Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06825/2017

THE IMMIGRATION ACTS

Heard at HMCTS Employment Tribunals Liverpool	**Decision & Reasons Promulgated**
On 12th September 2018	**On 25th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR SYED FAIZAN ALI NAQVI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms C Warren (Counsel)
For the Respondent: Mr A Tan (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Bradshaw, promulgated on 24th April 2018, following a hearing at Manchester on 12th April 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, and was born on 19th September 1993. He appealed against the decision of the Respondent dated 5th July 2017, refusing his claim for refugee status and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The Appellant entered the UK in February 2014 with a visa as a Tier 4 Student. He had various extensions of stay. Some three years later, on 11th January 2017, he made a claim for asylum. The essence of his claim is that he fears religious opponents in Pakistan, his uncles, and his ex-girlfriend's family because of his religious beliefs and alleges that there is no protection for him from the authorities there.

4. The Appellant is a Shia Muslim. He had an affair with a girl who belonged to a family of Wahabi Muslims. Her name was [AK]. The affair was from 2011 to 2013. In 2012, when he was 19, he gave lectures criticising Salafi (Sunni) ideology. In October 2013 a jirga meeting was held. The jirga decided he should be killed for blasphemy. His father disagreed with the jirga. The Appellant did not go to the police to complain about the threats or the jirga decision against him. His father and his maternal grandfather were powerful and so no harm came to him during the lifetime of his father and grandfather out of deference and respect to them. The Appellant returned to Pakistan in December 2016, and on 22nd December 2016 he alleges he gave a lecture that he had been preparing for two years in a local mixed faith mosque. Subsequently he was attacked by unknown men who attempted to kidnap and kill him. He was taken to hospital. It is against this background that he claimed asylum.

The Judge's Decision

5. Judge Bradshaw dismissed the appeal on the basis that, although there was no requirement that the Appellant corroborate his evidence, it was significant that he had produced no written evidence at all to support his claim that there was a jirga meeting or about its outcome. The judge held that, "most importantly he has produced no documentary evidence at all of any of his lectures merely telling me that he had these at home so he clearly could have" (paragraph 56). The judge also held that the Appellant was, "inconsistent and vague about the attack in December 2016 and he speculates about who attacked him" (paragraph 57). The judge was not satisfied about the truthfulness of the Appellant's claim or the risk that he complained about.

Grounds of Application

6. The grounds of application state that the judge failed to make a finding on the gunshot wound that the Appellant had despite the evidence. She also failed to make a finding on whether the Appellant's injuries were in fact

sustained. Moreover, the judge failed to make findings on other issues which were relatively central to the Appellant's claim, and also unlawfully required corroboration, which was not necessary in a protection claim.

7. On 26th June 2018, permission to appeal was granted by the Tribunal with the observation that, "in an otherwise careful and well reasoned decision and reasons it is nonetheless arguable that the judge, despite finding much of the Appellant's evidence vague, failed to make specific findings on the core aspects of the Appellant's case" paragraph 3.

Submissions

8. At the hearing before me on 12th September 2018, Ms Warren, appearing on behalf of the Appellant, carefully and methodically took me through the grounds of application. She submitted that there were no clear-cut findings made by the judge on core matters raised before her. For example, there is a heading towards the end of the determination of, "My Findings". However, the judge does not make findings here to begin with. What she does is to set out the evidence, referring to the submissions made before her by the representatives. This section includes submissions of the representatives, assertions by the judge, and then a few conclusions. It is not clear what the judge concluded upon.

9. The Appellant's claim consisted of giving a controversial lecture which was critical of Wahabist teachings; being attacked two days later; sustained trauma to the head and a gunshot wound to the leg; and in addition, he had produced a FIR dated 26th December 2016, together with two newspaper reports detailing the nature of the attack, as well as an injury report signed and dated by Ahmad Barr. However, the judge made no findings with respect to the Appellant's injuries (at paragraph 26) and went on to criticise the injury report (at paragraph 65) without making any findings about the injuries themselves.

10. This is despite the judge stating (at paragraph 69) that "the medical report from the hospital merely confirms a wound to the head and a wound to the left calf …". Indeed, the judge failed to make any finding as to whether the two injuries were in fact sustained and as to the causation behind those injuries. The judge also failed to make findings on whether the Appellant was subject to a jirga decision as he claimed in October 2013, and whether he was an anti-Salafist as he claimed. Moreover, the judge wrongly went on to require corroboration of the evidence (at paragraph 56).

11. The judge did not heed the strictures in **TK (Burundi) [2009] EWCA Civ 40**. Ms Warren submitted that the proposition in that case was that, "where evidence to support an account given by a party is or should be readily available, a judge is, in my view, plainly entitled to take into account the failure to produce that evidence" (see paragraph 16). However, submitted Ms Warren, the critical reference here was to the evidence being "readily available", and there is no reason to assume that

either the jirga decision, or the lectures which the Appellant had been preparing, should be evidenced through documentation.

12. Finally, all of these matters assumed a greater importance when it was recognised that the judge had concluded that,

> "I accept that the UNHCR Report does indeed recount criticism of the Pakistani government for failing to protect Shi'ite Muslims from attacks and for allowing militant organisations to operate with impunity but failing to investigate and punish those responsible for violent attacks against Shi'ites" (paragraph 66).

In these circumstances, it could not be said that the Appellant was not at risk of ill-treatment or persecution.

13. For his part, Mr Tan submitted that there was no error of law on the part of the judge. He submitted that the judge had made it quite clear, for example, that corroboration was not required (at paragraph 56), but the fact was that the Appellant had been preparing his lectures for some two years, and it was quite improbable that there would not be any documentation of these lectures, which the judge had independently been sceptical of. It was not the case that the judge had not come to clear findings. The judge had rejected the Appellant's claim in every fundamental respect and had concluded that the Appellant was "inconsistent and vague about the attack in December 2016 and he speculates about who attacked him" (paragraph 57). Finally, the judge in any event, ended with the observation that if she was wrong about her conclusions, that in any event there was sufficiency of protection to the standard required in Pakistan which one can expect of the state (see paragraph 69).

14. In reply, Ms Warren submitted that one could not confidently assert that the state would provide protection from non-state agents of persecution given what had been said at paragraph 66, namely, that the UNHCR itself had recognised that the Pakistani state was failing to provide protection to Shi'ites.

No Error of Law

15. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. Notwithstanding Ms Warren's careful and well structured submissions before me, I do not accept that anyone reading this determination can have any doubt as to why the judge refused the Appellant's appeal. I not that under the heading "My Findings" (at paragraph 34) the judge does set out what both representatives submitted before the Tribunal of fact at that time (see paragraphs 36 to 37). However, what the judge is doing here is plainly setting out the central aspects of the appeal, before going on to making firm findings under a paragraph, which is clearly signposted with

the assertion that, “the Appellant’s credibility is damaged by a number of factors” (paragraph 38). The judge then goes on to give her findings. Practically every relevant matter is then concluded upon with the necessary clarity expected of a fact-finding Tribunal.

16. Thus, the judge concludes that the Appellant did not claim asylum on first arriving in the UK, despite claiming to have had threats to kill him. The judge explains that the Appellant’s account was inconsistent. He had come on a student visa and he had actually said that his father had agreed that he should have a foreign education. This is despite also stating that the father opposed the jirga decision and that is why he sent him to the UK. But even so, the judge makes it quite clear that the Appellant, “then returned to Pakistan on two separate occasions” (paragraph 39). The judge then addresses the issue of the lectures given by the Appellant at his local mosque from April 2012. The judge says nothing here about requiring corroboration. What the judge makes clear is that the Appellant “provided no explanation why he began to receive threats until 2013” (paragraph 40). The judge then goes on to deal with the jirga decision. She notes that it was decided in October 2013 that the Appellant should be killed because he had committed blasphemy. However, the judge was entitled to conclude that, “yet nothing happened to him before he left Pakistan for the UK for the first time in February 2014, nothing happened to him when he returned in August 2015” (paragraph 41). In the same way the judge also deals with the secret relationship with [AK], that the Appellant claimed to have had. The judge is clear here that the Appellant “gives little or no detail about the two year relationship. He speculates about how [AK]’s family knew him and that there had been any relationship. Her father saw them once, but they were schoolfriends and it appears nothing was suspected” (paragraph 42). Indeed, the Appellant goes on to confirm that after April 2013 “he had no further contact with [AK] and the last time he had contact with her family was in October 2013” (paragraph 43).

17. However, ultimately, the reason why there was no risk to the Appellant of ill-treatment or persecution, notwithstanding his Shi’ite religious orientation, or any past problems he may have had, is that the Appellant “was able to return to Pakistan in August 2015 without any problem” (at paragraph 44); and even managed to “return again in December 2016 ostensibly to deal with the inheritance dispute” (paragraph 45). Any references to the Appellant’s evidence not having the advantage of additional corroboration, only follows after that finding, and even then after Judge Bradshaw has made it categorically clear that “there is no requirement that the Appellant corroborate his own evidence” (paragraph 56). That, however, did not prevent the judge from assessing the value of that evidence, against the background of her having found that evidence to be unreliable, and also to have been unsupported by any documentary evidence (at paragraph 56). All in all, therefore, the judge did not materially err in law and the challenge to her decision amounts to nothing more than a disagreement with that decision.

Notice of Decision

18. There is no material error of law in the original judge's decision. The determination shall stand.

19. No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Juss 22nd October 2018