Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/00326/2017**

PA/00328/2017

PA/00330/2017

PA/00332/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18th September 2017	**On 11th October 2017**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

MUHAMMAD SHARIQ (FIRST APPELLANT)
NAILA ALMAS (SECOND APPELLANT)
MUHAMMAD BILAL (THIRD APPELLANT)
MUHAMMAD HAMZA (FOURTH APPELLANT)
(NO ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr H Rashid, instructed by Marks & Marks Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Pakistan born in 1961, 1964, 1990 and 1996. They appeal against the decision of First-tier Tribunal Judge Devlin, dated 21st March 2017, dismissing their appeals against the refusal of their

protection claims on asylum, humanitarian protection and human rights grounds.

2. Permission to appeal was granted by First-tier Tribunal Judge Keane on 24th July 2017 on the basis that the judge arguably committed a procedural irregularity capable of making a material difference to the outcome of the appeals, when drawing upon his common sense and experience as a practical and informed person at paragraphs 91 and 402 of his decision, before finding aspects of the Appellants' claims of fact to be implausible.

3. The grounds submit that the judge had failed to adequately justify his conclusions in paragraphs 91 and 402 in relying on his common sense and experience as a practical and informed person. This amounted to an error of law because it was clear the judge was not impartial when making his decision. Further, the judge erred in law in his assessments of the first information reports [FIRs] and in failing to properly apply Tanveer Ahmed [2002] UKIAT 00439. The judge had attached too much weight to the background material in finding that these reports were not genuine.

Preliminary Issue

4. There were directions on the court file from Upper Tribunal Judge Jordan stating that there was only an application for permission to appeal in the case of Muhammad Shariq and that the order granting permission was not a grant in respect of all four Appellants. However, it appears from the court file that there were separate notices for the third and fourth Appellants and the second Appellant was dependant on the first Appellant. Accordingly, I am satisfied that there was an application for permission to appeal in respect of all four Appellants and that the First-tier Tribunal granted permission on that basis.

Submissions

5. Mr Rashid relied on the grounds, in particular at paragraph 9, and challenged the judge's findings at paragraphs 91 and 402. He submitted that the judge found it implausible that those attending the Appellants' home did not identify themselves (paragraph 91) and that it was also implausible that the relatives, with whom the Appellants stayed prior to coming to the UK, would have asked them to leave (paragraph 402). The judge found it implausible on the basis of his own common sense and experience as a practical and informed person.
6. Mr Rashid submitted that the judge failed to take into account the circumstances of the Appellants and the actual evidence that was given by them. He submitted that the judge's practical and common sense was of limited use when assessing the actions of the Taliban and he relied on the judge's direction at paragraph 112 of the decision. The judge's treatment of the evidence at paragraphs 91 and 402 demonstrated that his decision

was not impartial. He was not entitled to rely on a practical and common sense approach and could only decide the Appellants' case on consideration of all the evidence in the round. The judge erred in looking at each point individually instead of considering it as a whole.

7. In relation to the FIRs, Mr Rashid submitted that the judge attached too much weight to the background material and failed to properly apply Tanveer Ahmed. Throughout the decision the judge was not making impartial assessments. His approach was flawed and the Appellants did not have a fair hearing, which amounted to a material error of law.

8. Mr Tufan submitted that the cases relied on by the Appellants in their grounds of appeal, namely Elayi (fair hearing - appearance) [2016] UKUT 00508 (IAC) and MM v Secretary of State for the Home Department [2014] UKUT 105 (IAC), were not relevant because the Appellants claimed to have been persecuted by an unidentified group, which they thought was the Taliban. It was not a case where the judge was required to assess the actions of the persecutors, or indeed the security forces. Accordingly, Mr Rashid's reliance on the case of Lopez-Reyes v Immigration Naturalisation and Service 79 F 3d at 911 (9th Cir, 1996), which the judge quoted at paragraphs 116 to 119, was not relevant.

9. There was no unfairness in this case. It could not be said that the judge was impartial in considering any of the points and, accordingly, Elayi did not apply. The complaint, in relation to paragraphs 91 and 402, is that the judge's approach to plausibility was flawed because he assessed the evidence on the basis of his own experience and common sense. This was a lengthy determination and complaint is made against two discrete paragraphs. There was no material error of law. The judge had not adopted an incorrect approach. Any challenge to the weight to be attached to the background material could not be successful because this was a matter for the judge.

