



UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: PA/09147/2016

THE IMMIGRATION ACTS

Heard at: Field House  
On: 24 July 2017

Decision and Reasons Promulgated  
On: 07 August 2017

Before

Deputy Upper Tribunal Judge Mailer

Between

MR A M  
ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr S Ahmed, counsel, instructed by 12 Bridge Solicitors  
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Pakistan, born on [ ] 1984. He appeals with permission against the decision of First-tier Tribunal Judge Callow dismissing his appeal against the decision of the respondent dated 19 August 2016 to refuse to grant asylum or other protection based on his imputed religious grounds –[1].
2. Judge Callow noted that the core issue in the appeal centred on the reliability or otherwise of the FIRs produced by the appellant in support of his claim [20]. The Judge set out at [17] the principles from Tanveer Ahmed [2006] UKIAT 00439.

3. The respondent relied on verification checks undertaken in Pakistan in respect of the FIRs relied on by the appellant. They were considered to be false. The DVR in respect of the first FIR asserted that the Station House Officer of Shaharah -e-Faisal police station, Karachi East, was contacted to check the FIR no. 254/11. The SHO confirmed that the date and details of the provided FIR dated 16 February 2011 did not match the details in the records of that police station. Accordingly, he confirmed that the FIR provided by the applicant was not genuine. The FIR no. 254/11 of that police station is not dated 16 February 2011 as claimed and the crimes committed do not match to the records.
4. With regard to the second DVR addressing the second FIR dated 14 September 2015, it was again noted that the FIR no. 531/15 provided by the applicant was not genuine. Nor did the crimes committed fall under the relevant sections of the Pakistan penal code as claimed but the only crime in record is 13/20/65 (recovery of illegal arms) under the code. Accordingly, the FIR was not genuine.
5. It was accordingly not accepted that the Moulana had made reports of blasphemy against the appellant and that the police had called at his home after the first FIR was lodged [8(b)].
6. The appellant had also relied on hospital reports for his brothers dated 6 July 2016 as well as photographs of their injuries and other documents. Four days prior to his departure to the UK as a student, the appellant was accused by a Mullah of disrespecting the Prophet and supporting the Ahmadi faith. The appellant departed Pakistan on 19 February 2011 but only learned in November 2015 that the Moulana had filed an FIR against him in February 2011, consequent upon the incident which occurred on 15 February 2011 and again in October 2015 when it was believed by the Moulana that the appellant was about to return to Pakistan. Further, it was only in November 2015<sup>1</sup> that the appellant learned that his brothers had been assaulted at EID prayers on 6 July 2016 on account of the appellant's blasphemous conduct back in February 2011 [5].
7. In addition it was asserted by the appellant that in February 2015 the Moulana had some pamphlets printed criticising the appellant. On 6 July 2016 he mentioned the name of the appellant's father in a sermon as someone who disrespected the Muslim religion. It was in these circumstances that the appellant's brothers were attacked - [5].
8. It was also asserted that before October 2015 the police attended the appellant's house four or five times about the incident involving his brothers and began to visit the house again after the incident in July 2016. His family in Pakistan continued to receive threats from the Moulana and others - [5].
9. The essential parts of the FIR relied on by the appellant complained that he was guilty of insulting the Prophet and blasphemy for which there is no forgiveness in Islam - [6 -7].

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<sup>1</sup> That date is clearly incorrect as the incident had not yet occurred

10. In his 'assessment of credibility and findings of fact', Judge Callow referred at [19] to decisions involving dishonesty under the provisions of paragraph 322(1a) of the Immigration Rules. He stated that it was necessary to make a finding of credibility concerning the evidence of the appellant. He has made such a finding only after anxious consideration of all relevant and material circumstances. He stated that "in making this finding, I have taken into account all the available evidence, in the round, and have attached such weight as I consider properly attributable thereto" [19].
11. He stated that [22] that the underlying facts of the 2 DVRs have been established. He stated that 'in the round these show that the FIRs relied on by the appellant that he is wanted for blasphemy are false'. He stated that in arriving at this conclusion he approached the issue from the standpoint that the onus rests with the respondent on the balance of probabilities. A careful reading of the documents, most importantly the two DVRs, shows that the documents relied on by the appellant refer to incidents unrelated to the appellant. The first FIR did not match the police records and was not dated 16 February 2011. The second FIR was dated 18 August 2015, not 14 September 2015. It was concerned with the recovery of illegal arms. [22]
12. The Judge found that the inescapable conclusion is reached that his claim, belatedly made after service of notice as an overstayer, '...has been fabricated, wherein no weight is attached to the self serving affidavits of the appellant's brothers. They may well have been assaulted but not because the appellant is wanted in Pakistan for blasphemy' – [24].
13. Had there been any substance to the FIRs produced by the appellant, it could reasonably have been expected of him that beyond letters addressed to the police in Pakistan by his solicitors, the appellant would have instructed a lawyer to attend upon the police to verify the FIRs relied on. Such a failure in the circumstances of adverse DVR reports, undermine the genuineness of his claim. – [25].

### The appeal to the Upper Tribunal

14. In granting the appellant permission to appeal on 1 June 2016, First-tier Tribunal Judge Baker found that the appellant's grounds of appeal had merit. The FIRs were found to be false documents for reasons not susceptible for challenge.
15. Judge Baker stated however that the balance of the evidence in support of the claim was arguably not adequately addressed. He found that '...it is arguable that there was a material error of law in not assessing the main other elements of the evidence, (the witness written evidence, the credibility of the account of the events by the appellant and the medical evidence lodged, for example) before reaching conclusions adverse to the appellant's core account'.

16. Mr Ahmed, who also represented the appellant at the hearing, contended that the Judge in fact failed to address the evidence in the round. He failed to have regard to the “subjective” evidence submitted. In particular he failed to consider the affidavits of the brothers where they described the incident of Eid and the harassment to which they have been subjected. There was thus no assessment of the evidence or a finding of fact, save a conclusion without any analysis of the evidence in the round.
17. The Judge also failed to consider medical evidence which plainly confirmed that the brothers were attacked during the Eid prayers. Moreover, the prints of leaflets were distributed, referring to the appellant as being the one who had committed the offence of blasphemy. There was also photographic evidence and medical evidence confirming that the appellant’s brothers had been attacked during the Eid prayers.
18. In summary, he submitted that the totality of the evidence which was relevant had not been assessed by the Judge in the round. Save for the FIR points, there was no real credibility issue. No real issue was raised by the respondent in the refusal letter or by the Judge: the sole focus was the FIR issue.
19. He also submitted that the Judge erred in his assessment of the FIRs, as the DVRs were insufficient in detail; the reports failed to identify who was spoken to and the name of the officer in question. Nor was there a transcript of any conversation provided, nor the duration given as to how long such a conversation lasted.
20. He submitted in reliance on paragraph 1(d)(iii) and (iv) of the grounds that the DVRs must be examined in context, ‘...wherein FIRs were dated 16 February 2011 and 14 September 2015, it would be extraordinary that the information could be disclosed without further inquiries being conducted’. The burden rested upon the respondent and in the light of these shortcomings that burden had not been discharged.
21. Moreover, the Judge failed to make findings of fact regarding the assertions made by the appellant’s brothers in their affidavits concerning the EID incident as well as the harassment to which they have been subjected. An important aspect of the appellant’s evidence was thus left undetermined.
22. Nor was there any evidential basis for the conclusions at [23]. In that respect Mr Ahmed referred to letters written by the appellant’s solicitors to Station House officers, Shah Faisal Colony Police Station No. 2 dated 5 January 2017 in respect of the two FIRs. These were produced in the bundle at pages 26–28, dated 20 December 2016 and 5 January 2017. The solicitors had tried calling the station to no avail. They sought information as to whether the FIRs had been issued by that station and what the name of the officer is, who is investigating the matters.

23. There had been no response to that letter and accordingly the second letter, dated 5 January 2017, was sent urging an urgent response. The letters related to the station identified in the DVRs.
24. In his oral submissions Mr Ahmed repeated his assertion that the Judge did not consider the evidence in the round. The DVRs were the primary focus. The appellant had not relied solely on the FIR reports. The Judge did not look at direct evidence relevant to whether the appellant was being sought by the Mullah. There was no analysis of the affidavits of the brothers where they described the incident in detail.
25. Nor was there any reference to the pamphlet translated from Urdu at page 18 of the appellant's bundle. In that pamphlet, in respect of the mosque in Karachi, it was stated that the EID prayer will offer at 7.45am and Scholar Molana Shakir-ul-Haq will be leading the prayers and would also address the audience regarding 'those who have disrespected our religion and our prophet'.
26. Nor did the Judge consider the evidence submitted by the appellant at his interview set out in the first question at his substantive interview. There he produced documents and evidence that he wished to submit. This included the two police reports, copies of national identity cards of his father and two brothers; hospital records for his brothers; copies of two pamphlets; photograph of a priest giving a speech on Eid; photographs of both his brothers injured as well as a video (not supplied) of his brothers' treatment in the hospital after they were beaten. There was also a file of his father's medical reports provided.
27. In the light of the concerns concerning the DVR report, the Judge should have considered the evidence in the round "in the true sense."
28. Nor did the Judge have regard to the FIRs lodged by the appellant's brothers before the police station on 17 August 2016 and 6 September 2016 regarding the incident on 6 July 2016. There they stated that after Eid some people attacked them and beat them badly. They believed that the Molana who has issued a blasphemy case against the appellant was involved in the attack. They also referred to having gone many times to the police station and have been told that this is a religious issue which police cannot do anything about. It was contended in the second attempt that they suspected that this is because of the involvement of the "scholar" that they are refusing to lodge their report. This was also sent to the "DSP". This produced no action either.
29. In the circumstances, the Judge was wrong to confine himself to the DVRs.
30. On behalf of the respondent, it was submitted that the Judge dealt with the letters referred to at [25] where the Judge stated that beyond letters addressed to the police by

his solicitors, the appellant would be expected to instruct a lawyer to attend the police to verify the FIRs relied on. Such a failure undermines the genuineness of the claim.

31. Mr Clarke submitted that the fact that corroboration is not required does not mean that an adjudicator is required to leave out of account the absence of documentary evidence which might reasonably be expected - ST (Corroboration) Kasolo Ethiopia [2004] UKIAT 00119. In that case it was found that the Judge was entitled to comment that it would not have been difficult for the appellant to produce a death certificate concerning his brother or evidence supporting the contention that he received hospital treatment.
32. The Judge was entitled to consider that apart from the letter written by the solicitors, reasonable corroboration was neither sought or provided.
33. He submitted that the Judge did state at [22] that matters have been taken in the round. At [19] he stated that it was necessary to make a finding of credibility concerning the appellant's evidence. He stated that he has taken into account all the available evidence in the round. The Judge found at [24] that the brothers may well have been assaulted although this was not because the appellant is wanted in Pakistan for blasphemy. The Judge referred to the affidavit at [11] as well as at [24]. The pamphlet at page 20 does not refer in terms to the appellant. It is therefore difficult to see how this could advance the appellant's case.
34. In response, Mr Ahmed submitted that the pamphlet at page 18 is important as it refers to the Mullah who would be leading the prayers and addressing the issue of disrespect to their religion and the prophet. That is the same Mullah who obtained the registration of a case of blasphemy against the appellant. This was dated 16 February 2011.
35. There is a second FIR of the registration of a case of blasphemy against the appellant via the FIR. It was believed that the appellant is coming back to the country soon and a request is made that he be arrested as he is guilty of blasphemy. This again was an application by the same Mullah to register the case against the appellant.
36. There have accordingly been no findings of fact in relation to the pamphlets as well as the other documents. None of this evidence has been factored in as part of the evidence as a whole.
37. The brothers did in fact attend and make enquiries in respect of the DVRs but the police were not interested in registering their complaints. The Judge did not consider the steps that the appellant had taken through his brothers, confining himself to the expectation that a lawyer should have been instructed to attend the police to verify the FIRs relied on [25].

