



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

Appeal Number: PA/02685/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 27th May 2016**

**Decision & Reasons Promulgated
On 1st July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

**M K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Aly, Morden Solicitors London

For the Respondent: Mr Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on [] 1979. He appealed against the Respondent's decision dated 21st October 2015 refusing to grant him asylum and humanitarian protection in the United Kingdom and refusing his human rights claim. His appeal was heard by Judge of the First-tier Tribunal Moxon on 17th March 2016. The appeal was dismissed on all grounds in a decision promulgated on 24th March 2016.
2. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Ransley on 15th April 2016. The permission states that it is arguable that the judge may have erred in law

for failing to apply a test of fairness when he refused to adjourn the hearing to another day. The permission states that the judge recognised the potential importance of the Appellant's wife's oral evidence by his offer to stand down the matter until the afternoon on the same day to allow the wife to attend but the permission goes on to state that it is arguable that the judge's finding that it was likely that the wife would fail to attend an adjourned hearing was speculative. The grounds have added another limb to this appeal and are challenging the adverse credibility findings made by the judge against the Appellant and the documentary evidence. This ground is included in the permission.

3. The Appellant's wife was at the hearing centre with their children. One of the children came into the room with the Appellant while the error of law hearing was being conducted. His wife and the other children remained outside the court. There was no objection to this.
4. The Appellant's representative submitted that she is relying on the Grounds of Appeal and that an adjournment should have been granted for fairness to enable the Appellant's wife to attend the hearing. She submitted that because the adjournment was not granted there was a deprivation of fairness in the hearing. I was referred to the case of **Nwaigwe [2004] UKUT 00418 (IAC)**.
5. I was referred to paragraph 9 of the judge's decision and the representative submitted that the Tribunal has to deal with cases fairly and justly and that Rule 2(2)(c) was not satisfied. This states that so far as practicable the parties should be able to participate fully in the proceedings. The representative submitted that it is clear that the judge felt that the Appellant's wife's evidence could be important as he was prepared to adjourn the case for three and a half hours to enable the Appellant's wife to attend. She submitted that good reasons were given for this not being acceptable. The Appellant's children were at school and his wife had to pick them up. She was also 26 weeks pregnant.
6. I pointed out that at the date of the First-tier hearing there was no statement from the Appellant's wife. The representative submitted that had his wife been asked for a statement she would have given this but she is at the hearing centre today with her children. She submitted that it is therefore clear that the judge was wrong when he stated that the Appellant's wife might well not attend a hearing date in the future.
7. I asked the representative if the Appellant had had legal representation before the First-tier hearing and she said he had but the barrister at the First-tier hearing had suggested that the Appellant's wife should give evidence. She submitted that her evidence might well only have been corroborative but even this would have been useful for the Tribunal because of the inconsistencies found in the Appellant's evidence. She submitted that the Appellant's wife could have given evidence about her family background and what her family had wanted and what their behaviour had been. She submitted that the Appellant's wife would have

been the best person to give that evidence. She submitted that the Appellant was therefore deprived of the opportunity for a fair hearing as the judge did not allow his wife to give evidence. She submitted that only a short time would have been required for a further hearing to be listed but the fact that his wife would have had notice of having to give her evidence and there would have been notice for her children being taken out of school, would have made a difference.

8. The representative went on to deal with the findings of the First-tier Judge relating to the Appellant's evidence and the inconsistencies found by him. I was referred to the case of **Chiver Romania [1994] UKIAT 10758** and she submitted that the centrepiece of the Appellant's claim stands. She submitted that there were no inconsistencies in the core of the Appellant's account.
9. I was referred to the First-tier Judge not properly considering the Appellant's evidence that because his brother-in-law, whom he fears, has links to the police in Pakistan he could have influenced the people who gave the evidence that the FIR submitted by the Appellant for his First-tier hearing was false. I asked the representative about the false medical report. She submitted that the spelling error referred to therein was not important. It could still be genuine report. She submitted that the judge had not properly considered the influence the Appellant's wife's brother had with the police.
10. The representative submitted that the Appellant's evidence was not inconsistent. I was referred to paragraph 52 of the decision in which the judge states that the Appellant has been inconsistent with his evidence. She submitted that the evidence given by him has been broadly the same as the evidence provided with the application, that he had to move about because he was afraid of his wife's family and she submitted that there is nothing in his evidence which is wholly inconsistent. She submitted that the First-tier Judge made a wrong analysis of the evidence as the core of the story is consistent.
11. The representative referred to the judge seeking corroboration relating to a second FIR which was not with the evidence and she submitted that corroboration is not required in asylum cases and I was referred to the case of **Kasolo Ethiopia [2004] UKIAT 00119**. She submitted that the judge failed to take into account the Appellant's wife's family's connections to the police and the Appellant's evidence about the second FIR.
12. With regard to the Appellant not claiming asylum until 2015 she submitted that the Appellant had valid leave in the United Kingdom as a Tier 4 Student until it was curtailed and that is when he claimed asylum. Because he had valid leave he did not realise that he should have claimed asylum at an earlier date. She submitted that he did so when it was necessary and this should not damage his credibility.

13. The Presenting Officer made his submissions relying on the Rule 24 response which is on file.
14. He dealt first of all with the adjournment request and submitted that the judge in his decision has given good reasons for not granting the adjournment. He has been balanced in his approach and gave the Appellant's wife an opportunity to give evidence but this was rejected by the Appellant. All the circumstances of the adjournment request are narrated by the judge in the decision and he gave the Appellant three and a half hours to bring his wife to the hearing centre. He submitted that everything the judge did was fair. He considered the circumstances and the health of the parties and the fact that the Appellant's wife was 26 weeks pregnant. He referred to the Procedure Rules at paragraphs 8 and 9 of the decision and at paragraph 10 states that he does not accept that it was ever the intention of the Appellant that his wife would give evidence at the hearing. There was no statement from his wife and the Appellant had been legally represented. The Appellant had considerable warning of the hearing date and had plenty of time to prepare. The Presenting Officer submitted that the judge may have gone too far when he found that the Appellant's wife might well not attend a further hearing but the judge made a balanced and reasoned response and found that there would be little impact if the Appellant's wife did not attend to give evidence. He submitted that the judge properly reasoned that if the Appellant's wife was unable to attend at that hearing in May 2016 the hearing at a later date could well be a day with bad weather and she could be more heavily pregnant or have a young baby. He submitted that there was no deprivation of fairness because the Appellant's wife did not attend the First-tier hearing. He submitted that the Appellant gave his evidence, was cross-examined and his evidence was tested and the judge made his decision based on this.
15. With regard to the second ground of appeal and the credibility issues, the Presenting Officer submitted that the grounds are merely a disagreement with a reasoned set of findings. With regard to Article 8, the judge made findings of fact at paragraph 51 and then stated that he does not find the Appellant to be a credible witness. At paragraph 52 he explains the inconsistencies he finds and at paragraph 53 he makes reference to the false documents, being the first FIR and medical report. The judge has relied on the case of **Tanveer Ahmed [2002]** and at paragraph 54 he refers to the Country Information and Guidance on Pakistan. At paragraph 55 he gives weight to the verification reports, which he was entitled to do. At paragraph 55 he states that it is unlikely that the Appellant's father-in-law would have been able to corrupt not only the official from the embassy who made the enquiries but also people within the police station and the hospital, getting them to provide inaccurate information. He submitted that the judge has considered everything before him and has not made any error of law. He has given greater weight to certain parts of the evidence than others. He submitted that the grounds are merely a disagreement with the judge's decision.

16. The Presenting Officer submitted that at paragraph 56 of the decision the judge may well have speculated on whether the Appellant would have pursued his wife when he first met her after being told that her family was dangerous. He points out that the Appellant states that because he was afraid, he left his home but the judge finds it to lack credibility that if he did this he would continue to attend his work place. He submitted that there are sufficient reasons for the judge's credibility findings.
17. He submitted also that the judge was entitled to take into account the fact that no second FIR was produced and to find that this undermines the Appellant's credibility. He not only refers to this in relation to his credibility findings he also notes that there is no evidence from either the Appellant's aunt or his brother, both of whom supposedly were visited at least once or twice by the Appellant's aggressors. He submitted that the judge was entitled to comment on this.
18. The Presenting Officer submitted that with regard to Article 8 the judge's starting point was adverse credibility. This is referred to at paragraph 66 of the decision. At paragraph 67 he goes on to deal with the best interests of the Appellant's children and Section 117B of the 2002 Act. He submitted that all the evidence on Article 8 and the best interests of the children is brought together at paragraphs 75, 76 and 77 and he again submitted that the grounds of application are purely a disagreement with the judge's decision. I was asked to uphold the judge's decision.
19. The Appellant's representative submitted that the time given to the Appellant's wife to attend the hearing was not appropriate. Her children were at school. She would have had to take them out of school and she was 26 weeks pregnant. She submitted that she is at the hearing centre today and so the judge was wrong to find that she would not attend a hearing in the future. She submitted that there was no medical report on the Appellant's wife as this would have had to be obtained in advance and she submitted that the judge should have adjourned the hearing. She submitted that the judge took note of the barrister's statement that the Appellant's wife's evidence could be important.
20. The representative submitted that the judge did not properly consider the Appellant's wife's family's influence over the police. He did not consider whether perhaps the verification documents could have been falsified.
21. With regard to the credibility issues she submitted that the wedding was quiet and was held in a friend's house. She submitted that the Appellant's wife's sister told the family members about the wedding and the Appellant's wife, had she been given the chance to give evidence, could have given evidence about whether her sister is trustworthy or not.
22. The representative referred to the country guidance on Pakistan and the FIR report. She submitted that there is corruption in the police force and the judge recognised this but it was unreasonable of the judge, based on his findings about the original FIR and medical report, to find that as no FIR

was submitted for the second incident this goes against the Appellant's credibility.

23. I was asked to find that there are material errors of law in the judge's decision and set the decision aside.

Decision and Reasons

24. I shall deal with the second ground of appeal first being the credibility findings made by the judge in his decision. The judge has referred to inconsistencies in the Appellant's evidence. He has not only referred to them but he has explained why these are inconsistencies at paragraph 52. He then goes on to deal with the fake FIR and fake medical report and refers to the case of **Tanveer Ahmed**. The judge has considered the document verification reports and has given these weight and he has done so based on the background evidence on Pakistan as well as the oral evidence and the Appellant's statement. The judge finds that the verification reports should be given more weight than the documents which, based on the verification reports, he believes are forgeries. The Appellant told the judge that the documents are genuine but the judge points out at paragraph 55 that if they are genuine the Appellant's father-in-law must have corrupted the official from the embassy who made the enquiries and must have corrupted people within the police station and the hospital to provide inaccurate information. He finds that this is unlikely and has explained why. He goes on to refer to the spelling error in the medical report. He has given proper reasons for finding that these documents are forged. In particular he considered the objective evidence. He also finds it to lack credibility that the Appellant would leave home but continue to attend his work place if he was afraid of his in-laws. The judge also pointed out in the decision that there is no evidence from the Appellant's aunt or his brother, who apparently have been bothered by the aggressors in Pakistan. The judge then goes on to deal with the lack of the FIR from the complaint in June 2010 and explains why the lack of this FIR undermines the Appellant's account that he made a complaint at that time.
25. The judge clearly finds that Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 applies because of the Appellant's delay in claiming asylum. I do not accept the representative's submission that because the Appellant had a visa he did not claim asylum. If he feared for his life in Pakistan an asylum claim should have been made immediately. This also goes against his credibility.
26. Throughout the decision the judge has made it clear why he does not believe the Appellant's evidence.
27. The judge then goes on to deal with Article 8 of ECHR. He refers to the relevant case law and deals with Article 8 and the best interests of the children.

28. The judge has made a clear proportionality assessment taking all these things into account referring to Section 117B of the Nationality, Immigration and Asylum Act 2002 and public interest and explains why it would not be a breach of Article 8 to return the Appellant and his family to Pakistan.
29. I then come to the adjournment situation. It is clear from the evidence that the Appellant had no intention of having his wife give evidence at the hearing. Apparently his barrister on the day suggested that this would be a good idea for corroboration purposes. The judge gave the Appellant a chance to fetch his wife to enable her to attend the hearing. This was not unreasonable. The judge did not require to do this. There is no evidence that the Appellant's wife was unwell at the date of the first hearing and there is nothing to suggest that she could not have picked the children up early from school. Being 26 weeks pregnant is not a reason for not attending the hearing. The judge has explained all this in his decision. He has also considered the Tribunal Procedure Rules and has considered fairness.
30. The judge may have overstepped the mark when he stated that the Appellant's wife might well not attend a hearing on the next occasion. She was at the hearing centre while this hearing went ahead. She brought the children with her. The children of course are on holiday today. Whether she would have come to the hearing if she had had to take the children out of school is debateable. In any case the judge has properly considered the adjournment request and I do not find that the fact that he was prepared to give the Appellant three and a half hours to bring his wife to the hearing centre means that he found that her evidence was essential. I find that what he was doing was trying to find a solution to a matter which had not been considered before the date of the hearing. He did not require to do anymore than he did. He states at paragraph 12 "It is not submitted that the Appellant's wife is to give evidence that is not before me from any other source. I can assess submissions as to the fact that she would have given consistent evidence. As such no unfairness arises from my failure to adjourn". I find that this is correct.
31. I find that there is no error of law in the judge not adjourning this hearing to another date.
32. I find that with regard to the judge's credibility findings and false document findings the grounds of application are merely a disagreement with thoroughly explained reasons for these findings.

Notice of Decision

There is no material error of law in the First-tier Judge's decision promulgated on 24th March 2016.

The First-tier Judge's decision that the Appellant's claim is dismissed on all grounds must stand.

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: 1st July 2016

Deputy Upper Tribunal Judge I A M Murray