



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00226/2018

THE IMMIGRATION ACTS

Heard at Field House
On 22 May 2018

Decision & Reasons Promulgated
On 5 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

W M
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sharma, counsel
For the Respondent: Mr Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. This matter comes before me for consideration as to whether or not there is a material error of law in the determination of First-tier Tribunal Judge Quinn (“the FTTJ”) promulgated on 14 February 2018, in which he dismissed the appellant’s appeal against the refusal of his asylum claim.

Background

2. The appellant is a citizen of Pakistan born on 24 March 1981. He entered the UK in February 2011 on a visit visa. He did not seek to extend his stay when that visa expired. He made his asylum claim in November 2016 on several grounds:
 - a. he was involved in a land dispute regarding his aunt’s estate in 2008; he was assaulted during a confrontation relating to this dispute.

- b. The appellant, a Sunni Muslim, had been in a secret relationship with a Shia Muslim for about 10-11 years. He eloped with this lady in January 2011 to get married. Her family prevented that marriage.
 - c. The appellant was attacked in his home by unknown masked men who beat and stabbed him. The appellant believes these men were instructed by the family of his Shia Muslim girlfriend.
 - d. The appellant was at risk on return: he would be killed by his girlfriend's family who did not approve of their relationship. They were people of influence.
3. The FTTJ dismissed the appeal. The appellant was granted permission to appeal in the following terms:

“ ...

4. The grounds assert that the Judge failed to give adequate reasons for his decision; that the Judge failed to consider the evidence properly and that the Judge reached unsustainable conclusions.

5. Between [1] and [9] the Judge sets out the background to this appeal. Between [10] and [21] he summarises the appellant's claim. The Judge's findings of fact are between [22] and [57] of the decision.

6. It is arguable that the Judge has given inadequate reasons for his findings. Throughout his findings the Judge refers to his own views. Arguably the Judge places emphasis on section 8 of the Asylum & Immigration (Treatment of Claimants etc) Act 2004 at [41] of the decision. It is arguable that the treatment of the land dispute between [47] and [53] of the decision is superficial. It is arguable that the treatment of internal relocation in two sentences of [55] is inadequate. ...”

4. Hence the matter comes before me.

Submissions

5. Mr Sharma, for the appellant, adopted the grounds of appeal (summarised above in the grant of permission). He confirmed this was, in essence, a reasons challenge. He focussed in his oral submissions particularly on [54] – [56] of the FTTJ's decision which addressed the issues of sufficiency of protection and internal relocation in three very short paragraphs. He observed the FTTJ had had bundles of evidence from the appellant, including witness statements, on these issues. In the appellant's own statement he had referred at [15]-[17] to his girlfriend's family having threatened him and to her family's connections with the security services in Pakistan. He noted the appellant's evidence at [16] that his uncle had told him his girlfriend's family had attempted to intimidate the appellant's own family. This was evidence of ongoing adverse interest. None of this, or the appellant's girlfriend's police connections, had been considered by the FTTJ in respect of relocation or sufficiency of protection. The FTTJ had made bare statements which did not relate to the evidence and were unreasoned. The FTTJ should have resolved the conflict. It was accepted there had been adverse credibility findings but these were not reasoned or explained. They were based on inference. There were no overall conclusions on credibility. Even if there were such findings they had to be made in the context of **AW (Sufficiency of Protection) Pakistan [2011] UKUT 31 (IAC)**. No explanation had been given for the finding that the appellant could relocate within Pakistan.
6. Mr Tarlow, for the respondent, accepted that the findings on sufficiency of protection and internal relocation were brief. The FTTJ had referred at [53] to the appellant's claim that one

officer, his partner's father, was "out to get him". It was appropriate for the FTTJ to find there was a functioning police force. It was also appropriate for him to take judicial notice of the size of the country and the availability of relocation to avoid persecution. He submitted that the grounds were no more than a disagreement with the brief reasons of the FTTJ; there was no material error.

Discussion

7. The FTTJ refers at [22] to having "considered in the round all the evidence and submissions presented whether or not specifically referred to in this determination". There is no requirement on the FTTJ to refer specifically to all the evidence adduced.

8. At [26] the FTTJ states:

"The Appellant claims to have been in a relationship with [his girlfriend] for three years until he left Pakistan in 2011."

This is not an accurate reflection of the evidence; in his asylum interview, the appellant stated at question 161 that he had been in a relationship with her for "10-11 years maybe". Indeed the FTTJ refers at [30] to their being in a relationship "for more than ten years". The FTTJ goes on to say at [27] that he "was not impressed by his evidence about this relationship". That conclusion appears to have been based on a misrepresentation of the appellant's evidence about the length of the relationship albeit the FTTJ does not identify any discrepancy in the evidence as regards the length of it.

9. The FTTJ refers to Pakistan as being a country which is "sensitive about religion" for drawing a conclusion as regards the likelihood [sic] of the appellant finding out about his girlfriend's religion [27]. It is not clear on what basis the FTTJ has concluded that the "country" is "sensitive about religion", whatever that means. No background material is cited in this regard.

10. At [29] the FTTJ draws the conclusion that "it was unlikely that she would have been allowed to go out in Pakistan to meet a man without a chaperone". There is no basis for this conclusion, such as evidence or background material. Similarly, the FTTJ refers at [30] to it being "unlikely" the appellant's girlfriend "would have been able to leave her home secretly to meet the Appellant". No reasoning is given for this conclusion.

11. The FTTJ states at [32] "although the Appellant referred to marrying [his girlfriend] it was clear that he had not actually gone through a ceremony of marriage". This appears to be a reference to the appellant's statement in his screening interview that he "married a girl which was my choice". However, he goes on to say in that same interview: "Her family was against our marriage we eloped to get married but we did not get married at that day." Thus the FTTJ has cited the appellant's evidence out of context and given inappropriate adverse weight to it.

12. It is stated at [39] that "it was not clear whether any alleged harassment was continuing because the Appellant stated that he had not been in touch with his family for one and a half years". This ignores the evidence of the appellant's uncle, whose statement dated 1 February 2018 was before the FTTJ, that the appellant's girlfriend's family "believe that [the appellant] has brought dishonoured [sic] by having a relationship with her. I have attempted to act as an intermediary between the appellant and [her] family, but they have made a threat against his life if he does return. I have attempted to resolve this situation but in Pakistan honour is paramount and [her] family will not rest until they murder him. ... I fear for his life if he does return to Pakistan. He will surely murdered [sic] on his return." The FTTJ makes no findings with regard to the

reliability of this witness evidence. It is not clear whether he accepts it. If it was rejected, he should have given his reasons for that rejection. The reference to a lack of clarity arising from the appellant's lack of contact with his family for one and a half years suggests that the FTTJ has overlooked this evidence.

13. It is not clear on what basis the FTTJ has found that the appellant "did not appear to have fled Pakistan but to have applied for a visit visa to enter the UK". It was not open to the appellant to claim asylum from abroad.
14. The FTTJ was entitled to take into account the appellant's immigration history and the delay in seeking asylum and to draw an adverse inference from these matters. However, the flaws in the FTTJ's reasoning as cited above call into question the reliability of his findings on the appellant's credibility. While it could be inferred that the FTTJ does not accept the appellant's account of a relationship with his girlfriend, it is not clear whether he rejects wholesale the appellant's claim to have been in a relationship with her or just parts of the appellant's account. Given that the findings of the FTTJ on the credibility of the appellant and his uncle are inadequately reasoned, I am satisfied that the findings on the appellant's credibility are flawed and unsustainable.
15. The FTTJ refers at [24] to the "lower standard of proof" being applied. However, throughout the decision, there are statements which appear to suggest he may have applied a higher standard. At [27] he refers to it being "highly unlikely" the appellant would not have found out sooner that his girlfriend was a Shia Muslim. At [29] he refers to it being "unlikely" she would have been allowed out without a chaperone. At [55] the FTTJ states "Pakistan is a huge country and it is unlikely that the Appellant could be found in a country of such size".
16. This is a decision which is relatively brief and the reasoning is sparse particularly on risk on return. Thus the impact of the flawed decision-making is that much greater than might otherwise be the case. Taken as a whole, the flaws undermine the sustainability of the adverse credibility finding. Credibility was at the core of the appeal. The decision of the FTTJ must be set aside in its entirety.
17. It was agreed by the parties before me that, were I to find a material error of law, the matter should be remitted to the First-tier Tribunal for a fresh hearing. That is appropriate given the scale of the flawed reasoning and the fact the errors of law go to the crux of the appeal, namely the appellant's credibility and that of his uncle.

Decision

18. The making of the decision of the First-tier Tribunal involved the making of errors on points of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunal Courts and Enforcement Act 2007 and Practice Statement 7.2(v), before any judge aside from FTTJ Quinn.
19. The FTTJ did not make an anonymity direction but given my findings such a direction is appropriate now.

A M Black

Deputy Upper Tribunal Judge

Dated: 1 June 2018

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

A M Black

Deputy Upper Tribunal Judge

Dated: 1 June 2018