



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/00314/2015

THE IMMIGRATION ACTS

Heard at Field House
On 9 April 2018

Decision & Reasons Promulgated
On 18 April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

MRS NB
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Aly, of Counsel instructed by Messrs Adam Bernard
Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against a decision of Judge of the First-tier Tribunal Behan who, in a determination promulgated on 8 November 2016 dismissed the appellant's appeal against a decision of the Secretary of State made on 22 November 2014 to issue removal directions under Section 10 of the Immigration and Asylum Act 1999 following the refusal of her claim to asylum.
2. The appellant's husband and her son, who was born on 29 April 2001, are her dependants. The appellant's brother-in-law came to Britain in the late 1990s and it is asserted that he was granted asylum and is now a British citizen. Her husband came to Britain in April 2001 and claimed asylum in April the following year. His

application was refused and his appeal against the refusal was dismissed by an Adjudicator, Mr Boyd, in a determination dated 23 October 2002. Permission to appeal further was refused and the appellant's husband became appeal rights exhausted. He has remained in Britain without authority ever since. Although he states he applied for leave to remain under the Legacy Programme in 2011, that application was refused. The appellant had herself visited Britain in 2006, 2008 and 2013 returning to Pakistan within the currency of the first two visas but remaining without authority after she entered in May 2013 before she claimed asylum in March the following year.

3. The appellant does not claim that she suffered persecution in Pakistan. Her claim is based on that of her husband because of her husband's profile in a Shia organisation called Fiqa Jafriya (FJ) which had made him a target for violence while he lived in Pakistan. That had culminated in his being shot in the leg and waist. The appellant stated that she had not come to Britain with her husband when he had come to claim asylum because it was her duty to look after her husband's family. She also said that it was not in her son's interests to leave Britain now because of threats to his life and because he was doing well at school here.
4. The Secretary of State accepted that the appellant was a Shia Muslim but did not find the appellant's claim to be credible and stated that the background to the claim was vague and inconsistent. The judge had before her a copy of the determination in the appellant's husband's appeal and also evidence that there was a letter to him from the respondent giving a notice of a decision to issue further removal directions.
5. The judge heard evidence from the appellant and from her husband. In paragraphs 47 and 48 she set out the appropriate burden and standard of proof. In paragraphs 49 onwards the judge, having noted that the standard of proof was a low one, considered the appellant's evidence. She noted the determination of Mr Boyd in which he had stated that he did not find that the appellant's husband was credible and did not believe that he had been the subject of persecution or harassment in the manner he had suggested or that he had a well-founded fear of persecution should he return to Pakistan. Mr Boyd had stated that that conclusion was enhanced by the fact that his wife (this appellant) appeared to have had no difficulty in Pakistan since her husband had left.
6. Mr Boyd found that the appellant's husband's evidence was inconsistent and lacked detail and noted that he had stayed in Pakistan for two years after he had first had problems and that he had then waited thirteen months before claiming asylum, claiming that he had not had any contact with his wife because of safety concerns although his brother's wife had been back to Pakistan and met her. The judge correctly reminded herself that she was not bound by Mr Boyd's findings and moreover in any event she was not hearing an appeal against them.
7. The judge noted the appellant and her husband had been consistent in saying that the appellant and his brother had come to the adverse attention of anti-Shia groups because of their position in FJ and noted that there was some background evidence to

show that there was some violence perpetrated against the Shia community by Sunni militants in Pakistan and therefore if the appellant's husband had held a high profile position in a Shia organisation it was not implausible that he became the target of anti-Shia militants. The judge stated that she was prepared to accept that the appellant's husband's brother played an active part in organising religious processions and that the appellant's husband had been asked by his father to look out for his younger brother. She said that beyond that it was difficult to discern from the evidence presented what their claimed "leadership" involved. The judge went on to say that she had found there were several unsatisfactory elements to the accounts given by the appellant and her husband and that she could not be satisfied that the appellant's husband had suffered the injuries he appeared to claim that he suffered at the hands of anti-Shia militants or that he was specifically targeted by such militant groups or that there is a real risk of serious harm should he return to Pakistan. Overall, she found the evidence presented by the appellant and her husband about precisely what had happened to him and why he had been targeted to be incoherent and inconsistent and that there was an absence of evidence that was clearly relevant to the appellant's case in circumstances where it was reasonable to expect such evidence to be presented. The judge found the explanation of why the appellant remained in Pakistan with her son in circumstances in which she said she feared for her life and which were traumatising to her son to be implausible.

