



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00857/2018

THE IMMIGRATION ACTS

Heard at Glasgow
On 6 September 2019

Decision & Reasons Promulgated
On 16 October 2019

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

G D
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Ahmed, Jones Whyte Law (on 23 May)
Mr Caskie, instructed by Maguire Solicitors (on 6 September)
For the Respondent: Mr A Govan, Senior Presenting Officer (on 23 May)
Mr Clarke, Senior Presenting Officer (on 6 September)

DECISION AND REASONS

1. I make an order for the anonymity of the parties in this appeal pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as children are involved. Any breach of this order may lead to contempt proceedings. The appellant will be referred to as GD and his partner in the United Kingdom as L.

2. The appellant, who is a national of Pakistan, has been granted permission to appeal the decision of First-tier Tribunal Judge Farrelly. For reasons given in his decision dated 14 January 2019 Judge Farrelly dismissed the appellant's appeal against the Secretary of State's decision dated 5 January 2018 refusing his asylum and humanitarian protection claim.
3. As to his immigration history, the appellant entered the United Kingdom in May 2012 with entry clearance as a student, giving leave until 15 October 2013. Revocation of his sponsor's licence resulted in curtailment of that leave to 25 November 2012. The appellant was nevertheless successful in obtaining further leave to remain, the latest grant until 7 October 2015. A further application for leave beyond that date was refused on 26 November 2015. The appellant requested administrative review which resulted in the decision being upheld on 12 January 2016 and thereafter he applied for permission to bring judicial review proceedings. This was refused on 30 August 2016. After being encountered by enforcement officers on 17 January 2017 the appellant was served with notice, IS96 as an overstayer. On 2 February 2017 he was again refused permission to bring judicial review proceedings against that decision. On 20 September 2017 the appellant applied for protection leading to the decision under appeal in these proceedings.
4. The appellant's case is based on a fear of harm in Pakistan as a result of his relationship with a Brazilian national (L) which began in October 2014. The appellant was already married his maternal cousin who with his father had paid for him to study in the United Kingdom. The appellant and L began to live together and their relationship was discovered by his mother in the course of a video phone call in June 2015 (L was standing behind him). As a consequence, the appellant fears his own family and that of his wife. Difficulties were compounded by L being a Christian. A further element was that the appellant's wife's brother was a police officer and could track him down throughout Pakistan.
5. The judge heard evidence from the appellant and L. He concluded the appellant was most likely married and had one child (rather than four as suggested in interview). He also found that he is divorced from his wife in Pakistan. He accepted the appellant and L were in a relationship and that she is nevertheless married (to another) and has two children. He accepted on balance that the incident during which their relationship was discovered had occurred and that it was probably not unreasonable for the family to react badly.
6. Nevertheless the judge placed little reliance on the documents produced by the appellant as evidence of the steps taken by his family to cause him harm and considered little weight could be given to the death certificate of his brother who was said to have been harmed for having helped him. He considered that the couple could go to Pakistan and relocate within the country and thus the appellant had not demonstrated a real risk of persecution. Finally, the judge concluded that interference with rights under Article 8 was proportionate in the interests of immigration control.

7. Permission to appeal was granted by First-tier Tribunal Keane in response to grounds of challenge as to:
 - (i) The judge's understanding of the FIRs.
 - (ii) A failure by the judge to consider the appellant's evidence that his brother who had been killed was assisting him.
 - (iii) The judge had failed to fully consider the death certificate.
8. Judge Keane considered the judge had arguably erred when apparently drawing on his own personal knowledge when stating that "... it is commonly known that they (FIRs) relate to complaints made often to harass people" and, "... to be any way affecting [sic] the [sic] must have a basic foundation". In addition, the judge had arguably erred with regard to an irrelevant consideration as to the appellant's failure to mention at this asylum interview his brother's assistance.
9. At the first hearing in the Upper Tribunal, Mr Ahmed acknowledged his difficulties with the first ground. He accepted that he had no evidence with which to rebut the judge's understanding of the misuse of FIRs. He no longer relied on this ground.
10. As to ground 2 he clarified the challenge with respect to the judge's reasoning at [35] of the decision which is in the following terms:

