



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11552/2016

THE IMMIGRATION ACTS

Heard at Field House
On 28th June 2017

Determination Promulgated
On 12th July 2017

Before

UPPER TRIBUNAL JUDGE RINTOUL
DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[R S]
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Butterworth (Counsel)
For the Respondent: Mr P Duffy (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge N Amin, promulgated on 5th January 2017, following a hearing at Hatton Cross on 22nd November 2016. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before us.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, who was born on [] 1991. He appealed against the decision of the Respondent dated 11th October 2016, refusing his claim for asylum, and for humanitarian protection, under paragraph 339C of HC 395.

The Appellant's Claim

3. The Appellant's claim is that he would face mistreatment and persecution on account of his having married a woman of Hindu religion who is an Indian national, whilst he was in the UK, on 23rd February 2015, which was something that his family discovered in March 2015, leading to his uncle subsequently threatening him by telephone by making a death threat, although the uncle did not subsequently issue further threats after March 2015.

The Judge's Findings

4. The judge found that both the Appellant and the Appellant's wife's families "have shown disapproval with their marriage and these resulted in some strong telephone calls and messages" but that she did not find that these threats were so serious "as to amount to persecution that is persistent and serious" (paragraph 36). With respect to the threats already issued against the Appellant, the judge went on to say that, "this evidence shows that there is no desire to pursue the Appellant even if returned to Pakistan" given that no further threats had been made after April 2015 (see paragraph 39). Whatever fear the Appellant had was a subjective one and could not be objectively sustained. The judge also held that the Appellant had failed to show that there was a lack of effective police protection in Pakistan were he to return back there with his Hindu wife (paragraph 44). Consideration was given by the judge to interfaith marriages, and how they are considered to be illegal, and it was recognised that women face severe pressure and retribution from family members, which was something that the judge did accept, but the decision was made by the judge that the Appellant would have "recourse to the police" and that alternatively "he can choose to live in India with his wife" (paragraph 48).
5. The appeal was dismissed.

Grounds of Application

6. The grounds of application state that the judge was not entitled to find that the threats made to the Appellant had been forgotten because time had passed, and the judge was also wrong to say that there was effective state protection in Pakistan, with or without internal relocation.

7. On 9th March 2017, permission to appeal was granted by the Upper Tribunal on the basis that, “this is a case about the problems faced by a male, a Muslim, citizen of Pakistan who, against the wishes of his family, has chosen to marry a citizen of India who follows the Hindu religion. I am satisfied that the decision is arguably wrong”.
8. On 23rd March 2017, a Rule 24 response was entered to the effect that the judge below had directed himself appropriately because it was clear that the Appellant and his wife could relocate to different parts of Pakistan such as Karachi if need be. Alternatively, the Appellant could live with his Indian wife in India.
9. At a hearing on 24 April 2017, UTJ Rintoul found that the decision of the First-tier Tribunal involved the making of an error of law. That decision is set out in the annex to this decision. UTJ Rintoul observed that the judge had accepted the Appellant’s credibility, but had then gone on to say that the threats were not so serious as to amount to persecution that was persistent and serious. Once it had been accepted that the Appellant was credible, then “it is difficult to see how a threat to kill even if the applicant were to return to Pakistan is not a serious threat” (paragraph 9). The judge appears not to have properly thought through what followed from her findings or to have given reasons as to why she considered that a death threat was not a serious threat (paragraph 10).

Submissions

10. At the hearing before us on 28th June 2017, Mr Butterworth, appearing as Counsel on behalf of the Appellant, submitted that there were four issues before this Tribunal. First, whether there had been persecution in the past. Second, whether there was a risk of persecution in future from the Appellant’s family. Third, if such a risk is established, whether there would be on the particular facts, sufficiency of protection for the Appellant in this case. Fourth, whether there was sufficiency of protection in the home area, and if not whether it would be reasonable to expect the Appellant to relocate elsewhere within Pakistan. He then made the following submissions.
11. First, once it had been accepted by Judge Amin that family members in Pakistan had threatened to harm and kill the Appellant, this was sufficient to meet the asylum tests of persecution, on the lower standard. Second, the objective evidence, such as the CIG (Pakistan: Women Fearing Gender Based Harm/Violence), makes it clear (at paragraph 9.3) that there is a risk of harm with regard to love marriages, in precisely such circumstances, and in particular given that such relationships involve honour amongst families (see paragraph 7.3). Third, it was not enough to say that the last time that the uncle made the threat was in March 2015, and that this was an insufficient basis for rejecting risk, because past persecution is an “excellent indicator” of future persecution, and unless there has been “a major change of circumstances within that country that makes prospective persecution unlikely,” it is “generally sufficient, though not a mandatory, means of establishing prospective risk.” Fourth, it was well established that there is corruption in the police service in Pakistan, and quite frequently the police failed to adequately protect parties to a love marriage, but they actively assist in tracing the lovers and returning them back to

their families, and this is expressly recognised in the CIG (Pakistan): Women Fearing Gender Based Harm/Violence at paragraph 7.3.1, which makes it clear that,

“some families were reportedly moved to use violence in opposing love marriages, including kidnapping their daughters, attacking the relatives of the males in a relationship, and obtaining help from the police to track down partners who married without family approval”.

Furthermore, the same report makes it clear that, “instead of filing charges, police typically responded by encouraging the parties to reconcile” and that “there were reports that police and security forces raped women” (see paragraph 10.1.1). Fifth, as far as internal relocation was concerned, this was not a viable option for the Appellant, because the police would not protect the Appellant and the Appellant’s family would be able to trace him wherever he went, thus resulting in risk to the Appellant (see the CIG Report at paragraph 7.3.1 and 10.1.1). Finally, the Appellant could not go to India with his wife, because the Appellant is a Pakistani national, who would then be at risk from his wife’s relatives there.

12. For his part, Mr Duffy submitted that once Judge Amin had accepted, as credible, that the Appellant had met with threats from his uncle in March 2015, then there would be a risk on return of persecution on the lower standard. This is because the threats are probative evidence of what awaits the Appellant were he to return to Pakistan. The question then is whether the Appellant would be able to find “sufficiency of protection in Pakistan”. Although minorities of Hindu communities lived in places like Lahore, he could point to no evidence of interfaith marriages of couples living in such areas, in the midst of a largely Muslim country. Mr Duffy submitted that, “it would be hard for me to argue there is sufficiency of protection”. He also noted that the CIG (Pakistan) Report confirmed (at paragraphs 3.1.4 and 3.1.5) that the police would often be complicit in the ill-treatment and persecution of people who had married against the wishes of their family.
13. In a reply, Mr Butterworth relied upon the expert report of Dr Antonio Giustozzi (15th June 2017) which had been submitted in a “supplementary index” to this Tribunal, and this recognises (at page 15) that, “there were many examples of police aiding and abetting families seeking to punish or harm love marriage partners”. It also recognises that the Appellant “will have to seek relatively well-paid employment in order to earn a livelihood, as nobody would be available to support him even temporarily,” were he to return. He also notes that the Appellant, “and his wife would be at risk from his family and also likely from militant groups” (paragraph 15).

Remaking the Decision

14. We have remade the decision, on the basis of the findings of the original judge, the evidence before her, and the submissions that we have heard today. We are allowing this appeal for the reasons given by Mr Butterworth, and largely conceded to by Mr Duffy.

15. First, this is a case where the Appellant has been found credible in relation to the death threats that he has received for having married, as a Muslim man of Pakistani origin, a Hindu woman of Indian origin. Since he has been found credible we find the threats to be real and likely to be carried out.
16. Second, past persecution is strong evidence of future persecution, unless there is a material change of circumstance. Since we have found the threats to have been real, and likely to be carried out in the future, we find that there is no material change of circumstance as to take the appellant out of his risk category. Third, the evidence both from “the CIG (Pakistan): Women Fearing Gender Based Harm or Violence” and from the Country Advice Pakistan, Australian Government, Refugee Tribunal, “Pakistan – PAK37665 – Punjab – Love Marriages – Family Violence – Protection Orders – State Protection – Political Violence” (17th November 2010) makes it clear that adequate protection for love marriages is not provided in Pakistan (see paragraph 5 of Mr Butterworth’s skeleton argument). Third, sufficiency of protection does not exist for the reasons set out in the expert report of Dr Antonio Giustozzi (at paragraphs 10 to 13), though we are bound to say that the expert has absent-mindedly stated that, “interfaith marriages are rare in Afghanistan” (paragraph 14). Finally, internal relocation is not available, on the lower standard. This is because there are well known difficulties arising from this not being seen as a valid marriage. There is also a risk, in those circumstances, of this couple’s living together being seen as *zina*. This would make their protection difficult. This is particularly so if they had to explain why the appellant’s family was threatening them. The police are often complicit in aligning themselves with family members in order to trace a couple who have married against their wishes, and this is to say nothing of the fact, as pointed out in the expert report, that internal relocation here for the Appellant would be “unduly harsh” given the lack of employment, and the fact that he would be seeking to internally relocate with his Hindu wife of Indian origin, such as to come to the attention of the neighbourhood, and militant groups. For all these reasons, this appeal is allowed.

Notice of Decision

17. The decision of the First-tier Tribunal involved the making of an error of law such that it fell to be set aside. We have remade the decision as follows. This appeal is allowed.
18. No anonymity direction made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

6th July 2017

TO THE RESPONDENT
FEE AWARD

As we have allowed the appeal and because a fee has been paid or is payable, we make a fee award of any fee which has been paid or may be payable.

