



IAC-AH-CJ-V1

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

Appeal Number: AA/06260/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 27th October 2015**

**Decision & Reasons Promulgated
On 9th November 2015**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

**MR ABDUL WAHEED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Thathall (Counsel)

For the Respondent: Mrs R Pettersen (Senior Home Office Presenting Officer)

DECISION AND REASONS

Introduction

1. This is the Appellant's appeal to the Upper Tribunal, with permission, concerning a decision of the First-tier Tribunal (Judge Hillis) promulgated on 7th July 2015, dismissing his appeal against a decision of 20th March 2015 refusing to grant him asylum or humanitarian protection and refusing a human rights claim.

The Background

2. The Appellant is a national of Pakistan and was born on 1st December 1970. He claimed to have entered the UK, utilising a false passport, in April 1992. He said he had remained in the UK ever since. He has produced documentary evidence suggesting that he came to the attention of the Home Office in January 2001 or possibly a little earlier. According to the Respondent, he was arrested for working illegally in the UK on 2nd August 2002 and was served with papers as an illegal entrant. There is some documentation suggesting that consideration of an initial asylum claim was delayed because he had absconded and some other documentary evidence suggesting that, as of 25th March 2011, he had never claimed asylum. On 18th December 2014 the Respondent, having reviewed the situation, seems to have decided that no valid asylum claim had ever been made and also concluded that he had “no basis of stay in the United Kingdom”. The Appellant did, thereafter, in fact on 8th October 2014 make an asylum claim.
3. The basis of the claim for asylum made on 8th October 2014 was that he would be at risk upon return to Pakistan because he had formed a relationship, in the UK, with one Shafeena Rehman, a British citizen, and that her former husband, who is in the UK but who has family in Pakistan with government connections, wished to kill him as a result. It was also the Appellant’s case that, having been in the UK since 1992, he met the requirements of paragraph 276ADE of the Immigration Rules (his claiming to have been in the UK continuously for at least twenty years) and that he satisfied the requirements of Article 8 of the European Convention on Human Rights (ECHR), both within and outside the Rules, on the basis of his relationship with Ms Rehman and on the basis of his relationship with her youngest daughter.

The Appeal to the First-tier Tribunal

4. There was an oral hearing which took place on 17th June 2015. The First-tier Tribunal heard evidence from the Appellant, from Ms Rehman and from Mr Zahid Hanif Kahut, a solicitor, though not the solicitor representing the Appellant. It found that the Appellant was not a credible witness, it disbelieved his claim to be at risk upon return to Pakistan, it disbelieved his claim to be in a genuine relationship with Ms Rehman and it concluded he had failed to show that he had been in the UK for a continuous period of at least twenty years. As to those matters, it said this;

“Findings as to Credibility and Fact

Credibility

38. The Appellant, on his own account, states that he entered the UK using a false passport. He also states that he first learned of the claimed threats to him by Mr. Rehman five years ago and that he has been living as husband and wife with Ms Rehman since 2013 and delayed applying for asylum and any legal status within the Immigration Rules

notwithstanding the documentation in this appeal from the Respondent and A.Q. Butt. These two facts contained in the Appellant's own account engage the terms of Section 8 (above) and I am required to consider this as one factor adversely affecting the Appellant's credibility in the balance of the evidence taken as a whole in assessing the Appellant's credibility. Engaging the terms of Section 8 (above) is not, of itself, determinative of the Appellant's credibility.

