



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05452/2018
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THE IMMIGRATION ACTS

Heard at Field House
On 3rd January 2019

Decision & Reasons Promulgated
On 15th April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

AB & OTHERS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. A Jones, instructed by Connaughts
For the Respondent: Mr S. Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. Although an anonymity direction was not made by the First-tier Tribunal ("FtT"), as this a protection claim and includes children, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, the appellants are

granted anonymity. No report of these proceedings shall directly or indirectly identify the appellants or any member of their family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

2. The appellants are all nationals of Pakistan. AB was born on 5th July 1977. The remaining three appellants, are the children of AB. FA was born on 8th November 2003 and was 14 when she arrived in the UK. She is now 15. AA was born on 23rd May 2005 and was 11 when he arrived in the UK. He is now 13. UA was born on 26th January 2007 and was 10 when he arrived in the UK. He is now 12.
3. The appellants all arrived in the UK on 4th April 2017 having been granted leave to enter the UK as visitors. The appellants intended to visit AB's daughter HA, who is also a Pakistani national, but married to a British Citizen and living in the UK. The appellants made a claim for asylum on 13th October 2017. The claim was refused by the respondent for the reasons set out in a decision dated 13th April 2018. Their appeals were dismissed by FfT Judge Rowlands for the reasons set out in a decision promulgated on 28th June 2018. The appeal before me is an appeal against the decision of FfT Judge Rowlands.

The decision of the FfT Judge

4. At paragraph [4] of the decision, the FfT Judge refers to the witness statement of AB and adopts the summary of the appellants claim as set out in the respondent's decision. At paragraphs [5] to [9] of the decision, the Judge refers to AB's evidence in cross examination and the answer given by AB in response to a question from the Judge. At paragraphs [10] to [13] of the decision, the Judge refers to the evidence provided by AB's daughter, HA, and by AB's son-in-law (*the husband of HA*). The Judge sets out the submissions made by the parties at paragraphs [20] to [26] of the decision. The Judge's findings and conclusions are to be found at paragraphs [27] to [37] of the decision.

5. The Judge accepted, as the respondent had, that the appellants are nationals of Pakistan and that they had arrived in the UK on 4th April 2017, with the benefit of a visit visa granted on 23rd February 2017 to visit AB's daughter and son-in-law. Insofar as FA, AA and UA are concerned, the Judge notes at paragraphs [28] of the decision as follows:

"..Whatever their mother has claimed to have happened does not affect them and there is no threat to them from their father's family or their mothers family. They simply rely on the fact that they should stay with their mother and that she needs protection from her family and/or her in-laws in Pakistan."

6. Insofar as the core of the claim made by AB is concerned, the Judge states at paragraphs [29] to [32] of the decision as follows:

"29. The first appellant claims that she has had a sexual encounter with her distant cousin, a man called [MA]. She claims to have met him on three occasions, the last time being 1st August 2017. She has claimed that he forced himself on her but changed her evidence and said that what happened was consensual. This lack of consistency is something I find that damages her credibility. I do not accept her claim of interpreting difficulties and believe that she probably changed her claim in that respect to make it more credible that her family and her husband's family would be against her. If it were true that he had forced her to have sex, i.e. raped her, then it would be unlikely that her family would go against her and, having realised this, she now claims that she consented. This damages her credibility. I am not satisfied that there ever was any sexual encounter between them.

30. She claimed that [MA]'s daughter caught them in bed together and that they got dressed and he took her home. She then claims that his daughter, who had never met her before, somehow found out who she was and, despite being a distant second cousin, phoned the appellant's family in Pakistan and, within hours, her family and her in-laws knew what had happened and had within days disowned her and called for her to be stoned to death.

31. I do not find it credible that [L], who did not to know her, would have the ability to contact her family and I am not satisfied that this part of the claim is true. It follows that I do not accept that there have been any threats towards her from within her family or her in-laws nor that they have been made directly to her or indirectly via her daughter.

32. I have also noted the newspaper articles served with a bundle only one day before the hearing with insufficient time to be authenticated despite being published in 2017. I have noted reports from the Immigration and Refugee Board of Canada confirming that there can be fraudulent documents including newspaper articles and that Pakistan journalists have advised the FAT that people can publish false stories in newspapers for a fee. I have also noted that one statement from her family claims that she had committed adultery or a

sexual act today being 10th August and that that is inconsistent with her claim that it all happened on the 1st August. I am not satisfied that the newspaper articles are reliable documents. I am not satisfied, as a consequence, that any threats have been made to her. I have also noted that the appellant claimed at first that her father was dead and changed this when she realised that she had claimed that there were threats from him and her claim that she was disowned by him, this further damages her credibility. I am not satisfied that she has told the truth and the two witnesses are backing her up to meet her case. I do not believe anything happened between her and [MA] and I do not accept that she and her children cannot safely return to Pakistan.”

7. The Judge concluded that the appellant is not in need of protection and is not at any risk of persecution because of adultery laws in Pakistan. At paragraph [33] of the decision the Judge states “.. *I believe that nothing has happened...*”. At paragraph [34] of the decision of the Judge states:

“Having regard to the totality of the evidence both oral and documentary I am not satisfied that the appellant has shown that there is a real risk of harm and has not demonstrated to the standard set out in Sivakumaran that she has a well-founded fear that she will be persecuted for a Convention reason if she is now at the date of my decision returned to Pakistan and accordingly I dismiss her appeal.”

The appeal before me

8. The appellant claims that the Judge failed to make findings on material evidence and that failure undermines the Judge’s overall finding as to the credibility of AB and her account of events. The appellant refers to the evidence given by AB’s daughter and son-in-law, and claims that the failure of the Judge to consider all the evidence of the two witnesses, render the credibility findings made by the Judge, unsafe. It is said that the Judge erred in law, in failing to analyse the evidence of the witnesses and make findings with regard to their evidence. Furthermore, the appellants claim that the adverse credibility finding based on the niece never having met AB previously, is based on a false premise and disregards the cultural norm of extended family relationships in which family members are identifiable from family photographs. Finally, in reaching the decision, the Judge failed to have regard to the objective material which shows that extra marital affairs are looked upon with extreme shame, and that AB’s initial reluctance to admit to a

consensual relationship, was in the circumstances, to be expected. The appellants point to the decision of the Court of Appeal in HK -v- SSHD [2006] EWCA Civ 1037.

9. Permission to appeal was granted by Upper Tribunal Judge Grubb on 16th November. The matter comes before me to consider whether or not the decision of FfT Judge Rowlands involved the making of a material error of law, and if the decision is set aside, to re-make the decision.
10. Ms Jones submits that both AB's daughter, HA, and her son-in-law, had knowledge of what had happened, because of the telephone conversation between HA and her father. The Judge refers to the evidence of HA and her husband at paragraphs [10] to [13] of the decision, but the only consideration of that evidence in the findings is the passage at paragraph [32] of the decision, in which it is said that "*.. her witnesses are backing her up to meet her case...*". Ms Jones submits that there has not been a proper consideration of the evidence of the witnesses. She submits that the Judge could only have found that the evidence of AB regarding the relationship was not credible, if there was also a finding that AB's daughter and son-in-law were lying. Ms Jones submits that the Judge's failure to adequately consider the evidence of the two witnesses and whether that evidence lends support to the claim made by the appellant, discloses a material error of law.
11. I remind myself of the observations made by Mr. Justice Hadon-Cave in **Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC);**

It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.

12. I have also had regard to the decision of the Upper Tribunal in **Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 IAC** where it was stated in the head note that:

"Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which the appeal is determined, those reasons need not be extensive if the decision makes sense, having regard to the material accepted by the judge."

13. Dealing first with the Judge's overall assessment of the claim and the credibility of the appellant, in HK -v- SSHD [2006] EWCA Civ 1037, the appellant's account had been rejected at first instance simply because the facts he described were so unusual as to be thought, unbelievable. The Court of Appeal held that that was not a safe basis upon which to reject the existence of events that were said to have occurred within an environment and culture that were wholly outside the experience of the decision-maker. At paragraph [28] of his judgment Neuberger LJ stated:

"Further, in many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any)."

14. The assessment of credibility is always a highly fact sensitive task. The FfT Judge was required to consider the evidence as a whole. In assessing the credibility of AB and the claim advanced by her, the Judge was required to consider a number of factors. They include, whether the account given by AB was of sufficient detail, whether the account is internally consistent and consistent with any relevant specific and general country information, and whether the account is plausible. Clearly, some of those factors may be more relevant in an individual case than others. If an account is littered with internal inconsistencies that may be enough for a Judge to dismiss the evidence of an appellant as incredible. It does not follow that a Judge is entitled to dismiss an account in the same way simply because the account is simply implausible.

15. In Y -v- SSHD [2006] EWCA Civ 1223, Keene LJ stated:

"25 There seems to me to be very little dispute between the parties as to the legal principles applicable to the approach which an adjudicator, now known as an immigration judge, should adopt towards issues of credibility. The fundamental one is that he should be cautious before finding an account to be inherently incredible, because there is a considerable risk that he will be over influenced by his own views on what is or is not plausible, and those views will have

inevitably been influenced by his own background in this country and by the customs and ways of our own society. It is therefore important that he should seek to view an appellant's account of events, as Mr Singh rightly argues, in the context of conditions in the country from which the appellant comes. The dangers were well described in an article by Sir Thomas Bingham, as he then was, in 1985 in a passage quoted by the IAT in Kasolo v SSHD 13190, the passage being taken from an article in Current Legal Problems. Sir Thomas Bingham said this:

“An English judge may have, or think that he has, a shrewd idea of how a Lloyds Broker or a Bristol wholesaler, or a Norfolk farmer, might react in some situation which is canvassed in the course of a case but he may, and I think should, feel very much more uncertain about the reactions of a Nigerian merchant, or an Indian ships' engineer, or a Yugoslav banker. Or even, to take a more homely example, a Sikh shopkeeper trading in Bradford. No judge worth his salt could possibl[y] assume that men of different nationalities, educations, trades, experience, creeds and temperaments would act as he might think he would have done or even – which may be quite different – in accordance with his concept of what a reasonable man would have done.”

26. None of this, however, means that an adjudicator is required to take at face value an account of facts proffered by an appellant, no matter how contrary to common sense and experience of human behaviour the account may be. The decision maker is not expected to suspend his own judgment, nor does Mr Singh contend that he should. In appropriate cases, he is entitled to find that an account of events is so far-fetched and contrary to reason as to be incapable of belief. The point was well put in the Awala case by Lord Brodie at paragraph 24 when he said this:

“... the tribunal of fact need not necessarily accept an applicant's account simply because it is not contradicted at the relevant hearing. The tribunal of fact is entitled to make reasonable findings based on implausibilities, common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the case as a whole”.

He then added a little later:

“... while a decision on credibility must be reached rationally, in doing so the decision maker is entitled to draw on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible”.

27. I agree. A decision maker is entitled to regard an account as incredible by such standards, but he must take care not to do so merely because it would not seem reasonable if it had happened in this country. In essence, he must look through the spectacles provided by the information he has about conditions in the country in question. That is, in effect, what Neuberger LJ was saying in the case of HK and I do not regard Chadwick LJ in the passage referred to as seeking to disagree.”

16. Here, at paragraph [27], the Judge confirms that he has considered all the evidence in the case, including evidence to which he does not specifically refer to. At paragraph [34] of his decision, the Judge confirms that he had “..regard to the totality of the evidence both oral and documentary”. Having made that clear, there is no reason for me to believe that he did not do so.

17. At paragraph [28] of his decision the Judge refers to the matters that were not in issue. What follows at paragraphs [29] to [33] are findings that, in my judgement, arise from a combination of a number of inconsistencies in the account, a lack of detail or sufficient explanation, and matters that appeared to the Judge, to be implausible. In reaching his decision, the Judge plainly had regard to the various strands of evidence including the evidence of the appellant's witnesses, the newspaper article, and the statement from the AB's father dated 10th August 2017 in which it is claimed that AB "*..has committed a sin today, dated 10th August 2017..*".
18. At paragraph [29] of the decision, the Judge considered the inconsistencies in the account of AB as to her relationship with [MA]. The Judge considered the explanation provided by AB as to how those inconsistencies arose. The appellant had made a witness statement dated 25th May 2018. The appellant relied upon that witness statement as is set out at paragraph [4] of the decision. At paragraph [3] of her witness statement, the appellant claimed that the interpreter "*..did not do a good job of interpreting the questions to me. Where the interviewer has asked questions in respect of rape, the same was not translated to me by the translator and therefore there was a miscommunication as to the event which had occurred..*". The Judge rejected the appellant's explanation for the inconsistencies.
19. When properly read, in my judgement, the Judge reached his decision as to whether the appellant was involved in a sexual encounter with a distant cousin by reference to the evidence as a whole. In reaching his decision as to the credibility of the appellant's account, the Judge did not disregard the evidence of AB's daughter and her son-in-law. The Judge was plainly aware of that evidence. As Ms Jones accepts, the evidence is referred to at paragraphs [10] to [13] of the decision. The Judge carefully considered the account advanced by AB and how that had been developed, and considered the documentary evidence relied upon by the appellant in the form of a newspaper article and a statement from AB's father. The Judge was not satisfied that the newspaper articles are reliable documents. Having rejected AB's own account, and the documents that she relied upon, it was in my judgement

open to the Judge to simply state that she was not satisfied that AB has told the truth and that her witnesses (*i.e. AB's daughter and son-in-law*) are backing her up to meet her case. At paragraph [31] of the decision, the Judge had rejected the claim that there had been threats towards AB either directly to her, "*..or indirectly via her daughter.*". The weight that the Judge attached to the evidence of the witnesses in light of the findings regarding the appellant's own evidence and the documents relied upon, was in the circumstances, a matter for him.

20. As Brooke LJ observed in the course of his decision in **R (Iran) v The Secretary of State for the Home Department [2005] EWCA Civ 982**, "unjustified complaints" as to an alleged failure to give adequate reasons are all too frequent. The obligation on a Tribunal is to give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision. If a Tribunal has not expressly addressed an argument, but if there are grounds on which the argument could properly have been rejected, it should be assumed that the Tribunal acted on such grounds. It is sufficient that the critical reasons to the decision, are recorded.

21. In my judgment, the FfT Judge reached his overall findings by reference to a combination of inconsistencies in the account given by AB, the documents relied upon by AB, and matters that appeared to the Judge, to be implausible. On appeal, the Upper Tribunal should not overturn a judgment at first instance, unless it really cannot understand the original Judge's thought process when he was making material findings. In my judgement, the Judge identified and resolved key conflicts in the evidence, and gave a brief explanation of the conclusions on the central issue on which the appeal was determined. The findings made by the Judge were findings that were properly open to the Judge on the evidence before the FfT. The findings cannot be said to be perverse, irrational or findings that were not supported by the evidence. The appeal was dismissed after the Judge had carefully

considered the facts and circumstances of the claim, and all the evidence before him.

22. In my judgment, the appellant is unable to establish that there was a material error of law in the decision of the FtT and it follows that the appeal is dismissed.

Notice of Decision

23. The appeal is dismissed.

Signed Date 15th February 2019

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

No fee is payable and there can be no fee award.

Signed Date 15th February 2019

Deputy Upper Tribunal Judge Mandalia