"35. The appellant then has introduced the killing of his brother in support of his claimed fear. He has suggested he was helping him. However, in his substantive interview I find no reference to any brother helping him or attempting to mediate. At question 17 he said for 2 years he had no contact with anyone. At Question 69 he refers to speaking only to childhood friends who told him about the FIR's. The provenance of the death certificate submitted is not known. On balance I find this evidence carries little weight and appears to have been introduced in an attempt to enhance his claim."
11. The text of the grounds of challenge is as follows:
 - "2. The Judge at paragraph 35 makes reference to the appellant's brother death certificate. The appellant's [sic] had stated that his brother had sought to assist him and due to this he was killed. The Judge makes reference to the Substantive Interview Q17 and Q69. The Judge failed to consider the appellant's evidence at the hearing that his brother was assisting him. The appellant's Substantive interview was on 19th December 2013, the asylum hearing was heard on 23rd July 2018 and the appellant's brother's death was registered on 8th March 2018."
12. Mr Ahmed argued that the Presenting Officer had asked the appellant when his brother was killed and he submitted that the appellant had responded at the hearing under cross-examination that the assistance by his brother had occurred after the interview. Mr Ahmed readily acknowledged the difficulty this posed and had nothing more to say on this ground.
13. In relation to the death certificate, Mr Ahmed explained that the original had been produced at the hearing. He argued that the judge had not fully considered it. Mr

Govan contended this was a credibility issue and referred to [14] of the judge's decision:

"14. Within the papers in [sic] a death certificate stating that his brother was found dead on 8 March 2018 from unnatural causes. The appellant said he received this through a friend whom he did not want to name."

14. And he contended that the judge had given sufficient reasons for rejecting the reliability of that certificate. Mr Ahmed had nothing further to add to his initial submissions and I reserved my decision.

15. On reflection, I considered that as this involved a protection claim and in order to give this case anxious scrutiny, that it was desirable for the hearing to be reconvened in order for the parties to produce a note of the exchange on this aspect at the hearing. Directions were given as follows:

"1. I have decided to reconvene this hearing in order to hear further submissions on ground two as the issue relates to a protection claim. This is despite the lack of a clear indication in the ground as to the basis of challenge and the lack of any supporting evidence as to the exchange it is said that the appellant had under cross-examination on the matter of the timing of contact between him and his brother.

2. The appellant is directed to file with the Upper Tribunal and serve on the respondent by no later than 31 May a typed transcript of Counsel's note relating to the exchange in question.

3. The respondent is directed to file with the Upper Tribunal and serve on the appellant within the same time a copy of any note on this aspect taken by the Presenting Officer.

4. The appeal will then be re-listed for a further hearing for submissions on ground two."

16. The Secretary of State responded on 31 May 2019 and specific to the point explained:

"I have examined my court notes from the day, and regret that they are brief in form and were not verbatim. I can confirm that I have no specific note on responses to any cross-examination on the aspect raised in the grounds before you, that of the brother assisting the appellant prior to his death. However, the lack of note does not equate to a refutation that any such questions were asked on the day as cross-examination progressed."

17. The accompanying notes of the hearing does not cover the point.

18. At some point the appellant changed solicitors. Nothing was produced apart from an affidavit by the appellant disclosing the identity of the provider of the death certificate and an expert report on the difficulties the appellant would encounter.

19. Mr Caskie understood the position the proceedings had reached which had been left at the point the judge had failed to consider the evidence relating to the timing and nature of his brother's role. He nevertheless considered that as drafted ground 2 was sufficient to deal with the point although on reflection indicated he wished to amend

the grounds and gave an indication of the basis on which he wished to do so. Before proceeding further I read out the judge's record of the questions and answers in cross-examination. After being questioned about the certificate it was put to the appellant that nobody knew who had done this and he responded:

"The day brother killed for which I am getting phone calls, unknown numbers. One was my brother-in-law who said you will end up like this. There is no doubt in it how can I prove this [illegible] made me switch off phone."

20. The Presenting Officer then said "you used your mobile" to which the appellant responded "yes". It was then put to the appellant that he "could have shown call when this happened" to which he replied, "How could I remember".
21. The questioning then switched to the appellant's family circumstances.
22. In response to my questions Mr Caskie explained that the evidence of the appellant's brother's assistance in intervening in the family dispute first emerged in cross-examination and it had not appeared in the witness statement. He proposed an amendment to the second ground as :

"Where there is no record by the Home Office Presenting Officer and representative or the judge as to the nature of the evidence provided regarding the appellant's brother assisting him as demonstrated in the second sentence of this ground of appeal".
23. Mr Clarke objected on the basis that the appellant had the opportunity of amending the grounds before the hearing. By way of response Mr Caskie explained that new information had been obtained in the course of the hearing, being the absence of any record of the exchange, including the record by the judge.
24. I refused the application on the basis that if the parties were unable to say or agree what was before the judge, I failed to see how the appellant was able to demonstrate that the judge had erred.
25. I thereafter heard from further submissions from Mr Caskie on the second ground, essentially in terms that the judge was required to explain his reasons for reaching the conclusion in his decision. In the absence of relevant evidence it could not be said the decision was in accordance with the law.
26. By way of response Mr Clarke contended the judge had given anxious scrutiny to all the evidence, and made no error of law.
27. I reached these conclusions on ground 2. The appellant's witness statement which he adopted at the hearing the appellant explained at [14]:

"In or around the middle of March 2018 my brother Ghulam Qadar was killed. I was shocked when I found out. Ghulam was the only brother in my family that was helping me. I used to speak with him and he helped me as much as possible. He helped me by sending me copies of police reports and he was speaking to my wife and her family to try to mediate between us. He was the only one that I could trust in

Pakistan and he was careful not to show anyone that he was openly helping me. I was really shocked when I found out he was killed. He was lying on the side of the road badly beaten. No one helped him and by the time he was taken to hospital he was dead. I know that Ghulam was coming back from my wife's family home because he wanted to persuade them to forgive me and not to attack me and kill me if I was to return. My brother-in-law called me around about the end of March 2018. He told me they were responsible and told me that he knew he was helping me. My brother-in-law told me this is what would happen if I was to return. He was trying to frighten me. It worked."

28. The statement is dated 16 July 2018. The appellant was interviewed about his claim on 19 December 2017. At question 17 he was asked whether he was in contact with any family members in Pakistan to which he responded:

"I about 2 years I have not contacted anyone since this was exposed."

29. At question 39 the appellant was asked when he had last spoken to someone in Pakistan, to which he responded:

"I am still talking to my friends but my family I have not spoken to them in the last 2 years."

30. And at question 40 he was asked when he last spoke to his in-laws, to which he replied:

"About 18 to 19 months ago I spoke to my wife but I don't remember the last time I spoke to my in-laws."

31. At question 62 the appellant was asked the date when he was first threatened, and he responded:

"It was very next day when I spoke to my father and explained to him the whole thing about me and Nara living together, my elder brother called me and said you know what kind of family we belong to you have ruined our respect and humiliated us whatever you said to father it is so embarrassing. He said we will deal with you whenever you will come back to Pakistan he was not listening he was shouting and threatening me again and again. I think it was the end of June 2015."

32. The appellant then went on to refer to threats that he had received from his wife and at question 69 he was asked whether he had received any further threats from Pakistan since then, to which he responded:

"After that I did not speak to anyone directly however my childhood friends I am in contact with they keep telling me that everything is still the same they don't like you anymore and they are very angry over what you have done. My friends told me about the Police report and application file against me."

33. There is no evidence that the appellant was asked about this inconsistency at the hearing nor has the appellant advanced the case that the intercession by his brother occurred only after his asylum interview. Given the timing of the family's discovery and their hostile reaction, I consider the judge was entitled to draw an adverse inference from this aspect and I do not consider he fell into error.

34. It remains a case that the first ground is no longer relied on and I am satisfied the judge gave adequate reasons for questioning the reliability of the death certificate of his brother.
35. Accordingly I am not persuaded the judge erred on the basis of the challenge on which permission has been granted. This appeal is dismissed.

NOTICE OF DECISION

The appeal is dismissed.

Signed

Date 11 October 2019

UTJ Dawson

Upper Tribunal Judge Dawson