



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/09453/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 20th September 2018**

**Determination Promulgated
On 27th September 2018**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**K D K
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Jorro, of Counsel, instructed by Adam Bernard Solicitors

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

DETERMINATION AND REASONS

1. The appellant is a Pakistani national born on 3 April 1966. He challenges the determination of First-tier Tribunal Judge Khawar, promulgated on 25 June 2018, dismissing his appeal against deportation and the respondent's refusal to grant him asylum.
2. The appellant entered the UK as a student in May 2007 following a successful appeal and extensions of his leave were granted until 7 June 2016. On 6 August 2011 he was joined by his wife and their three children. On 13 February 2015 the appellant was convicted for conspiracy to facilitate the breach of the immigration laws and

sentenced to 20 months in prison. On 22 March 2015 he was served with the respondent's decision to deport him dated 16 March 2015. Representations were submitted on his behalf on 31 March and 17 June 2015 raising an asylum claim. The appellant was interviewed and on 6 November 2015 he forwarded further documentary evidence in support of the claim to the respondent. On 18 August 2016 the respondent made a deportation order and refused the asylum /human rights claim.

3. The deportation order was made following the appellant's conviction for his involvement in the conspiracy to facilitate a sham marriage between his nephew and an EEA national. It would appear that fraudulent documents were obtained by the appellant through his accountant in support of the claim that the EEA national was exercising treaty rights in the UK.
4. The appellant's asylum claim was that he worked for the UK and that his role involved working with women in rural communities with a view to helping them become more independent and that for this role he had become a target for the Taliban and that his vehicle had been attacked in 2004.
5. Permission to appeal against the determination of the First-tier Tribunal was granted by Judge Andrew on 24 July 2018. The matter then came before me on 20 September 2018.

The Hearing

6. I heard submissions from the parties in the presence of the appellant.
7. Mr Jorro, who had also represented the appellant before the First-tier Tribunal (and has been wrongly named in the determination), criticized the judge for his treatment of the documentary evidence adduced in support of the appellant's employment with the United Nations Development Programme (UNDP) and his work with rural women in the Kashmir region and the tribal areas of Pakistan. He argued that although the judge had set out all the documents which did not make reference to the appellant's work with women, and which the appellant claimed made him a target of the Taliban, he failed to make reference to any of the documentary evidence which did support that part of his claim. The supporting evidence which had been disregarded was set out in the skeleton argument. Moreover, in maintaining that the evidence did now show that the appellant had worked with women, the judge had raised a new point which the respondent had not relied on. The judge's error in disregarding this evidence infected all his findings and resulted in a flawed determination.

8. Mr Jorro also submitted that there was no basis on which the judge could have concluded that the newspaper articles had been fabricated. The originals had been adduced and the judge had speculated in finding that the reports had been prepared for the appellant's appeal. Finally, the judge had erred in his consideration of article 8. He had failed to undertake a balancing exercise and had not had regard to any of the factors contained in paragraphs 22-27 of the skeleton argument. The decision should be set aside and the appeal remitted to the First-tier Tribunal.
9. In response, Ms Everett submitted that there were no errors made by the judge. The determination was sound and should stand. She argued that the judge had referred to there being no documentary evidence from the UN in respect of the appellant's employment and he was entitled to conclude that the absence of evidence from that source was of great significance. She submitted that there was no strong evidence that the appellant's role had been working with and empowering women and that work with communities did not automatically mean that he would be involved with women. Ms Everett submitted that the expert in his report concluded that the attack in 2004 was more likely to have been against the UN as an organisation than against the appellant as an individual. He had been able to remain living in a city for three years after the attack without any problems despite the expert's claim that he was more likely to be tracked in a city than in a village.
10. Ms Everett submitted that the judge's findings on the newspaper articles was made in the context of the evidence from witnesses.
11. With regard to article 8 she submitted that the judge had found that the rules had not been met and there was no evidence that the decision was disproportionate. However, if the assessment was not considered to be adequate, the matter could be retained in the Upper Tribunal.
12. Mr Jorro replied. He pointed out that this was not a case where the judge had only been interested in documentary evidence from the UK itself as he had considered non-UN evidence to find against the appellant. Having considered unofficial sources of evidence, it was incumbent on him to consider all of it. He repeated that it was speculative to maintain that the newspaper articles had been engineered by the appellant and he maintained that article 8 had not been properly assessed.
13. That completed submissions. At the conclusion of the hearing, I reserved my determination which I now give with reasons.

Discussion and Conclusions

14. I have considered all the evidence before me and have had regard to the submissions made.
15. Three criticisms of the First-tier Tribunal Judge are made. I find that there is merit in Mr Jorro's submissions; although the second ground is the weakest.
16. Mr Jorro's strongest argument is the first. Whilst on the face of it, it does appear that the judge wanted to see documentary evidence from the UN itself relating to the appellant's employment, and I agree that it is curious that such evidence is not forthcoming, Mr Jorro makes a valid point when he submits that the judge did, however, rely on non-UN documentary evidence to undermine the appellant's claim. It follows that either the judge should have found all non-UN documentary evidence unreliable or of little weight, or he should have considered all of it.
17. It may be seen from the determination that what the judge did was to list a number of documents from various sources as evidence that the appellant's work did not involve women in the community. He does not, however, make any reference to the documents listed in the skeleton argument, and which were before him, of similarly sourced documents which claimed that the appellant did work with rural women. In failing to consider all the evidence holistically, the judge's finding with respect to the nature of the appellant's employment is flawed and unsustainable. I am not persuaded that there is any merit in the argument, following from this ground, that the judge raised a 'new point' as regards the documentary evidence because it is often the case that evidence adduced for a hearing raises matters that were not included in the decision letter. The complaint may have been more meritorious had it been argued that the judge did not alert the parties to the point he considered the fresh evidence gave rise to; but such a criticism is not made.
18. The second criticism made was that the judge erred in his findings on the newspaper articles and that his findings were speculative and without foundation. There is force in Ms Everett's submission that these findings were made in the context of the evidence given by the witnesses, and indeed the appellant's production of fraudulent documentary evidence in his nephew's sham marriage claim is noted, but given the judge's flawed findings on the core claim, it is possible that all subsequent findings were infected by the adverse view taken by the judge regarding the appellant's claimed employment. Therefore, whilst the appellant will have to try and resolve the discrepancies arising from the evidence of his witnesses and the newspaper articles, I do not seek to uphold the judge's findings in this respect.
19. Finally, there is the article 8 assessment. Whilst there was limited documentary evidence before the judge as to the nature of any

private/family life claim, the factors included in Mr Jorro's skeleton argument should have been considered and the judge's assessment should have been more than the throwaway assessment to be found at paragraph 95. Whether it would have led to a different outcome is another matter, but the assessment carried out by the judge is plainly inadequate.

20. The decision is set aside. It still serves as a record of proceedings in respect of the oral evidence given by the appellant and his witnesses. Further, as the summary of the appellant's immigration history, the basis for the deportation and summary of his case as set out at paragraphs 10-33 are undisputed, they continue to serve as an accurate background to the appeal. No findings are, however, preserved.

Decision

21. The First-tier Tribunal made errors of law. The decision is set aside and shall be re-made by another judge of the First-tier Tribunal.

Anonymity

22. I continue the anonymity order made by the First-tier Tribunal.

Signed

A handwritten signature in black ink, appearing to read 'R. Keir' with a small dot at the end.

Upper Tribunal Judge

Date: 24 September 2018