Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07134/2016

THE IMMIGRATION ACTS

Heard in Birmingham	**Decision & Reasons Promulgated**
On 3 August 2017	**On 10 August 2017**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

M G

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Ahmad, Ahmad & Williams solicitors
For the Respondent: Mr Mills, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Although an anonymity order was not made by the First-tier Tribunal, this is an appeal on protection grounds. It is therefore appropriate to make an anonymity order. 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, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

The Appellant's claim and Respondent's refusal

1. The Appellant appeals against the decision of First-tier Tribunal Judge Juss promulgated on 7 February 2017 ("the Decision"). By the Decision the Judge dismissed the Appellant's appeal against the Respondent's decision dated 29 February 2016 refusing his protection and human rights claim. The appeal to this Tribunal relates only to the protection claim.

2. The Appellant is a national of Pakistan. He arrived in the UK on 6 October 2007 as a student with leave which was extended until 2012. Thereafter, he overstayed. An application made on human rights grounds was refused on 10 February 2013. On 29 January 2016, the Appellant was encountered by the police who discovered that he was an overstayer. He then claimed asylum on 30 January 2016.

3. The core of the Appellant's claim is that, in 2001, his parents arranged for him to marry his maternal cousin. He did not wish to marry her because he was concerned that she and her family were not of good character. When her family asked for a date to be set in January 2003, the Appellant refused and said that he wished to continue with his education. He claims that he was then attacked by the girl's father, the Appellant's uncle, MA and the girl's brothers. He claims that the attacks occurred in February 2003 and April 2005. He claims that he was threatened again by one of the brothers in September 2007 whereupon he left Pakistan and came to the UK.

4. It is the Appellant's case that MA, his uncle, held a position of influence because of his links to the "noon league (called Muslim League N)" (asylum interview Q23). It is said that the uncle used to organise meetings for the party locally and, because of his links with politicians in that party, the Appellant claims that MA holds a position of influence throughout Pakistan and over the police throughout that country.

5. The Appellant also says that he was disentitled by his father in 2011 and has produced a "disentitlement deed". He says that he came to know about the disentitlement only in 2015 when he spoke to his sister.

6. The Respondent roundly disbelieved the claim. She did not accept that the Appellant was at risk from his uncle and cousins as claimed. She also did not accept that the uncle had the influence claimed for reasons given at [21] to [31] of the refusal letter. She pointed out that, in any event, the persons who the Appellant claimed to fear were non-State agents. Although sufficiency of protection and internal relocation were not considered in detail in the letter (because the claim was not accepted as credible), it is clear from the tenor of the letter that she took the view that those considerations would have been a complete answer to the claim even if believed. The Respondent also drew attention to the Appellant's delay in making his claim for asylum.

7. As to the claim to have been disentitled by his family, the Respondent considered the document produced and applied the Tanveer Ahmed principles before going on to say this:

> "[42] There is no reason to doubt the validity of the document; therefore weight can be placed on this document. Therefore considering the low standard of proof required in asylum claims it is accepted that you have been disentitled by your father."

Grounds of appeal, permission grant and submissions

8. As I pointed out to Ms Ahmad when she sought in submissions to rely only on her grounds, the terms of the permission grant do not appear to coincide with the grounds of appeal.

9. The focus of the grounds of appeal is to be found in the following paragraphs:

> "[4] The IJ has considered the oral evidence and the justification provided by the Appellant for not claiming asylum in 2011/12. The Appellant stated when giving oral evidence that his family disowned him in 2011/12 but it was not the only reason to claim asylum. The Appellant stated that his family disowning him along with the threats from local Pakistan Muslim League party made him claim asylum in the UK. The Appellant stated that he received threats from Muslim League Party due to which he claimed asylum in the UK.
>
> [5] Furthermore, the IJ has not taken into consideration the objective evidence. The Appellant's documentary evidence along with objective evidence, when considered together would be a compelling evidence."

10. Permission to appeal was granted by First-tier Tribunal Judge Scott Baker on 6 June 2017 in the following terms (so far as relevant):

> "[3] The respondent accepted at [54] of the refusal letter that the appellant had been disentitled by his father. The veracity of the disentitlement document produced in 2011 was accepted at [42] of the refusal letter. There was seemingly no challenge in the refusal letter to the appellant's evidence that he had heard about this in 2015.
>
> [4] The determination is succinct and there is no reference in the body of this document to the acceptance of this document by the respondent. Accordingly the findings made by the judge are tainted by this omission in failing to note this acceptance. The judge is clear at [17] that he found the claim to be a complete fabrication. Such finding was not open to him on the evidence as presented by the parties."

11. Although Mr Mills submitted that permission was therefore only granted on that narrow ground and I should not consider the wider grounds as pleaded, I allowed Ms Ahmad to develop her submissions in relation to the grounds as a whole, particularly since permission is not refused expressly on the grounds as pleaded.

12. Ms Ahmad's submissions can be summarised as follows. First, she said that the Judge has failed to consider that the Appellant also claimed to fear the Muslim League. Second, she said that the Judge has failed to consider whether the Appellant's uncle did hold the influential position which the Appellant claimed and the Judge has simply adopted at [16] of the Decision the Respondent's reasoning on this aspect. Third, she said that the Judge has ignored the background evidence produced in relation to honour killings. Fourth, she said that the Judge has made factual errors in reciting the background to the claim which had tainted his consideration of the delay in the Appellant making his claim. Finally, in her reply she addressed the point made by the FTTJ when granting permission. She said that since credibility was fundamentally at issue, it may have made a difference if the Judge had recognised the Respondent's acceptance of the "disentitlement deed" as genuine.

13. As I note above, Mr Mills said that I should deal only with that latter point since that is the only point on which permission is granted (although that point is not referred to at all in the grounds). Although Mr Mills said that the "concession" that the disentitlement deed is genuine may be slightly generous given that the document had to be assessed on the evidence in the round and the Appellant had otherwise been disbelieved, he did not seek to withdraw that concession. He said though that it was not binding on the Judge if, having heard the evidence, the Judge was not persuaded that the concession was rightly made. He also accepted that the Judge has not in fact made any finding one way or another whether that document was genuine. He also submitted that the document is not central to the Appellant's claim. The fact that the Appellant may have been disentitled by his father was not his reason for claiming protection.

14. In relation to the grounds and the core of the Appellant's claim, Mr Mills pointed out that, even if the facts of the claim were true, the Appellant would also have to show that (a) he would be at risk some fifteen years after he claimed to have refused to marry (b) that there is no sufficiency of protection from the authorities in relation to the threat and (c) that he could not move to another part of Pakistan to avoid the threat. Mr Mills also submitted that the Judge has not erred in adopting the Respondent's reasons in rejecting the Appellant's claim about his uncle's position of influence. Provided he considered the claim for himself, the Judge was entitled to adopt those reasons. He pointed out by reference to the asylum interview record that the Appellant was unable to give any detail about his uncle's position and why it is claimed that he is so influential. On the Appellant's own case, the uncle is a retired civil servant who volunteered for a political party locally. There is no corroborating evidence about his uncle's position.

Decision and reasons

15. I begin by dealing with the point on which permission was granted. As to the Respondent's position in relation to that document, I have set that out at [7] above. In fact, contrary to Mr Mills' submission, what the Respondent says does not appear to me to be a concession at all. The Respondent has simply

said that she does not disbelieve the document because there is no reason to do so. She does not say in terms that she accepts it to be genuine. She merely accepts what the document records as true because there is no reason to doubt the document and there is a low standard of proof. In my estimation, that indicates that the Respondent considered the evidence to fall into that "Karanakaran" category of evidence which is not definitely accepted or rejected but rather evidence about which she is unsure and which is not therefore discounted when considering the entirety of the claim.

16. Further, I accept Mr Mills' submission that the disentitlement claim is not the core of the Appellant's case. The document reads as follows:

> "On oath I [name and address of father] stated that I have two sons and five daughters among them one G M who is disobedient to my family and elders. The situation has gone negative to the roots of respect of my family. G M has acrossed the limitations of God Almighty. He is not obeying my single order, included of solemnizing his marriage according to my will. In these circumstances I have disentitled him by my moveable and immoveable property. I also state that I am not responsible for any act done by G M (my son) perspective and retrospective and in future."

17. Taken at its highest, the document may corroborate the Appellant's claim that he was told by his parents to marry and that he disobeyed. It does no more. But the Appellant does not claim to fear his father. He claims to fear his uncle and cousins who he says, in effect, sought retribution for dishonouring their daughter/sister. The document says absolutely nothing about this.

18. The Judge summarised the Appellant's case at [3] of the Decision. The disentitlement is no part of that claim as summarised and rightly so. It is then that claim which the Judge rejects at [17] of the Decision as a "complete fabrication". Although the Judge does record at [8] of the Decision, the submission for the Home Office that even the unwanted arranged marriage in 2001 was not credible (suggesting that the Home Office itself had departed from acceptance of the deed), the Judge made no finding on that submission. There is therefore no rejection of the claim that the Appellant had refused to marry his cousin or that his father had therefore disentitled him. It was though not relevant to the claimed risk which came on the Appellant's account from his uncle and cousins. A Judge is obliged to make findings on the central claim but not on peripheral matters which have no relevance to the core of that claim.

19. I turn then to the Appellant's grounds and submissions, on the assumption that the Appellant has permission to argue those. As to the assertion that the Judge failed to consider the Appellant's claim to be at risk from the Muslim League, I asked Ms Ahmad to direct me to the evidence which set out that claim as the interview record is clear (Q16) that the Appellant only claimed to fear his uncle and cousins as a result of his refusal to marry his maternal cousin. Although Ms Ahmad pointed me to the questions and answers which follow at [Q20] to [Q24], I noted that those concerned the

uncle's position of influence arising from his association with the Muslim League and did not indicate a fear of the Muslim League itself which Ms Ahmad was constrained to accept.

20. If it is being suggested that the claim of a fear of the Muslim League materialised only in the oral evidence at the hearing (which would, in itself, cast significant doubt on its veracity), then I would have expected a witness statement, preferably before but certainly with the grounds, setting out the claim which it is said was made. In the absence of evidence that the Appellant was claiming to fear the Muslim League (as opposed to fearing his uncle who may be a supporter of that party), the Judge clearly did not err in failing to consider it.

21. In relation to the Appellant's uncle's supposed position of influence with the Muslim League, the Judge dealt with this as follows:

> "[16] Fifth, there is the expressed fear of harm from [M A], who it is said gives his support to the Muslim League (Noon) Party. As the Refusal Letter (paras 22-25) makes it only too clear, he works in the Tax Office, and has no official political standing of his own and the suggestion that in these circumstances the Appellant could not invoke state protection in Pakistan against what are non-state agents of alleged persecution (where the Refugee Convention is not even engaged) is fanciful."

22. I accept that the Judge is required to consider for himself the various elements of the protection claim (so far as relevant). However, as Mr Mills noted, on this point, the competing evidence was that the Appellant knew nothing about his uncle's role with the party, his associations with politicians (only one of whom he could name) or how he had gained those links ([Q20] to [Q24] of the asylum interview). As to the links with the police, the Appellant's answer at [Q50] appears to suggest that the uncle's influence over the police is demonstrated because the uncle's family are always fighting and therefore get reported to the police but they are then bailed rather than detained. The Respondent dealt with that aspect of the claim at [21] to [31] of the refusal decision. As she pointed out, the Appellant's claim in this regard was devoid of any detail. She also pointed out that if the uncle was as influential with the police as claimed, then there would be no investigations or detentions. The fact that the family members were later bailed indicated only that there is a "due process in place". If the Judge accepted the force of the Respondent's position on this aspect, as he clearly did, he was entitled to rely on that rather than repeating what is said in the letter.

23. As to the background evidence, it is incorrect that the Judge did not refer to it. At [17] of the Decision, he said this:

> "[17] Finally, it follows that any reference to such other 'objective evidence' as the BBC Report (at p6) dated 1st April 2016 stating that Honour killings are on the rise of the CIPU Report (at pp11-33) is oitiose in the context of the appellant's claim....."

In circumstances where the Judge provided adequate reasons at [12] to [16] of the Decision for finding the claim not to be credible, it was not incumbent on him to go further.

24. In any event, the Judge found at [16] of the Decision that the Appellant's uncle does not have the influence which he claimed. I have already explained why that finding is one open to the Judge. Even if the Appellant's claim were otherwise credible therefore, it would fail because there would be a sufficiency of protection. Ms Ahmad sought to persuade me that, even in this regard, there would be a need to consider the background evidence and she drew my attention in this regard to [2.2.6] of the Country Information and Guidance Pakistan: Security and humanitarian situation report dated November 2015. That though does no more than state that there is caselaw finding that there is generally sufficient protection in Pakistan but if there are circumstances requiring additional protection, then caseworkers must consider whether the authorities can provide the additional protection which the particular circumstances require on an individual basis. That is of no conceivable relevance, particularly given the finding about the (lack of) influence which the Appellant's uncle holds.

25. Finally, I accept Ms Ahmad's submission that there are some unfortunate factual errors at [2] of the Decision where the Judge recites the factual background to the case. I accept that the Appellant arrived as a student not visitor. It is though clear from [12] of the Decision that when the Judge came to make his findings, he was cognisant of that fact. Similarly, although the Judge states at [2] that the Appellant's leave was valid until 31 October 2010, it is clear from what is said at [14] that he was aware that leave was extended until 2012. The date of the asylum claim is also incorrectly stated at [2] of the Decision as 31 October 2010 but since that follows a reference to the Appellant being encountered on 29 January 2016 and being said to have claimed asylum "the next day" (which must therefore be 30 January 2016 and correct), that makes no material difference.

26. Ms Ahmad sought to persuade me that in fact the Appellant had an application outstanding after 2012 and therefore there was no reason to claim asylum earlier than he did because he could not be removed. That might have some potential implications for what is said about delay in the Judge's reasons. It is, however, clear from the Respondent's refusal letter that the Appellant's last application was made outside the Rules on 10 January 2013 (his leave as a student having expired on 17 December 2012) and was refused on 10 December 2013. Ms Ahmad submitted that there was thereafter an administrative review against that decision which remained pending and therefore prevented the Appellant's removal. However, leaving aside that there is no right of administrative review against a decision made outside the Rules (at most this could be an application for reconsideration), there is absolutely no evidence of such an application. The Appellant's leave had expired in any event on 17 December 2012. He was thereafter liable to removal as an overstayer.

27. Further, and in any event, none of this could make any difference to the Judge's reasons based on the delay at [13] and [14] of the Decision. As I have already noted, the asylum claim is predicated on a fear from the Appellant's uncle and cousins who were said to have attacked him in the past. That would be a claim which would have been evident to the Appellant from the outset. The claimed delay in being informed about the disentitlement made no difference to the timing in relation to the core of the claim. Further, as the Judge notes at [14] of the Decision, even on the Appellant's case that he learned of the disentitlement only in 2015 and that this was the trigger for the claim, there was no explanation for delaying making the claim until January 2016 after the Appellant was encountered by the police.

28. For those reasons, I am satisfied that the Decision did not involve the making of a material error of law. The Judge reached findings which were open to him on the evidence before him and were sufficient and adequately reasoned. I therefore uphold the Decision.

DECISION

The First-tier Tribunal Decision did not involve the making of a material error on a point of law. I therefore uphold the First-tier Tribunal Decision of Judge Juss promulgated on 7 February 2017 with the consequence that the Appellant's appeal is dismissed.

Signed Dated: 9 August 2017
Upper Tribunal Judge Smith