10. In this case the judge had looked at each issue raised by the Appellants and the Respondent and then considered the evidence in the round. It could not be said that the judge was impartial or biased when the decision was read as a whole. He did not approach the case with any pre-determined view. In any event, the appeal could not succeed because there was no evidence before the First-tier Tribunal to show that the Taliban would be able to pursue the Appellants were they to live in another city and therefore internal relocation was an option that was open to them.

11. In response, Mr Rashid submitted that he only relied on the Article 8 point made in the grounds if he succeeded on his asylum point. The issue here was whether the judge had made a fair decision. The judge had not taken into account background material in looking at the evidence of the Appellants. Although he had not done research of his own, he had failed to disclose at the time, or give judicial notice of his view expressed at

paragraphs 91 and 402. The judge had not looked at the situation in Pakistan in assessing why the Appellants' relatives would have asked the Appellants to leave. The judge had also failed to deal with why the FIRs were discredited. The FIRs did corroborate the Appellants' accounts and the judge's findings on the basis of his own experience and not on the basis of the background material meant that the approach he had taken to the hearing was unfair. He could have come to a different conclusion had he approached the evidence impartially.

The Appellants' claims

12. The Appellants entered the UK on 15th November 2012 with leave to enter as visitors. They made applications for leave to remain on human rights grounds in 2013. The applications were refused and their appeals withdrawn in December 2013. They made three further applications, which were refused. The third and fourth Appellants made protection claims on 29th June 2016. The first Appellant made a protection claim on 8th July 2016.

13. The first Appellant's protection claim was on the basis that he refused to hand over his sons, the third and fourth Appellants, to a group of men who wanted to forcibly recruit them for jihad. The incident took place on 7th September 2012. The men fired in the air to disperse neighbours and then fled. After the incident, the Appellants moved, during which time they learned that the men had returned to the family home.

14. The third Appellant stated that, in November 2011, a group of five or six males approached him and asked him to join them. He believed they were the Taliban. He refused to join them and they began to harass him. He reported them to the police and a few weeks later they tried to kill him and his brother, the fourth Appellant, when travelling by motorcycle. In August/September 2012 a group of five or six men attacked the Appellants' house firing guns at the front door. Following this the family left their home. Whilst in the UK, his maternal uncle contacted his family and told them that the same men had been round to his home again.

15. The fourth Appellant stated that in 2011 a group of people tried to force his brother to take part in jihad, but he did not know who they were. The same people tried to get him to join them and in November 2011 he was attacked at his house and shot at. He then left the family home and his paternal uncle informed him that these people continued to visit his home.

The judge's decision

16. The judge made the following findings in relation to the first Appellant:

> "91. Drawing upon my common sense and experience as a practical and informed person, I consider it to be implausible that the men

should at no point have given any indication as to the group to which they belonged, or the cause for which they were fighting, or that they should have said or done nothing from which their identity or cause could be inferred (whether by the Appellant, his fellow villagers, or the police to whom he reported the matter)."

"92. The vagueness of the Appellant's answers of (sic) interview may be contrasted with the information he bears to have given in the First Information Report, dated 7 September 2012."

"93. This which bears (sic) to have been made 'through written application by [him]'. By contrast with his answers at interview, this records the Appellant as having said that '... the cause of the enmity [was] that some activists were persuading [his] kids towards Jihad and [he] prevented it'. The Appellant made no mention of this in his Asylum Interview, despite being asked to 'start [again] from the beginning' (Qu. 60) and to explain 'Why [the men] would want to kill his sons?' (Qus. 61 to 64)."

"96. Moreover, I consider the Appellant's apparent insouciance with regards to the group to which the men belonged, their aims and methods, to be so far-fetched and contrary to experience a human behaviour, as to be almost incapable of belief – particularly, in light of his claim that they continued to pursue him and his family after he had left his village."

17. The judge found that he was unable to identify any satisfactory explanation for the vagueness and lack of clarity in the first Appellant's answers. In interview, when asked whom he feared, the first Appellant stated: "There were some people misbehaving with my children and they were asking them to join their group and they started visiting our home. They came to our home address and were asking that we want your children to come with us, and then we refused to send our children with them and they started firing and the people they gather round and they left because I refused and I said 'What are you doing? I will not let my children do that'".

18. When asked who these people were, the first Appellant replied, "I don't know which group they belong to". When asked if it affected others in the community he stated, "They will keep looking for the young people to join them and somebody will join them. They won't misbehave with them". When asked, "Did you ask others in your community who these people were?" he replied, "The other community members. They didn't know either as they had covered their faces". When asked which group did they belong to, he stated, "I did ask them and they said we will reveal which group they belong to when you join us and there were four or five people and they started pushing me".

