



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

Appeal Number: PA/03813/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 24 October 2018**

**Decision & Reasons
Promulgated
On 26 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**M Y
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Fraczyk of Counsel, instructed by Baileys Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. This is an appeal against the decision of First-tier Tribunal Judge Andrew promulgated on 24 August 2018 in which she refused the appeal of the Appellant on protection grounds against a decision of the Respondent dated 8 March 2018 refusing asylum in the United Kingdom.

2. The Appellant is a citizen of Pakistan whose date of birth is given as 1 January 1963. He entered the United Kingdom in 2009 pursuant to a visit visa granted on 31 March 2009 after a successful immigration appeal. The Appellant overstayed his visa. On 12 June 2014 he was arrested as an overstayer. On 19 September 2017 he was detained when reporting to the immigration services and on 20 September 2017 he claimed asylum.
3. In his screening interview the Appellant asserted that he *“had problems with my family”*, claiming

*“The main problem is because I came to the UK in 2009 and could not support them. They have found out that I have girlfriend here in the UK, she is supporting me.
They will kill me, because my in-law are powerful.
I fear my in-laws.
Because they warned me if I return to Pakistan they would kill me”*.
4. At his substantive interview the Appellant produced threatening letters that he claimed had been written by his in-laws. However, it would appear the Appellant demonstrated little knowledge of, or familiarity with, the contents of the threatening letters: see question 55 *et seq.*
5. The Respondent in due course refused the Appellant’s application for asylum for reasons set out in a ‘reasons for refusal’ letter (‘RFRL’) dated 8 March 2018. The Respondent rejected the Appellant’s claim to have been the recipient of threats from his in-laws, and also rejected the Appellant’s claim to have been in a relationship with a woman in the UK - which he had stated variously to have commenced in 2013 or 2014. The Respondent concluded that the Appellant would not be at risk if returned to Pakistan. It may also be noted that the Respondent characterised the Appellant’s claim for protection as not engaging a ‘Refugee Convention reason’ because it was essentially rooted in a claimed dispute with family members and did not arise for reasons of race, religion, nationality, membership of a particular social group, or political opinion.
6. The Appellant appealed to the IAC.
7. The appeal was dismissed for reasons set out in the Decision and Reasons of Judge Andrew.
8. The Appellant sought permission to appeal to the Upper Tribunal, which was granted by First-tier Tribunal Judge Grant-Hutchison on 17 September 2018.

9. The Respondent has filed a Rule 24 response dated 11 October 2018 resisting the Appellant's challenge to the decision of the First-tier Tribunal.

Decision of the First-tier Tribunal

10. The First-tier Tribunal Judge, having rehearsed something of the background to the case and having appropriately directed herself to the burden and standard of proof, set out her findings of fact at paragraph 19 of the decision in 28 lettered sub-paragraphs (a - bb). Of particular note in the context of the issues before me are the following matters, which include in part an acceptance that there had been an issue between the Appellant and his wife, and in turn members of her family, over the fact that he had not been supporting her in the United Kingdom.

“h. It is not surprising that the Appellant's wife in such circumstances has made application to the Pakistani Courts for support. I am satisfied that, following the death of her father-in-law and her mother-in-law in 2017, and with whom she lived, she would have found it difficult to manage financially. I do not find that a Court Order such as the one produced by the Appellant in his Bundle would place the Appellant at real risk on his return to Pakistan.

i. However, it is from his wife's brothers the Appellant claims his fears arise. They have taken over his two houses and also wish to take his ancestral land. Again, I do not find this surprising. The Appellant has neglected to maintain his wife and family for a number of years whilst apparently carrying on a business in the United Kingdom (see the Court Order) and I am satisfied that it is reasonably likely that they see this as some form of compensation for the money that is owed to the Appellant's wife.”

11. The Judge, having accepted these aspects of the premises of the Appellant's claim, then addressed her mind to the threatening letters. She sets out at paragraphs 19k-19q reasons for not attaching any weight to either the letters or a First Information Report ('FIR') produced by the Appellant. In my judgement the Judge does so with adequate cogency: the reasoning is essentially sound, and indeed is not in itself the subject of any specific challenge. The reasons include that the Appellant had been inconsistent in his claims in relation to the letters, and had offered a confused account during the course of interview indicating unfamiliarity with the letters (a matter raised in the RFRL). The Judge also considered that the contents of the threatening letters were inconsistent with the

contents of other supporting documents, in particular the FIR and a letter said to have been written by the Appellant's sister to the police.

12. The Judge then went on to consider the Appellant's claim that "*his brothers-in-law had influence with politicians, the Police and Immigration officials all over Pakistan*" - noting that beyond the Appellant's assertions in this regard nothing had been provided by way of supporting evidence as to such influence (sub-paragraph 19s).
13. I acknowledge that this latter assessment may be vulnerable to criticism in that the Judge appears to have expected the Appellant to be able to produce something by way of supporting corroborative documentary evidence of such influence: "*Had they had the influence the Appellant claims I would have expected the Appellant to be able to produce articles from newspapers or photographs confirming his assertions*".
14. Indeed this is the substance of one of the Appellant's grounds of appeal: it is convenient to address it at this juncture.
15. This particular aspect of the Appellant's challenge to the decision of the First-tier Tribunal is essentially contingent upon being able to establish his other grounds of appeal. The influence of the Appellant's brothers-in-law is only relevant if it is shown that they intend him harm. Accordingly, notwithstanding that in the abstract there may be some substance to this aspect of the challenge, in my judgement it ultimately does not avail the Appellant because I am not satisfied he has established the other bases of challenge.
16. Returning to the First-tier Tribunal's reasons: at paragraphs 19t-19z the Judge considered the Appellant's claim to have been in a relationship with a woman in the United Kingdom - an adulterous relationship given that he had a wife in Pakistan.
17. It is a startling feature of the Appellant's case that the woman with whom he was supposedly having the relationship did not attend the hearing of his appeal, and did not otherwise provide a supporting statement; nor did the Appellant provide any other evidence of the relationship. For the reasons explained - and it seems to me to what should have been the surprise of nobody - the Judge ultimately concluded that the Appellant had failed to demonstrate that he was in, or had ever been in, such a relationship as he claimed.

18. Again, no criticism is raised on behalf of the Appellant in respect of this aspect of the Judge's reasoning and findings.
19. Necessarily the Judge's consequential finding - *"It follows from this that I am satisfied the claims that news of an extramarital relationship has not got back to the Appellant's brothers-in-law, as claimed, and this aspect of the claim has been made with a view to bolstering an already weak claim."* (paragraph 19z) - albeit poorly expressed, is adequately clear and unimpeachable.
20. The Judge then states the following conclusion:

"Accordingly, I am satisfied that the Appellant is not at real risk from his brothers-in-law, as he claims. I do accept that he may be at risk of losing his assets in Pakistan, but this is because he has not paid maintenance for his wife and five children, not for any other reason. This does not give rise to a claim for humanitarian protection." (paragraph 19aa)
21. The Judge then goes on to consider, in the alternative, internal relocation - stating that she was not satisfied that the Appellant had shown that his brothers-in-law had any influence in Pakistan.
22. For completeness I should note that the Judge also took into account section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and found that the Appellant's delay in claiming asylum further leads her to *"find his claims are not credible"* (paragraph 20).
23. The Appellant's appeal was therefore dismissed by the First-tier Tribunal Judge.

Challenge

24. The primary ground of challenge that has been pursued and amplified before me is set out in these terms in the Appellant's grounds of appeal at paragraph 4:

"In reaching her findings the Judge has made no reference at all to the expert report of Ms Uzma Moeen. Whilst the expert of course cannot comment on credibility which is a matter for the Judge, she is able and in fact does comment on the plausibility of the account. This evidence has not been considered by the Judge at all when making her credibility findings. Ms Moeen comments in her report in

particular that the Appellant's account of events and in particular the reaction of his wife's brothers is plausible within the context of Pakistani society. Whilst it is acknowledged that she does not have to refer to every single piece of evidence, it is submitted that the expert report was an important piece of evidence and should have been considered."

25. Ms Isherwood accepts, as it seems to me she inevitably must, that the First-tier Tribunal Judge does not make any express reference to the report of Ms Moeen in the decision. (This is also acknowledged in the Rule 24 response.)
26. It is to be noted that at paragraph 10 of the Decision the Judge does refer to the bundle produced by the Appellant, which includes the report. The Judge also states at paragraph 18 that she had given consideration in the round *"to all the evidence that is before me"*. Nonetheless, it is to be acknowledged that there is no express reference to Ms Moeen's report.
27. In such circumstances the focus of argument before me was on the materiality of the report of Ms Moeen.
28. The report is in the 72 page bundle submitted by the Appellant before the First-tier Tribunal at pages 39-72. It is dated 9 August 2018. It is on the letterhead of the Asian Legal Advice Service. In the opening paragraphs Ms Moeen sets out the basis of her instructions and something of her expertise.
29. For completeness it is helpful if I set out the opening paragraphs of the instructions as pertaining to the issue before me. Paragraph 11 of Ms Moeen's report is, in part, in these terms:

"My instructions are to comment on the following issues in my expert report:

- (i) *Whether [MY]'s claim, as set out in his statement of 06 August 2018 and in his interviews, is plausible in the context of Pakistan, according to objective country evidence and your own expert knowledge.*

In particular:

- (ii) *Whether it is common for a married man such as [MY] to be targeted, attacked or even killed by his in-laws or male relatives of his wife for having extra marital relationship with a woman (in*

the UK) and that he stopped paying maintenance money to his wife and children in Pakistan and whether [MY] would be likely to be at risk of serious physical harm from his wife's brothers and/or their associates (who have considerable political influence in Pakistan) if he returns to Pakistan now."

(The other paragraphs of the instructions, (iii)-(vii), are to a very considerable extent contingent upon the answers paragraph (ii).)

30. In addressing her instructions Ms Moeen sets out sections of her report with subheadings that replicate the essential nature of the divisions of the instruction: accordingly, between paragraphs 14 and 15 of the report there appears again the text of paragraph (ii) of the instruction before an attempt is made to address that particular question.
31. Prior to addressing the express instruction of paragraph (ii), at paragraph 14 of the report (under the heading "*Expert's Opinion*") Ms Moeen, having referred to the Respondent's decision, writes:

"However, by way of background, in order to assess the plausibility of his fear of serious physical harm and/or even unlawful killing if he is forced to return to Pakistan, in my opinion, it may help to consider the issue of honour-based violence and/or fate of men of [MY]'s claimed profile who try to escape any serious physical harm to be inflicted on them due to their alleged extra marital relationship and are labelled as irreligious, rebellious and adulterous."

32. It may be seen that in defining the context for the consideration of the issues raised the expert's focus is very much upon the claim that the Appellant is, and is accused of being, an adulterer. Indeed, such a 'profile' is an intrinsic part of the questions set out in the instructions, as recited at paragraph 11(ii).
33. Necessarily, as might be expected, when the expert begins to address paragraph (ii) of her instructions she again makes specific reference to the claimed extramarital relationship: paragraph 15 of Ms Moeen's report opens in these terms:

"[MY] claims that he fears risk of serious physical harm and/or unlawful killing, if he returns to Pakistan from his wife's brothers due to his extra marital relationship with a woman in the UK and that he has stopped paying maintenance money to his wife and children in Pakistan."

34. Mr Fraczyk, on behalf of the Appellant, has argued that the expert in fact gives consideration both (a) to the circumstances of an adulterer and the risks arising by reason of adultery, and (b) the circumstances of somebody who fails to maintain maintenance payments, as discrete matters. He identifies the following passage in the middle of paragraph 16 of the report:

“Therefore, in my opinion, [MY]’s extramarital relationship with a woman and/or the stopped payment of maintenance to his wife and children is not only seen as defiance from Islam in a Pakistani familial setup but such irreligious act also brings shame, disrespect and dishonour to his wife and her immediate family in Pakistan.”

It is submitted that the use of “and/or” means that the expert is in part opining that the stopping of maintenance will trigger the same adverse interest for the same reasons as would the act of adultery.

35. In my judgement the difficulty with that submission is that the whole of the rest of paragraph 16 is entirely focused upon adulterous behaviour and non-marital sexual acts. Further, immediately after the passage quoted above, the expert continues:

“It is plausible that feeling disgraced, his wife’s family would have threatened him of serious consequences. Such relationships are neither legally nor morally or socially acceptable in Pakistan”.

36. I do not accept that at paragraph 16 the expert is seeking to set out in a discrete manner a separate risk arising by reason of failure to meet the maintenance requirements. The analysis is in respect of adultery: the opinion on both plausibility of account and nature of risk is only supported by contextual references to the attitude towards, and treatment of, adulterers in Pakistan. There is no reference to the country situation in respect of those who do not support their families.

37. Similarly, it seems to me that the further phrase alighted upon by Counsel at paragraph 18 does not assist the Appellant’s arguments. At paragraph 18 Ms Moeen writes:

“I must point out that in [MY]’s case (as he claims) where the couple ‘dishonoured’ their families by entering into a romantic relationship and/or spending time alone in a house, the risk of serious physical harm to such men or couples in this situation would become more serious. I say so because honour is a multidimensional term that includes familial respect (izzat) and social prestige (ghairat).”

Mr Fraczyk urges me to consider that the reference to a multidimensional concept of honour would potentially embrace the failure to pay maintenance. I am not prepared to accept that that is what the expert had in mind at paragraph 18, which, again, is clearly written in the context of a consideration of a 'dishonourable' relationship outside of marriage.

38. In all such circumstances I do not accept the absence of any express reference to Ms Moeen's report amounted to a material omission. The report is focussed on the plausibility of threats arising in the context of adultery. The evaluation of the claimed fact of adultery did not turn on anything in the report. The Judge having concluded that the Appellant had not shown that he was an adulterer, or had been reported to be an adulterer to his in-laws, would have gleaned from the report no material assistance in evaluating risk on return.
39. Beyond those particular passages in the report of Ms Moeen, I have also been taken to a number of examples of incidents involving family feuds that have resulted in violence - including killings described as 'revenge' killings or 'honour' killings. It seems to me that none of those matters can be shown to be specifically 'on point' with regard to the maintenance issue. Moreover, in any event the fact that the sort of terrible things described - and which the Appellant claims to fear if he were returned to Pakistan - do occur in Pakistan, does not mean that they are reasonably likely to happen in the instant case. Something more is required to make good a claim for protection: either that such matters are so endemic that anybody failing to make a maintenance payment can expect to be at risk, or that there is something particular about the Appellant's case that puts him at risk.
40. As regards maintenance of his family, it seems to me not irrelevant to note that on the Judge's findings the failure to make payments had in substance been remedied by the actions in taking the Appellant's land and applying it to the benefit of his wife and children.
41. Be that as it may, in any event on the Appellant's evidence the factor that was particular about his case that went to demonstrate a specific risk to him, was the written threats that had been received. The Judge entirely rejected those threats for cogent reasons. It is to be recalled that the Judge not only rejected that element of the Appellant's case, but also found that the Appellant had not been able to discharge the burden of proof in respect of a matter that was readily provable in this country - that is to say in relation to his supposed adulterous relationship.

42. It is adequately clear that for sustainable reasons the Judge found the Appellant to lack credibility on the core elements of his account. In short, the Appellant did not make good on his claim that he had been the recipient of written threats.
43. It is submitted in the grounds of challenge that this should not inevitably have been fatal to the Appellant's application: *"The rejection of the documents does not lead to the conclusion that [the in-laws] would not harm him upon return"* (paragraph 5 of the grounds).
44. However, the rejection of the documents meant that there was nothing left to support the Appellant's claim other than his oral testimony that he had been the recipient of threats. Moreover, the rejection of the documents actively undermined his account and his credibility. In such circumstances, it seems to me that even if in general terms his account could be said to be plausible in that violent family feuds occur in Pakistan, this does not avail the Appellant. It is all very well to say that his account is plausible in the abstract, but if the Judge does not accept that he ever received any threats, the core of his claim is rejected, and, quite simply, his case fails .
45. I have already noted above that there was a third element to the challenge in respect of the 'reach' and influence of the Appellant's brothers-in-law, but that becomes an irrelevant consideration if the Appellant has not been able to establish that he is at risk in the first place.
46. Accordingly, notwithstanding the apparent error in failing to make express reference to the report of Ms Moeen, I find no material error of law.
47. Even if I were minded that the omission of reference to Ms Moeen's report was more problematic I would not be inclined to exercise the discretion conferred upon the Tribunal by section 12(2) of the Tribunals, Courts and Enforcement Act 2007 to set aside the decision of the First-tier Tribunal. In circumstances where an Appellant claims that he is at risk in consequence of being an adulterer and of having received threats related either or both to his adultery and to his failure to support his wife, but fails to establish either the fact of adultery or the fact of having been the recipient of threats it seems to me that he does not have a meritorious case for protection.
48. I reject the Appellant's challenge to the decision of the First-tier Tribunal.

49. An anonymity order has previously been made in these proceedings. By oversight, I did not invite the representatives to address me on the continuation of that order. For my own part – and with the caveat that I have not heard from the parties – I cannot see any particular reason why anonymity should be continued. However, in circumstances where I have not invited submissions it seems to me appropriate that the order be continued for the present. If for any reason these proceedings continue in any other forum it may be that the appropriateness an anonymity order can be revisited.

Notice of Decision

50. The decision of the First-tier Tribunal contained no material errors of law and stands.

51. The Appellant’s appeal remains dismissed.

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: **21 November 2018**

Deputy Upper Tribunal Judge I A Lewis