IAC-AH-CO-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01606/2014

THE IMMIGRATION ACTS

Heard at Centre City Tower, Birmingham	**Decision & Reasons Promulgated**
On 17th July 2015	**On 23rd July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR MUHAMMAD IMRAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Bradshaw (Counsel)
For the Respondent: Mr D Mills (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Camp promulgated on 7th July 2014 following a hearing on 11th June 2014 at Birmingham, Sheldon Court. In the determination, the judge allowed the appeal of the Appellant. The Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

2. The Appellant is a male, a citizen of Pakistan, who was born on 20th March 1991. He appealed against the decision of the Respondent Secretary of State against his removal on grounds that such a removal would involve a breach of his rights under the Refugee Convention 1951, and that such a decision would be incompatible with his rights under the European Convention of Human Rights.

The Appellant's Claim

3. The essence of the Appellant's claim is that he is a Pakistani national of Jowar village in Bunir District near the Khyber Pass, and that his father was a member of the Awami National Party (ANP) and was in the "district cabinet". The Appellant himself was also a "active member" of the ANP. When in June or July 2001 the Taliban took over the Bunir District, they started to attack ANP members. The Appellant fled to Mardan. He did not feel safe there. He relocated to Peshawar. There he received a call from the Taliban saying that they knew he had gone to Mardan and was now in Peshawar, and as a result of this he moved to Karachi. He stayed there for about a year and a half.

4. When, one night in 2011, he was out of usual place of board in Karachi, he stumbled upon a friend, and he was informed that his room had been broken into, and so he moved to Lahore. From there he went to Islamabad. There an agent helped him to arrange to leave Pakistan on a student visa. His fear now is that if he returns, he will not be safe from the Taliban and he relies upon a report from the expert by the name of Mrs Mooen who claims that the reach of the Taliban is so extensive that the Appellant would not be safe anywhere in Pakistan.

The Judge's Findings

5. The judge heard submissions from the Respondent's representative that even if the Appellant was found to be a member of the ANP, "internal relocation was possible" (paragraph 22). This was despite the expert opinion of Mrs Mooen. The Appellant had, after all, lived in Lahore and he had lived in Islamabad, and he had done so "without interference from the Taliban. He had spent a significant time in Pakistan arranging his student visa" (paragraph 22).

6. The judge accepted that the Taliban have a strong grip in some areas, which included Bunir and have infiltrated other parts of Pakistan, including Karachi (see paragraph 25). He accepted that some of the objections against the Appellant's claim lacked cogency (paragraph 26).

7. Nevertheless, there were question marks in relation to the Appellant's own conduct, including the fact that the Appellant had not claimed asylum timeously, had fled, had not reported back to the authorities, and when apprehended subsequently, had made a run for it (see paragraph 13 of the determination).

8. In addition, the "considerable detail" in the witness statement for the Appellant, albeit prepared by experienced solicitors, showed that on the lower standard, that the Appellant had a viable claim on the basis of which he would succeed (paragraph 38).

On this basis, the judge accepted that the Appellant was a member of the ANP, that he had been targeted by the Taliban, and that he risked physical harm if returned to Pakistan (see paragraph 41). The appeal is allowed.

Grounds of Application

9. The grounds of application state that the judge did not give reasons or adequate reasons for his findings on material matters. It is said that he failed to take into account the conflicts of opinion or material matters.

10. On 25th July 2014, permission to appeal was granted on the basis that the judge appears not to have given proper reasons for his finding at paragraph 42 that sufficiency of protection was inadequate and that internal relocation was "unrealistic".

11. On 7th August 2014, a Rule 24 response was entered by Mr Bradshaw.

Submissions

12. In his submissions before me, Mr Mills, appearing on behalf of the Respondent Secretary of State, explained that the personal history of the Appellant was such that his evidence could simply not be relied upon. He had not entered the UK as an asylum seeker. He had on 9th October 2011 applied for a Tier 4 (General) Student visa and this was issued. Nevertheless, the Appellant did not enrol and commence his studies by 20th February 2012 as required. When his leave was curtailed, he was given a right of appeal, which he did not exercise. Subsequently he was arrested for fraud and overstaying. He was taken to Collindale Police Station where he told officers that he had done casual building work and had been paying rent of £40 per week.

13. When he was released from detention on 8th February 2013, and required to maintain regular reporting, he did not report. He did not attend a substantive asylum interview date on 18th February 2013. Where on 24th July 2013 he was encountered again during an immigration arrest team visit to the "Afghan Bazaar" in Edgware, the Appellant made a run for the rear exit and had to be apprehended. During all this time the Appellant maintained that he wished to make an asylum claim which he did not.

14. This was the reason why the refusal letter had drawn attention to the proper application of Section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004 in this case. It is in this context that the Appellant's claim had to be evaluated.

15. Second, in evaluating the Appellant's claim in this context, it was remarkable that the judge had found the Appellant to be efficient in all these respects outlined, together with ANP membership documents that were produced by the Appellant which could not be properly relied upon (see paragraph 30) as well as other aspects in relation to the claim that he was making, which could not be properly verified.

16. All of this, however, changed when the judge came around to making his final decision at paragraph 39 of the determination. Here, the judge observes that the Appellant's witness statement of "considerable detail" was one which "was not the sort of document which might be expected if the claim was not genuine" (paragraph 39). This was perplexing given that in the next breath, the judge observed that,

> "The witness statement is clearly drafted by solicitors and not the Appellant's direct record of the matters contained in it (which is not, of course, to suggest that the solicitors have done anything other than turn what the Appellant said into an appropriate format). It would obviously be absurd to assess credibility by reference to the length of a witness statement" (paragraph 38, paragraph 39).

17. Yet, this was exactly what the judge appears to have done in looking at the twenty page witness statement. This is because the judge concluded that,

> "I have formed the view that the corrections and additions in the witness statement have been made in a genuine attempt to deal with the matters which were unclear or apparently discrepant. If I may use a vernacular expression, I do not consider that the Appellant, finding himself in a hole, has gone on digging. The level of detail is such as to persuade me that there is a core of truth in the Appellant's account, despite his abhorrent behaviour and other matters cited as affecting his credibility" (paragraph 39).

The judge had then gone on to accept the conclusions reached by Mrs Mooen in her report (paragraph 40) which had not been accepted by the Secretary of State and had not been subject to a proper analysis.

18. The judge then at paragraph 41 concluded that the Appellant's claim was credible in all the three different respects that he had outlined. Yet, no reasons were given to reach these conclusions in the manner that they had been reached.

19. For his part, Mr Bradshaw submitted that he had placed reliance upon his Rule 24 response, which properly analysed the findings of paragraph 39 made by the judge. He submitted that if one looked at the well-known case of **Chiver (10758)**, it was quite clear that,

> "It is perfectly possible for an Adjudicator to believe that a witness is not telling the truth about matters, has exaggerated his story to make his case better, or is simply uncertain about matters, and still be persuaded that the centrepiece of the story stands".

20. When looked at in this context, it was clear that the judge's findings at paragraphs 28 and 29, referring to the expert report by Mrs Mooen was such as to properly lead him to conclude that the Appellant's claim was a genuine one.

21. In reply, Mr Mills submitted that the only reason why the judge allowed the appeal was on the basis of the lengthy witness statement that had been prepared by professional solicitors. That in itself was no reason to allow the appeal.

Error of Law

22. I am satisfied that the making of the decision by the judge involved 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. It is well-known that, "it is necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost" (see Haddon-Cave J in **Budhathoki (reasons for decisions) [2014] UKUT 341**).

23. This is a case where it is not possible to decipher why the Appellant in this case wins and the Respondent Secretary of State loses. The core of the difficulty lies at paragraph 39. Mr Bradshaw's valiant attempts to suggest (which he does also in his Rule 24 response) do not persuade me otherwise.

24. First, the judge is clear that, despite "his abhorrent behaviour and other matters cited as affecting his credibility" the appeal is to be allowed because of a witness statement prepared and "clearly drafted by solicitors". Yet, even if this is an account given by the Appellant, this is an Appellant who in every other respect has been found to be lacking in credibility up to the point of the Witness Statement, and thereafter it is simply not possible to discern why a witness statement in itself tilts the balance in favour of the Appellant as it does.

25. Second, this is all the more so given that the judge himself recognises that, "it would obviously be absurd to assess credibility by reference to the length of a witness statement".

26. Third, insofar as the judge does attach the level of credence that it does to the witness statement, it is unclear what is meant by the statement that, "if I may use a vernacular expression, I do not consider that the Appellant, finding himself in a hole, has gone on digging". This is a curious statement in circumstances where the Appellant has done next to nothing to set out his claim for asylum up to the point that the witness statement is prepared and he comes to court.

27. Just because the Appellant has stopped digging, to use the vernacular again, does not mean to say that his claim succeeds as a genuine and viable claim for asylum, for that reason alone.

28. Finally, it is in this context, that the firm conclusions that the Appellant is a member of the ANP, that he has been targeted by the Taliban, and that he does risk physical harm if returned to Pakistan (see paragraph 41) is highly questionable.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. This appeal is to be remitted back to the First-tier Tribunal in Birmingham to be determined by a judge other than Judge Camp on a substantive basis to be determined *de novo* under Practice Statement 7.2 because the nature or extent of the judicial fact-finding exercise is such that it is

deemed necessary in order for the decision in the appeal to be remade that it be remitted to the First-tier Tribunal.

No anonymity direction is made.

Signed Dated

Deputy Upper Tribunal Judge Juss 23rd July 2015

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date

Deputy Upper Tribunal Judge Juss 23rd July 2015