



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

Appeal Numbers: PA/07498/2018
PA/07484/2018

THE IMMIGRATION ACTS

Heard at Birmingham CJC

On 1 May 2019

**Decision & Reasons
Promulgated
On 16 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**MR A M K
MR AR M K
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr H. Samra, Harbans Singh and Co
For the Respondent: Ms H. Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are nationals of Pakistan. The first Appellant was born on 13th April 1974 and his son was born on 5 June 1998. The Appellants claimed asylum following the first Appellant's previous admission as a Tier 2 (Migrant) with the second Appellant as his dependant. The basis of the claim is that family land had in part been occupied by an Islamic terrorist

organisation, Lashkar e Jhangvi (LJ) who are linked to the Taliban. It was asserted that they had built a mosque and madrasa on part of the family land but when the first Appellant had complained to the local police about this, that they had done nothing; that LJ found out the first Appellant had complained and threatened him with violence if he did not withdraw that complaint. As a result, the first Appellant had been made subject to a fatwa by the Ulema Council for refusing to withdraw the complaint and an FIR had been lodged against him by the authorities because it was believed he had colluded with LJ in building the mosque and madrasa on his land from which terrorist activities were organised. The second Appellant's claim is based on that of his father.

2. The Appellants' asylum applications were refused in decisions dated 2 and 3 June 2018. The Appellants appealed against these decisions and their appeals came before Judge of the First-tier Tribunal Ford for hearing on 15 January 2019.
3. In decision and reasons promulgated on 22 January 2019, the appeals were dismissed.
4. Permission to appeal was sought, in time, on the basis that the judge had misinterpreted several documents and made factual inaccuracies, in particular:
 - (i) in finding that the letter from the Regional Police Office of Multan did not identify the complaint was wrong and contradictory;
 - (ii) in finding the letter was not on letterheaded paper however it was stamped and signed and the judge did not place weight on this;
 - (iii) At 60 and 34D in finding that the letter from the City Police Station was illegible when it was only the signature that was illegible not the text itself and that this was an important document because it was an FIR issued by the rangers against the Appellants;
 - (iv) The judge erred in failing to finish her sentence at the end of paragraph 6D and 34D;
 - (v) The judge had erred in her assessment of the letter from the Pakistan Ulema Council at 6H, finding this is against A1 and that this was a shift in evidence because the fatwa was against A2, when it was never either Appellants' account and never stated in any evidence, document or at the hearing that a fatwa had been issued against A2;
 - (vi) In respect of her rejection of the evidence of the witness, the judge failed to take account of the fact that the witness had gone to the Appellants' village not in order to inspect whether there was a mosque and madrasa but to pay his respects to the parents of his friend who had lost their son.
5. Permission to appeal was granted by Judge of the First-tier Tribunal Blundell in a decision dated 15 February 2019 in the following terms

“Although I initially formed the view that the grounds of appeal represented nothing more than a disagreement with Judge Ford’s decision I am just persuaded that there is arguable merit in some of the points advanced. It is arguable for example that the judge misunderstood some of the documents she considered and that she based certain findings on a misunderstanding of the evidence (an example of which is at 5 of the grounds).”

