to descend to proper analysis of the AMAUK documents. In this regard I note the observations of this Tribunal in the cases of **MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC)** at paragraph 13 in which comment is also made on the case of **AB (Ahmadiyya Association UK: letters) Pakistan [2013] UKUT 511(IAC)**. I am satisfied that the Judge did not properly address the letters from the AMAUK and that that is a further error of law.
34. In all those circumstances the decision of the First-tier Tribunal must be set aside for error of law.

Remaking the decision

35. It was common ground between the representatives that in such circumstances the Appellant had effectively been deprived of a fair hearing of her appeal and it would be necessary for there to be a full rehearing with all issues at large back before the First-tier Tribunal. Accordingly this case will be sent back to the First-tier Tribunal to be heard by any Judge other than Judge Cockrill. It is not necessary for me to issue any specific Directions. Standard Directions will apply, but the Appellant is of course now on notice of the DVR - and indeed a copy of the DVR has been handed to her representative today. Necessarily the Appellant will need to turn her mind to how she wishes to address it - but that is a matter between her and her current advisers.

Notice of Decision

36. The decision of the First-tier Tribunal contained material errors of law and is set aside.
37. The decision in the appeal is to be remade before any Judge of the First-tier Tribunal other than First-tier Tribunal Judge Cockrill
38. No anonymity direction is sought or made.

The above represents a corrected transcript of an ex tempore decision given at the conclusion of the hearing.

Signed

Date: 15 January 2016

Deputy Upper Tribunal Judge I A Lewis