



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/12750/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 27 July 2017

On 11 September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

AN

(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss. P. Yong, Counsel, instructed by Davies, Blunden & Evans

For the Respondent: Mr. T. Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Cameron, promulgated on 13 January 2017, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant asylum.
2. As this is an asylum appeal, I make an anonymity direction.
3. Permission to appeal was granted as follows:

“In relation to ground three, although the recitation of the evidence elsewhere in the Decision suggests that the Judge was aware of the relevant chronology, it is arguable that the Judge erred at [78] of the Decision in his finding that the Appellant would not have returned to Pakistan in 2015 if there were a fatwah against him. It is the Appellant’s case that he was unaware of the fatwah at the time of his return. That error may not be material when assessed with the other credibility findings but is arguably so at this stage.

The other two grounds are weaker and may amount to a mere disagreement with the findings. However, I do not limit the grant of permission.”

4. The Appellant attended the hearing. Both representatives made oral submissions following which I reserved my decision.

Submissions

5. Miss. Yong submitted that the judge had found that there was a lack of corroborative medical evidence, but there was a Rule 35 report showing scarring. The Rule 35 report showed that the Appellant was a victim of torture but the judge had placed no weight on this corroborative evidence. She submitted that this was particularly pertinent as the judge had found that the Appellant was consistent, in particular regarding his arrest and detention in 2014.
6. In paragraph 68 the judge had found that the Appellant’s evidence was consistent but not truthful. She submitted that the judge had raised the threshold and gone beyond the lower standard of proof applicable. There was sufficient evidence to find that the Appellant was at risk.
7. At Q60 of his asylum interview the Appellant had stated that the military hospital did not give him a receipt. The military hospital worked under the Pakistani authorities. The Appellant had been clear at the first stage of his asylum claim that he could not even obtain a receipt from the hospital, so it was unlikely that he was going to be able to obtain any further evidence of treatment received at the hospital. The judge had found that the Appellant was detained by the Pakistani authorities. The Appellant’s claim was that they would not even issue a receipt, let alone give him medical records. It was impossible for the Appellant to get such evidence and in requiring it the judge had raised the threshold of the burden of proof.
8. In relation to ground 2 the judge had found that the Appellant was a member of UKPNP [67] and that there was evidence that the authorities would take action against members of this organisation.
9. At [75] and [81] the judge stated that there was no background evidence to show that the position in Pakistan had improved, and that there were fewer attacks in 2014. However, there had been evidence before the judge that there had been fewer attacks in Kashmir in 2014. I was referred to the EASO Country of Origin Information Report Pakistan,

August 2015 paragraph 2.6 (page 177 of the Appellant's bundle). This states that there were very few attacks in AK in 2014, although there were occasional cross-border attacks along the line of control. AK was the Appellant's area.

10. In relation to ground 3 she accepted that the findings in paragraph 78 referred not to the Appellant's return to Pakistan, but to the Appellant's failure to claim asylum on return to the United Kingdom in September 2015. However, she said that the fatwah was in the judge's mind and he had not rejected the fatwah outright. She submitted that the judge had come to the conclusion that the fatwah was not reliable based on his other credibility findings. She referred to the letter from the advocate who had gone to obtain the fatwah (page 37 of the Appellant's bundle). No consideration had been given to this document, and the judge had not stated why he had rejected the evidence of the advocate.
11. Significant documentary evidence had not been considered by the judge. Although there was no formal psychiatric report, there was a Rule 35 report. The Appellant had been found to be consistent throughout. The judge had raised the legal burden of proof and had rejected the credibility of the Appellant due to a lack of corroborative medical evidence although there was a Rule 35 report.
12. In relation to the 2014 arrest, the Appellant had said at interview that this was a random arrest. He had not relied on an interpreter at his interview and this had not been considered by the judge. Miss. Yong submitted that it was not rational to find the Appellant consistent and to find that he was a member of the UKPNP, but then to reject his asylum claim. Section 8 was only one factor. Specific documentary evidence had not been rejected by the judge.
13. Mr. Wilding relied on the Rule 24 report. He submitted that there was no material error of law in the decision. The case advanced in submissions relied on the failure to take the Rule 35 report into account, but no complaint had been made in the grounds that there had been a failure to take medical evidence into account. The skeleton argument before the First-tier Tribunal had not relied on the Rule 35 report.
14. In relation to ground 1, this was an attack on the judge's misunderstanding of the military hospital. There had been no challenge in ground 1 to a failure to consider the medical evidence. The decision was thorough. There was a comprehensive set of findings at [31] to [86]. Mr. Wilding took issue with Miss. Yong's summary of the decision - the judge had not found the Appellant to have been consistent. Paragraph 68 was not a finding of consistency, and not a finding as to the Appellant's credibility. He submitted that it was possible to be consistent about something which is a lie or something which is the truth as equally as it was possible to be inconsistent about it. The comments regarding the Appellant's consistency did not equate to a credibility finding.

15. The grounds were no more than a disagreement with the findings of the judge. In the grant of permission the judge noted that the strongest point was in relation to [78]. However, it was accepted that the finding at paragraph [78] was not about return to Pakistan but referred to the Appellant's failure to claim asylum on return to the United Kingdom when he knew that there was a threat. This finding was open to the judge. There was no misunderstanding as to the timing of the fatwah.
16. While accepting that the grant of permission had not been limited, Mr. Wilding pointed out that the judge granting permission was not taken with grounds 1 or 2. Although the First-tier Tribunal judge had noted the consistency of the evidence, he had not accepted a great deal of the Appellant's evidence. The Appellant had been coming and going between the United Kingdom and Pakistan. In relation to the application to adduce further evidence under Rule 15, this did not go to the heart of the Appellant's narrative, which is what the judge had been assessing. There had been no hospital reports from Pakistan, but equally there had been no medical evidence from the United Kingdom apart from the Rule 35 report. There was no material error of law.
17. In response Miss. Yong submitted that the failure to consider the Rule 35 report fell within ground 1, a failure to take into account key evidence when making adverse credibility findings. The failure to take into account the Rule 35 report clearly fell into ground 1. All medical evidence had to be taken into account. She accepted that the Rule 35 report had not been separately pleaded but the judge had not made a finding of fact about the Appellant's detention in 2003.
18. She submitted that paragraph 68 contained very strong findings which were sufficient credibility findings. The judge had found that the Appellant had been consistent throughout. He had then found a way out from making a finding that the Appellant was at risk despite this finding of consistency, relying on the fact that there was no hospital report provided in relation to his treatment. He had made this finding without looking at the other documentary evidence which was before him. It was difficult to obtain medical records from abroad, let alone from a Pakistan military hospital. The Appellant had provided all documentary evidence as soon as possible where this was feasible.
19. There had been no real challenge to the advocate's letter. There was a flawed basis for the judge's credibility finding. The Appellant was found to have scarring in the Rule 35 report. The judge placed no weight on this report simply because there was no psychiatric report. The Rule 35 report further corroborated the Appellant's account. The judge had made positive credibility findings about his arrest and detention in 2014. The Appellant had been involved in sur place activities. He was at risk.

Error of Law Decision

20. I will start by dealing with ground 3. As accepted by Miss. Yong, paragraph 78 does not refer to the Appellant's return to Pakistan when he

knew there was a fatwah against him, but refers to the Appellant's failure to claim asylum on return to the United Kingdom in September 2015, when he claimed to know that there was a fatwah against him. The judge has not misunderstood the timing of the fatwah. The judge has made an adverse credibility finding on the basis that, having discovered that there was a fatwah against him, the Appellant did not claim asylum on return to the United Kingdom. There is no error of law in paragraph 78. This finding was open to the judge.

21. Ground 3 does not refer to any failure of the judge to make a finding as to the fatwah. There is no misdirection in paragraph 78 and it is only on this apparent misdirection that ground 3 relies. The issue of whether or not the judge made findings about the existence of the fatwah falls into ground 1.
22. I accept Mr. Wilding's point that the case advanced before me was in some ways rather different to that advanced in the grounds of appeal. However, the first ground of appeal is that the judge failed to take into account key evidence when making adverse credibility findings against the Appellant. Unfortunately, what follows does not completely back up this ground. However, the grounds are not limited, and they raise the issue of the failure to take into account key evidence. I will therefore deal with the issues raised by Miss. Yong.
23. Miss. Yong submitted that the judge had not taken into account the Rule 35 report and the advocate's letter. The advocate's letter is in relation to the fatwah. I have carefully considered the decision. There is no clear finding as to whether or not a fatwah has been taken out against the Appellant. In paragraph [44] the judge refers to the fatwah, but this is not a finding, but is merely a recounting of the Appellant's evidence (as is the case for paragraphs [31] to [63]). He refers to the letter from the advocate at [62], but again there is no finding and the judge simply sets out the contents of the letter.
24. The findings are set out from [66] onwards. The only references to the fatwah in paragraphs [66] to [86] are at [76] to [78] in relation to section 8. However, as set out above, this is relevant to the Appellant's failure to claim asylum when he claimed to know that there was a fatwah against him. There is reference in [79] to the copy of the fatwah, but no finding that it can be relied on. The main paragraph where the judge purports to deal with the fatwah is [83]. However there is no finding as to whether or not the fatwah has been issued, and there is no reference to the letter from the advocate. In fact, although the paragraph starts "with regard to the issue of the Fatwa", it does not proceed to consider the issuing of the fatwah in any detail.
25. At [84] the judge concludes that he cannot place weight on the fatwah, but again, this is not with any reference to the letter from the advocate, but is due to the fact that he does not accept that the Appellant was detained "given the lack of medical evidence available" and because the Appellant returned in September 2015. The judge rejects the fatwah

because he rejects the claim that the Appellant was detained. He does not consider the evidence of how the fatwah was obtained when concluding that the fatwah cannot be relied on. In [85] he finds that the Appellant has not shown even to the lower standard of proof that a fatwah has been issued as he does not find the Appellant's account to be credible. I find that there is a failure to take into account all relevant evidence connected to the fatwah.

26. The judge's rejection of the fatwah is directly connected with his rejection of the medical evidence. In relation to this medical evidence, in paragraph 79 the judge states:

"The only medical evidence provided by the appellant is a detention service order under rule 35. It is relevant to note that in his witness statement dated 18 September 2016 at paragraph 19 he refers to the fact that this suggests that he is suffering post-trauma. I take note that there is no formal psychiatric or psychological report provided to support this contention."

27. Paragraph 80 states:

"I accept that an appellant is not required to provide corroboration however where documents could be obtained then it is expected that the appellant would make some attempt to do so. He has provided a number of documents in relation to his membership of the party and also a copy of the Fatwa he states was issued against him. There is no explanation as to why the appellant has not provided any medical reports in connection with his mistreatment in 2014 in particular in a hospital report given that he states he was in hospital for two weeks. Even if it were a case that the authorities could put pressure on the hospital not to indicate that he was there because he was the victim of torture there should be some record that he was at least at the hospital for those two weeks."

28. The judge accepts that corroboration is not necessary, but then states that he would have expected some medical evidence to be have been provided from the hospital in Pakistan. Further, he does not consider all of the evidence in the round as he gives no consideration to the content of the Rule 35 report. This was corroborative of the Appellant's claim. While the report is referred to, there is no reference to what is in it. The judge has evidence before him which supports the Appellant's account, yet he does not refer to its contents. Instead he places weight on the fact that the Appellant has not provided evidence from the hospital in Pakistan. The Appellant's evidence at his asylum interview was that he was not able even to get a receipt from the hospital to show his attendance. There is no reference to this evidence when the judge finds that the lack of a medical report from the hospital in Pakistan damages the Appellant's credibility. He also makes reference to the lack of formal psychiatric or psychological report [79].

29. I find that the judge has failed to take all of the evidence into account when coming to his findings. I find that he has failed properly to consider

all of the evidence, including the letter from the advocate and the Rule 35 report. The main reason given for rejecting the claim that he was detained was the lack of medical evidence, despite finding that the Appellant's evidence in connection with his detention "has been consistent throughout" [68]. Nevertheless, despite making this finding, the account is rejected due to no hospital reports being provided.

30. While the judge accepts that an appellant is not required to provide corroboration, effectively this is what he does. He gives no weight to the fact that the Appellant's account has been consistent due to the failure to provide corroborative evidence.
31. The judge accepts that the Appellant is a member of UKPNP, and that he has "taken part in some activities in this country" [84]. He finds that the authorities have taken action against the UKPNP [67]. However, he does not consider separately the Appellant's risk on return on account of this membership. Having found that the Appellant was a member of a group against whom action had been taken by the Pakistani authorities, it was necessary to assess the risk on return to the Appellant. At [83] he finds that the Appellant's activities in the UK would not have brought him to the attention of the authorities in Pakistan, but he does not give reasons for this finding.
32. I find that the failure to consider the risk on return to the Appellant on account of his membership of the UKPNP is a material error of law.
33. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Decision

34. The decision of the First-tier Tribunal is set aside. No findings are preserved.
35. The appeal is remitted to the First-tier Tribunal to be reheard.

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 his 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 8 September 2017

Deputy Upper Tribunal Judge Chamberlain