19. The judge came to the following conclusions on the submissions made by the presenting officer:

> "400. The sixth point was that it was implausible that the Appellants should return to the family home in Chat Jamal, simply because they could not stay with their relatives indefinitely, and their papers and belongings were there."
>
> "401. I agree."
>
> "402. Drawing in (sic) my commons sense and practical experience, I do not consider it plausible that the Appellants' relations would have asked them to leave, if they believed that by doing so, the Appellants would be forced to return to their home in Chat Jamal, where their lives would be in danger. That claim is, in my opinion, so far-fetched and contrary to experience of human behaviour as to be incapable of belief."
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> "403. In any event, as the Presenting Officer pointed out, the Appellant were able to afford flights to the United Kingdom in 2011 and 2012. They also owned the property in Chat Jamal, which they could have sold. There was no reason for them to be rendered destitute even if their relatives had asked them to leave."
>
> "404. As regards the documents, there are real questions as to why the first Appellant did not simply ask his neighbours in Chat Jamal to retrieve the relevant documents and send them to them, or if that was not possible, why he did not simply retrieve them himself and immediately return to his family in Karachi."
>
> "405. The Appellant did not advance any satisfactory answer to either question."
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> "406. In any event, I do not consider it plausible that the first Appellant would have taken his family back to Chat Jamal, in order to collect documents, and they stayed there for a week to ten days, if he had been told that the men had been visiting the property on a regular basis."
> "407. It follows that I consider the Presenting Officer's sixth point to be well-founded."

20. The judge's findings on credibility were as follows:

> "432. I accept that Jihadist groups do attempt to recruit young men to their cause. However, I cannot say that all of the events described by the Appellants are events of a type that might happen in Pakistan, for I was not referred to any comparable

accounts in the country background information. The Appellants' accounts stand apart, in terms of the assiduity of the men who sought to recruit the third and fourth Appellants; their failure to carry out any of their threats over a prolonged period of time; and their apparent timidity."

"433. I have found that aspects of those accounts are quite simply implausible. Thus, I consider it to be implausible that:
(i) the men should at no point have given any indication as to the group to which they belonged, or the cause for which they were fighting, and that they should have said or done nothing from which their identity or cause could be inferred
(ii) that the first Appellant should have said so little about the incident in Karachi, and that the third Appellant should not have asked him for any more information;
(iii) the Appellants' relations would have asked them to leave, if they believed that by doing so, the Appellants would be forced to return to their home in Chat Jamal, where their lives would be in danger;
(iv) the whole family should have returned to their home district, within a short time of the attack, to check up on the progress of his complaint, or to collect their documents, notwithstanding that they were aware that the men continued to make efforts to locate them; and,
(v) the family should have stayed at home for a week to ten days before they departed Pakistan."

21. The judge, in relation to the FIRs, found at paragraph 440: "I note the First Information Reports produced by the Appellants, but bear in mind the country background information with regards to the ease with which forged documents can be obtained in Pakistan. This causes me to approach them with some caution. The narrative in both reports seems unaccountably vague – particularly given that they were sent by post, which rather suggests that they were composed at their authors' leisure. I have noted that there is no independent evidence as to provenance, and no attempt has been made to independently verify either report, whether by means of confirmation from the Pakistani Police Force, or a report from an expert confirming that they correspond in appearance, format and content with specimens known to be genuine."

22. The judge concluded at paragraphs 441 to 443:

"441. I now come to look at all of the evidence in the round. When I do, I find that the numerous difficulties that I have identified, exert an enormously strong negative pull, and that there is very little advanced by the Appellant's (sic) to counteract it. I therefore find that I cannot be satisfied, even to the lower

standard of proof, that any part of their respective accounts of the events that led to their final departure from Pakistan and the making of their protection claims in the United Kingdom, is worthy of credence."

"442. I reject their accounts in their entirety. They (sic) not only internally and mutually discrepant, but, when looked at as a whole, entirely implausible."

"443. In short, I do not believe a word that any of the Appellants says about being pursued by Jihadis in Pakistan."

Discussion and conclusion

23. The judge dealt with each of the Appellants in turn setting out their immigration history and the basis of their protection claims. He then dealt with the reasons for refusal in respect of each Appellant. He noted the documentary evidence submitted, the Appellants' witness statements, the oral evidence and submissions.

23. In coming to his findings and reasons, the judge again dealt with each Appellant in turn assessing whether the points made against the Appellants in the refusal letter had any merit. He assessed the Appellants' explanations for the discrepancies pointed out therein. The judge carefully evaluated each point made in the refusal letter and gave reasons for why there was no satisfactory explanation by the Appellants or why the Respondent's conclusion was not sustainable.

24. The judge directed himself at paragraph 111, following the case of Wani v Secretary of State for the Home Department [2005] SLT 875: The decision maker is entitled to draw on his common sense and his ability as a practical and informed person to identify what is or is not plausible. However, the judge recognised the limitation on the usefulness of common sense and practical experience as touchstones for decisions on plausibility. The judge also recognised the dangers of the decision maker implicitly re-characterising the persecutors' actions according to his own conceptions of reasonableness, referring to the case of Lopez-Reyes.

25. Accordingly, the judge was well aware of the legal test he should apply in approaching the Appellants' evidence. The Appellants make two complaints in relation to paragraphs 91 and 402.

26. The judge's conclusion that the first Appellant was unable to identify the group to whom his persecutors belonged was one which was open to the judge on the evidence before him. In coming to that conclusion, the judge did not only rely on his common sense and experience as a practical and informed person, but also assessed the answers that were given in the first Appellant's asylum interview and in oral evidence.

27. It is clear from reading the whole of the judge's conclusions, in relation to the first Appellant, that he considered every aspect of his claim and the background material. The judge was not merely re-characterising the persecutors' actions according to his own conceptions of reasonableness. He made a finding that the first Appellant was unable to identify his alleged persecutors and that this failed to support the Appellants' claim that they would be at risk from the Taliban on return.

28. In relation to paragraph 402, the judge was dealing with points made by the Home Office Presenting Officer. The Appellants had given an explanation for why they had been asked to leave the home of relatives. The Appellants returned to the family home because they could not stay with relatives indefinitely and their papers and belongings were there. The point made by the judge was, if the Appellants were genuinely in need of protection, then it was not plausible that his relatives would have asked them to leave. Even if there is some error in that approach, the judge also went on to consider the fact that the Appellants returned to the family home. This issue is more fundamental because, if the Appellants had suffered as they claimed, why would they return to their family home when their relatives asked them to leave. There was no explanation for why they had not gone elsewhere, or for why they had not asked somebody else to retrieve their documents. If the Appellants were at risk of harm, the judge found that it was not plausible that the first Appellant would have taken his family back to collect documents and stayed there for a period of ten days. This finding was open to the judge on the evidence. Again, it was not a matter of the judge just looking at the situation and applying his view of the evidence.

29. It is unfortunate that the judge refers to plausibility rather than credibility in this regard, but in any event the judge's treatment of the sixth point made by the Presenting Officer, which he sets out at paragraph 400, and his conclusion at paragraph 407, discloses no error of law or impartiality. The judge agreed with the submission that the Appellants' actions in returning home, if they were indeed in fear of being recruited by jihadists, in order to retrieve documents was not a satisfactory explanation for their actions.

30. Accordingly, I am of the view that the judge's findings at paragraphs 91 and 402 of the decision disclose no material error of law. The judge was not acting impartially or applying his own characterisation of the events. He was assessing the Appellants' evidence and their actions in the context of the situation and the Appellants' claim as a whole.

31. Further, at paragraph 432 onwards, the judge set out his conclusions on the Appellants' credibility. The judge identified a number of discrepancies in the Appellants' account, ten in all, and found that there were no satisfactory explanations. There was also no satisfactory explanation for the delay in claiming asylum.

32. There was no error of law in the judge's assessment of the FIR. He assessed what was said in the FIRs against the asylum interview and other evidence of the Appellants. He was entitled to rely on the lack of information as to where the FIR had come from and whether it was independently verified. The weight to be attached to the background material was a matter for the judge.

Summary

33. The judge has properly directed himself in drawing upon his common sense and experience as a practical person, and he was well aware of the dangers of re-characterising the persecutors' actions according to his own conceptions and reasonableness. The judge assessed the evidence and found it to be vague and contradictory. None of the Appellants were able to identify their claimed persecutors and the judge's conclusion that their accounts were not capable of belief was one which was open to the judge on the evidence before him. The judge did not act unfairly and he was not impartial.

34. There was no error of law in the decision to dismiss the Appellants' protection claim on asylum and human rights grounds. It was conceded by Mr Rashid that the Article 8 claim could not succeed if there was no error in the judge's assessment of the protection claim.

35. Accordingly, I find that there was no error of law in the judge's decision to dismiss the appeal. The Appellants' appeals are dismissed.

Notice of Decision

Appeal dismissed

No anonymity direction is made.

J Frances

Signed Date: 6th October 2017

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

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

J Frances

Signed Date: 6th October 2017

Upper Tribunal Judge Frances