8. The judge stated that the exact circumstances under which the appellant's husband was shot were unclear. The appellant's husband told the respondent he had been captured and interrogated by anti-Shia groups several times and that he was beaten and his leg injured. He was recorded as saying that his brother had been the assistant chief of the group and the judge stated that that was not what the appellant's husband had said in evidence. The appellant's husband had said that there had been an attack with gunfire on his brother and they had driven to a hospital in Rawalpindi but there was no record in his determination of him saying he had been shot in his leg. The judge said that she was told about a time when the appellant's husband could not get to a hospital to have his leg wound treated but it was not clear if these were the same incidents or different ones. It appeared from the determination of Mr Boyd that there was some link to the appellant's husband's brother's involvement and difficulties in politics as opposed to his leadership role in FJ.
9. The judge went on to point out that the appellant's husband had given no detail about the circumstances under which he was shot or why he waited two years to leave and also pointed to the discrepancies in the evidence as to whether or not FJ was a political party or a religious grouping. The judge stated that the discrepancy was most likely explained by someone making up the evidence and in view of the fact that there was no mention of being shot at in the appellant's husband's signed statement which was adopted by him at the hearing she concluded that either he had wilfully invented the evidence or was extremely careless about what evidence he was prepared to put before the Tribunal. Moreover, the appellant's husband had signed a statement saying that FJ had been outlawed many times by the government but this was simply not true. The judge noted that the appellant had said that her life was in

danger in Pakistan but pointed out that she had come to Britain, with her son, four or five times but had always returned to what she claimed was an extremely dangerous situation and that the explanation for this was that she had to do this to look after her parents-in-law. The judge found that inherently implausible. Moreover, she placed weight on the delay in the appellant claiming asylum.

10. The judge pointed to the fact that the appellant's brother-in-law, who lived in Britain and, it was claimed, had had asylum here, would have been a key witness but he did not attend. She noted that the appellant's husband had said that if he returned to Pakistan he would resume his previous activities but that there was scant evidence as to what they were: it appeared that he may have been responsible for making arrangements for processions and for protecting his brother but it was not clear how many processions or over what period these had been arranged, nor was it clear what activities he would take up if he returned to Pakistan now. He could hardly go back to being his brother's bodyguard as his brother was here. The judge went on to state that although the roles of the appellant's husband and her brother-in-law were unclear she was prepared to accept that in his locality the appellant's husband's father and uncle had taken active roles which were passed on to the appellant's husband and his brother but it was not clear what role that was as it was certainly not, it appeared, a religious role. She pointed out that the appellant's husband did not say that he had taken any role in the Shia community here, nor was there even any evidence of regular attendance at the mosque or religious activities. His role had been linked to his locality and to his family. It was not reasonably likely that her husband would continue his activities in Pakistan now if he feared that he would be in danger. There was no evidence to show what he would wish to do so on return.
11. The judge therefore found that the appellant and her husband did not qualify for asylum here. Detailed consideration was given to the appellant's rights under Article 8 of the ECHR and in particular to the rights of the appellant's son. The judge found that the family would be able to return to Pakistan as a unit.
12. The grounds of appeal on which Ms Aly relied are lengthy and Mr Clarke made brief submissions thereon. Firstly, it was argued that the judge had failed to state in what way the appellant's evidence was inconsistent and incoherent and should have set out her specific concerns regarding the ways in which the evidence of the appellant's husband that he had been shot were unclear. It was stated that the judge should have made clear findings about whether or not the appellant's husband had been shot and should have explained why the claim was rejected and should have taken into account the fact that the incidents which had been described had taken place before the appellant's husband fled to Britain in 2001 and therefore that the inconsistencies related to events sixteen or more years ago.
13. I consider that there is no merit in that ground of appeal. The reality is that it was the appellant's evidence and that of her husband which was inconsistent and incoherent. The judge clearly very carefully considered the evidence before her and did point out the inconsistencies therein. The judge did also of course have the determination of Mr Boyd – the Adjudicator who heard the appellant's husband's appeal – before her.

It is impossible for a judge to make clear findings as to what happened if the evidence of the witness is itself unclear. What the judge wrote in the determination reflects the evidence before her. There is no clear submission in the grounds to show that the appellant's husband's evidence was coherent throughout and that the judge had misunderstood the evidence being put before her. Moreover, the judge should not have accepted incoherent evidence merely because it related to issues many years ago. The reality is that Mr Boyd did not find the appellant's husband was credible and that he heard evidence very shortly after the incidents on which the appellant's husband relied.

14. It was then argued in the grounds that the judge should have accepted the inconsistent evidence as to what FJ was because when the appellant and her husband had made those statements to their solicitor they had done so through an interpreter and that effectively it was the fault of the solicitor or legal representative that a coherent account was not taken when the statements were produced.
15. However, there was simply no evidence before me to indicate that the appellant's legal representatives were anything other than conscientious and taking down as clearly as possible the evidence which they were given through the interpreter when the statements were prepared.
16. The third ground argued that the judge had placed undue weight on the fact that the appellant had visited Britain and then returned to Pakistan. The grounds argued that the judge was wrong to find it was implausible that if the appellant was in fear of persecution she would have returned to Pakistan. I do not accept that ground of appeal. The conclusion of the judge was fully open to her. She did take into account that the appellant had said she had to look after her parents-in-law but the conclusion that the appellant would not be expected to return if there was a reasonable likelihood that she would face persecution was fully open to the judge.
17. The fourth ground asserts that the judge was wrong to place weight on the fact that the appellant's brother-in-law did not give evidence stating there may have been many reasons for that. However, the reality is that the appellant's brother-in-law is in England and he is in contact with the appellant's husband. It appears that it was claimed that he was the principal target and that the appellant's husband acted as his bodyguard. The appellant's brother-in-law would surely have his own elder brother's interests at heart but did not attend and no persuasive reasons were given for that. I consider that the judge was entitled to place weight on his non-attendance.
18. The fifth ground of appeal questioned the conclusion of the judge that the fact that the appellant's husband did not play a religious role in FJ and differentially stated his position from that of an imam was a distinction not open to the judge given the hostility to Shias in Pakistan. It was stated that if the appellant's husband had played a leading role of whatever description there would be reason to suppose that he would be at risk. The reality is that there is no evidence that the appellant's husband played a leading role, what was asserted was that he was his younger brother's bodyguard and that he may have arranged marches. The judge again reached a

conclusion which was fully open to her. That ground of appeal went on to argue that if the appellant's husband had played such a role in the past then that of itself was reason to suppose that he would seek to play such a role again. I consider that the judge was fully entitled to conclude, given that there was no evidence whatsoever that the appellant's husband had played any role in any Shia organisation since coming to Britain and indeed there was no evidence in the background documentation relating to FJ, that the appellant's husband would face any difficulties on return or would wish to take up any role.

19. Finally, the grounds argued that the judge was wrong to state that the appellant and her husband could relocate within Pakistan, stating that the fear arose from the appellant's husband's active role in a Shia organisation and hostility to Shias was nationwide in Pakistan and therefore wherever they went the appellant's husband would be at risk of further involvement with an organisation which would arouse hostility towards him from the Sunni majority.
20. There is no evidence in the background papers before the judge of the existence of FJ in Pakistan and there is nothing to indicate the appellant's husband was in any way a prominent figure or would be recognised anywhere outside his home area let alone, if he would be recognised at all after sixteen years away. There is nothing to indicate that he would take up any further role in any Shia organisation on return. I consider that the appellant and her husband could relocate, should they not wish to return to their home area, without difficulty although the reality is that the appellant has returned to her home area on a number of occasions after visits to England. In all, I consider that there is no merit whatsoever in the grounds of appeal.
21. This was a detailed determination in which the judge properly grappled with the somewhat incoherent and unsubstantiated evidence before her and reached conclusions which I consider were fully open to her thereon. The reality is that the incident on which the appellant's claim is based was now almost twenty years ago. There has been no involvement of her husband with FJ for at least sixteen years and his involvement with that organisation was of little importance and furthermore, it must be remembered that this appeal relates to the appellant and not to her husband - his appeal as dismissed- and she herself, although she claims that she lived in fear in Pakistan, did return there on a number of occasions and was able to give no concrete examples of any form of persecution which she had suffered there, or at least no specified claims of any such persecution.
22. In these circumstances I consider that there is no error of law whatsoever in the determination of the judge in the First-tier and I dismiss this appeal.

Notice of Decision

This appeal is dismissed.

Anonymity direction made.

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 her or any member of her 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



Deputy Upper Tribunal Judge McGeachy

Date: 13 April 2018