Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00939/2019

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 16 January 2020	**On 31 January 2020**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

H S
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms L King instructed by Fountain Solicitors
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure of publication of any matter likely to lead members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Pakistan who was born on 21 June 1958. She last arrived in the United Kingdom on 7 April 2018. On 23 April 2018, she claimed asylum with her husband as her dependant.

3. On 18 January 2019, the Secretary of State refused the appellant's claim for asylum, humanitarian protection and under Art 8 of the ECHR.

4. The appellant appealed to the First-tier Tribunal. In a determination sent on 23 August 2019, Judge Trevaskis dismissed the appellant's appeal on all grounds.

5. The appellant was initially refused permission to appeal to the Upper Tribunal by the First-tier Tribunal (DJ Woodcraft) on 24 September 2019. However, on 23 October 2019 the Upper Tribunal (UTJ Gill) granted the appellant permission to appeal.

6. The respondent did not file a rule 24 response.

The Appellant's Claim

7. The appellant's claim is that she is a Christian who has been accused of blasphemy. On 20 February 2018, she was working as a carer in a private home when three women were visiting. The appellant says that, having left the room and returned, she was accused by the women of having thrown the Koran on the floor and thereby insulted it.

8. The following day two men came to her home on a motorcycle seeking the appellant because she had insulted the Koran. When confronted with the appellant's son and other Christians from the neighbourhood, the men left.

9. Between 7 March 2018 and 9 March 2018, the appellant claims that she received three threatening letters including a fatwah against her family.

10. On 9 March 2018, she was approached by two men on a motorcycle who attempted to grab her. A gun was fired but she escaped when nearby workers intervened. The appellant made a complaint to the police on that day and they registered the case but no action was taken. The appellant relied upon a newspaper report which reported the incident.

11. On 16 March 2018, the appellant moved to Gujranwala in Punjab province. On 25 March 2018, the appellant was again confronted by two men on motorcycles who were armed. Again, she managed to escape when a crowd formed. She again reported this incident to the police.

12. On 31 March 2018, the appellant petitioned the court because of the lack of police action in relation to her complaint.

13. On that day also, the appellant moved to Shahkot. There, on 2 April 2018, she was again confronted by two armed unknown men on motorcycles brandishing their firearm and she again managed to escape when a crowd formed.

14. On 7 April 2018, the appellant again filed a petition complaining about the lack of police action.

15. The appellant also relied upon a document (an 'Order for Appearance'), in effect a summons, requiring the appellant to report to the police which, she claimed, related to a complaint that had been lodged against her.

The First-tier Tribunal's Decision

16. Judge Trevaskis rejected her asylum claim. He made an adverse credibility finding. In reaching that finding, Judge Trevaskis approached the assessment of credibility applying para 339L of the Immigration Rules (HC 395 as amended). His principal reasons were as follows.

17. First, the judge accepted the respondent's evidence, in four Document Verification Reports ("DVR") that four of the documents relied upon by the appellant were not genuine: namely, the appellant's complaint to the police on 9 March 2018 in relation to the incident that occurred on that date; the complaint to the police made on 25 March 2018 in relation to the incident on that date; the complaint to the police on 2 April 2018 in relation to the incident that occurred on that date; and the "Order for Appearance" (the summons) to report to the police station (see K82-90 of the respondent's bundle).

18. Secondly, as regards the newspaper reports the judge noted that the background evidence indicated that it was possible to "have anything published in a newspaper for a price" and that the existence of newspaper reports "does not of itself prove the truth of the matters contained in them".

19. Thirdly, the judge relied upon inconsistencies identified by the respondent in the refusal decision and that the appellant's account of the initial incident that had led to her being accused of blasphemy was not plausible.

20. Fourthly, the judge relied upon what he described as the "unacceptable level of coincidence" in the three incidents when the appellant was confronted by armed men on motorcycles on 9 March 2018, 25 March 2018 and 2 April 2018.

21. Fifthly, the judge noted that there was no supporting evidence from the appellant's husband who had been present during the claimed confrontations. Finally, the judge took into account that the appellant had not claimed asylum on arrival at the airport.

22. At paras [95]-[97], the judge summarised his reasons as follows:

> "95. I have also considered whether her credibility is damaged by presentation of false documents. I have found those documents to be nongenuine, and therefore I find that her general credibility is damaged by their production.
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> 96. I have considered the general credibility of the appellant, and I find that it has not been established to the required standard. She has made claims which I have found lacking in plausibility, supported by documents which I have found to be nongenuine. Her husband's

> potentially important evidence has not been provided. The other letters and supporting documents are self-serving and based upon information provided to the authors by the appellant.
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> 97. In light of the above findings, I am not satisfied that the appellant should be given the benefit of the doubt in relation to her asylum claim in accordance with paragraph 339L."

The Appellant's Challenge

23. The appellant's challenge to the judge's adverse credibility findings is set out in the grounds of appeal and Ms King's skeleton argument which she developed in her oral submissions:

    (1) The judge made a number of factual errors in paras [12] and [24] of his decision and, in para [30], finished a sentence with "entirely random and unintelligible remarks";

    (2) The judge was wrong to rely upon the absence of evidence from the appellant's husband given that he was informed that the appellant's husband was too unwell on the day of hearing to attend;

    (3) In finding that the documents relied upon by the appellant were not genuine the judge failed properly to engage with the expert report of Waheed Ahmad;

    (4) The judge failed to identify the inconsistencies in the evidence upon which he relied which were, in any event, limited to two minor inconsistencies in the refusal letter;

    (5) The judge was wrong to rely upon the "unacceptable evidence of coincidence" in the three events relied upon by the appellant.

24. In addition, Ms King referred me to, but did not pursue with any vigour, para 11 of the grounds which criticised the judge for failing to consider under Art 8 the impact upon the appellant's family life with her son and his family in the UK.

Discussion

25. Whilst I do not accept the appellant's case on all five of the points raised, I am satisfied, for the reasons I will give shortly, principally based upon point (3) and part of point (1), that the judge did materially err in law in reaching his adverse credibility finding.

26. The crucial error lies, in my judgment, with the judge's failure properly to engage with, and take into account in reaching his adverse credibility finding, the expert report of Waheed Ahmad. As Mr Howells recognised in his submissions, the authenticity of the documents relied upon, in particular the summons, was central to the judge's rejection of the appellant's claim. At [87], the judge noted that the appellant's claim that

she had been accused of blasphemy made "no sense" if the summons was not genuine.

27. The judge set out a summary the report of Waheed Ahmad at paras [46]-[56] as follows:

> "46. The author of this report is a lawyer in Lahore. On the instructions of the appellant's representatives he undertook the following enquiries.
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> 47. On 15 July 2019 he went to the court in Gujranwala where he confirmed that a petition by the appellant against the police was filed on 31 March 2018 and a hearing date of 6 April was fixed.
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> 48. On 17 July he visited the court in Shahkot where he confirmed that a petition by the appellant against the police was filed on 7 April 2018 and a hearing date fixed for 11 April 2018.
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> 49. On 18 July 2019 he visited the office of daily newspaper Muqabla, where it was confirmed that the newspaper produced by the appellant dated 10 March 2018 Lahore was genuine.
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> 50. On 18 July 2019 he visited the office of daily newspaper Waiz, where it was confirmed that the newspaper produced by the appellant dated 30 March 2018 Lahore was genuine.
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> 51. On 19 July 2019 he visited the court in Lahore to seek verification of the affidavit of the appellant dated 31 March 2018. The court was unable to verify the document because they do not hold a copy of the petition.
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> 52. On 17 July 2019 he visited the police station Sadar Shahkot for verification of the application submitted by the appellant dated 2 April 2018. He was told that without the diary number and stamp of the police station they were not in a position to verify the application. He then visited the office of the Commissioner for oaths whose stamp appeared on the document, where it was confirmed that the stamp is genuine.
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> 53. In the opinion of the author of the report it is common practice in Pakistan that the police avoid giving diary numbers to complaints so that they are not compelled to take action on the complaint or to be accountable for failing to do so. He said there are thousands of petitions pending in courts against the behaviour of the police.
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> 54. On 15 July 2019 he visited the police station Jinnah Road Gujranwala for verification of the application submitted by the appellant dated 25 March 2018. The police were unable to verify the application because it does not have a diary number or police station stamp.
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> 55. On 23 July 2019 he visited the police office in Lahore to verify the order for appearance by the appellant but they were unable to verify it because no date was mentioned.
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> 56. On 24 July 2019 he visited the police station in Liaqatabad to verify the application filed by the appellant dated 9 March 2018 but this could not be verified due to the absence of diary number or stamp."

