



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13155/2017

THE IMMIGRATION ACTS

Heard at Liverpool
On 26 November 2018

Decision & Reasons Promulgated
On 27 December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR S A A R
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Thornhill, Thornhills solicitors

For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Pakistan born on 17 January 1993. He made an asylum claim on 17 January 2017 on the basis of the fact that he is an atheist. This application was refused on 30 November 2017 and his appeal against that decision was dismissed by Judge of the First-tier Tribunal Morris in a Decision and Reasons promulgated on 6 February 2018. The Appellant sought and obtained permission to appeal to the Upper Tribunal and in a Decision and Reasons promulgated on 25 September 2018, I set aside the decision of the First-tier Tribunal and adjourned the

appeal for a hearing *de novo* before the Upper Tribunal. A copy of that decision is appended.

Hearing

2. The hearing next came before the Upper Tribunal on 26 November 2018. The Appellant gave evidence and was cross-examined by Mr McVeety on behalf of the Respondent. The Appellant adopted his statement dated 17 January 2018 and drew attention to photographic evidence at pages 20 to 23 of a car with a smashed side window and windscreen, which he stated was his previous car. He claimed the damage occurred when parked outside his house and he believed this constituted part of the harassment he had faced from his partner's ex-husband.
3. He also sought to rely on the fact that his Facebook profile timeline at page 47 of the bundle, which is in the public domain, indicates that he is from Lahore and thus his partner's ex-husband is aware of that, although this is the only part of his Facebook page which is public. At pages 48 to 50 are transcripts of texts the Appellant claimed were sent to him by his partner's ex-husband that he was harassing him by giving the Appellant the registration number of his old car, and that he had used his partner's profile. He communicated with the Appellant by pretending to be his partner, Ms G, but instead used abusive language. Some of these messages are in Urdu.
4. The Appellant also relied on two years' worth of communication by text, WhatsApp and pictures shared between the Appellant and his partner and photographs of them together. At page 218 of the bundle onwards the Appellant set out in detail where and when these pictures were taken. He stated he had lived with his partner, E G for more than two years, that they had started living together at the end of July 2016 in his friend's house. He said that the social worker had taken his partner's child into care and this was as a result of his partner's ex-husband telling lies to them about the child. It is alleged that she is an alcoholic. However, his partner continues to see her son every two weeks and was due to give birth to a child of their relationship on 6 April 2019.
5. During cross-examination the Appellant was asked to clarify who the conversation was between (at page 201). When asked why she was referring to her ex-husband when they are not yet divorced the Appellant responded in her witness statement at page 10 she was still living with him until July 2015, although they had separated in the sense they were no longer having marital relations. She has gone to Pakistan with him and their son so that his family could meet the child. The Appellant was asked to give the name of his partner's ex-husband, which he did, and the location of his address. When asked how the Appellant knew it was his partner's ex-husband who smashed his car and whether it could have just been a random attack, the Appellant stated that there were more expensive cars than his on the road and these were not attacked. Whilst he did not have any proof he did report it to the police, told them he was being harassed and who he thought it was, but the police said that they needed evidence. When asked how his partner's ex-husband knew where they

lived he stated that when his current partner changed her address, she changed her bank and credit card address details and it may be that her ex-husband saw one of these letters. He also said that he knows one of his partner's good friends who was in contact with him, so she may have told him. The Appellant was not really able to explain why his partner's friend would give her friend's ex-husband's details and address to him, to which the Appellant stated he did not like the friend, which does not, in fact, answer the question.

6. In relation to the Facebook timeline the Appellant stated this was relevant because it shows he is from Lahore in Pakistan and it will be easy for him to harm him, though he was unable to explain why he had put up the Facebook timeline. When asked if anything had happened in Pakistan the Appellant said that his partner's ex-husband had tried to contact his brother. The Appellant was then asked about his caste, the Syed caste, who are considered to be direct descendants of the prophet and thus anyone from the caste is considered to be more religious than anyone else. He stated his family would not approve of his relationship in the UK.
7. Mr McVeety asked the Appellant how it was that even in Pakistan his attendance at the mosque was sporadic when his family were very religious and it was submitted there was a discrepancy in his evidence at question 62, where the Appellant stated his parents were well-aware he did not go to the mosque and that he would go to hell when he died. When asked if his family attempted to harm him for not attending the mosque, the Appellant stated that they were threatening him but did not harm him or punish him at that time. When asked why his family would punish him now, the Appellant stated this was because he is an atheist and has left Islam. When asked how his family found out he was an atheist the Appellant responded that when he came to the UK he started in Pakistan, but it was here when he realised he did not believe in God. He told his family this and they said it was their biggest mistake sending him to the UK. He stated that his family had made threats, that they had the right to punish him, and he would be in danger if others outside the family found out.
8. When asked why or how anyone could find out that he is an atheist, the Appellant stated that he had not told anyone, but in Pakistan he would express himself that he did not want to spend his life being forced to do something he did not want to do, that he would be asked to go to the mosque and pray, and if he did not do this then people would know that something is wrong. When asked if he was threatened previously for not going to the mosque, the Appellant said no-one did anything, that it was a big city and they did not know. When asked why he could not live elsewhere in Pakistan, when nobody would know or care that he was not going to the mosque, the Appellant stated that they would still be Muslims. When asked why he could not relocate to a Christian area the Appellant stated he would still be in danger having left Islam. When asked who the Appellant had told that he is an atheist he said he had only told his partner and his uncle, that he did not generally tell people in the UK that he is an atheist because he knows bad things could happen to him. When asked why he could not just continue going to the mosque, the Appellant stated he

could not do this, that if he does not believe in God he would have to pretend and that previously he was young, he was only 17 years old and now he is an adult.

9. In terms of signing a travel document the Appellant stated on that document form that he did not have a religion and that has been sent to the Pakistani Embassy. However, in respect of his identity card this does record that the Appellant is an atheist because otherwise there will be problems for him. When asked why he stated on the form he was a Muslim, the Appellant said if he said anything else it would show that he is not a Muslim and maybe he will be put in the system that he is an atheist, and if he was deported to Pakistan he would be prosecuted. The Appellant was then asked why when he claimed asylum had he not mentioned religion and whether the reason was his relationship with a Christian woman. The Appellant denied this stating that it is one of the reasons, but that he had no religion.
10. The Appellant stated that he feared going back because he was in a relationship with a Christian as well as being an atheist himself, that his family members would be offended by the relationship. He confirmed that he and Ms G had moved in together in July or August 2016 to the house of a friend and they became joint tenants in December 2016. When asked if the Appellant's ex-partner was attempting to get custody of her first baby back, he said that she was and this was to do with her ex-husband. When asked if his ex-partner has a religion he said that she is a Christian but not religious.
11. The Appellant's partner, E G, then gave evidence in English, with an interpreter on standby. She confirmed her name, address and the contents of her statement at pages 8 to 13 of the bundle and that her nationality is Latvian. She confirms she is expecting a child and the Appellant is the father, and that the ante-natal records produced were her ante-natal records showing her estimated date of delivery to be 6 April 2018. She confirmed that she and the Appellant live at their current address and they have lived at this address for almost two years since December 2016, that they had first lived with a friend for about three months from the end of July and then in her friend's house from the end of September.
12. On cross-examination by Mr McVeety, the witness stated that she is not currently working in the UK because she has a health problem, that she had worked until February 2018, but this was Christmas temporary work and her contract finished. She stated she had had three interviews since to obtain work, the last one being in May or June, but she had been suffering from back pain which had worsened since July 2018 due to her pregnancy. She accepted however she had not been signed off sick by her doctor. The witness stated that she supported herself by receiving benefits and both she and her husband received some benefits in relation to their son. The witness confirmed she had been to Pakistan for two months, though she had had problems and had had an argument with her husband because she knew by that time she did not love him and loved someone else, and her husband threatened to take her son away from her. She did not however claim that she had any problems in Pakistan because of her Christianity.

