



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01883/2017

THE IMMIGRATION ACTS

Heard at Field House
On 7 June 2017

Oral Decision & Reasons Promulgated
On 30 June 2017

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

MUJADAD ALI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A. Adophy, Solicitor-Advocate of Rana & Co, Solicitors
For the Respondent: Mr P Singh, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan who was born on 10 October 1988. He appeals against the determination of First-tier Tribunal Judge Hodgkinson promulgated on

23 March 2017 in which he rejected the appellant's appeal against the earlier decision of the Secretary of State to refuse his protection and human rights claims. The relevant decision made by the respondent was made on 9 February 2017.

2. It is perhaps worthwhile at this stage pointing out the nature of the decision making conducted by the respondent. In paragraph 3 the decision maker set out the basis of the appellant's protection claim. He said that in 2006 the appellant formed a Shia group whilst in college. This caused friction between some of the other students. He left and joined another Shiite group later in 2006 and participated by collecting funds. Later on, in 2011, he re-opened a Shia mosque which had been closed down earlier and he described an event which took place on 13 June in which he was returning from Lahore and was in a car outside his home when shots were fired in the air before the attackers left the scene. The appellant was not injured and did not recognise his attackers. He reported the incident to the police and the police registered an FIR.
3. Subsequently, on 6 March 2012, the appellant referred to a second incident where he was approached by five men on motorcycles. He managed to escape from those men, even though they had been armed and began firing at the appellant. He then moved to Lahore and after about six weeks he decided that he should leave Pakistan.
4. The Secretary of State did not accept that claim, and part of the reasoning in the decision letter is a consideration of the background material which referred to the fact that 95% of Pakistan's population were Muslim. The Shia Muslim population is in the minority, between 5 and 20%. There is no doubt that the appellant was part of a minority Shia Muslim community. The background information supported the claim that the Shia population is spread throughout Pakistan. There are no provinces where the Shias constitute a majority, but that the overall background information does not suggest that Shias as a community are, as a whole, at risk. So, in paragraph 23, the Secretary of State reasoned that whilst in general the Shias are a minority group, it cannot be said that simply being a Shia would entitle the appellant to international protection. It was against this background that the Secretary of State came to consider the claim.
5. In support of her approach, and it became a central feature of the case this morning, the Secretary of State relied upon answers that were given in interview by the appellant. The appellant was asked about the incident which took place in June of 2011 and was asked about what the police did when they arrived at the scene of the crime. He was asked at question 55 what did the police do and he answered,

"They took down the FIR."

The appellant pointed to document number 6. We know from C7 of the bundle that document number 6 was an English translation of an FIR which is dated June 2011. Similarly, when he was asked about the later incident, he repeated his claim that the FIR was filed at the moment of the incident, so in answer to question 81 his last response was,

“The police filed the FIR and then the police left. This is document number 7”.

So, on both of those occasions the appellant said that the FIR was created at the scene of the crime when the police arrived to investigate the crime. It was not created, according to the answers given in response to questions 55 and 81 at the police station.

6. The Secretary of State made the point in paragraph 33 and paragraph 34 of the decision letter:

“33. You have submitted English translations for the FIRs. It is noted that you claim that you were attacked on 13/06/2011 and the police arrived at the scene within 5 minutes and took down an FIR. However, it is noted that the FIR states that the date of report being 15/06/2011, some 2 days after the incident. This inconsistency has been noted.

34. It is further noted that whilst you indicate that the second attack which took place on 06/03/2012, you state an FIR was filed at the scene on the day of the attack and the police left. Again, this is considered inconsistent with the FIR which states that the report date was 10/03/2012.”

7. Accordingly, what the refusal letter was saying was that the appellant’s answers given in response to questions 55 and 81 were wrong. They were simply incorrect or untrue. On that basis the Secretary of State relied upon those answers as being inconsistent with the true facts. In the determination the judge deals with this point and refers to the appellant’s responses in interview between paragraphs 24 and 29. In paragraph 24 he merely recites what is said in paragraph 33 of the refusal letter, and in particular repeats the evidence in the interview that the appellant said the first FIR was created at the scene of the incident. At paragraph 25 the judge refers to the refusal letter again, at paragraph 34, where once again the appellant stated that the second FIR was produced at the incident. We know that to have been wrong. All that the judge is doing in paragraphs 24 and 25 is reciting something that is factually accurate.

8. At paragraph 27 the judge refers to the appellant’s evidence in relation to this and quotes paragraph 11 of his statement in which the appellant said:-

“The Respondent erred in her findings that the dates of the incidents are different to the date the FIRs were filed. The Respondent is mistaken about the report made when the police first attend the scene to the one that is officially filed at the police station. On both occasions when the police attended the scene they took first response report which is a note that an incident has happened. Then FIR is a report that is made in person at the station, a formal complaint and request to the police to specifically investigate the crime committed against me.”