Hearing

6. At the hearing before the Upper Tribunal, Mr Samra on behalf of the Appellants went through the documentary evidence. In respect of page 49, the Judge found that the letter from the Regional Police officer does not identify the Appellant: see [6] a and b but this is wrong. She also takes issue with the fact that the letter from the police was not on a letterhead but failed to take account of the fact that it was stamped.
7. The next challenge is to the Judge’s findings at 6d and 34(b) where the Judge stated that the handwritten text was illegible, however, the stamps are legible and the Judge omitted to complete the sentence at 6(d) in respect of the envelopes. In this respect, Mr Samra submitted that at pages 50-51 there is a certificate of posting by the Appellants’ solicitors to the head of the village, which was then taken to the relevant department: see page 52 which is the letter which was sent; page 61 and the translation at page 62, which refers to the stamps from the Regional Post Office and the City Police Station. Mr Samra submitted that it is apparent from page 62 that it is the signature that is illegible, not the documents themselves.
8. Mr Samra also submitted that there was confusion as to who the fatwa was issued against: see page 85 and see [3], [5]; [34](h) and [35]. He submitted that the consistent evidence is that a fatwa was issued against A1 and not A2 and that the assessment of the documents has clouded the Judge’s assessment of credibility. He reminded the Upper Tribunal that the test is that set out in Tanveer Ahmed [2002] UKIAT 00439 in respect of the weight to be placed on the documents. Mr Samra submitted that the stamps are clearly legible, it is the signature that is not and it was clear that the documents were posted to Pakistan by the Appellants’ solicitors. They were returned to the Appellant’s friend and the envelope was provided: see pages 40 and 41, although he was not able to say why the documents were sent back via a friend rather than solicitor to solicitor correspondence. He submitted that the matter should be re-heard afresh and returned to the First tier Tribunal.
9. In her submissions Ms Aboni said there was a brief Rule 24 response stating that the judge had directed herself correctly. She submitted the judge had adequately considered all the documents relied upon by the Appellants and dealt with them individually at [6] of the decision and reasons. At [34] the judge addresses all the documents and gives adequate reasons for rejecting them and why she is unable to place much

weight on them. The judge found that the first Appellant was inconsistent, correcting his replies at interview and changing his account and found at [30] that the apparent delay by the authorities in being interested in the Appellant has not been explained.

10. At [34] the judge addressed each of the documents, giving reasons why she does not find the documents to be reliable. Ms Aboni submitted that the Judge gave adequate reasons for finding those documents do not corroborate the Appellants' account. She submitted the documents were considered in line with the Tanveer Ahmed principles. There was little background evidence to support the Appellants' claims and the judge had given adequate reasons for her findings. There was no material error.
11. In reply Mr Samra continue to rely on the grounds of appeal and asserted that the judge had made a material error of law. I reserved my decision, which I now give with my reasons.

Findings and reasons

12. I have concluded that the decision of First tier Tribunal Judge Ford contains material errors of law, arising from her assessment of the documentary evidence submitted by the Appellants. It is apparent that there was some confusion by the Judge as to whether a fatwa had been issued against the first or second Appellant given that at [5] the Judge recorded that a fatwa was issued against the second Appellant but at [3] and [34](h) she records that it was issued against the first Appellant. She then goes on to conclude at [35] that the first Appellant had shifted his account of the fatwa from the scholar's council being against him to stating that it was against the second Appellant. However, the first Appellant's consistent evidence e.g. at Q.20 of his asylum interview, is that a fatwa from the Suab scholars had been issued against him and this is recorded by the judge at [25]. Nowhere in the decision and reasons has the judge recorded evidence by the first Appellant that a fatwa was issued against his son instead. Thus I find any confusion was on the part of the judge and that this undermines the safety of her findings and conclusions in respect of a key document in the case.
13. I further find that the Judge erred in her assessment of other of the documents in that the Judge failed to take account at 6 (d) of the fact that the documents were stamped, albeit the handwriting was illegible in the correspondence between the Appellants' solicitors and the City police station and that envelopes were provided, albeit the judge's finding in respect of the envelopes is unclear as the sentence is incomplete.
14. I also find that the judge erred in her assessment of the evidence from the witness, FA, whose evidence was that he had gone to the Appellants' village to pay his respects to a friend's family whose son had passed away and whose parents' home was in the same village [21]. The judge disregarded his evidence at [22] on the basis that he had no photographs nor any account of a newly built mosque on the Appellants' land and found

his evidence not credible. Her findings in this respect are unsustainable because they are based on her speculative belief, absent any proper evidential foundation, that the reason the witness visited the village was to help the Appellants rather than pay his respects to his friend's parents.

Notice of Decision

15. I find material errors of law in the decision of First tier Tribunal Judge Ford. I set that decision aside and remit the appeal for a hearing *de novo* before the First tier Tribunal.

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 their 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 13 May 2019

Deputy Upper Tribunal Judge Chapman