28. It is not suggested that Mr Ahmad is not an expert and that his report, both in relation to the police documents and also in relation to the newspaper reports, was other than expert evidence that had properly to be taken into account. As set out in the judge's determination at paras [52], [54]-[56], Mr Ahmad reported that, because of the absence of information on the documents, the relevant authorities were unable to verify whether or not the documents were genuine. As regards the newspaper reports, Mr Ahmad reported that they had been verified as genuine newspaper reports by the relevant papers.

29. Having set out Mr Ahmad's report in summary, the judge noted the respondent's DVRs at para [57] as follows:

> "Enquiries made from the British High Commission in Islamabad by telephone to the relevant police stations regarding the three complaints by the appellant and the summons for her appearance revealed that they were not able to be verified as genuine by reference to police records."

30. The judge dealt with the documentary evidence under the heading "My Findings" at paras [87]-[88] as follows:

> "87. The appellant has produced documents which she says support her claim. The police documents have been identified by the respondent as nongenuine, and the appellant's enquiries are unable to verify the documents. It is suggested that the police are [sic] deliberately failed to register the complaints. Significantly, it appears that the summons which the appellant claims to have received from the police is also nongenuine. If, as she claims, she is someone who has been accused of blasphemy, it makes no sense that the summons would be non-genuine. The fact that it is leads me to conclude that it has been fabricated in order to bolster the appellant's claim. With regard to her complaints against the police and subsequent court proceedings, in the absence of any evidence verifying those documents, I attach no weight to them.
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> 88. With regard to the newspaper reports, background information indicates that it is possible to have anything published in a newspaper for a price. Therefore the existence of these newspaper reports does not of itself prove the truth of the matters contained in them."

31. It is plain to me that the judge has taken the DVR findings at face value, namely that in each case the documents were found to be "Non-Genuine & False". It is equally clear that in each instance, unlike the situation reported by Mr Ahmad, the absence of the information in the documents does not appear to have prevented the police checking whether the documents were held by them. I should add that, apart from the report into the summons, each of the enquiries was by telephone and only in the case of the summons was, as Mr Howells informed me, a copy (in all probability redacted) provided by the respondent to the police.

32. On the face of it, there is a clear issue that arises from the report of Mr Ahmad and the DVRs. On the one hand, Mr Ahmad reported, having provided the documents to the police, the lack of information prevented them making any checks. By contrast, including in three cases by

telephone only, the absence of that information did not prevent the authorities checking for the documents when contacted by the respondent. The judge made no reference to Mr Ahmad's report in the relevant paragraphs setting out his reasons for finding the document not to be genuine. That was a clear error of law particularly given that there was the issue that I have identified which the judge was required to grapple with before either accepting what was said in the DVRs or not.

33. As I pointed out at the hearing, the respondent carried the burden of proof that these documents were not genuine. The judge could not simply, in the circumstances of this case, accept, without more, what was said in the DVRs. It may well be that, if the judge could not resolve the inherent contradiction in the evidence as to whether the documents could, in fact, be checked, then the respondent would have failed to produce evidence sufficient to discharge the burden of establishing that they were not genuine and were false documents.

34. In my judgment, therefore, the judge erred in law in reaching his finding that the documents, which were central to the appellant's claim, were not genuine and were false documents. The centrality of the genuineness of the summons was noted by the judge himself in para [87] of his determination. The judge's error in finding the document to be not genuine was, in my judgment, in itself sufficiently significant in assessing the appellant's credibility that it leads me to conclude that the error was material and, that despite any other reasons he may have given, it leads me to conclude that his adverse finding and decision to dismiss the appeal cannot stand.

35. It is not, therefore, strictly necessary for me to deal with each of the other grounds in detail. It suffices if I deal with them in this way.

36. As regards point (1), the judge did make two factual errors in paras [29] and [44]. In para [29] he wrongly stated that the appellant had, having returned from the UK to Pakistan in February 2018, obtained her nursing job within "two days" when it should have said "two weeks". Further, in para [44] he wrongly stated that her husband had undergone heart bypass surgery when he was "19" when, in fact, it was nineteen years ago when he was 43. However, neither of these misstatements of the facts were, in any way, material to the judge's reasons for dismissing the appeal.

37. More problematic, however, is what the judge says in para [30]. There, he is summarising the appellant's evidence of the incident on 20 February 2018 which was, on her claim, the basis upon which she said that she had been accused of blasphemy. The judge said this (my emphasis):

> "Her accusers were 3 women who were visiting the female patient. She left the patient's room to make tea for them and when she returned she found the Koran on the floor. The women started shouting at her, accusing her of throwing it on the floor and they abused her verbally and physically. Two or three other servants came when they heard the noise. One of the women made a telephone call.

> The appellant was able to escape after 4 – 5 minutes because she knew the exit doors. The three women were the daughter and another relative of the patient and an old woman *sitting in a strong terrace and take Cassidy in relation to Ross's murder thereof shall always forward bridging just an awareness of the leading shouting weeds away always everything was a security 100 shouting in cry baby shortly new chair*."

38. The italicised words not only have no relevance to this appeal but make no sense in any context. They almost have the characteristic of a random set of words. In one sense, as Mr Howells submitted, they might be seen as irrelevant to the judge's final decision. However, as Ms King submitted, they appear to replace part of the appellant's account as to what happened on 20 February 2018 and which led, she claimed, to the subsequent events and accusation of blasphemy. The judge never returns to deal with the appellant's account on 20 February 2018 and it is unclear, therefore, whether he fully had in mind what the appellant said happened to her. In itself, the error would not undermine the judge's adverse conclusion. The error is, however, of some concern given that it leaves uncertain whether the judge fully grasped the appellant's account of events on 20 February 2018.

39. As regards point (2), in para [86] the judge noted that he had "not heard or read evidence from [the appellant's] husband, which would have been helpful, since he was present during the claimed confrontations". Ms King submitted that there was an explanation for the absence of the appellant's husband at the hearing because he was ill. That, however, did not explain why there was no written evidence from the appellant's husband. That was a matter which the judge could take into account as it was evidence which could reasonably be expected to be provided (see TK (Burundi) v SSHD [2009] EWCA Civ 40). In my judgment, that is all that the judge meant when in para [89] he said this:

> "Given the nature and form of the threats, I am not satisfied to the required standard that the appellant has submitted all material factors at her disposal."

40. I do not accept Ms King's submission that the judge did not make plain what 'missing' information he is referring to. He is not referring to the documents which were submitted (but which he found not to be genuine), he is clearly referring to the absence of evidence and the only evidence to which he makes reference in that regard is that of the appellant's husband. Indeed, if clarity was required, he made this plain at para [96] when he said: "Her husband's potentially important evidence has not been provided."

41. As regards point (4), the judge stated at para [90] that he had "considered the inconsistencies relied upon by the respondent in the refusal decision". He did not explain what those inconsistencies were. Ms King pointed out that the two inconsistencies related to first, evidence given by the appellant at her interview that, after the 9 March 2018 incident, she had not told her husband when she got home because he had a heart condition but that she also said that she had told him later; and secondly,

in her screening interview, despite stating that she had been accused of blasphemy, when asked whether she had committed an offence she had said 'no' but had later explained that she thought the question was directed to other offences.

42. Because the judge does not set out the inconsistencies in his determination, it is unclear what he made of them and any explanation that the appellant had given. However, equally clearly, these inconsistencies did not form a significant part of the judge's reasons for his adverse finding. I am unpersuaded that, even accepting Ms King's criticisms, that the judge materially erred in law in reaching his adverse finding when he stated that he had "considered" the inconsistencies relied upon.

