



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01214/2011

THE IMMIGRATION ACTS

Heard at Field House
On 9 May 2013

Date sent
On 14 August 2013

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MR MUHAMMAD IMTIAZ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gilbert, Counsel, instructed by Rahman and Co Solicitors
For the Respondent: Ms E Martin, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal was last before me on 12 October 2012, following which on the following day I prepared a document entitled "Decision and Directions" which was sent to the

parties around the end of October. I noted in this Decision that this appeal had an unfortunate history, which I set out.

2. I summarised the appellant's claim and also the unfortunate chronology, including the fact that on previous occasions the respondent had not been represented and so neither had the appellant's evidence been properly tested, nor had the respondent's reasons for rejecting the appellant's claim been properly argued.
3. I do not propose in this determination to repeat what I have already set out, but I rely upon all the matters set out in my earlier Decision.
4. In my earlier Decision, while I expressed my reservations as to the findings of fact which had been made in respect of the appellant's claim by First-tier Tribunal Judge Russell, particularly because the respondent did not make arguments which could have been made and did not present evidence which might have been available, nonetheless I considered that these findings could not properly be set aside. I repeat what I wrote at paragraph 47 of this Decision:

"This is essentially a reviewing Tribunal; findings of fact made by the First-tier Tribunal should not be interfered with unless it can be shown that these findings are not sustainable because of a material error of law. While it is possible (or even probable) that had the respondent's case been put more effectively (and in particular had the records of all interviews referred to in the reasons for refusal been put before the Tribunal, and had the respondent been represented so that the appellant could be cross-examined effectively) the First-tier Tribunal might have been persuaded to make different credibility findings, on the basis of the material before him, the findings of fact which [the First-tier Tribunal Judge] made were open to him, and it is accordingly not appropriate for this Tribunal to interfere with them, and certainly not so late in the day."

5. Accordingly, at paragraph 48, I found as follows:

"It follows that for the purposes of this appeal, I must accept that the facts have been found as follows. The appellant came to this country in 2006, together with his wife, who was pregnant at the time (their first child being born only a few months later). They came because they were frightened that if they stayed they would be at risk because of the matters set out in the appellant's statement. In September 2010, one of his brothers-in-law managed to arrange for a First Information Report to be initiated, which contained false allegations that the appellant and his brother had caused injury by firing a gun at him. The appellant has been told by a lawyer that it is not safe for him to return now."

6. Then, at paragraph 49, I found that "for present purposes, I am obliged to and do accept that the appellant's account of what occurred in Pakistan is truthful, and that his brothers-in-law are still, some four years later, conspiring together to cause him harm".

7. I found that Judge Russell (the First-tier Tribunal Judge) 's finding that the appellant would not be at risk on return was unsustainable, essentially because he had failed to make clear findings as to whether the appellant could safely relocate internally. I found that the finding that internal relocation would be reasonable was sustainable. I also made a finding, at paragraph 52, that on the basis of the appellant's evidence, this appellant would be at risk on return to his home area. It followed that this Tribunal now needed to consider only whether or not this appellant could safely relocate internally.
8. To this end, I gave permission to both parties were to make further submissions and to adduce further background evidence directed to the issue of whether or not a First Information Report dishonestly obtained would be likely to be enforced anywhere in Pakistan. I also directed that these submissions should address the issue of whether and to what extent the initiation of a First Information Report would require the involvement of the police or other independent government agency, rather than just a complaint being made, and further whether, if this report was acted on outside the appellant's home area, there would be a real possibility that in consequence this appellant would suffer such serious harm that his Article 3 rights would be engaged.
9. Following the service of this decision, together with the direction which were contained within this document, the appellant's solicitors filed with the Tribunal (and, I have been told, sent a copy to the respondent) an expert report. However, nothing was received on behalf of the respondent.
10. Accordingly, On 25 March 2013, I gave further directions, which were also served on the parties. The parties were advised that this appeal would be relisted for further oral submissions on 9 May 2013, and at paragraph 3, the following direction was made:

"If the respondent still wishes to contest this appeal, in light of the further evidence submitted on behalf of the appellant, she must file with the Tribunal and serve on the respondent by no later than Friday, 12 April 2013, a skeleton argument setting out the submissions which will be relied upon at the hearing."
11. No such skeleton argument was filed with the Tribunal or served on the respondent, either by Friday 12 April or by the date of the hearing.

The Hearing

12. At the hearing, I heard submissions which were made on behalf of both parties. I recorded these contemporaneously in the Record of Proceedings, and shall not repeat them word-for-word, but shall refer below only to such of these submissions as are necessary for the purposes of this determination. I have, however, had regard to everything which was said to me during the course of this hearing, as well as to all the documents contained within the file.

13. On behalf of the respondent, Ms Martin apologised that she was not prepared properly to argue this appeal on behalf of the respondent. Mr Nath, who had represented the respondent before me on 12 October 2012, was unavailable to continue this case at this hearing. He was not in the office on this day. When the Tribunal observed that the notice of hearing had been sent out to the parties on 4 April 2013, some five weeks ago, Ms Martin informed the Tribunal that she personally had only received the papers the previous day. She also informed the Tribunal that neither my Decision and Directions, which had been sent to the parties at around the end of October 2012, nor my subsequent directions dated 25 March 2013, nor the expert report which had been served by the appellant, were contained within the respondent's file, and that she had not seen any of these documents. She applied for a further adjournment, of two weeks, and undertook to ensure that if such an adjournment were granted, the directions which the Tribunal had previously made would be complied with.
14. On behalf of the appellant, Mr Gilbert opposed this application. The respondent had had adequate time in which to prepare for this hearing, and as the Tribunal had already noted, following the hearing on 12 October 2012, the respondent's earlier failure to produce evidence for the purposes of this appeal had been raised. Mr Gilbert also relied upon the guidance given in the Rules.
15. I referred the parties to the relevant Rule dealing with adjournment of appeals, which is Rule 21 of the Asylum and Immigration Tribunal (Procedure) Rules 2005, which provides as follows:

"Adjournment of appeals

- 21(1) Where a party applies for an adjournment of a hearing of an appeal, he must—
- (a) if practicable, notify all other parties of the application;
 - (b) show good reason why an adjournment is necessary; and
 - (c) produce evidence of any fact or matter relied upon in support of the application.
- (2) The Tribunal must not adjourn a hearing of an appeal on the application of a party, unless satisfied that the appeal cannot otherwise be justly determined.
- (3) The Tribunal must not, in particular, adjourn a hearing on the application of a party in order to allow the party more time to produce evidence, unless satisfied that—
- (a) the evidence relates to a matter in dispute in the appeal;

- (b) it would be unjust to determine the appeal without permitting the party a further opportunity to produce the evidence; and
- (c) where the party has failed to comply with directions for the production of the evidence, he has provided a satisfactory explanation for that failure."

16. In response to a question from the Tribunal as to whether the respondent could provide a satisfactory explanation for the apparent failure to comply with the directions which had been given previously for the production of evidence, Ms Martin submitted that the respondent did, or could, comply with other requirements set out within Rule 21. In particular, it was likely that there would be evidence available to contradict what was contained within the expert report and the respondent wished to have the opportunity to submit such evidence. However, Ms Martin accepted that the respondent did not have a satisfactory explanation for her failure to comply with the directions which had previously been given for the production of the evidence which it was now hoped could be adduced.
17. When considering the adjournment request, I first consider whether or not there is a proper basis to conclude that the documents which are not within the respondent's file could somehow not have been sent. There is no basis upon which I can so find. All the documents which were sent by the Tribunal were received by the appellant's solicitors, and there is no reason to doubt that these documents would not have been sent at the same time to the respondent. These are my earlier Decision and Directions and the further directions given on 25 March 2013. Also, the appellant's expert report was properly filed with the Tribunal, and I have no reason to doubt Mr Gilbert's statement to the Tribunal, on instructions, that this document was also served on the respondent. Also, very regrettably, I have to take account of the fact that this Tribunal has frequent experience of the respondent not complying with directions which have been made and not being able to locate documents which have been sent to the respondent in the various files which are provided to the respondent's Presenting Officers. Accordingly, I considered the adjournment request on the basis that the respondent was properly served with all the documents to which reference has been made above, and I so find.
18. I take account of the respondent's previous conduct in this appeal, which has been criticised already. As the relevant Rule states in terms that the Tribunal must not adjourn a hearing on the application of a party in order to allow that party more time to produce evidence unless satisfied that that party has provided a satisfactory explanation for a previous failure to comply with directions for the production of that evidence, there is no proper basis upon which this application for an adjournment could be granted. I accordingly informed the parties that the hearing would proceed.
19. Notwithstanding the direction that I had previously made that the respondent, if she wished to contest the appeal in light of the further evidence submitted on behalf of the appellant (being the expert report) must file with the Tribunal and serve on the

appellant a skeleton argument, Mr Gilbert very properly did not object to Ms Martin making submissions with regard to the expert report, founded upon country information which was already before the Tribunal.

20. Ms Martin having informed the Tribunal that she would be available during the afternoon, I agreed to rise from this appeal and reconvene at 2pm, in order to allow her the opportunity to consider the material she had not seen before the hearing and prepare her submissions.
21. As already indicated, I do not intend in this determination to set out word-for-word the submissions which were made to me. However, I do record that Ms Martin accepted on behalf of the respondent at the outset that if the appellant relocated within Pakistan, he would be required to disclose his computerised national identity card (CNIC) number to any landlord, or in respect of any other official transaction which was carried out. She accepted, in those circumstances, that it would not be reasonable to expect this appellant to relocate without at least disclosing this number to some of the people with whom he would have to deal.
22. I accept that there is an abundance of evidence that there is considerable corruption within the Pakistan police, and for the purposes of this determination I also accept that there is at least a real possibility that the appellant's brothers-in-law, on the basis of the findings of fact which have already been made, have been able to bribe police officers within their locality. Accordingly, I have to consider whether, by registering within another locality within Pakistan, this appellant would incur a real risk that his whereabouts would become known to his brothers-in-law, who wish him harm.

Respondent's Submissions

23. Ms Martin relied on the COI Report of 7 December 2012. Although every individual needed an individually numbered CNIC, and at 32.03 of the COI Report the various documents required for the obtaining of a CNIC were set out, there was no evidence that any public record was kept of a CNIC number. Also, the respondent would rely on what was said at 12.05, with regard to FIRs:

“In a response to information request, date 4 November 2010, on the subject of First Information Reports, the Immigration and Refugee Board of Canada ... reported that, in correspondence with a representative of the Human Rights Commission of Pakistan (HRCP) on 8 October 2010, the HRCP representative stated ‘... while police in one area of Pakistan can become aware of an FIR against someone in another area of the country, they generally do not unless the police in the original jurisdiction call attention to a particular FIR as, for example, in a case that is particularly serious, politicised, or subject to public attention or that requires police to more actively search for a suspect.’ ”

24. It was also important to note that there were four police forces within Pakistan, which were all independent entities. There was no evidence that CNIC numbers were in the public domain.
25. Although the expert at paragraph 61 of her report claims that it is “highly likely that the police on the basis of the FIR or those who were after him would easily get information about [the appellant’s] whereabouts in Pakistan through the NADRA”, it was the respondent’s submission that they could only do so if they had the CNIC number in the first place. In this case, the Tribunal should also note that when the appellant had moved to a village 80 miles away, even though his brother-in-law was then said to be “out to get him”, and he had a CNIC number, he did not experience any problems. There was no reason why the appellant should not again be able to relocate.
26. The appellant had been safe on two occasions in Pakistan, once for two months and once for three months, and both times he would have had a CNIC number and the police had always had links with the appellant’s brothers-in-law.
27. The Tribunal should also note that it is now seven years since the appellant had left Pakistan, so if they were not bothered to look for him when he was in the country, there is no reason why they should be more interested in him now.
28. The Tribunal should also accept that there was no evidence to suggest that Karachi and other cities were now so dangerous as to warrant an Article 15(c) argument. Also, the appellant did not necessarily have to relocate to a major city. There were a number of areas in Pakistan where he could relocate to, such as a rural area or a smaller city within the larger provinces.
29. In this case, any danger to the appellant would depend on the ability of his brothers-in-law to locate him.

Appellant’s Submissions

30. On behalf of the appellant, Mr Gilbert relied upon the expert report provided by Mrs Uzma Moeen, which addressed the questions of whether an FIR could be used to track someone down and whether this would give rise to a risk of imprisonment even if it was false. Mr Gilbert submitted that there was evidence that an FIR would be enforceable elsewhere in Pakistan, and so the real question was whether another police authority would know of the existence of this FIR. The authorities were now bound to keep records of all tenants in their localities (see para 58 of the report) so in effect, the appellant would be at risk of discovery through the operations of a corrupt police force in Rawalpindi. Whether or not the database is available publicly, it would be sufficient if it was available to the police, because there were dishonest police officers involved. Evidence was given within the expert report of corruption within Pakistan.

31. The Tribunal should assess the risk to the appellant first on the basis that a finding exists that the appellant would be at risk in his home area. That is that his brothers-in-law had a present intention to do him harm, and so any finding as to the availability of internal relocation must be consistent with that finding. Next, with regard to the appellant's previous history, during the earlier periods relied upon by the respondent, the appellant had been in hiding and the evidence was that there had not been an FIR put out until 2010, which post-dated these periods. Therefore, the means of discovery would be more effective now.
32. Even if the appellant was to be taken into custody by a police force outside Rawalpindi, there remained a real risk of mistreatment. Although there were various anti-corruption measures in force, the expert had said at paragraphs 40-50 of her report that these were ineffective.
33. In reply, Ms Martin referred the Tribunal to paragraph 12.06 of the COI Report, which said that there did not appear to be a national system to track FIRs.

Discussion

34. On the basis of the findings of fact which I have already accepted, and in light of Ms Moeen's expert report, I must first consider whether or not there is a real likelihood that, if the appellant were to relocate within Pakistan, the FIR would come to the attention of the authorities where he was. It is argued on behalf of the appellant that, for reasons set out within the expert report, he would. Before considering exactly what is said within this report, I refer to the country guidance decision in *KA and Others (domestic violence – risk on return) Pakistan CG [2010] UKUT 216*, where at paragraph 265 the Tribunal found as follows:

“As regards safety, we reject Mr Fripp's submission that wherever the appellant sought to move in Pakistan the authorities or her husband's family would track her down. Mr Fripp has properly not suggested that someone in her position would be on any centralised database and we can find no evidence to suggest that. As regards her husband and his family, we take account of the interconnectedness of families in Pakistan. Equally, however, we bear in mind the evidence indicating that (at least in the private sector) centres/refuges generally keep their locations confidential. We consider that it is of material importance that Pakistan is a very large country geographically and has a large population, estimated in July 2008 as nearly 173,000,000, and that there is no evidence to suggest that the state agencies either at a federal or provincial level hold sophisticated nationwide databases on their citizenry. Whilst it appears that in some instances local police are told the names of women residing temporarily in centres or refuges for women, victims of domestic violence, there is insufficient evidence to show that this leads to persons outside the local areas being able to access that information.”

35. The Tribunal in *KA* did not have the benefit of Ms Moeen's report, but having read this report extremely carefully, together with the COI Report of December 2012, I note that Ms Moeen does not in fact say in terms that because a tenant will have to give a landlord his CNIC and will have to verify this, this information would then be provided to the local police, or that this information is then put on NADRA's database. It is also clear from the COI Report that there is no centralised database for FIRs. I set out the extract from paragraph 12.06 of this COI Report:

"On the same subject, the IRB recorded that in correspondence with a Lahore-based lawyer on 6 October 2010, the lawyer stated:

"There is no national system to track FIRs, and there is no systematic coordination between various police organisations at inter-provincial level or inter-organisation level. Police officers in one district will not be able to know about the FIRs registered elsewhere unless a circular is issued intimating them of offence and suspects. So, unless police is really after the accused, and get orders to search and seize in other districts or provinces, the accused may remain at large."

36. It is notable that nowhere in her report does Ms Moeen suggest that local police would send information regarding tenants who have moved into their locality, or their addresses, to NADRA. Unless they do this, there is no basis upon which police in another area could get to know that someone for whom they were looking could be located. There is absolutely no evidence provided by Ms Moeen (and she does not in fact suggest that this is the case) that any central record is kept of these addresses, let alone that they are stored on NADRA. There has been no evidence put before me to suggest that there is.
37. Although it was Mr Gilbert's submission that this was in effect what the report said, on a close analysis it does not. If Ms Moeen had wished to say (on the basis of evidence to which she was able to refer) either that FIRs are placed on a national database (contrary to the evidence referred at paragraph 12.06 of the COI) or that there is a national database in which addresses are collated with CNICs, she could have said so. The fact that she did not is significant, because there is no evidence that either is the case. In these circumstances, the appellant has not satisfied me even to the lower standard of proof that there is a realistic possibility that if he relocated elsewhere within Pakistan, his whereabouts would come to the attention of his brothers-in-law.
38. Even though I accept that the appellant would on a number of occasions have to give his national identity card details, I do not find (because there is no evidence to this effect) that these details would as a result be placed on any national computer to which other police forces would have access. So even if his brothers-in-law were to be assisted by corrupt police in the appellant's home area, there is no sufficient basis on which I could find, even to the lower standard of proof, that there is a reasonable likelihood that these police officers would ever be notified of the appellant's presence elsewhere in Pakistan, and I find that they would not. I accordingly find that he could safely re-locate.

39. As Judge Russell's finding that it would be reasonable to expect the appellant to re-locate if he could do so safely is not the subject of this appeal (and there is no basis upon which this finding could be challenged), unless it is unsafe for the appellant to re-locate, his appeal cannot succeed. It follows that as I have found that the appellant could safely re-locate, his appeal must be dismissed.

Decision

I set aside the determination of First-tier Tribunal Judge Russell as containing a material error of law and substitute the following decision:

The appellant's appeal is dismissed, on all grounds.

Signed:

Date: 29 July 2013

Upper Tribunal Judge Craig