Signed

Dated

Deputy Upper Tribunal Judge Juss

6th July 2017

ANNEX - ERROR OF LAW DECISION



IAC-AH-VP-V1

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

Appeal Number: PA/11552/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 24 April 2017
Extempore**

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**[R S]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Butterworth, Counsel

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Amin promulgated on 5 January 2017 dismissing his appeal against the decision of the respondent to refuse his claim for asylum.

2. In brief the appellant's case is that he married a Hindu woman from India and that when their respective families found out about that, his being in Pakistan and her family in India, both families were displeased to a considerable extent, the family in Pakistan making clear threats to kill as disclosed in the Home Office interview at question 76. Those threats came from an uncle.
3. The judge accepted the appellant's credibility but at paragraph [36] considered that the threats were not so serious as to amount to persecution that is persistent and serious, concluding that the parents were expressing their disagreements to the sudden news of this marriage.
4. The judge noted at [37] there had been no further threats, holding:

On this basis I do not consider that the past threats or any apprehended threats or harm the Appellant fears attain a substantial level of seriousness. What has been expressed is family or social disapproval by the appellant and his wife's family. As such these threats are outside the concept of persecution.
5. The judge then went on to consider that there had been no further contact and at [39] found that the evidence shows there is no desire to pursue the appellant even if he returned to Pakistan.
6. The judge then went on to conclude on the evidence on light of these findings of fact that there would be a sufficiency of protection for the appellant; and, given that his fear of persecution was related to the Sialkot area of Pakistan that it would be reasonable to expect him to relocate where there would be low risk to him.
7. The appellant challenged this decision on four grounds.
 - (i) First the judge had erred in finding that the death threats were insufficient to establish persecution.
 - (ii) In her assessment of whether there would be a sufficiency of protection.
 - (iii) In her assessment of whether there would be a possibility of internal relocation; and,
 - (iv) Whether country evidence concerning entry to India was properly taken into account by the assessment of the risk in India.
8. For reasons which I will develop it is only necessary for me to consider the first three grounds.
9. The difficulty I considered appears to arise from the judge's approach to the evidence is that having that the applicant is credible and to have accepted the facts she fails not to have considered properly what those threats were. It is difficult to see how a threat to kill even if the applicant were to return to Pakistan is not a serious threat. What the judge appears to have done is to have directed herself properly in line with MI Pakistan and MF Venezuela v SSHD [2014] EWCA Civ 826 that a three-stage test

to be adopted: what do the facts establish; what is the relevant threshold; and, whether that threshold is met. That is naturally relevant to past persecution which is an indicator of but not determinative of a future risk of persecution.

10. The judge appears to have not properly thought through what followed from her findings or to have given reasons to why she considered that a death threat was not a serious threat. The fact that it comes from a member of the family is not in of itself a reason to dismiss it and in this case, she appears not properly to have applied the decision in MI Pakistan.
11. There is an additional error in that the judge appears to conclude that simply because on the evidence of the appellant that the phone calls had been terminated that this showed that there was no desire to pursue the appellant even if he returned to Pakistan. This is not a natural or a sustainable inference. Further on that basis I am satisfied that the first ground is made out. It appeared also that the judge has misconstrued the evidence in her decision at 41.
12. I turn next to the second and third grounds which can be taken together. These are as Mr Butterworth submitted clear dependent on the specific fact-finding exercise paragraphs in this case. The judge had made a finding that there was a threat from the family and I considered that properly construed that the judge's decision on the issues both of sufficiency of protection and as to internal relocation are based on those. There is some evidence as Mr Butterworth submits that the police will assist families in pursuing other members of those families, albeit the evidence tending to show those of women but there would necessarily have to be given indications that evidence that the police do not assist people who have for example gone against their family or on particular facts of this case entered into an interfaith marriage which would need to be factored into account in assessing the issue of sufficiency protection facts of this case.
13. Further these considerations go also to the issue of whether internal relocation would or would not be reasonable given the difficulties that may occur as a result of the actions of the family, the possible actions of the police and the difficulties that the wife of the applicant may face as being part of an interfaith marriage.
14. For these reasons I am satisfied that the decision involved the making of an error of law which is capable of affecting the outcome and I set aside the decision. The decision is to be remade. The findings of fact and in particular the findings of credibility are preserved. The remaking of the decision will take into account the following matters:
 - (1) Whether there has been persecution in the past.
 - (2) Whether there is a risk of persecution in future from the appellant's family
 - (3) If such a risk is established whether there would on the particular facts of this case be sufficiency of protection for the appellant.

- (4) Whether if there were no sufficiency of protection in the home area whether it would be reasonable to expect the appellant to relocate elsewhere within Pakistan.
- (5) Any new evidence on which the parties seek to rely must be served on or before 18 June 2017.

Signed

Date 5 May 2017

A handwritten signature in black ink, appearing to read 'Justice Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul