



IAC-AH-DN-V2

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

Appeal Number: AA/11149/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 16th December 2015**

**Decision & Reasons Promulgated
On 17th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

A T

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Thornhill

For the Respondent: Mr G Harrison, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 8th January 1981. The Appellant claimed to have arrived in the UK in 2010 with a valid student dependent visa. This was subsequently extended until June 2014. He was then issued with a 151A detailing that the Appellant had no leave to remain in the UK. Subsequent to that he made a claim for asylum on 18th August 2014. That claim for asylum was based on three factors namely that the Appellant was of the Christian faith, that he had received threats from his brother and that a FIR had been registered against him. By

Notice of Refusal dated 3rd December 2014 the Appellant's application for asylum was refused.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Hands sitting at North Shields on 27th March 2015. In a determination promulgated on 14th April 2015 the Appellant's appeal was dismissed on asylum and human rights grounds and the Appellant was found not to be in need of humanitarian protection.
3. On 21st April 2015 Grounds of Appeal were lodged to the Upper Tribunal. On 6th May 2015 First-tier Tribunal Judge Astle granted permission to appeal. Judge Astle noted that the grounds asserted that the judge had made a mistake of fact that created unfairness and that it was incorrect to say that no-one overheard his argument with his brother. The Appellant's evidence was that there were others present. Judge Astle noted that the judge's finding that his parents continue to practise their faith was unsupported by evidence and it was argued that the judge's approach appeared to be that any documents from Pakistan were unreliable. He noted that the two reports submitted were not inconsistent and that the judge's findings with regard to the warrants were also unsustainable. Further he considered it was arguable that the judge was in error in her treatment of the documents submitted.
4. On 18th May 2015 the Secretary of State responded to the Grounds of Appeal under Rule 24. The Rule 24 response contended that the judge had provided cogent reasoning for rejecting the Appellant's account and noted that it was not suggested that the Appellant's parents did not continue to follow their faith and that it was clear that the Appellant's brother did not seek to convert them. It was accepted that the judge was entitled to conclude therefore that they remain Christians and that the judge was entitled to find that the assault was carried out by the Appellant's brother notwithstanding that the matter then descended into a fracas.
5. I was considerably assisted at the hearing of the error of law by the approach adopted by Mr Harrison on behalf of the Secretary of State who whilst acknowledging that he could not concede there was an error of law in the decision of the First-tier Tribunal Judge acknowledged the forces of the arguments put forward by Mr Thornhill and would not wish to put further opposition to them. Those arguments were that at paragraph 21 of the determination of the First-tier Tribunal Judge where he set out various breaches of the Appellant's case which are said to go to his general credibility, there were mistakes of fact which have created unfairness. This appears to have been apparent by the manner in which the judge dealt with the events of 21st September 2013 when the Appellant and his brother were involved in the violent argument and, at paragraph 27(g), where there was speculation that the Appellant's parents continued to practise their faith, notwithstanding that in his asylum interview the Appellant had described how his father was frail, disabled and bedridden and that his mother too was frail, suffers from hearing loss and that harmony had existed in the household for many years even though the Appellant's

brother had converted to becoming a verdant Muslim. I accepted the contention put forward by Mr Thornhill that that finding was unsupported by the evidence.

6. Further I accepted, and this appeared to be the main failing of the determination, that the First-tier Tribunal Judge fell into error by making a mistake which led to unfairness at paragraph 21(i) and whether weight should be attached to the documentary evidence at paragraph 21(j).
7. I consequently set aside the decision of the First-tier Tribunal and gave directions for the re-hearing of this matter. It was agreed between the parties that albeit none of the findings of fact were to stand this case should be retained by me in the Upper Tribunal. The matter came back before me on 29th September when it was adjourned due to a service of a document verification report dated 29th September 2015 and the Secretary of State's acknowledgement that such service did not give the Appellant's legal representative sufficient time to respond/investigate.
8. It is on that basis that the appeal comes back before me for re-hearing. The Appellant is represented by his instructed solicitor Mr Thornhill. The Secretary of State by Mr Harrison. I am assisted in this matter by the fact that both Mr Thornhill and Mr Harrison have appeared in this matter previously and consequently are fully conversant with the facts and issues.

Evidence

9. Mr Thornhill advises me of the additional evidence produced in this matter consisting of objective evidence by way of a report from the Immigration and Refugee Board of Canada and an extract from the Express Tribune with the International New York Times. In addition I am referred to subjective evidence being the medical report of Dr Kokri dated 26th October 2015, the translated letter from the Appellant's advocate in Pakistan, Shazia Gulzar, and the communication from the Court of District and Session Judge Faisalabad dated 4th November 2015 along with the statement of the Inspector at Saddar Samundri police station dated 2nd November 2015. I note these documents are used along with English translations and evidence of courier packaging.
10. The Appellant attended and gave evidence. He confirmed and adopted his witness statement which dates from 10th March 2015. Save for one typographical error at page 4 referring to the conversion of his brother to the Muslim rather than Christian faith he confirms that witness statement as his evidence-in-chief. He confirms that the original documents relied upon were submitted at the beginning of his asylum interview and that they are still held by the Home Office. He confirms that Shazia Gulzar is his solicitor in Pakistan and he confirms and identifies the original documents referred by his solicitors and now produced before the Tribunal. He advises that Shazia Gulzar is a Christian lawyer and that this lawyer was originally instructed through the assistance of his friend Nazir.
11. The Appellant was cross-examined by Mr Harrison. The Appellant advises that the documents produced from Pakistan via Shazia Gulzar had not previously been seen

by him or any of his family. He advises that he had seen a copy of the arrest warrant but only with the documents that are now produced. When asked as to whether any members of his family had seen the arrest warrant in Pakistan he responds that the police had been visiting his parents' home and although his father had died in April 2015 they still visited and that his mother had been told of the warrant. He was apparently further told that there was a warrant for her despite the fact that she is old, disabled and unable to see.

12. Mr Harrison enquires as to whether the Appellant has done any research into Shazia Gulzar. The Appellant states that she is a solicitor in the District Court and that he is aware that she is a Christian. He states that he came to know about her because his English solicitors advised that if he could obtain documents through a Christian solicitor that would be helpful and consequently his friend Nazir contacted her and asked her to prepare and obtain these documents which she did by making an application to the court. He states that she has two offices one being her principal office but also a chambers and that he knows that because he made enquiries himself through other solicitors in Pakistan. He re-emphasises the fact that the suggestion that he should have got a Christian solicitor stems from an original prompt from Mr Thornhill.
13. The Appellant advises that he was aware of his brother's conversion to Islam in about 2005 when he (the Appellant) was still in Pakistan. He advises his brother started pressurising him to convert in about 2006 when his brother started to have links with terrorist organisations. The Appellant continued to reside in Pakistan between 2006 and 2010 but not with his parents because of death threats that were being made to him primarily due to his failure to convert to Islam. He confirms that he married in 2008 but it was decided that she would come to the UK to study. He agrees that both he and his wife made that decision prior to their marriage and that she had borrowed money from her father towards this. He states that he was unable to assist because he was studying and whilst working it was only in a small job and that his wife came to the UK in 2007 as a student. They married in 2008 back in Pakistan and she remained in Pakistan for some three weeks.
14. The Appellant states that he applied to come to the UK in about 2009 but eventually left in 2010. When he left he was still receiving regular threats from his brother asking him to join his organisation. The threats that he received included those stating that unless he converted to Islam his brother would arrange for his belongings to be thrown out of his home despite the fact that both his parents were Christian and he had been brought up as a Christian. He acknowledges that he has three other brothers (all older) and three sisters and states that they were not targeted because they had already moved out of his parents' home.
15. The Appellant confirms that the threats made against him were at the highest level indicating that for example a threat he received from his brother was that if he did not convert he would "go to hell". This culminated in a family visit in September 2013 which led to a fight and allegations were made against him by his brother who

went to the police station and made a formal complaint that the Appellant had been disrespectful of the prophet Muhammad.

16. When asked if before 2013 either his wife or children (now aged 4 and 2) had been threatened with physical violence or death the Appellant responds that because of the threats made to him she was very concerned particularly bearing in mind that his brother was trying to force him to accept the teachings of the prophet Muhammad and was also mentioning the terrorist organisations which he belonged to. He states they had an ongoing dispute and his brother asked him to abandon Christianity. He states that he advised his brother that belief in Muhammad was false and that he believed in Christianity and this then led to his being physically assaulted by his brother. Thereafter his brother went to the mosque and said that he had insulted Muhammad and people were looking for him telling him that they were going to kill him and he was forced to escape. He advises he was afraid that he would be killed because there had been other incidents like this in the area, particularly bearing in mind that his brother had joined an extremist organisation, although so far as he is aware, his brother had himself never actually killed anybody.
17. The Appellant emphasises that when this happened he did not only believe that he was going to be killed by his brother but that the other Muslims who had gathered with him were likely to do so and in the light of the threat from what he considered to be a mob who were out looking for him he managed to escape and got back to the UK arriving on 26th September 2013.
18. The Appellant confirms that his wife had applied for an extension of her visa in 2014 and that was refused and that the Appellant was issued with IS151A on 14th June 2014. He confirms that only when he received that notice did he claim asylum. He states that he did not claim asylum immediately upon his return from Pakistan because at the time he was dependent upon his wife and he was not aware of the asylum procedure. Mr Harrison comments to the Appellant that he finds that difficult to believe bearing in mind that the Appellant is an intelligent man with a good command of English and has a Bachelor of Arts degree. The Appellant responds by stating that on his return he was aware that there was a concept of asylum but firstly he did not know how to go through the process, secondly he felt that once he was in the UK he was safe and thirdly he concentrated on helping his wife look after the children.
19. Mr Harrison enquires as to the Appellant's employment in the UK. He confirms that when he first arrived in 2012 he worked for KFC and thereafter in a care home looking after elderly people. He confirms that he has had some medical treatment in the UK having an operation some three years ago and that his daughter has had treatment in the UK having been born with a hole in her heart. Fortunately she is making good progress and she is monitored every six months and at the date of the re-hearing of this appeal she is aged 2¹/₄. He advises that the doctors have told him that they would only operate upon her if the hole gets bigger. He confirms his wife has not attended to give evidence - stating this is on the advice of his solicitor - and that she is at home in Middlesbrough with the children.

20. Mr Thornhill had no re-examination. I posed some further questions to the Appellant enquiring as to whether he had contact with his mother. He states that he is unable to contact her and that all contact he has made has been through the community. He states that his brother lives in the house with her but that he does not look after her and she is dependent upon the local community and one of her daughters. He admits to having contact with his sister who helps in looking after his mother. Finally he confirmed that his wife when studying in the UK was studying business management and that she completed the course and that her status within the UK is now dependent upon the Appellant's asylum claim.

Submissions

21. Mr Harrison relies on the Notice of Refusal of 3rd December 2014. He submits that there are no direct physical threats being made to the Appellant or his family but that the threats are localised and consist of a family dispute with his brother. He further emphasises that there is only one member of the family namely the Appellant whom his brother has tried to convert. He emphasises that the Appellant had left Pakistan for the UK with his wife who wanted to carry on studying and that the Appellant returned to Pakistan and the incident occurred and in the ensuing argument allegedly reference was made to the prophet Muhammad and his brother purportedly ran off to the mosque contending to the attendees that the Appellant had blasphemed the prophet. He submits that once that had happened the Appellant left Pakistan and did nothing regarding the threat. He points out that only when the Appellant's wife was refused an extension to her visa and the Appellant had been issued with IS151A that he made his application. Mr Harrison relies on *TP (Credibility) Zimbabwe [2004] UKIAT 00159* as a basic general premise. Within that authority he points out that the Tribunal was entitled to reject an asylum claim purely on the basis of the Claimant's immigration history without considering the substance of his claim at all drawing the comparison that in *TP* the Appellant had failed to claim asylum for over a year after arriving in the UK and did not do so until he was arrested and told he would be deported. He contends a similar scenario applies in this case. He submits that the Appellant's other good reasons in which he would wish to stay in the UK are namely that he has two children who could be educated in this country and that one child has a serious heart condition. He further points out the Appellant has been in employment and that his daughter would be entitled to free medical treatment for her heart condition in the UK but that he would have to pay in Pakistan. He asked me to dismiss the appeal. He points out that I am not required to deal with any application pursuant to Article 8 on the basis that none is pursued within the appeal process.
22. In response Mr Thornhill acknowledges that whilst in Pakistan the Appellant could "just about tolerate his elder brother." He points out that the Appellant distanced himself from his brother by moving to the nearest largest town and that although threats were made against him nothing came to physical harm but that his family had said that he could move away completely.

