



Upper Tribunal

(Immigration and Asylum Chamber)
AA/11756/2014

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly
Promulgated

Decision & Reasons

On the 18th March 2016

On the 6th April 2016

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

MR A.M.

(Anonymity direction made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Khan (Legal Representative)

For the Respondent: Mr Harris (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Shimmin promulgated on the 25th February 2015, in which he dismissed the Appellant's asylum appeal.
2. Permission to appeal that decision has been granted by Upper Tribunal

Judge Perkins on the 8th June 2015. The grant permission gave permission to appeal on all of the grounds raised within the grounds of appeal notice. Judge Perkins indicated that he was particularly concerned that, given the favourable findings of fact, the First-tier Tribunal might not have given adequate consideration to the Appellant's claim that he could not safely relocate to a different part of Pakistan. However he reminded the Appellant that he would have to show that the Judge erred in some way, rather than simply that the appeal could have been decided differently.

3. Within the grounds of appeal it is argued by the Appellant that First-tier Tribunal Judge Shimmin had found within his determination the Appellant was a credible witness and that at [46] had stated "I find that the Appellant has proved to the required standard of reasonable likelihood that the facts he alleges are true and that he is a credible witness." It is argued that it is strange after such finding and agreeing that the events as claimed by the Appellant occurred, that the Judge went on to dismiss the appeal and that the Judge had failed to give proper consideration to the threat posed to the Appellant and to his family in Pakistan. Next, it is argued that the First-tier Tribunal Judge was inconsistent in finding that the Appellant had not established to the required standard that he is the subject of persecution by non-state actors on account of his Shia religion and that he had not established that he had a high profile in the eyes of non-Shia, despite having accepted the Appellant's account was truthful and that the Judge had not given proper consideration to the genuine threat to the Appellant including attacks on him, his family and his mother. It is argued the Judge ignored the fact that the Appellant's uncle and cousins had been murdered in Pakistan on different occasions due to his family's prominent Shia profile. The argument is that the Judge failed to take into proper consideration the objective evidence presented was presented before him.
4. Within the Rule 24 reply it is argued by the Respondent that the First-tier Tribunal Judge properly directed himself and the Judge found the Appellant was credible, but was nevertheless not a high profile Shia Muslim in the eyes of non-Shia, which it is argued was a finding that was open to the Judge on the evidence. It is argued that the Judge found that there was no

particular evidence that the documents produced by the Appellant could be relied upon, but he took them into account generally. It is said the Judge did have in mind the claimed murders of the Appellant's relatives but the Judge accepted the Respondent's view that the Appellant was speculative regarding him being approached at a fuel station by someone who is said to have reached for a gun and that it was open to the Judge to find that he was not satisfied that the Appellant's children had been approached by people linked with anti-Shia groups.

5. In his oral submissions before me, Mr Khan relied upon the grounds of appeal. He argued that the Judge had accepted the Appellant's credibility but it was argued that the Judge had erred in finding the Appellant was not a high profile Shia. He argued the Judge ignored the fact that members of the Appellant's family including his uncle and cousins had been murdered and that there were newspaper articles showing the threat to his family and to the Appellant personally. He argued one member of the family had been murdered and another two had left the country. He referred me specifically to the newspaper articles at pages 45, 48 and 50, and to the Internet article at page 53 in this regard contained within the Appellant's bundle.
6. Mr Khan further argued that the Appellant's children were also dependents in the appeal, but the Judge had failed to consider paragraph 276ADE properly and failed to take account of section 55 in this regard, when assessing whether or not the Appellant's private and family lives would be breached, where they to be returned for the purpose of paragraph 276ADE.
7. In his oral submissions Mr Harris relied upon the Respondent's Rule 24 reply. However, Mr Harris properly conceded that the Judge had not specifically dealt with the newspaper articles and thereby had not dealt with the evidence that there was evidence that the Appellant was subject to a specific named risk of being killed, when assessing the Appellant's profile in Pakistan. He submitted that if I were to find that there was a material error in this regard, the matter would need to be remitted back to the First-tier Tribunal for a hearing de novo.

8. Mr Harris also properly conceded that the children were parties to the appeal as dependents, and that the Judge should have addressed the question of section 55 and the best interests of the children with his determination, which he had not done and Mr Harris said the Judge has not taken this into account when considering the Appellant's appeal under Appendix FM or Paragraph 276 of the of the Immigration Rules.

My findings on error of law and materiality

9. Having carefully considered the decision of First-tier Tribunal Judge Shimmin and having considered all of the evidence and the submissions raised both within the grounds of appeal, the Rule 24 reply, and the oral submissions of the legal representatives, together with the grant of permission, and in light of the concessions properly made by Mr Harris on behalf the Respondent that the Judge has not dealt with the evidence which was before him as to the newspaper articles which pointed to the Appellant as a specific named person who was at risk, I do find that the First-tier Tribunal Judge has erred in law in this regard by failing to take account of all of the relevant evidence when assessing the Appellant's profile.
10. Contained within the Appellant's bundle were letters and newspaper reports indicating that the Appellant was as a named individual subject to threats, and a plot to kill him and his family. I therefore do find that considered properly by Mr Harris, that the First-tier Tribunal Judge has failed to consider all the relevant evidence in this regard when assessing the profile of the Appellant and the threats to which he been subjected and his risk upon return. Had the Judge properly considered this evidence he would have referred to it and dealt with it in his decision. He has not. This amounts to a material error in law.
11. The argument that the Judge has also erred in law by failing to consider section 55 when considering the Appellant's human rights claim, given that his children were dependents upon his claim was not contained within the grounds of appeal to either the First-tier Tribunal or to the Upper

Tribunal, and no permission was sought from me to amend the grounds of in this regard. I have therefore not allowed the appeal on this ground, despite the concession made by Mr Harris.

12. However, in any event, given that the decision of First-tier Tribunal Judge Shimmin does contain a material error in law, in terms of his failure to take account of relevant evidence regarding the Appellant's profile, as set out above, I find that the decision of First-tier Tribunal Judge Shimmin should be set aside in its entirety, and the matter remitted for a hearing de novo before the First-tier Tribunal, before any First-tier Tribunal Judge other than First-tier Tribunal Judge Shimmin.

NOTICE OF DECISION

The decision of First-tier Tribunal Judge Shimmin does contain a material error of law and is set aside in its entirety;

The case is remitted to the First-tier Tribunal for a hearing de novo, before any First-tier Tribunal Judge other than First-tier Tribunal Judge Shimmin.

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

R McGinty

Deputy Judge of the Upper Tribunal McGinty
2016

Dated 18th March