39. In his oral account the Appellant was regularly inconsistent in where he lived and worked in the UK since he claimed arrival in 1992 and claimed to have been living in two places at the same time on occasions. He was also vague and, in my opinion, evasive when answering questions as to where he lived and worked during that period.
40. The Appellant originally stated in his evidence-in-chief that he arrived in the UK in 1992 looking for work and lived in Heckmondwike with his brother for approximately six months. He then moved to Huddersfield to find work and shared a house with friends. He was sacked from the takeaway he worked at for about four months when he was unable to supply his employer with his National Insurance number (NIN). He stayed in Huddersfield for about three or four years before moving to Sheffield in 1996/97 in the hope of getting a "proper job" but working illegally as he had no NIN.
41. He lived with friends in Sheffield rent free for about four or five years and worked for about seven months in takeaways during that period. He lost his job and returned to live in Huddersfield permanently. He stated he did not remember the date he returned to Huddersfield.
42. He then stated he moved to Crawley in 1993/94 to live with a cousin and worked in various jobs in takeaways for about seven or eight years during which he worked for a total of about three to four years. He then claimed his first stay in Huddersfield was for less than a year.
43. The Appellant then stated he left Crawley and lived for period of time in Oxford from 2000 and that he went to the police there to claim asylum and leave to remain. He was released the following day with some papers which he lost. He left Oxford after about 18 months to two years having been unable to find work as no jobs were available. He now claimed to have returned to Huddersfield when he left Crawley which is inconsistent with his earlier testimony set out above. It was at this time that he met Ms. Rehman about four months after arriving back in Huddersfield. He stated this was in about 2004 to 2005 which is again inconsistent with his earlier oral testimony. He then claimed they started to cohabit two to three years later.
44. During cross-examination the Appellant stated he did not have a good memory which is inconsistent with Ms. Rehman's oral evidence that he does have a good memory. He gave two addresses where he lived in Sheffield but was unable to give any addresses where he lived in Crawley or Oxford.
45. The Appellant then claimed that the people he lived with in Crawley were not actually relatives but neighbours from Pakistan. He then said that he thought the question was about Oxford and said he does have relatives in Crawley and he has aunts and cousins in Pakistan. He stated his sister lives in London but that he has never visited her there

and only seen her in the UK when she visits their brother in Heckmondwike. He said his elder brother from Heckmondwyke now lives in Oxford. And that he had also lived in Crawley before moving there.

46. I note here that there is no written or oral evidence before me from the Appellant's elder brother, his sister or any other relatives who live in the UK. The Appellant stated that he did not ask any of his relatives in the UK to provide evidence in support of his claim despite the fact he asked Mr. Majid and Mr. Kahut to do so. He stated when he lived in Crawley it was not with his elder brother as he was still living in Heckmondwike but that he did live with his brother in Oxford. He then claimed his other brother lives in Sheffield.
47. The Appellant stated that he had never made any previous formal application for asylum or leave to remain, he did not recall the name of the solicitors he saw in Manchester and that he only spent about five to ten minutes at A.Q. Butt, Solicitors and he did not remember signing anything whilst he was there and, on being shown their letter of the 12th January, that he did not recall instructing them to apply for asylum.
48. In re-examination he said he could not answer any questions about the "A.Q. Butt application" and that he had never seen any correspondence from them at any time.
49. During cross-examination the Appellant stated that he and Ms. Rehman did not start to live together until 2013 as he moved away from Huddersfield to Sheffield due to them having arguments about food but that the relationship did not break up at that time. Mrs. Rehman stated in her oral testimony that they had never argued about food and that he did not move to Sheffield due to any arguments.
50. I conclude, for the reasons set out above, that the Appellant is not consistent and his evidence is neither credible nor reliable.
51. I reject the Appellant's claim that Mr. Rehman or his family seek to cause him serious harm or kill him if he is returned to Pakistan. There is no reliable evidence that Mr. Rehman has threatened the Appellant or Ms. Rehman at any time following the start of their relationship during her marriage to him. I conclude that there is no reliable evidence before me that Mr. Rehman is only seeking to have the Appellant harmed if he returns to Pakistan as neither he nor his family will avoid persecution if the Appellant is harmed in the UK. If Mr. Rehman had felt that his and his family's honour had been harmed by the Appellant he would, in my judgment, have sought retribution in the UK within a relatively short period following the breakdown of his marriage.
52. The fact that, on the Appellant's own account, Mr. Rehman lives a five-minute drive from Ms. Rehman and the Appellant, has made no overt threats and has never visited their home leads me to conclude that he does not seek to harm the Appellant nor Ms. Rehman in this country or in Pakistan.

The Relationship with Ms. Rehman

53. The Appellant and Ms. Rehman in their witness statements stated that the reason they did not move in together and live as husband and wife was that such behaviour outside marriage is against their religion and

disapproved of in their community. I conclude that this is not consistent with the fact that they now claim to have lived together in a relationship akin to marriage for possibly two or three years. The Appellant claims it is two or three years since they moved in together and Ms. Rehman states it was in November 2013 which, at the date of the hearing, was approximately 18 months. I do not find this inconsistency insignificant and conclude that neither timescale is reliable.

54. The Appellant and Ms. Rehman were also inconsistent in respect of the approximate date that she returned to work following a period of ill-health due to clinical depression.
55. The Appellant relies on the medical evidence of miscarriages but there is no evidence before me to show that he was the father. Additionally, in light of the inconsistencies set out above I find that the Appellant has failed to show that he is in a genuine and subsisting relationship with Ms. Rehman as claimed. In reaching this decision I have taken into account the letters from Ms. Rehman's daughters but conclude I can place no evidential weight on them as there is no indication that they are aware of the gravity of the appeal hearing and the need for them to be truthful. Additionally, the contents of the letters has not been tested in cross-examination. The Appellant has not sought to call anyone from outside his claimed family with Ms. Rehman to give evidence of the relationship despite his claim that a number of his own close relatives live in the UK and that his friends and elder brother have accommodated and maintained him over a number of years since 1992.
56. I, therefore, conclude that the Appellant does not meet the terms of paragraph EX1 as he has failed to show he is in a genuine and subsisting relationship. Additionally, the evidence of Ms. Rehman shows that even if they are not living as husband and wife that only started in November 2013 and does not fulfil the definition set out in Gen1.2, namely, two years of cohabitation.
57. Mr. Majid's and Mr. Kahut's evidence of knowing the Appellant through informal cricket matches in 1992 and possibly a number of summers thereafter does not show that the Appellant was in the UK continuously as claimed. Ms. Rehman cannot provide any evidence in that respect which is independent of Mr. Waheed as she has known him at best for the last eight years only. The Appellant has, in my judgment, been unable to provide any reliable evidence that he has been in the UK continuously since 1992 and I, therefore, conclude that the Appellant does not meet the terms of the "Ten Year Route." I find that the Appellant has failed to show that he meets the Immigration Rules on the basis of a private or family life in the UK.
58. The Appellant claims that there is not a sufficiency of protection for him in Pakistan from an honour killing or serious harm at the hands of Mr. Rehman's family and relies on paragraph 2.2.19 in the COIS Report to show that men are also "affected" by honour killings where a man claims that a woman has brought dishonour to his family. The Report does not expand on what is meant by "affected by" and only refers to women being the subject of the violence. I, therefore, conclude that the Appellant has failed to show that, as a male, he will be "affected" to the extent that his circumstances come within a category

recognised by the Refugee Convention or that anything that may happen to him will engage the terms of Article 2 or 3 of the ECHR.

59. The Appellant, on his own account, has largely relied on charity and led to what Mr. Spence has referred to as a “hand-to-mouth existence.” The Appellant claims he cannot return to Pakistan as there is no work for him and he will be destitute. The Appellant has voluntarily lived what may be regarded as a life of hardship in the UK by choice as he has largely failed to find any of the employment he came to the UK to undertake. I conclude that the Appellant will not suffer any hardship in excess of what he claims to have suffered in the UK since 1992. He is still a relatively young able-bodied man who will be able to find at least as much work as he has in the UK to support himself. He also has relatives in Pakistan who, in my judgment, he can turn to in the same manner as he did with his relatives in the UK to assist him on return.
60. I conclude that the Appellant will not face any serious harm or undue hardship on return to Pakistan and that there is a sufficiency of protection available to him against honour killings.
61. There is no reliable evidence before me, for the reasons set out above, that the best interests of Ms, Rehman’s daughters will be served by the Appellant remaining in the UK. They will be more likely, in my judgment, to be able to re-establish familial relations with their father and brothers if Mr. Rehman is no longer in the UK and can remain with their mother in the UK. