



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/13703/2017
PA/13714/2017
PA/13715/2017

THE IMMIGRATION ACTS

Heard at Field House
On 31 May 2018

Decision & Reasons Promulgated
On 18 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MHSC, BS, HS
(ANONYMITY DIRECTION MADE)

Respondents

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer
For the Respondent: Ms S Ali, counsel

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the applicants' appeals against the decision of 9 December 2017 refusing their applications for asylum or humanitarian protection. In this decision I will refer to the

parties as they were before the First-tier Tribunal, the Secretary of State as the respondent and the applicants as the appellants.

Background.

2. The appellants are siblings and citizens of Pakistan, whose dates of birth are respectively 18 October 1993, 3 October 1990 and 29 March 1989. Their immigration history can briefly be summarised as follows.
3. The first appellant claims that he arrived in the UK on 31 December 2013 but the respondent's records show that he arrived on 19 August 2010 with a visit visa valid until 18 January 2011. He applied for further leave to remain under Tier 4. His application was initially unsuccessful because he could not provide his CAS. He reapplied and was granted leave until 21 September 2015 but on 4 November 2014 he was found to be working in breach of his conditions of leave and removal directions were set for 14 November 2014. He applied for judicial review, but his application was refused twice and finally dismissed on 7 July 2016. He made a further application for leave to remain as an extended family member of an EEA national but withdrew it on 22 January 2015. He claimed asylum on 15 April 2016.
4. The second appellant claims that she arrived by plane on 31 December 2009. She had applied for leave to remain as a Tier 4 student on 30 September 2009, which was granted until 30 April 2013. Her leave to remain in the same capacity was extended to 18 December 2014 but a subsequent application for further leave was refused. She took judicial review proceedings but the decision under challenge was upheld. On 27 May 2015 she applied for leave outside the Rules but this was refused with no right of appeal. She claimed asylum on 15 April 2016.
5. The third appellant arrived by plane on 25 January 2011. On 31 May and 2 July 2012, she applied for a Tier 4 student visa, but this was rejected. Proceedings in both the First-tier and Upper Tribunal were unsuccessful and her appeal rights were exhausted on 22 March 2013. Subsequently, she made a further application for leave to remain as a student, but this was again refused. On 16 January 2014 she was served with notice as an overstayer. She submitted a further application which was refused in August 2014 with no right of appeal. She took judicial review proceedings which were unsuccessful. On 8 July 2015 she applied for leave under article 8 but this was refused. She claimed asylum on 15 April 2016.
6. The appellant's claim to have a well-founded fear of persecution in Pakistan by reason of an imputed political opinion as the children of their father, who had been involved in anti-terrorist operations when he was employed by the Pakistan Intelligence Bureau ("PIB") from 1977 to 2013. He is now retired and practises law in Pakistan. He received two threats against himself and his family from terrorists, the first by telephone on 25 February 2015 and the second by letter received on 18 March 2016. He tried but was unable to obtain protection from the police in Pakistan. He and his family moved out of their home after receiving the threatening letter. They now live in hiding and have

not received any further threats. The appellants claim that on return they will be at risk from terrorists because of their father's role in anti-terrorism activities for the PIB.

7. The respondent accepted that the appellants' nationality was as claimed but not that threats had been made against their father or that they would be at any real risk of harm on return to Pakistan. It was not accepted that they had a genuine subjective fear which, in any event, was not objectively well-founded. The judge summarised the respondent's concerns and findings about the appellants' accounts in [13.1]-[13.23] and [13.24]. Alternatively, if there was a risk, they could look to the authorities in Pakistan for protection or relocate in an area where terrorists could not find them. The respondent also considered article 8 but found that the appellants could not meet the requirements of the Rules and there were no exceptional circumstances which would lead to a refusal being in breach of article 8.

The Hearing before the First-tier Tribunal.

8. The judge summarised the witness statement from the appellants' father in [30.1]-[30.23] before his summary of the appellants' oral evidence as this set out the events they relied on and put them in context. He then set out their oral evidence at [32]-[41] and his findings of credibility and fact in [48]-[65]. He reminded himself in [42]-[47] of the relevant law, the correct standard of proof in [48] and the judgments in HK v Secretary of State [2006] EWCA Civ1037 and Gheisari v Secretary of State [2004] EWCA Civ1854 on the approach to fact finding in asylum appeals.
9. He found that, whilst there were minor consistencies in the appellants' evidence, this did not diminish their overall credibility. He took into account that much of what they relied on was a repetition of matters told to one sibling by their father and then repeated to the other siblings. The appellant's father had not given live evidence, but his testimony was the most direct source of information and was supported by the documents supplied. The judge found that it was credible and met the lower standard of proof [51].
10. He accepted that the appellant's father had been involved in anti-terrorist activities while serving with the PIB and during that time had received terrorist threats but was protected by his employer. There was a period of time when he had worked overseas and was out of sight of terrorists, but he then returned to service in Pakistan. After his retirement the protection provided by the PIB ceased [52]. He also accepted that he had received a death threat by telephone on 25 February 2015 and had then encountered difficulties in persuading the police to register a FIR and had to enlist the support of the PIB but that was limited to advising him to put the complaint in writing [54].
11. The judge said that, whilst their father and family did not leave their accommodation until well after the second threat on 18 March 2016, this did not render all of the evidence inconsistent as the respondent had concluded [57]. He commented that the second threat would have been more of a worry because it was a letter by hand

delivered to the family address and was written in frightening and sinister terms. Their sudden flight at this stage was consistent. It was also consistent, so the judge found, with the appellants' father then telling his daughter of the threats to warn them in the UK, given the nature of the written threat. He also accepted that their father again experienced difficulties with the police taking action, given their reluctance to issue a FIR against unknown assailants [58]. He accepted that there had been a shooting incident at their home which had caused them to flee and that, more recently, another shooting attack on the former family home, which their neighbours had reported to the police [59].

12. He took into account the provisions of s.8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 and the submission that the timing of the applications was very convenient, given the appellants' immigration history. He said that, whilst it did appear that the appellants had belatedly claimed asylum after immigration notices had been served, he accepted their explanations. They were safe in the UK for most the time the students and were not aware of the threats to their father's life and the lives of their family in Pakistan until after the third appellant was told of the existence of the threats after receipt of the letter on 18 March 2016 [61]-[62].
13. He accepted that whilst the appellants were aware that their father had worked for the PIB they were not aware of the nature or details his work and this explained their inability to provide the level of detail the respondent criticised them for not knowing claiming that it made much of the evidence inconsistent, but the judge did not believe that this was the case [63].
14. Having accepted the general credibility of the appellants' accounts and particularly the direct evidence of their father and the supporting documents, he found that there was a real risk of them suffering persecution because of their imputed political opinion on return to Pakistan [66]. They would be at risk from unknown terrorists who had obtained information about the private mobile phone number and the address of their father [67]. The family in Pakistan had fled from one town to another but were then subjected to indiscriminate shooting at their new residence which resulted in them having to flee once more and the police had proved ineffectual in taking action to find and apprehend the culprits [68].
15. The appellants would be at risk on return to Pakistan and this risk would exist even if they relocated to another area, given the curiosity they would attract not living with their extended family and the ability of the unknown assailants in obtaining information about their father's mobile phone and the addresses where he has lived [69]. The judge referred to paras 9.2.1, 9.2.7, 10.2.4 and 12.1.1 of the Country Policy and Information Note on Pakistan June 2017 (CPIN) [71]. In summary, he found they had a well-founded fear of persecution because of their imputed political opinion and were entitled to recognition as refugees. The appeal was accordingly allowed on asylum grounds and article 2 of the Human Rights Convention.

The Grounds and Submissions.

16. The respondent seeks to challenge the judge's decision for the following reasons. It is argued that his findings lacked adequate analysis and reasoning and that he accepted a purported statement from the appellant's father. There was no suggestion or any medical evidence to suggest that any harm to come to him or his family in Pakistan and the judge allowed the appeal in essence on the basis of that document but did not give any reasons as to why he found that the document, intended by its nature to aid the appellants, was credible. Secondly, it is submitted that the judge failed to address issues and significant inconsistencies raised in the decision letter, referring to Malaba v Secretary of State [2006] EWCA Civ 820. He had failed to explain why the inconsistencies could properly be categorised as minor. Further, he had failed adequately to analyse or to give sufficient reasons why three adult appellants could not reasonably relocate in Pakistan. He had referred to four paragraphs in the CPIN but it was not clear in the context of his consideration how these isolated paragraphs could make the appellants' claim credible or internal relocation unduly harsh.
17. Permission to appeal was granted on the basis that it was arguable that the judge gave inadequate consideration to the issue of internal relocation apparently disregarding both the geographical size and population of Pakistan and that the grounds and decision disclosed an arguable error of law.
18. Mr Tarlow relied on the grounds. He submitted that the judge had categorised the inconsistencies in the evidence as minor but had failed to explain why or to elaborate any further. He had referred to the CPIN, a document in the public domain, but it was not clear what conclusions were drawn from the paragraphs cited. Further, so Mr Tarlow submitted, there was no analysis at all why the appellants could not relocate in such a large country or how any terrorist organisations would find them.
19. Ms Ali relied on her Rule 24 response. She submitted that the judge had given adequate consideration to the question of internal relocation at [66]-[69]. He had taken into account the various incidents where the appellants' family had relocated and still been targeted. She accepted that the decision had to make it clear how its conclusions had been reached but this did not mean that the reasons had to be lengthy. She referred to Shizad (Sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 where the Upper Tribunal had said that there was a legal duty to give a brief explanation for the conclusions on the central issue, but these reasons not need not be extensive if the decision as a whole made sense having regard to the material accepted by the judge. She argued that the judge had given an explanation for the conclusions central to the issue. It was for him to decide what conclusions could properly be drawn from the evidence and what weight to attach to any inconsistencies. He had heard the oral evidence and considered the documentary evidence and had reached conclusions properly open to him. She argued that there was no error of law to justify setting the decision aside.

Assessment of the Issues.

20. The respondent argues that the judge's decision lacked adequate analysis and reasoning and that he accepted "a purported statement" of the appellants' father but there was no suggestion or medical evidence to show that any harm had come to him or his family in Pakistan. It was for the judge to assess what weight to give to the written statement from the appellant's father. There was no medical evidence to suggest that he or his family had been harmed but their case was of attempts or threats of harm. However, there was evidence to capable of confirming the statement: for example, a copy of the threatening letter and the photographic evidence at pages 83 to 85 the appellant's bundle. It was for the judge to decide what weight to attach to this statement in the light of the evidence as a whole.
21. The grounds then argue that the judge did not give any reasons why found the document "intended by its nature to aid the appellants" to be credible. Any supporting statement, if credible, is generally likely to aid the appellants in their appeal. The fact that a statement does so, does not in itself indicate that it is not credible or reliable. That is for the judge to assess as an issue of fact taking all relevant matters into account. The judge summarised the statement in some detail in [30]. He rightly identified it as important as it contained first-hand testimony to the events which the appellants relied on and put their events in context. Having considered all the evidence, it was open to him to find at [51] that it was credible to the lower standard of proof, having noted that it was supported by the documents provided. The grounds are phrased as a reasons challenge rather than asserting perversity and I am satisfied that the judge gave adequate reasons for this finding of fact and the grounds arguing otherwise are seeking reasons for reasons.
22. It is further argued is that the judge failed to address the discrepancies regarded by the respondent as significant. He set out the respondent's concerns at length and there is no reason to believe that he then overlooked these concerns. It was for him to assess as an issue of fact whether and to what extent the inconsistencies diminished the overall credibility of the account relied on. The judge dealt with this matter relatively briefly but nonetheless adequately in [51]. He took the view that the source of many of the inconsistencies arose from a repetition of matters told to one sibling by their father and then repeated to others and he was also entitled to take into account that their father's statement was the most direct source of information and was supported by documentary evidence. He also accepted that the appellants had not being aware of the nature or details of their father's work and this explain their inability to provide the level of detail the respondent had criticised them for not knowing. The judge has explained why he did not regard the discrepancies as undermining the core of the claim.
23. The judge dealt with the concern about the delay by the appellants in claiming asylum. He said at [62] that he had considered the matter carefully and commented that, whilst it did appear the appellants had belatedly claimed asylum after immigration notices has been served, he accepted their explanations and the fact that they had only been

informed of the existence of the threats after their father received the letter on 18 March 2016. I am satisfied that this conclusion was open to the judge and cannot be categorised as irrational.

24. Finally, it is argued that the judge failed properly to consider the issue of internal relocation in the light of the fact that Pakistan is a large and well populated country. The initial issue when assessing internal relocation, before any consideration of undue hardship, is whether the appellants would be able to relocate safely in another area in Pakistan. The judge explained why he was not satisfied that this was the case: their father had relocated but still been the victim of targeting by terrorists and his unknown assailants had been able to locate and identify him.
25. The judge cited four specific paragraphs in the CPIN, although he did not refer to their contents. In her submissions Ms Ali referred to 3.1.2 which says that internal relocation to another area of Pakistan is generally considered reasonable but this will depend on the nature and origin of the threat as well as the person's individual circumstances.
26. The paragraphs referred to by the judge were 9.2.1 which refers to the fact that the Pakistan police force is "under resourced, poorly trained, badly paid, low in morale and viewed with suspicion by the courts and society because of its poor human rights record" and "most police are regarded as corrupt, inefficient and unprofessional"; 9.2.7 which refers to military supported operations and counter-insurgency operations carried out by the authorities, to the ineffectiveness of police investigations as well as the debilitating effect of threats to judges and witnesses who are not protected by witness protection programs; 10.2.4 noting that in practice the police usually make a note of a complaint in a register rather than formally recording a FIR and 12.1.1 referring to the US State Department Human Rights 2016 Report that "corruption was pervasive in politics and government" and that "corruption within the lower levels of police was common".
27. Whether the appellants were able to relocate in safety was again a question of fact for the judge to assess in the light of the evidence before him. It is not argued, at least not expressly, that the judge reached a perverse finding but that he failed to take proper account of the size and population of Pakistan and to give adequate reasons for his conclusion. The judge could hardly have been unaware of the size of Pakistan and he has explained why he reached the conclusion that the appellants in their particular circumstances would be unable to relocate in safety. Factoring in the background evidence in the CPIN, I am satisfied that the finding on relocation was open the judge.
28. In summary, whilst this is an appeal where a different judge might have reached different conclusions, the issue is whether this judge erred in law such his decision should be set aside. For the reasons I have given, I am on balance satisfied that he reached findings and conclusions open to him on the evidence for the reasons he gave. It follows that First-tier Tribunal did not in law.

Decision.

29. The First-tier Tribunal did not in law and it follows that the decision of the First-tier Tribunal stands.

Signed: H J E Latter

Dated: 12 June 2018

Deputy Upper Tribunal Judge Latter