



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/11984/2017

THE IMMIGRATION ACTS

Heard at Field House

**Decision and Reasons
Promulgated**

On 23rd of April 2018

On 26th April 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

[S K]

~~(Anonymity Direction Not Made)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance.

For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Pakistan born on [] 1982 and he entered the United Kingdom in December 2009 on a validly issued visa in his own

name as a student. He then made a series of eight applications combination of student extensions, "Zambrano" style applications and freestanding article 8 applications all of which were, other than some earlier periods of lawful extended student leave, unsuccessful. He was encountered by police in August 2017 and promptly claimed asylum on 12 August 2017.

2. The appellant based his claim on the premise that when he lived in Pakistan he had a row with two local men when the appellant accidentally brought down their kite at kite flying festival. The appellant claimed this took place in 2004 and in February 2004 he was assaulted by these men and beaten and then he and his brother were kidnapped and sexually assaulted. They were then released but he would be picked up and beaten/raped over the next eight months by these two men and their gang. He claimed that they were local drug dealers and a politically connected and a police complaint came to nothing.
3. The Secretary of State refused his asylum and human rights claim on 10th October 2017 and he appealed. In a determination dated 15th December 2017 Judge of the First Tier Tribunal Lal dismissed the appellant's appeal on all grounds.

Application for Permission to Appeal

4. The application for permission to appeal asserted that the determination contained material errors of law, specifically that the judge failed to give reasons or adequate reasons for his findings on material matters. The judge failed to assess credibility in line with case law and background evidence. The grounds referred to paragraph 52 of the determination showing the judge had not assessed credibility regarding the appropriate legal framework or background evidence. The judge simply stated that he believes claim to be fabricated and made no clear findings. It was submitted that findings should be made in relation to the background evidence and he had placed no weight on the fact that the appellant's account was consistent with background evidence in Pakistani. The judge's errors in considering the appellant's fear of the police showed that the judge had not anxiously scrutinise the issues and had failed to make sustainable findings
5. Permission to appeal was granted by Designated Judge Shaerf on the basis that the grounds argued the judge had made extensive adverse credibility findings without giving any sufficient reasoning to support them and the grounds were arguable.

The Hearing

6. At the hearing, the appellant failed to attend despite a notice of the hearing being sent to him by the Upper Tribunal on 15th March 2018. Miss Fijiwala made enquiries and confirmed that the appellant had been granted bail, was reporting, and that his address was as recorded on the

notice of hearing. I concluded that the appellant had indeed been advised of the date, time and venue of the hearing and that it was in the interests of justice to proceed with the hearing. There had been no communication by the appellant with the tribunal to advise that he was not intending or could not attend or that he requested an adjournment and, there was no contact number on the file for the appellant.

7. Miss Fijiwala identified that the judge had given adequate reasons, identified the delay of the appellant in claiming asylum and that he had given no credible explanation for that delay. The judge had made an assessment of the claim and identified that there was a lack of detail in relation to the assault. The judge looked at the specific evidence in relation to the appellant himself, the documentation and the medical evidence which was not compliant with the Istanbul protocol. The judge assessed the evidence in the round, including the evidence of his neighbour, and found it not credible. The findings were open to the judge.

Conclusions

8. The judge has not failed to give adequate reasons for risk of return. The judge made a succinct but careful analysis of the evidence and identified at the outset, at paragraph 11, that there was no claim in relation to the refugee convention or indeed in relation to article 8. That was based on representations made by the appellant's legal representative. Owing to the description of the appellant's fear and return of non-state agents that would explain the concentration on articles 2 and 3 of the ECHR. It is not arguable that the judge failed to consider the relevant evidence. It was open to him to note that the appellant had made a series of applications without mentioning any fear of return and it was open to the judge to find that the delay in claiming asylum adversely affected the appellant's credibility. The judge identified at paragraph 21 that the delay was indeed 'long'. The judge also noted that the appellant only claimed asylum after he was detained having lived illegally in the UK despite having numerous contacts with the immigration authorities. The judge gave his reasoning as to why he concluded that the claim was fabricated and that the appellant was never a victim of threats are because as the judge cogently reasons at paragraph 22 the appellant

'... as by his own admission he left the country to study and did not have a fear at that time or thereafter until he raised it for the first time in 2017'.

9. The judge specifically recorded that the events of the attack took place in 2004 whereupon the appellant claimed that he undertook a period of ill treatment for eight months. When it was put to the appellant that he stayed in the country and indeed in the same location for a period of five years thereafter, the appellant then contradicted himself by stating that the assault carried on till he entered the United Kingdom. It was open to the judge to make an adverse credibility finding on that basis.

10. The judge found that there was a lack of reference to any detail of what happened in the subsequent five years, pointed out the contradiction between his oral evidence and his written evidence, and noted that had the appellant had a well-founded fear he would have left sooner or relocated and the appellant did not. The judge found at paragraph 25 that the appellant changed his evidence and “he described the various changing reasons why he did not claim asylum earlier”. The interview was given was vague and the appellant himself was an unsatisfactory witness [27]. The judge addressed the documentation that was provided and criticise the statement of the neighbours as it was poorly manufactured and rejected the medical information from Pakistan and the rules 35 report which “did not assist the appellant as the latter recorded “some scars which ‘may be consistent due to the attack described’. As Ms Fijiwala indicated neither report was compliant with the Istanbul protocol and lent a minimal support to the appellant’s claim.
11. As the judge also pointed out at paragraph 28 the appellant was able to leave the country on a lawfully issued Visa on his own national passport and in the context of quote no actual political involvement” this would indicate the appellant was of no interest to the authorities for any other reason. Indeed, as already conceded by the appellant’s representative the refugee convention was not relied upon.
12. The judgement is pithy but displays a careful analysis expressed in forthright terms of the weakness of the appellant’s case. The evidence was considered in the round. On this basis it was open to the judge to make an adverse credibility finding against the appellant, and the judge did so addressing all the evidence.
13. In the light of the judge’s specific criticisms of the appellant’s claim, and having considered the particular account of the appellant, any reliance on the background country material did not assist the appellant. This is particularly when the appeal is placed in the context of the extensive delay in the claim and the extensive contact that the appellant had with the immigration authorities since his arrival as a student.
14. For completeness I should point out that the grounds argue that paragraph 52 was defective. There was no paragraph 52 in the decision.
15. As set out in Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC)
‘Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge’.
16. For the reasons given I find there is no material error of law in the judge’s decision which incorporated adequately reasoned findings for dismissing the appellant’s claim. The First-Tier Tribunal decision will stand.

Signed Helen Rimington
2018

Date 23rd April

Upper Tribunal Judge Rimington