



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000163

First-tier Tribunal Nos: HU/50044/2022
IA/00037/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 20th of March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

SS
(ANONYMITY ORDER MADE)

and

The Secretary of State for the Home Department

Appellant

Respondent

Representation:

For the Appellant: Mr R Sharma of Counsel, instructed by J McCarthy Solicitors
For the Respondent: Mr C Avery, a Senior Home Office Presenting Officer

Heard at Field House on 22 February 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. An anonymity direction has previously been made and remains because this matter relates to a claim in respect of the Appellant being a victim of modern slavery.
2. This is my oral decision which I delivered at the hearing today.

Background

3. The Appellant is a citizen of Pakistan. His appeal against the Respondent's decision to refuse his human rights claim. That had come for consideration before First-tier Tribunal Judge K Swinnerton at the Hatton Cross Hearing Centre on the 1 November 2023.
4. The Appellant's appeal was dismissed by way of a decision promulgated on 17 November 2023. Mr Sharma drafted grounds of appeal against that decision, he having appeared before the First-tier Tribunal. Permission to appeal was granted by First-tier Tribunal Judge C Scott, by way of a decision dated the 4 January. When granting permission the learned judge had said in part as follows (I have replaced the name of the individual to "I"):

"It is arguable that the Judge erred in law when assessing whether there would be very significant obstacles to the appellant on return to Pakistan, it being accepted that the appellant had a been a victim of modern slavery and had a subjective fear of being located by "I", the person who had kept the appellant working in abusive working conditions in [xx]. Whilst the Judge considers it 'not at all likely' that "I" would pursue the appellant in Pakistan, it is arguable that they have failed to consider what impact the appellant's subjective (even if irrational) fear of "I" would have on him if returned to Pakistan."

The Hearing Before Me

5. Mr Sharma submitted today that the two written grounds of appeal explained that there was firstly a misunderstanding and a failure by the judge to apply the Appellant's case. Mr Sharma took me to paragraphs 13 and 17 of the judge's decision. In particular, Mr Sharma said mental health was relevant in this case. He said this was in relation to consistencies regarding dates and indeed I note that the judge had quite correctly treated the Appellant as a vulnerable witness, as requested by the Appellant's legal representatives. Mr Sharma said the judge's assessment considered whether there was a well-founded fear on return from the individual ("I"). The question that was put to the Tribunal though was what difficulties the Appellant would face in reintegrating when he, the Appellant himself considers that the individual may be after him. It is what the Appellant believes, which was relevant. The Appellant feared reprisals at the hands of this individual and in those circumstances the Tribunal should have asked itself what impact the Appellant's fear of this individual would have and how it would affect the Appellant's ability to reintegrate in Pakistan. Once that question was asked then the availability of adequate mental health would become relevant for the Tribunal to consider.
6. The judge had failed to consider a live element of the Appellant's case. In relation to ground 2, this linked with the previous point. The Appellant's skeleton argument in the First-tier Tribunal had made reference to expert material or independent material when it came to mental health in Pakistan. At paragraph

17, the judge has referred to extended family members. The Appellant had said in his evidence that they could not assist him. The Appellant was asked about this in re-examination and the judge has not given reasons for rejecting that evidence.

7. I then heard from Mr Avery. He submitted that in relation to ground 1 the judge had clearly accepted that the Appellant has mental health issues. He had set out those submissions on the point at paragraph 8 of his decision and in relation to the fear of "I". Mr Avery said that there was a serious problem with the Appellant's submissions because at paragraph 13 the Appellant was asked whether "I" was looking for him and the Appellant had said 'no' and thereby the way the judge proceeded with the risk, was entirely appropriate.
8. As to paragraph 17 and the support for the Appellant and the support given and received, that was appropriate for the judge to conclude as well. This bleeds into the second ground of appeal, said Mr Avery. The judge did not say that there will be family support, in relation to whether the judge did not say that there would be family support and why there will be support. The Appellant had given evidence at the hearing that he had not fallen out with family members in Pakistan and so that the evidence that the judge was considering was whether the family support for the Appellant could continue. There was reasoning and reasonable inference notwithstanding what the Appellant may have said elsewhere. One needed to look at the context of integration in Pakistan and in the light of what the Appellant has said and in relation to the fear of "I", at paragraph 13, there was no reason why "I" would be looking for the Appellant any longer. Mr Avery said there was an error in the determination, there was no misunderstanding of the situation being applied by the judge on the evidence which had been given. Mr Avery said that the conclusion reached at paragraph 17 was perfectly sustainable.
9. Mr Sharma in reply said that paragraph 8 did set out a summary on behalf of the Appellant in relation to the fear of living in Pakistan and that it was recorded. There was a different issue that was being considered by the judge and that was whether the Appellant would be targeted. When one looks at paragraph 13, that could be read as asking: Is there any evidence that this person is targeting you, whereas the actual question should have been, do you believe that this person is looking for you, was not a complete answer. The two issues were different. The judge did not consider it was not consistent with reintegration and the judge should have considered this.
10. Mr Sharma referred me to paragraph 3 of the Appellant's witness statement dated 28 September 2023, whereas in part, Mr Sharma said paragraph 4 stated "I am scared that the man I fear will find me in Pakistan, even if I move to a different area ... the situation in Pakistan is very bad and there is no future for me there ... I will not have this level of support in Pakistan and my mental health will deteriorate". Mr Sharma said it was that fear which the First-tier Tribunal Judge should have considered in terms of the difficulties in relation to reintegrating. Mr Sharma said that this went to ground 1 and it also fed into that there were no proper reasons in relation to ground 2. I was asked to conclude that there was a material error of law in relation to the First-tier Tribunal Judge's decision.

Consideration and Judgment

11. Having considered the rival submissions and the documentation and indeed having reflected on the decision, I conclude that there is no material error of law in the judge's decision. My reasons for this conclusion are as follows.
12. In my judgment paragraph 13 of the judge's decision is very clear, particularly in relation to what is recorded in respect of the evidence from the Appellant himself. The judge has recorded that the Appellant said, "The Appellant was asked at the hearing whether there any reasons to think that "I" was looking for the Appellant and the Appellant answered 'no'.". This answer from the Appellant in my judgment completely undermines the rest of the Appellant's case that he fears he is at risk from I or that there is subjective or irrational fear. Because the Appellant himself said freely and openly that that I was not looking for the Appellant then there can be no fear, not even an irrational fear. That is because the Appellant is not being sought, as he the Appellant himself confirmed.
13. Even having attempted to provide the widest and most generous interpretation of what the Appellant is recorded as having said to the FTT Judge, I am unable to reach anywhere near the conclusion or the reading which Mr Sharma urges me to. In my judgment in no way was the Judge recording that the Appellant was being asked whether there was any evidence that the Appellant was being looked for by "I". The judge asked a very straightforward and simple question as to whether there was any reason to think that "I" was looking for the Appellant. The Appellant gave a very straightforward and no doubt honest answer. The Appellant's answer was 'no'.
14. In my judgment, even with the Appellant being vulnerable in the way in which has been properly identified and recorded, and indeed highlighted by both Mr Sharma and then the FTT Judge in his decision at paragraph 5 and even with the historic references to the victim of modern slavery and trafficking aspects of this case, in my that important finding leads me to conclude that ground 1 of the grounds of appeal is not sustainable. It is the Appellant who said 'no' and it is not possible to ignore that.
15. Ground 1 contends that the judge misunderstood the Appellant's case and what is said is that the Appellant did not invite the judge to conclude that it was likely that the individual Mr "I" will track the Appellant down, but rather whether the Appellant believed that Mr "I" was still interested in tracking him down and that thereby his life would be in fear. It was said in the grounds that in light of the trauma and mental health illness caused by the modern slavery that the Appellant would be negatively impacted by the ongoing fear such that he would not be able to reintegrate into society.
16. I cross-refer that ground of appeal which states: "But rather that he believes it is to be the case that "I" is still interested in tracking him down" to paragraph 13 of the judge's decision, which states "The Appellant was asked at the hearing whether there is any reason to think that "I" was looking for the Appellant and the Appellant answered 'no'". Once I undertake that cross referencing, in my judgment the judge clearly and fully dealt with the whole basis of the Appellant's claim. Mr "I" is not interested in tracking down the Appellant because the Appellant said he is not by saying 'no'. The judge did not misunderstand the Appellant's case. It was the Appellant himself who gave that evidence and the judge was perfectly entitled to come to the decision that was reached.

17. I turn to the matter relating to the adequacy or otherwise of mental health facilities in Pakistan. That is less relevant. What the judge had to do first was to reach the assessment of the evidence, which in my judgment is perfectly sustainable. That disposes of ground 1.
18. In relation to ground 2, the submission is that the judge came to erroneous conclusions in relation to the extended family members who may or may not be able to provide assistance to the Appellant in Pakistan. It is said it was unclear if the judge had rejected the Appellant's evidence in relation to this matter. There was an assertion, it is said that the Appellant claimed to be contact with an aunt in Pakistan.
19. The judge said at paragraph 17, "I see no reason why the mother and maternal aunt and other extended family members could not provide a support system for the Appellant which could also benefit him with his mental health issues."
20. The judge noted earlier in paragraph 17 that the Appellant had spent the majority of his life in Pakistan, had grown up there, that his mother and two brothers lived in Pakistan, sadly the Appellant's father had passed away. That the Appellant maintained regular contact with his mother and had a good relationship with her, that the Appellant had two paternal uncles in Pakistan as well as a maternal aunt. The Appellant had given evidence at the hearing that he maintained contact with his maternal aunt. The Appellant gave evidence that he had not fallen out with his extended family members, but they have simply not remained in contact.
21. In my judgment it was a perfectly proper inference and for the judge to conclude that the Appellant would be able to look to his mother (at the very least) for assistance, the Appellant having grown up in Pakistan and the Appellant continuing to have extensive contact with her.
22. It is of course a decision for the Appellant as to whether he wishes to continue to maintain contact with his maternal and paternal relatives but, in my judgment, nothing turns on the ability of the Appellant to see or speak with or to have contact with his maternal aunt. Once the fundamental basis of the claim had been rejected, the judge then had to consider the reintegration aspects of a vulnerable witness who has mental health difficulties against a backdrop of the mental health facilities being of a lesser standard than here in this jurisdiction, but nonetheless, such that the Appellant himself would be able to look to his family members for some form of support. The case law is clear that the facilities available in Pakistan do not have to be the same standard as are available in this country.
23. Having considered the decision, the judge was required to consider the evidence that was before him as a whole, and he plainly did so, giving adequate reasons for his decision. The findings and conclusions reached by the judge are neither irrational nor unreasonable. His approach in my view is sustainable.
24. In the circumstances, I conclude that there is no sufficient basis for the second ground of appeal to succeed either. The second ground contends that the judge's findings were made in a way in which they were unsupported by the evidence. In my judgment that is not correct for the reasons that I have shown by reference to the evidence and to the Judge's findings.

25. In respect of both grounds of appeal, the Court of Appeal in **Volpi v Volpi** [2022] EWCA Civ 464 sets out the approach to be taken by me in appeals. The decision reached by the judge was one that was reasonably open to him on the evidence before him and he gave adequate and sustainable evidence-based reasons for his decision.
26. Consequently the Appellant has not established that the decision involved the making of an error on a point of law, therefore the decision shall stand.
27. It is appropriate that I say that I am most grateful to Mr Sharma for the very helpful submissions, which he has made today. Ultimately, this matter turned on a very significant aspect, as highlighted by Mr Avery and in those circumstances, despite the persuasive submissions of Mr Sharma, I am not able to agree with him.

Notice of Decision

There is no material error of law in the decision of the First-tier Tribunal.

The decision of the First-tier Tribunal dismissing the Appellant's human rights appeal stands.

A. Mahmood.

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 February 2024