38. Nor did the Judge avail himself of the evidence concerning the allegations in relation to the 6 July 2016 incident. There was affidavit as well as the pamphlet evidence in support. There was no finding that the brothers did not attend the gathering on 6 July.

### Assessment

39. At [22] the Judge found that the underlying facts of the two DVRs have been established. In the round they show that the FIRs relied on by the appellant that he is wanted for blasphemy are false.
40. The Judge had regard to the appellant's criticism of the DVRs. He found that the evidence was of sufficient cogency. Those DVRs showed that the documents relied on by the appellant referred to incidents unrelated to him. Nor was there any match in the police records.
41. The Judge noted that the core issue centred on the reliability of the FIRs produced by the appellant in support of his claim – [20].
42. The Judge directed himself in accordance with Tanveer Ahmed noting in particular that the decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round.
43. However, the Judge stated that had there been any substance to the FIRs produced by the appellant, it could reasonably have been expected of him to have instructed a lawyer to attend the station to investigate the FIRs relied on [25].
44. However, the appellant claimed that he did take steps, namely the sending of two letters to the relevant police station by his solicitors, initially on 20 December 2016 and then again on 5 January 2017 asking confirmation as to whether the FIRs which were identified in the letter had been issued by the station and for confirmation of the name of the officer investigating the matters. No response at all was received to either of those letters.
45. In addition, the affidavits of the appellant's brothers, translated at page 6 and 8, identified the event on 6 July 2016. Although as noted by the Judge, these are not translated in impeccable English, the sense of each affidavit is clear. The brothers who attended the Eid service at the mosque referred to the Mullah Shakir Ul Haq who expressly referred to the appellant in his speech as a person who was misguiding people. This aroused the anger of those present who then attacked them and manhandled them resulting in injuries. Medication was also provided.
46. Apart from his brothers' own assertions, photographic evidence of such injuries was produced as well as medical prescriptions over a period. There is also a letter from Dr Rizvi dated 21 November 2016 confirming the attendance of the brothers at their surgery complaining that they had been beaten on 6 July 2016 on Eid after leaving the mosque.

One brother was seriously injured requiring hospital emergency treatment, the other was in a state of unconsciousness having sustained head injuries. The brothers have been treated by him since then.

47. Accordingly, there was some medical evidence confirming that the brothers had been attacked during the prayers on that day.
48. There was also the appellant's evidence that his brothers attended the police station themselves following the DVR but had not had any "joy" in registering their complaint against the Molana. They were therefore forced to write to their DSP who acknowledged the complaint but has not responded to date.
49. Although the Judge accepted that the appellant's brothers might have been assaulted, there is no assessment or finding as to the potential significance of that assault with regard to the appellant's claim that he is treated as a blasphemer and will be at real risk on return.
50. Further, the DVRs themselves do not contain much detail. The identity of the person spoken to and the name of the officer in question are not provided. Nor is there any transcript or précis of the conversation that occurred. Nor is there any estimate as to how long the conversation lasted. Nor is there any indication as to whether the information which was disclosed was available immediately, or as submitted by Mr Ahmed, whether this involved a process of information gathering. That is particularly relevant as the FIRs were dated February 2011 and September 2015. It is likely that the information sought would only be given after further inquiries were conducted.
51. In the circumstances I find that there has not been an adequate assessment or findings made of the matters raised in evidence by the appellant, his brothers, as well as the medical evidence lodged, before reaching conclusions adverse to the appellant's core account.
52. As Judge Baker noted, the balance of the evidence in support of the claim "was arguably not adequately addressed."
53. In the circumstances I find that the decision of the First-tier Tribunal Judge involved the making of an error on a point of law. I accordingly set it aside.
54. The parties agreed that in that event the matter should be remitted to the First-tier Tribunal for a fresh decision.
55. I have had regard to the President's Practice Statement regarding the remitting of an appeal. I am satisfied that the effect of the error has been to deprive the appellant of a full and proper opportunity for his case to be properly put and considered by the First-tier Tribunal.



**Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside and the case is remitted to the First-tier Tribunal (Taylor House) for a fresh determination to be made by another Judge.

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them 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 3 August 2017

Deputy Upper Tribunal Judge C R Mailer