



IAC-FH-NL-V1

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

Appeal Number: IA/49213/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 7 September 2015**

**Decision & Reasons Promulgated
On 12 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MALIK EHTASHAM ALI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Taylor-Gee, Counsel instructed by Inayat Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Pakistan born on 15 November 1985 and now aged 29 years. He appealed against the decision dated 6 November 2014 to refuse him leave to remain. His appeal was heard by First-tier Tribunal Judge O'Hagan on 16 March 2015 and in a decision promulgated on 25 March 2015 Judge O'Hagan dismissed the appellant's appeal on asylum, humanitarian protection and human rights grounds and further to the Immigration Rules.

2. The background to the appeal was set out by Judge O'Hagan at paragraph 5 where he stated that the appellant entered the UK on 29 March 2010 with entry clearance as a Tier 4 (General) Student valid from 1 March 2010 and that leave was subsequently extended to 5 May 2014. On 23 May 2012 his leave was curtailed because of difficulties that had arisen at the college where he was studying. On 24 December 2012 the appellant made his current application for indefinite leave to remain in the United Kingdom as a child over 18. He was last granted leave under paragraph 302 of the Immigration Rules and that application was refused. The decision was subsequently reconsidered when the application was again refused. It was that refusal which came before the judge.
3. The judge specifically noted at 6(i) that the respondent had rejected the application under the provisions of Paragraph 298 of the Immigration Rules. The appellant was recorded as being over the age of 18 and he had not been granted leave to enter or remain with a view to settlement under paragraph 302 or Appendix FM. As such he could not meet the requirements of paragraph 298(ii) of the Immigration Rules. The judge also referred to the rejection of the appellant's claim under paragraph 276ADE.
4. At the hearing before me Ms Taylor-Gee relied on the grounds for permission to appeal and in particular she stated that ground 1, the judge erred in requiring corroborative evidence. The ground set out that the judge did not find the appellant to be a credible witness but a clear if not primary principle reason why the judge refused the appeal was due to the lack of corroborative evidence as could be seen from paragraphs 45 to 48. The lack of evidence was the very first point relied on by the judge. Further to **ST (corroboration - Kasola) Ethiopia [2004] UKIAT 00119** it was an error of law to require corroboration.
5. At paragraph 38 it is clear to my mind that the judge considered all of the evidence and stated that the appellant's claimed account was not credible and putting aside the reference to corroboration. As the judge states at [38]:

*"It is important that I emphasise that in reaching my conclusions about the credibility of the claim, I did not consider **any one of the matters that I have identified as being determinative**. Rather, each of the individual matters identified formed a part of the jigsaw of the evidence before me. It was the cumulative impact of all of those matters, considered in the round as part of the overall tapestry of oral and written evidence before me, which led me to reach my conclusion."*
6. Criticism was made of the judge's decision because he remarked on the lack of corroborative evidence in relation to (i) the assertion that his uncles killed his father, (ii) the fact that the appellant's paternal family were wealthy and powerful people who wielded great influence (iii) that the appellant's father had a legal interest in the land and bequeathed it to his son and (iv) that his uncles had unlawfully confiscated such documents.

7. As I stated at the hearing it can be seen from paragraph 15 of **ST** that the fact that corroboration is not required does not mean that an Adjudicator is required to leave out of account the absence of documentary evidence which might reasonably be expected. An appeal must be determined on the basis of the evidence produced but the weight to be attached to oral evidence may be affected by a failure to produce other evidence in support.
8. It is reasonable for the judge in the circumstances to request documentary evidence. The account of the appellant is that his family were wealthy, powerful people who wielded influence and that in particular there was an underlying land dispute which was said to have been the motive for the murder of the appellant's father. The judge at [48] confirmed that he was struck by the total lack of evidence and there was no documentary evidence at all in any of the papers to support the appellant's claim that his father had a legal interest in land or property jointly held in Pakistan with his brothers nor that he bequeathed such interest to his son. Indeed from the submissions it is suggested that even the appellant did not know the extent to the land he claimed. The submissions were made on the basis that he had a potential claim.
9. As the judge stated at [48]:

"I find it surprising that neither the appellant nor his mother would have come into possession of a single solitary document relating to the appellant's father's interest in the land following his death. I would have expected at the very least for there to be some documents held in the appellant's father's personal effects or by his solicitors or accountants or something of that kind".
10. Ms Taylor-Gee submitted that this was the judge looking at it through an Englishman's eyes as the judge stated there was nothing in the appellant's father's personal effects let alone by his solicitors or accountants. There is no indication that advocates are not used in Pakistan and as this narrative related to land it was open to make this finding in respect of the appellant's evidence. No evidence was put forward to confirm that land holdings in Pakistan are not evidenced in documentary form. Even taking the criticism that the judge should not look through an Englishman's eyes all of the reports confirm that there are legal systems and advocates in Pakistan and this was a reasonable expectation by the judge.
11. As the judge indicated, it was not even clear how the appellant knew he had an interest in the land if he had no documentation. The judge stated that this was a man who was said to be from a powerful and wealthy family and that he personally had a legal interest in a share of the family's land and property and it was normal for such people to have recourse to solicitors, accountants and such like to manage their affairs.
12. As stated above it is not the sole reason that the judge dismissed the claim. The judge did consider the police report and noted that it was not just the lack of corroborative evidence but noted that from the police

report and evidence which was presented to the court [44] that the identity of the killers reported on the police report was “*unknown persons*”. The judge stated “*therefore whilst I accept the report as evidence that the appellant’s father was murdered it does not provide evidence to link the appellant’s uncles with that crime*”.

13. The judge was criticised again for improperly rejecting the appellant’s claim on the grounds of plausibility and specifically paragraph 50 was cited and this is what the judge stated in that paragraph:

“If I were to accept the Appellant’s account that his uncles are rich, powerful men who had managed to seize hold of all of the documentary evidence relating to the property and land, and for the reasons set out above I have difficulty with that, it does not particularly assist his case. In such circumstances, the uncles would be in a very strong position indeed. On the Appellant’s own account, they have physical possession of the land. If they also have possession of all the legal documents relating to the property, it is difficult to understand why they would be fearful of any potential claim that the Appellant might make. Having regard to the passage from the Home Office’s country guidance which I quoted at paragraph 39, he would be poorly placed to bring any such claim and they would be in a very strong position to defeat it if he were to try to do so. It is not at all clear to me why they would, in such circumstances, seek to kill him or harm him for the land or property. This is not, after all, a situation which they are trying to gain possession of the land or property; they have already done that. On his own account, the Appellant has made no effort to challenge their possession of the land and, as I said, he would be poorly placed to do so. Whilst it is unlikely that the Appellant could disturb their possession of the land, were they to engage in the criminality of murder or inflicting serious harm upon him, that could attract the attention of the authorities. Even if I accept the Appellant’s account of the history is true and that his view of the level of police corruption is also true, I would still have to conclude that the risks to the uncles of taking action against the Appellant would be far greater than the risks involved in simply doing nothing at all.”

14. The application for permission to appeal cited **Y v SSHD [2006] EWCA Civ 1223** such that at paragraph 25, judges are reminded that it is important to view events from an appellant’s point of view in the context of the conditions in the country from which he comes. There can be no doubt that at paragraph 43 the judge did set out the context of the claim in terms of what happens in Pakistan and at paragraph 44 the judge specifically states that he considered the specific evidence presented in the case. At paragraph 50 *supra* the judge also makes reference to the passage from the Home Office’s country guidance which he quoted at paragraph 39 such that the appellant would be poorly placed to bring any such claim and that the uncles who were wealthy and in legal possession/legal possession of the land it was not clear why they would seek to kill him or harm him. Indeed the appellant has decided to remove himself to the UK rather than stay and fight through the courts.
15. It was also submitted that the second reason for the persecutory treatment, namely the appellant’s reason to refuse to marry his cousin,

was because it was an attempt to keep the land in the family. As the land as the appellant claims was *already* in the possession of the uncles the appellant's refusal to marry his cousin would not form a foundation for his fear. Indeed the judge acknowledges and addresses this issue at paragraph 53 and states that he could not accept that if they were already in possession of the land and the legal documents that they would be anxious for him to marry his cousin and there was no need for them to insist upon a marriage to secure their position. At the close of paragraph 53 the judge said:

"Culturally it is normal for people to marry relatively young in Pakistan. It is therefore striking that despite all that is said about their ruthlessness and their determination to bring the marriage about, actually they appear to have done nothing but simply allowed matters to drift over a period of several years"

Thirdly, it was stated that the judge made no findings in respect of the appellant's aunt's evidence and **AK (failure to assess witnesses' evidence) Turkey [2004] UKIAT 00230** was cited. The judge at paragraph 45, 46 and 47 confirmed that he explored the other documentary evidence including the witness statements and that he had also considered the oral evidence. He concluded that he found nothing to support the appellant's assertion that his uncles were responsible for the murder of his father.

16. At part 46 he stated, "this is all bare assertion with no evidence to substantiate any of what is said" and in the light of the reasonableness of respecting documentary evidence I find that this is sound.
17. At paragraph 47 the judge stated that:

"Save for what is said in their witness statements there is no evidence presented by the appellant, his mother or his aunt to support their account of the appellant's paternal family as being wealthy and powerful people who wield great influence. I find that surprising since wealthy powerful people who wield influence usually have a public profile which, in turn, generates evidence of a kind that is publicly available. No such evidence was put before me."
18. These are valid reasons given by the judge for his conclusions and it is clear that the judge did address the evidence of the aunt.
19. The last ground was that the judge failed to make any findings in respect of the appellant's family life in the UK.
20. Mr Tufan pointed out the only criticism that could be made of the judge was that he continued to make findings outside the Immigration Rules under Article 8 without good reason. The judge to my mind explored the avenues of Article 8 thoroughly. He found at paragraph 58 that the appellant could not qualify under the provisions of Appendix FM, (bearing in mind the sustainable findings, the appellant cannot succeed under Paragraph 276ADE), the appellant did not have a child in the country and

did not satisfy the criteria for leave to remain as an adult dependent relative. The appellant only entered the United Kingdom in 2010 and was in his late twenties. The judge found that although he had a girlfriend the relationship did not satisfy the definition of a partner. The only avenue open to him according to the judge was outside the Rules. Indeed the judge went on to consider the appellant's Article 8 rights and the question of whether the appellant had established on the balance of probabilities family or private life. On the facts of this case the judge stated, "it seemed to me reasonable to accept that the appellant had established sufficient private life in the UK to cross the threshold of Article 8(1)".

21. At paragraph 63(iv) the judge clearly states he considered the relationship of the appellant with his mother, stepfather and stepsisters and accepted that they loved each other and it was normal for there to be love between a mother and son but both the appellant and his mother sought to depict the relationship in terms that suggested a closeness that "went far beyond the norm. I did not accept that".
22. The judge found that the appellant was an educated, intelligent adult capable of leading an independent life and the most telling indicator that the relationship between them was the normal loving relationship that one might expect but no more than that, was the fact that the appellant's mother felt able to leave him behind in Pakistan when she came to this country to marry her new husband.
23. In effect the judge found that the mother proceeded to relocate to this country, leaving the appellant in Pakistan where he remained for four years after she had left.
24. It is clear that the judge rejected in the first instance that the appellant had a family life and found that he had a private life. The judge correctly identified the elements of his private life finding no family life and found that on balance the decision for his refusal of leave to remain and removal was proportionate.

Notice of Decision

25. There is no error of law in the First-tier Tribunal Judge's decision which is thorough, comprehensive and well-argued and the decision shall stand.

Signed

Date 9th October 2015

Deputy Upper Tribunal Judge Rimington