43. As regard point (5), Ms King submitted that it was not a factor counting against the credibility of the appellant's account that the three events she relied upon were consistent. She submitted that the judge had failed to explain what the "unacceptable level of coincidence" was and, in any event, consistency was a positive factor in favour of the appellant.

44. I agree with Mr Howells' submission that the argument that consistency of an account is a positive feature in favour of a positive finding on credibility, is not the issue in this appeal.

45. Of course, it is relevant in determining whether an individual's account is credible and to be believed that over time at least the essential elements of that account are consistently recounted by the individual. It gives some positive support to the individual's credibility. That was not the issue in this appeal. Here, the judge was not wrongly counting against the appellant that she had consistently told the same account over time, for example repeating it at interview, in witness statements and in oral evidence. Here, the judge was, in effect, concluding that the striking similarity and coincidences in the single overall account of the appellant of what happened to her in Pakistan called into question whether that account was to be believed. In effect, the judge considered that it was implausible that the appellant would have been confronted in precisely the same way on three occasions with precisely the same outcomes. So, at paras [90]-[93] the judge said this:

> "90. … She then describes three occasions on which she was confronted by unknown males and either told to attend the mosque for conversion or being threatened with death. Remarkably, the circumstances of each confrontation were identical, involving men on motorcycles with guns shouting loud enough to attract the attention of bystanders, by whom they are intimidated into leaving without having accomplished their mission.
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> 91. When the appellant reports the incidents to the police in each of three completely separation locations, on each occasion the officer taking the report makes up the description of the guns without any prompting by the appellant or any of the three different pastors by whom she was

accompanied to the police station. She is also able to provide them with descriptions of the motorcycles of two different types.

92. The men who she claims confronted her, all of whom are apparently linked by their shared desire to do the appellant harm, make no attempt to abduct or to harm the appellant, despite having ample opportunity to do so. Considering how easy it was for them to locate her, it is surprising that her accusers, having reported her blasphemy to the police, were not able to inform the police of her location so that the summons which she claims was sent to her could be transferred to the police in her locality.

93. Given the unacceptable level of coincidence her claims and the other inconsistencies identified in the refusal decision and in the above findings, I reject the appellant's claims as being not credible."

46. The legal issue is whether it was properly open to the judge reasonably or rationally to conclude that the striking similarity between these three events should not be put down to coincidence but, in effect, to concoction by the appellant of her account. The judge clearly identified at paras 90-93 the elements of the three incidents which gave rise, for him, to the "unacceptable level of coincidence". I am unpersuaded that the judge's reasoning, in that regard, was irrational in the sense that no reasonable judge could properly take that view.

47. That then deals with the points raised in relation to the adverse credibility finding and the dismissal of the appellant's appeal on asylum grounds.

48. For the reasons I have given above, the judge materially erred in law in reaching his adverse credibility finding and in dismissing the appellant's appeal on asylum grounds. That decision must be set aside and re-determined, it was accepted by the representatives before me if that was my decision, on remittal to the First-tier Tribunal for a *de novo* rehearing.

49. As regards the Art 8 point raised in the grounds, Ms King did not pursue that point before me with any enthusiasm. She accepted that Art 8 had not been raised in the grounds before the First-tier Tribunal, although she had referred to it in her skeleton argument. However, she had not pursued Art 8 before the judge on any basis other than the risk on return. She did not seek to make any additional submissions before me.

50. In these circumstances, I am unpersuaded that the judge erred in law in dismissing the appellant's appeal under Art 8. Of course, since the appeal is to be remitted to the First-tier Tribunal, it will be open to the appellant, if she so wishes, to rely upon Art 8 again before the First-tier Tribunal.

Decision

51. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision is set aside.

52. Having regard to para 7.2 of the Senior President's Practice Statement and the nature and extent of fact-finding required, the proper disposal of the appeal is that it is remitted to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Trevaskis.

Signed

A Grubb
Judge of the Upper Tribunal
27 January 2020