



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/11802/2014

THE IMMIGRATION ACTS

**Heard at Field House
On Thursday 20 August 2015**

**Decision & Reasons Promulgated
On Tuesday 25 August 2015**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

**MR ASAD ALI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Head, Counsel

For the Respondent: Mr Walker, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

No anonymity order was made by the First-tier Tribunal. I find that no particular issues arise on the facts of this case that give rise to the need for a direction. For this reason no anonymity direction is made.

DECISION AND REASONS

Background

1. The Appellant is a national of Pakistan. He arrived in the UK with leave as a student on 14 March 2011. His leave expired on 23 July 2012. He was encountered and given a notice of his liability to removal on 5 April 2013. He claimed asylum on 2 May 2013.
2. The basis of the Appellant's asylum claim is as follows. He is a Shia Muslim. He was brought up with his family in a predominantly Sunni Muslim village. His father was a farmer and owned land. His father was shot and killed on 23 March 2006. The Appellant believes that the killers were members of the Taliban because his father spoke out publicly against the Taliban and the shooting occurred a few days after a meeting which his father had organised. He reported the crime to local police but no-one was arrested or prosecuted as no witnesses would come forward.
3. Subsequently, the Appellant started making speeches at meetings criticising the Taliban, saying they were enemies of the country and of Islam. After one of those meetings, at the end of 2007, he was kidnapped and beaten by an extremist group.
4. In 2008, the Appellant gave a speech at a meeting. Armed men who he believed to be Taliban and who he believed were targeting him approached the stage. The Appellant managed to escape in the commotion and confusion of the crowd fleeing.
5. The Appellant then went to live in Gujiranwala with a friend. He claims that at some time in 2009, his friend was targeted by the Taliban who were looking for the Appellant and the friend was shot and hospitalised. The Appellant then moved to Lahore where he lived with relatives along with his mother and sister. He lived there for eight months. He claims that, at the beginning of 2010, when giving a speech at Gamay Shah, he saw three men who he thought were Taliban including a man from his village, armed with guns. He escaped.
6. The Appellant also says that he was a member of Tehbeek Nifaz-E-Fiqha Jaffaria party ("TNJ"). The Appellant produced a document dated 8 May 2013 from someone in TNJ stating this and relating some of the events on which the Appellant relies.
7. The Respondent rejected the Appellant's asylum claim in a reasoned decision dated 5 December 2014. She accepted the claim so far as it related to the killing of the Appellant's father in 2006 and the kidnap and beating suffered by the Appellant in 2007 but did not accept the parts of the Appellant's claim recited at [4] to [6] above.
8. The Appellant appealed to the First-Tier Tribunal and his appeal was heard by Judge Wylie on 10 April 2015. The Judge accepted that the Appellant's father had been shot and killed in 2006 and that the

Appellant had been kidnapped and beaten in 2007 but found the Appellant generally not credible. I will return to this below as it is the Appellant's case that the Judge reached inconsistent findings on credibility. The Judge also found that the Appellant could relocate to another part of Pakistan and that there would be a sufficiency of protection on return.

9. In a decision promulgated on 10 June 2015 ("the Decision") the Judge dismissed the Appellant's appeal. Permission to appeal was granted by First-tier Tribunal Judge Cox on 3 July 2015 on the basis that the Judge may have made contradictory findings in relation to credibility and may have erred in her assessment of sufficiency of protection given his acknowledged past problems which may have been at the hands of the Taliban. The matter comes before the Upper Tribunal to determine whether the First-tier Tribunal Decision involved the making of an error of law.

Submissions

10. The Appellant's first ground focuses on the Judge's treatment of credibility. Ms Head submitted that there were contradictory findings in the Decision at [28] where the Judge accepts that the Appellant's father was shot and killed and that the Appellant was kidnapped and beaten by an extremist group and [29] where the Judge notes that the Appellant did not claim asylum for two years after his arrival in the UK, after his leave expired and he was served notice of liability to removal and says that "I did not find the appellant to be generally a credible witness". I pointed out to Ms Head that these two paragraphs were not necessarily contradictory or inconsistent if one looks at the Appellant's claim as a whole. What the Respondent rejected as not credible was events after 2007 and the Appellant's membership of TNJ. If one reads [28] to [39] as a whole, the Decision could be read in the same way. Ms Head accepted that this might be the case but submitted that this was not clear. She accepted also that the findings in those paragraphs were open to the Judge on the evidence.
11. She submitted however that it was not open to the Judge to reject the Appellant's case that the targeting of his father and the kidnap were the actions of the Taliban. Even if the Judge was entitled to disbelieve the targeting by the Taliban thereafter, it was incumbent on her to make a finding whether the Taliban was behind the events in 2006 and 2007 since those were relevant to the Appellant's profile when it came to assessing internal flight alternative and sufficiency of protection. If she did not accept that the Taliban was behind these events, then it was incumbent on her to give reasons for not accepting the Appellant's claim in that regard.
12. Mr Walker in response submitted that the Judge was entitled to take into account the Appellant's immigration history and the lateness of the claim for asylum. The Judge had summarised the reasons for rejecting

the credibility of the majority of the Appellant's claim and those findings were open to her.

13. The Appellant's second ground focuses on the Judge's findings in relation to internal flight and sufficiency of protection. Ms Head referred me to the case of AW (sufficiency of protection) (Pakistan) [2011] UKUT 31 (IAC) and to the expert report produced for the Appellant's case. She referred in particular to [2] of the headnote in AW and [35] and [37] of the decision as authority for her proposition that the Judge was required to carry out an evaluation of the Appellant's individual profile in order to determine whether protection on return would be sufficient.
14. It is in this context, she submitted, that the Judge was required to make a finding whether the targeting which she did accept was at the hands of the Taliban. Even if the Judge was entitled not to accept events post 2007, she submitted, the fact that the Appellant is a Shia muslim coupled with the fact of being targeted by the Taliban in the past was enough to suggest that protection may not be sufficient. She pointed in this regard to page 24 onwards of the expert's report. She also referred me to [35] of that report and the indication from the Respondent's own country information report that levels of violence against Shia muslims in Pakistan have increased from 2011 levels. Ms Head submitted that the Judge's treatment of sufficiency of protection by reference to AW at [44] is simply insufficient even based upon the guidance in AW itself because no consideration has been given to the Appellant's individual profile.
15. Mr Walker submitted that the Judge's finding on sufficiency of protection had to be read in the context of her findings on internal flight. This Appellant had moved within Pakistan and even on his own case had lived in Lahore for a number of months before coming to the UK, apparently without being targeted by the Taliban (if indeed it was the Taliban who had targeted him and his father earlier). Those findings were open to the Judge on the evidence.

Error of Law Decision and reasons

16. Having heard the submissions, I indicated that I reserved my decision on error of law. The representatives agreed that if I found an error of law, the case should be remitted to the First-Tier Tribunal. Ms Head indicated that if I found an error of law only on ground two, there would still need to be further evidence because the Judge had made no clear finding whether the Appellant was targeted by the Taliban in 2007 in the events which were accepted and that finding was central to the consideration of sufficiency of protection and internal flight. Mr Walker asked that, if I did not find an error of law in ground one, the credibility findings should be preserved on remittal.
17. After considering the grounds of appeal and the submissions and evidence, I am satisfied that there is an error of law in relation to ground

two. The Judge has not made any clear finding whether the targeting which she did accept was by the Taliban or given reasons to which she was entitled for rejecting the Appellant's assertion that it was. The Judge may have been entitled to discount the expert report's findings in relation to sufficiency of protection and internal flight to other areas of Pakistan based on that historic persecution particularly if she was entitled to the credibility findings in relation to events after 2007 and the findings therefore that the Appellant had suffered no further difficulties. However, she has not considered the individual profile of the Appellant as a Shia muslim who has (or may have) been targeted by the Taliban in the past.

18. If the Appellant's only ground had been ground one, I would not on that basis alone have found there to be an error of law. Whilst the findings on credibility are not clear, I consider that the Decision can reasonably be read as the Judge accepting the events in 2006 and 2007 but rejecting the Appellant's credibility in relation to what happened thereafter. However, the findings are not clear and a finding will be required in relation to who was responsible for the events in 2006 and 2007. I have therefore decided, since the appeal is to be remitted to the First-Tier Tribunal in relation to ground two, that the Decision should be set aside in its entirety with no credibility findings preserved. I make clear that this includes also the positive credibility findings in relation to the events in 2006 and 2007.

DECISION

The First-tier Tribunal decision did involve the making of an error on a point of law.

I set aside the Decision. I remit the appeal to the First-Tier Tribunal for re-hearing. No findings are preserved.

Signed



Date 21 August 2015

Upper Tribunal Judge Smith