



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

Appeal Number: AA/05617/2012

THE IMMIGRATION ACTS

Heard at Bradford

On 19th July 2013

Determination

Promulgated

On 26th July 2013

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

IFTIKHAR ALI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Afzal of IIAS (Manchester)

For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Bagral made following a hearing at Bradford on 11th July 2012.

Background

2. The Appellant is a citizen of Pakistan born on 25th July 1972. His wife and two children are dependants on his claim. He arrived in the UK in May 2007 with entry clearance as a student conferring leave to enter until 29th September 2010 and was joined by his wife and son on 21st November 2009. During the currency of his leave he applied for leave to remain as a Tier 1 (Post-Study Work) Migrant which was refused as a consequence of the submission of a certificate from the Cambridge College of Learning. He then made a second application for further leave as a Tier 4 (General) Migrant which was again refused and subsequent appeal dismissed on 11th March 2011.
3. On 23rd April 2012 he claimed asylum on the basis of his fear of his wife's family who disapproved of their marriage. He said that his wife's family had recorded a kidnapping case against him and an arrest warrant had been issued. He feared that he would be arrested by the police on return and that he and his wife will be killed by her brothers in an honour killing. The judge considered the Appellant's claim and the evidence and found it not to be credible. She also considered the claim to remain here on the basis of Article 8 and concluded that removal would be proportionate.

The Grounds of Application

4. The Appellant sought permission to appeal on the grounds that the judge did not give any weight to the arrest warrant and had overlooked the objective evidence which indicated that the authorities were unable and unwilling to offer effective protection.
5. Permission to appeal was refused by a First-tier Judge on 23rd August 2012.
6. The Appellant then renewed his application in a detailed critique of the determination and permission was granted by Upper Tribunal Judge Chalkley on 19th November 2012.

Submissions

7. Mr Afzal said that his main argument was that the judge had not properly applied the correct standard of proof. She had made a number of favourable findings which outweighed the adverse ones.
8. The judge had made insubstantial criticisms of the evidence and had not taken proper account of the wife's evidence. In particular, she had found it not credible that the couple would have voluntarily returned to their home town of Bahawalpur if they had genuinely feared his wife's family as claimed, but the evidence was that the marriage had taken place in the chamber of the lawyer concerned and not in open court. There was nothing to negate the documents which the Appellant had produced in good faith, and the Appellant's account was consistent with the objective evidence. He also said that she should have found that removal would not be proportionate.

9. Mrs Pettersen submitted that it was not clear what the judge was supposed to have done wrong. In his written statement the Appellant had said that the marriage had taken place in Bahawalpur because it was the tradition and because his friend had engaged an advocate to help to arrange the court marriage. Both the Appellant and his wife had said that they had had a marriage in the district court in Bahawalpur and had not said that they simply went to the lawyer's office. There was no evidence to support the present submission that there had been no public appearance.
10. The fact that the Appellant's account was not inconsistent with the objective evidence of honour killings did not mean that it was true. The judge plainly had the objective evidence in her mind. With respect to Article 8 the judge gave sustainable reasons for making the decision that she did.
11. With respect to the criticisms in the grounds, it was open to the judge to find that if the Appellant's wife and child were in danger he would not have left them behind when he came to the UK. She was entitled to find the fact that the Appellant's wife and son applied for a visa giving an address in Bahawalpur strongly contradicted the Appellant's claim that at all material times they had relocated to live in Lahore. She was also entitled to place little weight on the arrest warrant in the light of the fact that the Appellant had only ever produced copies which were easily obtained and to state that it was curious that all of the documentation was dated after the appeal was dismissed in March 2011, given that the Appellant said that he had had problems from 2006. Finally it was open to her to comment on the fact that the letter from the Appellant's wife's doctor was that her family had tried to kidnap the Appellant's brother who had fled to Dubai but this was not a matter which had been mentioned either by the Appellant or his wife in evidence.

Findings and Conclusions

12. This is an exemplary determination. In a clear and careful decision the judge properly addressed all relevant issues and made findings open to her on the evidence.
13. There is no misapplication of the standard of proof. The judge gave credit to the Appellant in respect of a number of matters and was prepared to accept his explanation that he was suffering from the side effects of medication for confused answers at interview. This does not demonstrate that this experienced judge was either unaware of the lower standard of proof to be applied or that she did not do so. It is indicative of the fairness of her approach.
14. It was plainly open to her to find that the Appellant's account of an elopement and a flight to Lodhran was inconsistent with their decision to return to Bahawalpur the following day to marry in Bahawalpur Court. She was entitled to find that it was not credible that, less than four weeks after their marriage, the Appellant applied for entry clearance to come to the UK

and left his wife and son behind, claiming that they were in hiding in Lahore. That claim in itself is not consistent with the fact that both the Appellant and his wife gave their address on the Visa Application Form as Bahawalpur.

15. In these circumstances, the judge was entitled to reject the copy arrest warrant as not reliable properly considering the documentary evidence, in the light of the evidence as a whole as she was required to do.
16. It is simply untrue to say that the judge did not take into account the wife's evidence which she referred to in detail throughout the determination.
17. Having found the core of the Appellant's claim not to be credible the fact that it was not inconsistent with the objective evidence adds little to his case but in any event the judge considered the submission and referred to it in the determination.
18. With respect to Article 8 the determination is again, unimpeachable. The judge gave careful consideration to the primary consideration of the best interests of the Appellant's children, one of whom was born in the UK. The Appellant's history and conduct in immigration matters has been poor but the judge reminded herself that the children could not be blamed for his actions. Their best interests however lay with remaining with their parents in Pakistan, bearing in mind that they were familiar with the lifestyle and culture in Pakistan having spent most of their lives there and they would have contact with family members with whom they could form new relationships.
19. This is an unmeritorious challenge to the judge's decision.

Decision

20. The decision of the judge shall stand. The Appellant's appeal is dismissed.

Signed

Date

Upper Tribunal Judge Taylor