



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal number: HU/05037/2019 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC

Decision & Reasons Promulgated

On 26 April 2021

On 04 May 2021

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

QK

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Mr I Ali, instructed by M&K Solicitors

For the Respondent: Mr A McVeety, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote

hearing. At the conclusion of the hearing, I indicated my decision but reserved my full reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a national of Pakistan with date of birth given as 20.3.83, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 16.11.20, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 5.3.19, to refuse his claim for international protection.
2. Permission to appeal to the Upper Tribunal was refused by the First-tier Tribunal on 11.12.20. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Grubb granted permission on 18.2.21 on ground 1 only, considering it arguable that it was unfair not to grant the appellant's adjournment application to afford him the opportunity "to produce the recent evidence concerning a violent assault by SH (whom the appellant claimed to fear). One of the reasons given, namely that there had been a 19-month delay since the (respondent's) decision, was arguably not relevant as the delay was not due to the appellant." Permission to appeal on the other grounds was specifically refused. I declined Mr Ali's application to reopen grounds on which permission was refused for cogent reasons.
3. Shortly before the hearing, the Tribunal received the appellant's skeleton argument, dated 26.4.21. I have carefully considered the decision of the First-tier Tribunal in the light of all the submissions and the grounds of application for permission to appeal to the Upper Tribunal.
4. The appellant first came to the UK in 2011 with entry clearance as a spouse. In due course, he was granted Indefinite Leave to Remain. The background to the appellant's factual claim was that he met SH, who involved the appellant in his drug dealing business in the UK. The appellant claims SH accused him informing the UK Police about SH's drug dealing involvement, leading to SH sending people to threaten the appellant's parents in Pakistan. The appellant was remanded in prison and in December 2015 convicted of being concerned in the importation of Class A controlled drugs, namely heroin, for which he was sentenced to 7 years' imprisonment. This conviction led to the decision to deport the appellant from the UK. Part of the appellant's factual claim was that genuinely feared that he would be at risk of death or serious harm from SH if he were to be returned to Pakistan.
5. The appellant sought an adjournment to adduce further evidence of SH's alleged violent character and his ability to evade punishment for his actions. At [11] of the impugned decision, the judge noted that the adjournment application was made, "in part on the basis that the appellant had evidence that SH had

committed a very serious assault in Pakistan, and the appellant wanted further time to verify this information. This evidence was important because it showed SH's violent nature, and was also relevant to the Pakistan authorities' ability to provide sufficiency of protection (of the appellant against SH)". The skeleton argument asserts that the evidence was material as it demonstrated that SH continued to engage in a pattern of criminal behaviour with impunity, that in consequences the level of risk to the appellant was greater, and that the Pakistani authorities would be unable to protect the appellant if he returned. It is also submitted that the ability of SH to evade justice over a prolonged period was indicative of his ability to act with impunity.

6. The Rule 24 reply, dated 3.2.21, points out that the documentation the appellant sought to rely on was produced and the appellant wished only to 'verify' the FIR. There was no indication as to how long such verification process might take, or even if such verification was possible. As the judge pointed out, the FIR related to an alleged victim with no connection to the appellant. The respondent submits that the relevance of the verification of the FIR and medical information was "extremely limited". It is also pointed out that at [39(iii)] the judge considered the evidential extent of the 2020 FIR as suggesting that SH was not in prison in August 2020. More significantly, the respondent points to [39(v)] where the judge found that even if the assault in August 2020 took place as alleged, this did not demonstrate that SH was well-connected or able to act with impunity. In any event, the judge proceeded on the basis that the events in August 2020 took place as alleged. In the premises, it is submitted that verification of the FIR could not have made any material difference to the outcome of the appeal.
7. In refusing the adjournment application, at [12] the judge noted that she already had evidence of alleged death threats made against the appellant and considered that further evidence of possible violence was unlikely to have a material impact on the appeal decision. Further, the judge noted that there were also four FIRs against SH including in relation to a 2018 drug importation, all of which was relied on by the appellant as allegedly demonstrating SH's ability to evade justice. In the light of that evidence, the judge considered it unlikely that further evidence of ability to evade justice would have any material impact on the appeal decision.
8. It is correct that in concluding at [12] that the appellant would not be deprived of a fair hearing if the adjournment request were to be refused, at [12(ii)] the judge also relied on the 19 months that had elapsed since the respondent's refusal decision and considered that "dealing with a case fairly and justly includes avoiding delay so far as compatible with the proper consideration of the issues." Whilst the 19-month delay was not attributable to any fault on the part of the appellant, it was relevant to the overall consideration of the adjournment application. However, it was not the sole or major reason for refusing the

adjournment application. I am satisfied that even without that consideration refusal of the application was justified.

9. Notwithstanding the refusal of the adjournment a primary information the appellant relied on was emailed to the Tribunal and to the respondent's representative during the hearing. This comprised a FIR dated 22.8.20, in which SH and others are accused of beating a Utilities employee with a pistol, severely injuring him. A report of 1.9.20 with a CT scan of the victim's head and neck showed multiple fractures. Although the skeleton argument submits that judge failed to make any explicit findings as to the reliability of the FIRs, it is clear from [28] of the decision that this material was considered by the First-tier Tribunal. However, at [39(v)] of the decision the judge concluded that even if SH committed the alleged assault in August 2020, this did not indicate that he is well-connected or has impunity.
10. At [59] the judge found that the Horvath standard was met so that the appellant could avail himself of the protection of the Pakistani authorities if attacked. Whilst the material the appellant sought to adduce may arguably have been relevant to the issue of sufficiency of protection, at [60] the judge made the alternative finding that even if she was wrong in relation to sufficiency of protection, internal relocation was a viable option, for the cogent reasons set out in the decision. It follows that the ostensible purpose for which the adjournment was sought, according to [11] of the decision, was not material to the outcome of the appeal. The internal relocation finding means that any potential error in relation to sufficiency of protection could have made no difference to the outcome of the appeal. I appreciate that at [8] of the grounds, the appellant sought to link both issues of sufficiency of protection and internal relocation to the need for the adjournment, however it is difficult to see how the argument for the adjournment is relevant to internal relocation away from SH and the threat he allegedly posed for the appellant's safety. At [39] and [60] the judge was not satisfied that SH would be able to access the National Database or that the Police would tell him of the appellant's whereabouts away from his home area. It follows that verification of the FIR or other similar evidence (as Mr Ali sought in his submissions to widen the scope of further evidence to be obtained), would not have demonstrated that he was so well-connected that he would have been able to track and trace the appellant wherever he relocated to within Pakistan.
11. I am not satisfied that it has been demonstrated in argument to the First-tier Tribunal or to me that verification of the FIR would demonstrate that SH is able to act with impunity, as claimed. That another crime has allegedly been committed does not show that SH is able to act with impunity or that he was not pursued by the authorities for criminal actions. The submission also begs the question whether there was sufficient evidence to prosecute rather than a mere assertion of culpability, or that proceedings were not in train, or had completed.

12. It was not even made clear how the FIR could be independently verified, or how or when that would be possible. Mr Ali suggested that it was intended to instruct solicitors but even that step would be far from satisfactory as independent or objective evidence. The benefit of seeking to verify the 2020 FIR in the overall context of the evidence, when the judge already had and had taken into account the documentation which had been emailed at the beginning of the hearing, is unclear. In any event, as Mr McVeety submitted, there was no challenge in the First-tier Tribunal to the proposition that SH was a “nasty piece of work” as Mr McVeety put it. That he allegedly committed an offence of violence against someone entirely unconnected to the appellant fails to demonstrate that the authorities would be unable to provide a sufficiency of protection to this appellant. That FIRs were issued rather suggests that complaints against SH were accepted by the Police. The First-tier Tribunal proceeded on the basis that the character of SH was as alleged. No one doubted or challenged the validity of the documents. The judge did not make a finding that the FIRs were not genuine or not reliable. In those circumstances, as Mr McVeety submitted, there appears to be no valid purpose in seeking an adjournment for FIR verification.
13. In the premises, I am satisfied that the judge was entitled to refuse the adjournment application and that no unfairness ensued to the appellant. Complaint is made that no explicit findings were made as to the 2018 and 2020 FIRs. However, it appears that the judge proceeded on the basis that they were genuine.
14. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal so that it must be set aside.

Decision

The appeal of the appellant to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 26 April 2021

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

“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 his family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings.”

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 26 April 2021