13. In relation to the Appellant's witness statement at [10], that she had lost contact with the Appellant but had re-met him at an Eid festival, she confirmed this was the case, and when asked why if he was an atheist was he at this festival, she replied that it was an area which he named which is very busy and one can eat late, which was the reason that she was there and that her partner was also there too and it had been a coincidence.
14. The witness, Mr Q then gave evidence, confirmed his statement and his address, his statement being at pages 14 to 17 of the bundle. His evidence was to the effect that the Appellant had lived with him at his address, that he was a friend of the Appellant's father, who had not mentioned any concerns about religion and that the Appellant had not mentioned that he was an atheist when they lived together. However, he knew that he did not possess his own copy of the Koran. The witness confirmed he had met the Appellant's partner, Ms G, previously in 2016 or 2017 and that the Appellant had moved out of his house to live with his partner in September 2016.
15. In terms of submissions, Mr McVeety submitted that in relation to the Appellant's asylum claim this was not credible in terms of his religious beliefs. There had been delay in making the claim, the Appellant having arrived on 10 August 2011, but did not claim asylum until 17 January 2017, after he had been detained on 13 January 2017. Mr McVeety clarified that the Appellant's previous extended family member application was based on his cousin who now lives in Spain. Against that background the Appellant now says he was at risk when he left Pakistan. Other than the mention of his ex-partner's spouse, there is nothing of consequence that has happened to him in relation to his alleged conversion. Mr McVeety submitted there is a clear delay. His explanation as to why he was claiming asylum is not a full one as recorded on the asylum minute, but he submitted it was nonsensical that it was due to his family's religious beliefs that he would not mention that he was an atheist, in light of the fact that he is living in an unmarried relationship with a Christian.
16. He submitted that the Appellant was not attending the mosque in Pakistan. His family knew he did not attend, yet there was nothing more than parental concern about his wellbeing, nor any indication that anything had happened to him as a consequence. Mr McVeety invited me to find this is entirely inconsistent and incredible, set against the backdrop of a family who are supposed to be extremely religious.
17. He submitted that the family allowed the Appellant to come to the UK, and whilst he has allegedly gone against his family, clearly it was important that one publicly professes a faith, but his family did not worry that he did not. He submitted it was not credible that his parents were aging and from the Syed caste but had not undertaken the Hajj, either because the Appellant was not telling the truth, or because his family are not that religious anyway.
18. In the alternative, Mr McVeety submitted that his previous lack of attendance at the mosque did not cause him any problems. He does not believe in God, but this would

also not cause him problems, and if he was concerned about it he could relocate somewhere else without the need to go to the mosque. He submitted the fact of the matter is the Appellant is not a proselytising atheist, and for example at no point did he mention to his witness, Mr Q, with whom he lived, that he is an atheist, and he simply does not publicly proclaim his atheism.

19. In relation to any risk from his partner's ex-partner, Mr McVeety submitted that this is speculative. Even if true, they were more crimes of passion than because the Appellant is an atheist and that his partner's ex-partner could not be politically or religiously motivated, not least because he himself had a relationship with a non-Muslim Christian woman. Mr McVeety invited me to dismiss the asylum appeal.
20. In relation to the Appellant's relationship with Ms E G, Mr McVeety did not seek to assert that the relationship is not genuine and subsisting, and he accepted clearly it is. However, he submitted that the Appellant's partner has no settled status in the UK and is not working. He submitted she would not qualify under the EEA Regulations because she is not exercising treaty rights, nor was it the case that she had retained a right of residence under the Regulations.
21. In terms of the Appellant's ability to meet the Immigration Rules, Mr McVeety submitted if the Appellant were to be returned to Pakistan there would clearly be consequences, but insurmountable obstacles is a very high test to meet. The Appellant's partner, clearly has experience of Pakistan and has been there before. They are unmarried and she is pregnant and the child would not be British unless it were accepted that she had permanent residence from July 2016.
22. In relation to the public interest considerations, he accepted the Appellant speaks English, but the maintenance requirements of the Rules would not be met and his partner is not yet divorced, although she is going through the process.
23. In his submissions, Mr Thornhill submitted that whilst the Appellant did not historically have any problems as a result of not attending the mosque on a regular basis, at interview the picture is somewhat confused. Up to the age of 16 the Appellant would attend Friday prayers, and from that time until he came to the UK his attendance at the mosque was sporadic. This was known by his parents who were deeply upset. Mr Thornhill submitted that parents are going to give latitude to children of that age because it is a phase that they are going through and it was not a matter of great concern if others did know outside the family. He submitted the Appellant is in his mid-20s. If he were to go back to Pakistan now and attempt to relocate he would have massive problems as it is out in the open that he has lost his religion. Mr Thornhill submitted this is not simply a matter of going to the mosque. The Appellant is an atheist, he has no religion. This will be wholly unacceptable to his family and if known about by the wider family he would be at risk of serious harm. He submitted it would be difficult for that information to remain within the family. There would be question marks from others if the Appellant failed to attend the mosque, and clearly it will be wrong for him to have to do something against his

non-belief, i.e. go to the mosque every Friday, and that this will be contrary to the doctrine set out in HJ (Iran) [2010] UKSC 31.

24. In respect of internal relocation, Mr Thornhill submitted that strangers in Pakistan with no family or kinship would be viewed suspiciously and it would be known that the Appellant is someone who does not attend the mosque, which would require him to be not only discreet but to tell lies and that his life would be put at risk if he did not lie.
25. In relation to whether or not he is a genuine atheist, Mr Thornhill sought to rely on a Home Office minute of 13 January. He submitted that no-one asked the Appellant to set out details of his atheism, only at the very end. This was a time when he was having problems with his partner's ex-partner and this was uppermost in his mind.
26. In respect of the interview record as to why he had come to the realisation he was an atheist, the Appellant stated he thinks he was about 50% an atheist in Pakistan, but when he came to the UK it was emphasised to him that he does not have a faith. His partner was not cross-examined about her witness statement evidence as to the Appellant reporting to her that he was not religious.
27. Mr Thornhill submitted that her evidence could be given weight, albeit she is not an impartial witness, but the way in which she is given evidence shows she was endeavouring to give truthful evidence. The second witness only found out the Appellant is an atheist after he was detained, nevertheless his evidence was capable of corroborating the Appellant's account in that he can attest the Appellant did not attend the mosque while staying with him and did not read or possess the Koran.
28. Mr Thornhill invited me to accept that the Appellant has a genuine subjective fear of his partner's ex-partner, however he accepted there is a lack of evidence to show that this was a well-founded fear.
29. In relation to the Appellant's relationship with his current partner and the fact that the Presenting Office had accepted it was genuine, subsisting and durable, and that the couple had cohabited together for more than two years, Mr Thornhill accepted that he did not have the evidence to show that the Appellant's partner had been accepting treaty rights throughout and this is because the focus was on her obtaining her divorce so that the Appellant and his partner could marry.
30. Mr Thornhill invited me to determine the appeal on the basis of Article 8 outside the Immigration Rules in that there would be unjustifiably harsh consequences for the Appellant or his partner if he were to be removed to Pakistan. He submitted that the Appellant's partner cannot go to Pakistan, they are not married, she is pregnant, they will clearly have problems under the Hudood Ordinance. Moreover, she is subject to a contact order in respect of her son on a fortnightly basis, so therefore whilst neither the Immigration Rules nor the Immigration (EEA) Regulations could be met currently, there were very strong reasons as to why the Appellant's partner could not relocate or join the Appellant in Pakistan, the consequence of which they would be separated for a very long time, be unable to marry, and it is not possible to come to

the UK as a fiancée under the EEA Regulations. He submitted thus removal of the Appellant would amount to a disproportionate breach of Article 8.

Findings and reasons

31. In respect of the Appellant's asylum claim, I have concluded that he does not have a well-founded fear of persecution in Pakistan. Whilst I accept that the Appellant no longer practises his religion, I do not find that he would positively assert his atheism if returned to Pakistan. He was not an impressive witness. There was a marked contrast between his evidence in respect of his fears and concerns arising from his partner's former husband, which was clear and detailed and his evidence in respect of his lack of religion, which I find was vague and lacking in detail.
32. I accept that atheism or a lack of religion falls for consideration under the Refugee Convention in light of Article 10(1)(b) of the Qualification Directive. I also accept that atheism is potentially punishable by death as blasphemy in Pakistan, in light of pages 244-245. Whilst I have taken into consideration the evidence at pages 246-250 as to the forcible disappearance of 5 atheist, secular bloggers or activists in Pakistan in January 2017, there was no evidence that the Appellant is a blogger or an activist and I find that it is the public nature of the denial of Islam which appears to have attracted the ire of the Pakistani authorities. Consequently, I have concluded that his atheism is a personal matter and not something that he would actively put in the public domain via social media or otherwise.
33. In light of the fact that historically he was able to avoid attending the mosque whilst living in Pakistan I find that on the particular facts of this case that he would not be at risk of persecution as a consequence of having no religion. Applying *HJ (Iran)* I find that whilst he would seek to conceal his atheism, this would not be in order to avoid persecution so much as to avoid attracting the disapproval of his parents and society. I do not believe that his parents have threatened him, particularly as from their point of view he is living in and settled in the UK. I also doubt that his parents are as deeply religious as he claimed, otherwise they would have ensured that he attended the mosque regularly when he was living with them in Pakistan. I further find that it would not be unduly harsh to expect the Appellant to internally relocate from Lahore to another large city where his failure to attend the mosque could pass unnoticed.
34. For the avoidance of doubt, I find that the Appellant does not have a well founded fear of persecution from his partner's former husband, who continues to live in the UK and is the primary carer for his child with the Appellant's partner. There is no evidence that he would seek to find and harm the Appellant if he were returned to Pakistan, even if he knows that the Appellant is from Lahore. Whilst I find that the Appellant has a subjective fear of him, this does not engage the Refugee Convention and there is no evidence that the Appellant would be at risk of treatment contrary to Article 3 of ECHR if returned to Pakistan. Whilst there have been incidents in the UK I accept Mr McVeety's submission that this are likely to be as a consequence of the

breakdown of his marriage and the fact that his wife has left him for the Appellant, rather than anything to do with the Appellant's atheism.

35. However, I find that the Appellant is in a genuine and subsisting relationship with EG with whom he has been cohabiting since at least September 2016, having previously met and formed a relationship with her whilst she was married to and living with her husband. I accept that she is currently pregnant with his child, who is due to be born in April 2019. I found Ms G to be a credible witness and I accept her evidence, which was clear and straightforwardly given.
36. Mr Thornhill candidly accepted that on the basis of the evidence currently available the Appellant was unable to meet either the Immigration Rules or the requirements of the Immigration (EEA) Regulations 2006 because, although his partner arrived in the UK in July 2013 and was previously working and then a job seeker, she has neither applied for nor been granted permanent residence in the UK and is not currently working or exercising treaty rights and has not done so since February 2018.
37. I find that the Appellant and Ms G share family life and the decision to remove the Appellant from the United Kingdom would interfere with that. Despite the fact that Ms G previously visited Pakistan with her former husband and her son, I find that it would be unreasonable and unjustifiably harsh to expect her to relocate there with the Appellant, given that they are unmarried and she is pregnant. It would also disproportionately interfere with her right to family life with her son, who she sees fortnightly pursuant to a Contact order from the Family Court and it would be contrary to his best interests to lose contact with his mother in light of the fact that the Family Court have deemed it appropriate for there to be contact.
38. I have attached weight to the public interest considerations, set out in section 117B of the NIAA 2002. These do not assist the Appellant. Whilst he speaks English there is no evidence that he is financially independent and his leave has at all times been precarious. He does not have a genuine and subsisting parental relationship with his partner's son. The Appellant arrived in the UK on 10 August 2011 as a Tier 4 (General) student and having made an unsuccessful application for a residence card as the extended family member of an EEA national relative, he only claimed asylum on 17 January 2017 after having been detained as an overstayer. Thus clearly the public interest considerations attract substantial weight on the facts of this case.
39. However, I have concluded that the consequences for Ms G of the Appellant being removed to Pakistan would be unjustifiably harsh, in light of my finding that they have established family life; that she is pregnant with his child and that she cannot reasonably be expected to go to Pakistan for the reasons set out in [37] above. I find that the fact that they are unmarried would mitigate against their ability to be reunited via entry clearance and that Ms G is likely to be unable to exercise treaty rights effectively for some time following the birth of their child, thus they would be likely to face a lengthy separation. For these reasons I find that removal of the Appellant would constitute a disproportionate breach of Article 8 of ECHR.

Notice of Decision

The appeal is allowed on human rights grounds.

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 *Rebecca Chapman*

Date 18 December 2018

Deputy Upper Tribunal Judge Chapman