9. I entirely accept that that is what occurs in such cases. Inevitably, the policeman involved at the scene of the crime will use his notebook to record whatever he sees and hears when questioning the persons who are potential witnesses, but that is not what the appellant said. His answers to questions 55 and 81 are clear. He was

saying the FIR was created at the scene of the incident. That is precisely what the judge records in paragraph 28 of the determination by saying that the appellant's evidence did not accord with what we know to be the true position. He referred to the answers that he gave as to the two incidents. He recites the answer to question 55 that the appellant provided. He recites also in paragraph 28 the question and the answer that was provided by the appellant in relation to the March incident. Accordingly, paragraph 28 is factually correct. He does no more than recite the material.

10. When it therefore comes to paragraph 29 he makes the point:-

“Thus, the appellant's indication, in his asylum interview, is that the FIRs were taken by the police on the actual dates of the alleged two incidents, and not thereafter. I find his attempt to explain this date discrepancy to be unsatisfactory and to be one which lacks credibility. I find that the date discrepancy is damaging to the reliability of the FIRs and to the appellant's credibility as a whole.”

11. The explanation provided by the appellant in paragraph 11 of his statement is not that the respondent made a mistake in recording his answers. He said they were made at the time of the incident. He made no reference to a notebook entry followed by a subsequent arrival at the police station. Thus, paragraph 29 of the determination is also factually correct.

12. It would have been open to the appellant to say:-

“I'm sorry, I got that all confused. When I referred in my interviews to the FIRs as I did by reference to document number 6 and document number 7, I wasn't in fact referring to FIRs at all. I was referring to the notebook entries which were made at the scene and the FIRs were made later”

If that had been provided as an explanation, it would have required the judge to consider whether his explanation was a truthful one but that was not what the evidence was. Consequently, I find it impossible to say that paragraphs 24 to 29 in the passages to which I have referred contain any errors of law. They are all factually accurate and it was open to the First-tier Tribunal Judge to find that this was a credibility issue.

13. There is, however, a more telling point as to the reliability that can be placed upon the FIRs. They are to be found at D6 and D7 of the respondent's bundle. In one version of the documents they are found side-by-side; in other words, one is able to make a direct comparison between the two documents by looking at them side-by-side. The striking feature is that both of these incidents, which are entirely separate incidents and which did not take place at the same spot, are each described in paragraph 4 of the FIR in these terms:-

“Place of occurrence and direction from Police Station

In the vicinity of Mohallah Sutanpura distance 1 ½ K.M Towards East from Police Station”

Exactly the same description is provided in paragraph 4 of the second FIR which, on its face, was created on 10 March 2012 referring to the incident on 6 March 2012.

14. It was open to the judge to find that it was simply wrong to say that the two incidents took place at exactly the same spot. It is said on behalf of the appellant by Mr Adophy that this is merely a jurisdictional reference and that it does not refer to the place of occurrence itself; it refers to the area in which the police station has jurisdiction over. There is no evidence to that effect. But in any event I reject it because that is simply not what is being said. The place of occurrence and direction from the police station is what is described; not the jurisdiction of the relevant police station. In each case it is said that it took place one-and-a-half kilometres towards east from the police station and, therefore, in the same area.
15. There is, in my view, another matter which indicates that these FIRs are falsified. If one looks at the typesetting side-by-side of paragraph 4 which describes the place where the incident occurred, the words 'In the vicinity' are inset and are somewhat further inset compared with the second line which says "1 ½ K.M Towards East from Police Station". If one then looks at the description of what happened at the place of occurrence in the second of the FIRs, once again the first line is inset slightly towards the right of the line that follows where the distance is described as "1 ½ K.M". Exactly the same occurs in both documents. There is a full stop after the "K" but not after the "M". "Towards East" are both typed with uppercase letters.
16. I am satisfied that both of those entries are not simply the same words but exactly the same typesetting. This looks to me like a cut and paste job. These were matters which the judge was entitled to take into account and did so at paragraph 26 of the determination by relying on the very point made to that effect at paragraph 35 of the refusal letter and concluding, in paragraph 30, that these documents are unreliable.
17. Not only do I determine that that was a finding that was properly open to the judge, but I too consider to the extent that I am sure, looking at these documents, that their internal evidence is such that they are falsities. No adequate explanation was provided by the appellant for these striking coincidences in the FIRs. Accordingly whatever may be said about the appellant's claim that the FIRs were made at the place of the incident, the assessment by the judge as to the similarity in the description of the two separate incidents in the two separate First Information Reports is such as to render them unreliable.
18. On the basis of those sustainable findings it was therefore open to the judge to assess the affidavits in the sense that the substantive content of all three affidavits was largely identical, and that the contents did not address the core of the appellant's claim. Accordingly, it was open to the judge to place limited weight upon those.
19. Similarly, having made sustainable findings in relation to the FIRs and the appellant's evidence as to how they came about, it was open to the judge to discount the reliability of the evidence in relation to the newspaper reports which were dealt with by the judge in paragraph 35 of the determination.

20. In these circumstances I am satisfied that the judge made sustainable findings. It is also the case that the judge took into account the background information about Shia Muslims in Pakistan as assisting him in reaching his conclusion. In the totality, he went on to consider that the appellant's account of the adverse events which occurred to him in Pakistan was fabricated and accordingly he was not entitled to his protection claim. I do not find there was an error of law in the judge's determination and the conclusions that he reached were properly open to him.

DECISION

The Judge made no error on a point of law and the original determination of the appeal shall stand.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL