Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05531/2014

THE IMMIGRATION ACTS

Heard at Newport	**Determination Promulgated**
On 10 June 2015	**On 18 June 2015**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

N C
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr D Mills, Home Office Presenting Officer
For the Respondent: Mr B Hoshi instructed by Duncan Lewis & Co, Solicitors

DETERMINATION AND REASONS

1. This appeal is subject to an anonymity order by the First-tier Tribunal pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

2. Although this is an appeal by the Secretary of State, for convenience I will refer to the parties as they appeared before the First-tier Tribunal.

Introduction

3. The appellant is a citizen of Pakistan who was born on 28 April 1968. The appellant arrived in the United Kingdom with his wife and three children on 15 April 2014. He claimed asylum on the basis that he had a well-founded fear of persecution if he returned to Pakistan because of his religious beliefs, namely that he is a Christian. He claimed that he operated a Christian music studio in Rawalpindi. He claimed that on 21 March 2014, he had been approached by three people from the local mosque, one of whom was the Imam, to hire his studio but he had declined as his schedule was busy. They threatened him and threw equipment on the ground and pushed him when he tried to stop them. That evening, he was told by a neighbour that the police were outside his studio and a poster was pasted on the studio wall which accused him of blasphemy. An FIR has been lodged against him; there is fatwa issued against him; and he is subject to a court summons. The appellant fears that if returned to Pakistan he will be at risk from Islamists and will face an unfair prosecution for blasphemy.

4. On 17 July 2014, the Secretary of State refused the appellant's claim for asylum, for humanitarian protection and under Article 8 of the ECHR. As a consequence, on 18 July 2014, the Secretary of State made a decision to remove the appellant to Pakistan.

5. The appellant appealed to the First-tier Tribunal against that decision. A hearing took place on 19 December 2014. In a determination signed on 9 January 2015 and promulgated on 13 January 2015, Judge Britton allowed the appellant's appeal on asylum grounds. He accepted the appellant's account and concluded that there was a real risk that the appellant would face a threat to his life or would be subject to persecution on the basis of an unfair trial if returned to Pakistan.

6. On 27 January 2015, the Secretary of State sought permission to appeal on the basis that the judge had erred in law in that he had failed to give adequate reasons for his findings favourable to the appellant in paras 35-40 of his determination.

7. Subsequently, the First-tier Tribunal (Judge P J M Hollingworth) granted the Secretary of State on the ground:

> "An arguable error of law has arisen in relation to the extent of the judge's reasoning upon which his findings depend."

8. On 26 February 2015, the appellant filed a Rule 24 reply resisting the Secretary of State's appeal on the basis that the judge had given adequate reasons for his findings and consequently no error of law was established.

9. The appeal came before me on 10 June 2015.

The Appeal

10. Mr Mills, who represented the Secretary of State, relied upon the ground of appeal upon which permission had been granted, namely that the judge had failed to give adequate reasons.

11. However, additionally he sought to amend the grounds of appeal to add a further ground, namely that the judge had erred in law by failing to apply the relevant country guidance decision of AK and SK (Christians: risk) Pakistan CG [2014] UKUT 00569 (IAC). That decision was not drawn to the judge's attention. Indeed, it had not been reported at the date of the hearing on 19 December 2014. The Upper Tribunal's website makes clear it was reported on 23 December 2014 although promulgated to the parties in those appeals on 15 December 2014. That was not clear at the hearing before me but is now. Mr Mills sought to amend the ground in order to argue that the judge's failure to consider AK and SK was, nevertheless, an error of law as it was reported before the Judge's decision was signed on 9 January 2015 and promulgated on 13 January 2015.

12. Mr Hoshi opposed the application to amend the grounds on the basis that it was now too late to include a new ground by way of amendment on the day of the hearing before the Upper Tribunal.

13. I will return to these issues after I have considered the ground upon which permission was granted.

Discussion

14. There were three issues which Judge Britton had principally to determine in reaching his decision:

    (1) Had the appellant established that he owned a recording studio in Rawalpindi?

    (2) Had the appellant established that he had been threatened and subject to an FIR, fatwa and court summons as a result because he was wrongly accused of blasphemy having refused three persons from the Mosque access to his studio?

    (3) Was the appellant at risk on return if his account was accepted?

15. Mr Mills submitted that the Judge's reasoning was inadequate. It was not clear on what basis the Judge had found in the appellant's favour.

16. Mr Hoshi submitted that the judge had given adequate reasons in relation to all three of those issues. Mr Hoshi submitted that the judge was not required to give extensive reasons but only sufficient so that the losing party knew why she had lost.

17. It is trite law that a judge must give adequate reasons for his or her decision (see the case law set out in MK (duty to give reasons) Pakistan [2013] UKUT 641 (IAC) at [7]-[12]).

18. That duty is not, however, more than to explain the essentials of any finding or decision. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC), the (then) Chamber President (Blake J) said this at [10]:

> "We would emphasise that although there is a legal duty to give a brief explanation of the conclusions on the central issue on which the appeal is determined, such reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge."

19. Blake J went on to state:

> "Although a decision may contain an error of law where the requirements to give adequate reasons are not met, this Tribunal would not normally set aside it as in the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance is taken into account, unless the conclusions that the judge draws from the primary data before him were not reasonably open to him."

At [11], Blake J identified the Tribunal's task as follows:

> "We have, therefore, concluded that our task is to carefully review the evidence before the judge relating to this basis of the appellant's claim, to determine whether it is capable of supporting the conclusions to which he came."

20. In MK, the current Chamber President (McCloskey J) affirmed the approach in Shizad at [11] as follows:

> "The depth and extent of the duty to give reasons will inevitably vary from one case to another. The duty is contextually sensitive. Thus, as the Upper Tribunal observed in **Shizad** [2013] UKUT 85 (IAC), a Tribunal's reasons need not be extensive if its decision makes sense. See also **R (Iran) v SSHD** [2005] EWCA Civ 982." (emphasis in original)

21. Judge Britton's reasoning and findings are at paras 35-40 of his determination. They are undoubtedly brief. Nevertheless, I accept Mr Hoshi's submissions that his reasons are adequate to support his findings.

22. First, as regards the appellant's account that he was at risk because of his refusal to allow his music studio to be used by three men one of whom was an Imam, Judge Britton heard oral evidence from the appellant and also had evidence from the appellant's brother-in-law, Dr L and an affidavit from a co-worker, JR attesting to the appellant owning the recording studio. At para 36 of his determination, Judge Britton said this:

> "I accept that the photograph taken and produced (page 30 of the appellant's bundle) is the mosque opposite the appellant's studio. I accept that the appellant did have that studio in Rawalpindi and before that in Islamabad. I accept the evidence of the appellant's brother-in-law Dr [L] who had seen for himself the recording studio in Islamabad. He had not seen the one in Rawalpindi but was aware of the appellant's move from Islamabad to Rawalpindi. There is also the

> affidavit of [JR] who used to work for Tritones Production and studios. I accept the appellant was producing 95% gospel music. I am satisfied that the appellant did have a recording studio in Islamabad and in Rawalpindi."

23. Secondly, as regards the threats to the appellant and the position he now claimed to be in facing a fatwa and prosecution, at para 39 Judge Britton set out why he accepted the appellant's account and basis for his claimed future risk. Again, he had the oral evidence of the appellant and also the affidavit evidence of his co-worker JR. He also relied upon the documentary evidence, in particular the fatwa and FIR. At para 39 the judge said this:

> "I accept the appellant's evidence of what happened to him on 21 March 2014 when 3 people came into his studios, one of whom was an Imam and damaged his equipment and he was beaten. Two of his employees, [SM] and [JR] witnessed what had happened. [JR] describes what happened in his affidavit. I accept the appellant was falsely accused of blasphemy and that a Fatwa was issued against the appellant (p28) and an FIR (p26 and 27). I accept the appellant's evidence that there would be a threat to his life if he returned to Pakistan. I accept that he may not receive a fair trial and his situation has gone beyond discrimination but has become one of persecution."

24. At para 37 the judge set out his reasons for accepting that the appellant had escaped from Islamabad on the basis that he worked for PIA at Islamabad Airport as follows:

> "The appellant is a Christian. The pastor who helped him escape has not produced a statement. However, I accept the appellant's evidence of how he left Rawalpindi and Islamabad. The appellant worked for PIA and had access to Islamabad airport which would normally not be available. He said he went through the VIP exit and his family went through normal channels. I accept that that could easily have been done."

25. In relation to the documents, the judge pointed out at para 19 of his determination that although the refusal letter relied upon the "general availability of forged documents in Pakistan", the letter did not: "state why they are of the view that his documents cannot be relied upon."

26. The judge was obviously, therefore, alive to the possibility that the document might not be reliable. It is trite law that the judge was required to assess their reliability in the context of all the evidence (see Ahmed (Tanveer) v SSHD [2002] UKIAT 00439).

27. The judge had an opportunity to consider the oral evidence of the appellant and that of Dr L. Dr L's evidence supported that of the appellant both in relation to his owning a recording studio and the events that the appellant claimed had led to him and his family leaving Pakistan. The judge was entitled to accept the evidence he heard. He was also entitled to accept, and give weight to, the evidence of JR even though his evidence was only in written form. The grounds do not, as such, suggest otherwise.

Simply, the grounds argue that the judge's reasons were inadequate. The judge carefully set out all the evidence at paras 4-26 of his determination. He clearly had it in mind together with the parties' submissions which he summarised at paras 27 and 28 of his determination. Having accepted (as he was entitled to) the evidence of the three witnesses, taken together with the documentary evidence which the reliability of which the judge properly considered in the light of all the evidence, the Judge's reasons albeit were, in my judgment, adequate to support his positive findings. In my judgment, on issues (1) and (2) above, the judge gave adequate reasons for his findings. It is clear the basis upon which he made those findings in favour of the appellant and against the respondent.

28. Turning to issue (3), Judge Britton considered the objective evidence and expert report of Mrs Moeen at para 35 as follows:

> "From the objective evidence produced it is clear there is discrimination against Christians and the problems they have under the blasphemy law is a serious matter. This is clearly set out in Mrs Moeen's report and the BBC News document and headed 'What are the Pakistan's blasphemy laws?' and ABC document entitled 'Men accused of blasphemy, Zafar Bhatti and Muhammad Asghar, shot in Pakistan jail'. Further objective evidence in the appellant's bundle fully sets out the position of Christians in Pakistan."

29. It is not suggested that the background evidence in the bundle, to which the judge refers in the final sentence of para 35, does not support his conclusion. The expert's report is (now) at pages 79-112 of the Upper Tribunal bundle. Mr Mills made no submission in relation to this report which is clearly supportive of the judge's view that, if the appellant's account is accepted, he is likely to be arrested and prosecuted on charges of blasphemy and there is also a risk of him being targeted by Muslim extremists (see, for example paras 79 and 80 of the report).

30. Acceptance of the expert report and the background evidence provided, in my judgment, adequate reasons for finding in the appellant's favour on issue (3) that he would be at risk of persecution as a result of an unfair trial for blasphemy (of which he had been falsely accused) or there was a real risk to his life from Muslim extremists.

31. For these reasons, I reject the Secretary of State's challenge to the judge's decision as raised in the grounds in the application for permission to appeal.

The New Ground

32. I now turn to the additional ground which Mr Mills sought to introduce by way of amendment relying on the Country Guidance case of AK and SK.

33. The Tribunal has a discretion to permit a party to "amend a document" which would include the grounds of appeal under rule 5(3)(c) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

34. In exercising that discretion I must have regard to the overriding objective set out in rule 2 to deal with the case "fairly and justly". Rule 2(2) sets out some non-exhaustive factors as follows:

> "2(2)Dealing with a case fairly and justly includes –
>
> (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
>
> (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
>
> (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
>
> (d) using any special expertise of the Upper Tribunal effectively; and
>
> (e) avoiding delay, so far as compatible with the proper consideration of the issues."

35. Rule 2(4) imposes an obligation upon the parties to:

> "(a) help the Upper Tribunal to further the overriding objective; and
>
> (b) co-operate with the Upper Tribunal generally."

36. The point which Mr Mills wishes to raise as an additional ground is, in principle, a good one. It is recognised in the Senior President's Tribunal's Practice Directions for the IAC at para 12.4:

> "Because of the principle that light cases should be treated in like manner, any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as grounds for appeal on a point of law."

37. Consequently, if Judge Britton had failed to take into account a relevant country guidance case which had been reported at the date of the hearing, even if he was not referred to it, his failure to consider it would amount to an error of law. In my judgment, that principle is no less applicable where the country guidance case is reported after the hearing but prior to the First-tier Tribunal's determination being promulgated. That was the case in this appeal. Although the representatives both assumed that AK and SK had been reported on 15 December 2014, four days before Judge Britton heard the appellant's appeal on 19 December 2014, in fact it is clear from the Upper Tribunal's website that the decision was only reported on 23 December 2014; in other words after the hearing. Nevertheless, it was reported prior to the judge signing his determination on 9 January 2015 and the decision being promulgated on 13 January 2015. It is not suggested that AK and SK is not relevant to the appellant's claim. In my judgment, therefore, Judge Britton's failure to consider is capable of amounting to an error of law.

38. However is the Secretary of State entitled to amend her grounds so as to include this ground not contained in the original application for permission dated 27 January 2015?

39. As Mr Hoshi submitted, the amendment to the grounds was proposed by Mr Mills very late in the day. As I understand it, Mr Hoshi had no notice of the Secretary of State's application until shortly before the hearing. There was certainly no written application made to the Tribunal prior to the hearing or at all. As I understood Mr Mills, the point which he wished to now raise had only arisen in his mind when he saw the papers for the appeal shortly before the hearing date.

40. I accept, of course, that the lateness of the application was through no fault of Mr Mills himself. However, the case of AK and SK was reported just over a month before the Secretary of State drafted her grounds of appeal which made no reference to it. Mr Mills was unable to offer any explanation why the grounds did not include this challenge or why no subsequent application had been made, until the day of the hearing, to amend the grounds so as to seek to include it as an additional ground. It is now over four months since the grounds were originally drafted and over five months since AK and SK was reported. This is, in my judgment, a significant and unexplained delay. The country guidance system is well understood and country guidance cases are readily identifiable on the Upper Tribunal's website. Of course, the Secretary of State was actually a party to AK and SK and so had knowledge of it even prior to its being reported. It is wholly inexplicable why the point now relied upon was not raised earlier.

41. Mr Hoshi submitted that he was prejudiced in presenting the appellant's appeal if the grounds were amended as he had not had an opportunity to consider AK and SK for the purposes of this appeal. Whilst I entirely accept Mr Hoshi's position if he were required fully to argue the merits of the appellant's claim against the touchstone of AK and SK, that difficulty does not arise at the error of law stage. It would only arise if an error of law was identified and the Tribunal was remaking the decision in the light of AK and SK. I did not understand Mr Hoshi to resist the argument in principle that the judge's failure to consider AK and SK was an error of law. That said, the obvious difficulty faced by Mr Hoshi in having to assimilate a decision which runs to some 264 paragraphs together with fourteen appendices could be overcome by adjourning the appeal to a future date to remake the decision. In any event, Mr Hoshi was able to make a number of submissions in relation to AK and SK to the effect that it would not have made any difference to Judge Britton's decision and therefore his error of law was not material.

42. In my judgment, it is relevant in assessing whether to permit the amendment to consider the arguability of the proposed ground including whether the ground discloses a material error of law. In my judgment, it does not. Paragraph 6 of the headnote summarises the country guidance relevant to this appeal as follows:

> "Non state agents who use blasphemy laws against Christians, are often motivated by spite, personal or business disputes, arguments over land and property. Certain political events may also trigger such accusations. A blasphemy allegation, without more, will not generally

> be enough to make out a claim under the Refugee Convention. It has to be actively followed either by the authorities in the form of charges being brought or by those making the complaint. If it is, or will be, actively pursued, then an applicant may be able to establish a real risk of harm in the home area and an insufficiency of state protection."

43. Paragraph 8 of the headnote deals with relocation as follows:

> "Relocation is normally a viable option unless an individual is accused of blasphemy which is being seriously pursued; in that situation there is, in general, no internal relocation alternative."

44. Mr Hoshi submitted that in this appeal the judge's acceptance of the appellant's evidence in its entirety demonstrated that he fell within the "actively pursued" category of someone facing a blasphemy accusation. I accept that submission. The judge found that there was in existence a fatwa, an FIR and that the police had become involved. Equally, in accepting the appellant's evidence, the judge accepted that the appellant was subject to a court summons which, his evidence was, in respect of he had failed to attend court (see para 22 of the determination). I do not accept Mr Mills' submission that the assessment of the circumstances accepted by the judge, including the existence of the court summons, could lead to any other conclusion than that the blasphemy charges, falsely brought against the appellant, were being "actively pursued". The appellant, therefore, falls square within the risk category identified in AK and SK. Had the judge applied AK and SK, he would, in my judgment, have come to precisely the same conclusion that the appellant was at risk of prosecution on a false blasphemy charge and subject to an unfair trial. He would be at risk of persecution in his home area and could not safely re-locate.

45. It seems to me in assessing the application for an amendment to the grounds on the day of the hearing, no useful purpose would be served by granting permission to amend the grounds when the new ground could not have any prospect of success.

46. For all those reasons, I refuse the Secretary of State's application to amend the grounds. But, in any event, had I granted the application, I would have concluded that the error of law by the judge in failing to consider AK and SK was not material to his decision to allow the appellant's appeal on asylum grounds. The appellant would have succeeded applying AK and SK.

Decision

47. For all these reasons, the decision of the First-tier Tribunal to allow the appellant's appeal on asylum grounds did not involve the making of an error of law such that the decision should be set aside. That decision stands.

48. Accordingly, the Secretary of State's appeal to the Upper Tribunal is dismissed.

Signed

A Grubb
Judge of the Upper Tribunal