23. Mr Thornhill refers me to paragraph 17 with regard to the timing of the Appellant's asylum claim and the fact that it would be considered a late application. He points out that the Appellant's testimony has never altered and that he has been completely up front as to the approach that he adopted. He has set out at paragraph 17 why he took that decision. He has set it out in some detail. He contends that that was a reasonable decision for the Appellant to take even if with hindsight it could be contended that that was not the right decision. Mr Thornhill accepts that the Appellant has returned to Pakistan but then an argument arises and he is accused of blasphemy. He emphasises that the First Information Report is not a false one as is often suggested in asylum appeals. It is accepted he contends that the Appellant said certain things which you are not able to do in Pakistan. He points out that the Notice of Refusal does not deal with documents. Albeit that it was wrong for it not to give regard to the translations he acknowledges that perhaps at that time the author was unable to do so because the translations were not before him. So far as the document verification report he notes that the Secretary of State merely relies on telephone calls and a report writer in their contention that the report is not genuine. He reminds me that the Home Office have to prove to a high degree of probability that it is a false document. He emphasises the Appellant has now through his Christian lawyer produced further evidence and that there is substantial evidence now before the Tribunal to show that those documents are genuine and indeed that Mr Harrison on behalf of the Secretary of State has not sought to challenge him. He points out that the documents have upon them the seal of the police station. He enquires as to how we get therefore a conflicting view on the First Information Report. He points out that is the only evidence produced from the Home Office. There is nothing produced from the visa office from the District Court in Faisalabad so the Tribunal is left with the situation where a professional advocate has provided information which in theory the Home Office are suggesting must be false. He submits that the threshold that the Secretary of State needs to reach has not been made out. He submits that the documents produced are genuine, that the Home Office have not made out their case and he asked me to allow the appeal.

Findings

24. I start by reminding myself that the burden of proof in asylum cases is on the lower standard. Further it is necessary to consider a proper approach to the credibility in this matter. A proper approach to credibility requires an assessment of the evidence and of the general claim. In asylum claims, relevant factors are firstly the internal consistency of the claim; secondly the inherent plausibility of the claim; and thirdly the consistency of the claim with external factors of the sort typically found in country guidance. I accept that it is theoretically correct that a Claimant need do no more than state his claim but that claim still needs to be examined with consistency and as to inherent plausibility. In nearly every case external information against which the claim could be checked is available.
25. That would appear to be the case in this appeal. I have had the benefit of hearing the Appellant's evidence under cross-examination. The Appellant has answered the questions clearly and has not deviated from the evidence produced in his witness

statement. It is to the credit of Mr Harrison that he has not sought to suggest that the Appellant has done so. Further it has to be remembered that the evidence before me is considerably different on this re-hearing than that that appeared before the First-tier Tribunal Judge. Whilst I accept that there is a document verification report the requirement from the Secretary of State is to a very high standard and that, I am satisfied, has not been discharged. I have been shown the letter from Shazia Gulzar and the arrest warrant issued out of the Saddar Samundri police station in Faisalabad. That evidence is supported insofar as the envelopes in which they were sent to Mr Thornhill have been produced. That evidence has been obtained at the recommendation of Mr Thornhill who is a much respected and competent practitioner. I find that evidence compelling. It is supportive of the position in which the Appellant finds himself.

26. I acknowledge that the Appellant could be strongly criticised for the timing of his appeal. He has deferred making that appeal until served with notice of deportation. The delay is not in his favour but I am persuaded having heard his testimony there was good reason for that as set out in paragraph 17 of his witness statement. I further acknowledge that it could well be construed that the Appellant has other reasons for wishing to stay in the UK namely the unfortunate position regarding his daughter's health and the fact his family are now established in the UK and would wish to remain. I note however that no effort is made to bring this claim pursuant to Article 8 of the European Convention of Human Rights. Mr Thornhill puts his client's case solely on the risk that he would have on return.
27. I am satisfied that that is a real and genuine risk. I am satisfied that to the lower standard the Appellant has discharged the burden of proof. He has never veered from the threats he has received from his brother. I totally accept that if this were purely a case of a property dispute or a family dispute then the Appellant would not be in a position to sustain an asylum claim. However that no longer remains the position. This is an Appellant who has been accused of blasphemy of the prophet Muhammad. I accept that he was pursued by a mob. He managed to escape from that mob and returned to the UK. He has not returned to Pakistan since then. Subsequent to the accusation of blasphemy the Appellant has produced evidence of an arrest warrant obtained against him by a Christian lawyer in Pakistan. No evidence is produced by the Secretary of State discrediting the genuineness of that lawyer and I am, despite the document verification report, prepared to accept having seen that that document was sent in envelopes from Pakistan by the lawyer that those documents are genuine and that the research has been carried out and the evidence obtained by Shazia Gulzar.
28. In the light of same I am satisfied for all these reasons that the Appellant has a genuine fear of persecution for a Convention reason and that the Appellant is entitled to succeed in his claim for asylum. The Appellant's appeal is consequently allowed. It is accepted by the Secretary of State that any claims pursuant to Articles 2 and 3 of the European Convention of Human Rights rise and fall on the asylum appeal and they too are therefore subsequently allowed.

Notice of Decision

The Appellant's appeal is allowed on asylum grounds.

The Appellant is not entitled to humanitarian protection.

The Appellant's appeals are allowed pursuant to Articles 2 and 3 of the European Convention of Human Rights.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT

FEE AWARD

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris