



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

Appeal Number: PA/07431/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 22nd November 2018**

**Determination
Promulgated
On 02 January 2019**

& Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**SW
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Noor of Counsel, Lexmark Legal Associates

For the Respondent: Mr S Whitwell, Senior HOPO

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge C A S O'Garro, promulgated on 23rd August 2018, following a hearing at Hatton Cross on 12 July 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 10th October 1991. He appealed against the decision of the Respondent dated 25th May 2018, refusing his claim for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The Appellant's claim is that he is a Christian from Pakistan, who had lived in Lahore, where his father was a pastor of the local church. He had a friend by the name of "Tayab" who was of the Muslim faith. He and his family were of strict beliefs. The Appellant claimed that his problems started on 7th June 2011. This is when Tayab wanted to learn from the Appellant about Christianity, which the Appellant began to teach him. The Appellant gave him a Bible to look at for about two or three weeks. Tayab took the Bible home. The Appellant claimed that Tayab's mother found the Bible and Tayab was beaten and asked where he got it from. Tayab's mother informed Tayab's brother, Sajid, who was a police officer, and who brought some other officers along to the Appellant's place, picked him up, took him to the police station, and beat him up, and tortured him.
4. The Appellant during the process had been rendered unconscious, blindfolded, and put in the back of a car and then driven to an unknown location. He was kept for four days. He was stripped and tortured. He pleaded for mercy and apologised for what he had done. He was eventually released. He was thrown outside his home. He was taken to hospital by his father where he remained for two or three days. He received treatment. He then "returned to normal living with no problem until the middle of October 2011" (paragraph 6).
5. At that stage, the Appellant and his father encountered Tayab who told them that he had run away from home. Tayab apologised to them for what had happened to the Appellant. He said he wanted to convert to Christianity. The Appellant said that the following day Tayab came to his family home and the Appellant's father took Tayab to the local church and baptised him there in the church courtyard.
6. The Appellant claimed that whilst he was being baptised someone saw the baptism taking place through the church gates and informed Tayab's brother, Sajid. The Appellant claimed that the following day Sajid made a threat against all of their lives. The Appellant's father locked up the home and went to stay with the uncle who was also a pastor. The Appellant claimed that his father began to receive threatening phone calls from Sajid and his associates.
7. The family decided that the Appellant should travel to the UK. The father remained in Pakistan in hiding. The Appellant also stated that sometime in 2014 his younger brother, who was starting college in Pakistan, and had travelled to Lahore in order to obtain certificate he required, was shot and

killed by Sajid due to a false blasphemy case against the Appellant. The Appellant maintains that there is an arrest warrant issued against him and his father for blasphemy where the penalty prescribed is death.

The Judge's Findings

8. The judge, in a comprehensive and detailed determination, set up the facts in question, together with the background objective evidence in relation to Christians in Pakistan (see paragraph 38), before concluding that the Appellant could not succeed. The reason was, whereas the judge accepted that the Appellant had been attacked following the loan of the Bible to Tayab, the fact was that, after this "the appellant said life returned to normal" (paragraph 45).
9. The judge did not accept the remaining part of the Appellant's claim, namely, that his father then went on to baptise Tayab, particularly given that this part of the claim was based upon the baptism taking place in the church courtyard, where the Appellant's father could be seen by others. The judge did also not accept that a blasphemy charge was levied against the Appellant's father and the Appellant, or that his brother was killed as a result of those blasphemy charges (see paragraph 45).

Grounds of Application

10. The grounds of application state that the judge failed to properly assess the documentary evidence provided in favour of the Appellant. There were six pieces of documentary evidence, which the judge had disregarded upon concluding that the Appellant's claim was not credible. This was an error of law, given that the variety and provenance of these documents had not been considered. The judge also failed to engage properly with the Appellant's medical circumstances. There had been unnecessary criticism of the Appellant in not making a claim at the earliest opportunity, which had been taken against the Appellant, and could not be a proper basis for the rejection of the claim.
11. On 27th September 2018, permission to appeal was granted, on the additional basis that the judge had noted that the Appellant had been tortured by non-state agents for reasons connected to his Christian beliefs and, although this had been argued, paragraph 339K of the Immigration Rules, makes it clear that if there has been a past persecution, then unless proper reasons can be shown to the contrary, it must be assumed that such persecution will continue in the future. The judge had also failed to take into account the clinical findings of Dr Goldwyn.

Submissions

12. At the hearing before me on 22nd November 2018, Mr Noor relied upon the grounds of application. He submitted that both the Respondent Home Office and the judge had accepted that the Appellant was a Christian from Pakistan. The judge had also accepted that the Appellant had been

tortured by the police (see paragraph 12 of the grounds). The issue that this raised, however, was the outright rejection of the six pieces of documentary evidence (see paragraph 46 of the determination) by the judge, on the basis that the Appellant's account was not credible, and so the documentation could not be relied upon (see paragraph 6 of the grounds). Such documentation was important, consisting of two FIRs, an arrest warrant, and a superintendent's letter from the Lahore Police, confirming how the Appellant's brother had been shot and killed, in an encounter with the police. There had been no attempt to engage with the documentation, with a view to their provenance, and their import. The judge had also wrongly come to the conclusion that this was a Section 8 case of dismissal, where the Appellant's claim was intrinsically lacking credibility, on account of his having delayed in applying earlier (paragraph 49).

13. For his part, Mr Whitwell submitted that the determination was clear and comprehensive and there was no error of law. This was for the following four reasons. First, the documents had to be taken into account in the round, and in the context of the other evidence (see **Tanveer Ahmed**). In this regard paragraph 15.11 of the Home Office country guidance report makes it clear that the prevalence of fraudulent documents in Pakistan is so widespread as to render most of these to be unreliable. Second, the judge has taken account of the background evidence, and then concluded that the Appellant account was lacking in credibility. Third, whilst it was accepted that the Appellant had been tortured by the police, the judge laid considerable stress on the fact that the Appellant's life returned to normal, so that he remained in Pakistan for six months, without any further incidents. Finally, the judge was correct to raise credibility concerns in the context of Section 8 given the delay in the Appellant applying for asylum.
14. In his reply, Mr Noor submitted that it was simply not possible to separate the recognition of torture having taken place, from the documentation in support of such ill-treatment, because, once it had been accepted that there had been torture, then it had to be the position that, unless there was probative evidence to the contrary, that would be the starting point for the risk in the future, and to that end the documentation had to be engaged with and their provenance assessed.
15. He asked me to allow the appeal.

No Error of Law

16. 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 and remake the decision). I come to this conclusion notwithstanding Mr Noor's valiant and commendable efforts to persuade me otherwise in an appeal that was well-resented before me. My reasons are as follows. This is a case where the Appellant came to the UK as a Tier 4 Student on 31st December 2011. He did not claim asylum until 11th November 2014. The basic nature of the claim was

accepted, insofar as it was recognised that he had given a copy of the Bible to a friend, and as a consequence of that had been beaten up and mistreated by state authorities, in the form of the police, but after that, the judge was clear that “the Appellant said life returned to normal” (paragraph 45). The judge rejected other aspects of the claim. He was entitled to do so. He was entitled to come to the view that the Appellant’s father would not have converted Tayab, a person from a strict Muslim family, and especially in the open courtyard of the church, where other people would be able to see what had happened, and to thereby attract adverse publicity to an act that was prescribed by law in Pakistan, under the country’s well-known blasphemy laws.

17. That left two issues. The first was the issue of documentation. The judge does not ignore the documentation. He expressly engages with it. He makes it quite clear that,

“I find that the objective evidence indicates that the appellant’s uncle would not have been able to get the documents the appellant’s claimed he obtained and sent to him because the likelihood is he would have been subject to intimidation and attacks and in addition, ran the risk of being accused of blasphemy himself, particularly as he is a Christian preacher himself, according to the appellant’s evidence” (paragraph 44).

18. This finding is made before it is then concluded that the claim that the Appellant’s father baptised Tayab was not a credible claim (paragraph 45). The judge considers the documents “with the guidance given in **Tanveer Ahmed [2002] UKIAT 00439**” and then goes on to say that “in view of my findings about the Appellant’s credibility, I will place no evidential weight on these documents. I also bear in mind what the objective evidence is about the ease by which false documents can be obtained in Pakistan” (paragraph 46). It is clear from this that the documentation is considered in the context of the overall evidence, and particularly, on the basis of the judge’s conclusions that the provenance of these documents could not be relied upon given the risk that the Appellant’s uncle would run in terms of himself being “subject to intimidation and attacks” (paragraph 44), which was not a credible prospect that the uncle would have entertained willingly.
19. Second, insofar as there was the issue of the medical report by Dr Goldwyn, this does go on to refer to the Appellant’s mental state, and the PTSD, but it is very much based upon what the Appellant himself said to Dr Goldwyn, and the judge was clear that the report is “conspicuous by its absence of the Respondent’s refusal letter and there was no reference to the Appellant’s medical records which means an assessment of the Appellant’s mental state was based largely on what the Appellant told her” (paragraph 47).
20. This was not to say that the judge rejected the findings by Dr Goldwyn of the Appellant suffering from PTSD and severe depression, but made it

quite clear that the expert “has not stated the cause of the symptoms” and it was just as likely that the cause of these symptoms was to do with “the uncertainty surrounding his immigration status” (paragraph 48). That was a finding that the judge was entitled to make.

21. In the same way, the judge was entitled to come to the conclusion that Section 8 applied in that the Appellant had delayed considerably before raising an asylum claim on facts that were most obvious to raise at the earliest opportunity, had the Appellant been a genuine asylum seeker raising a genuine asylum claim for the reasons which he eventually laid before the Secretary of State, and were determined by Judge O’Garro.

Notice of Decision

22. The decision of the First-tier Tribunal did not involve an error of law. The decision shall stand.
23. An anonymity order is made.
24. The appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Juss

18th December 2018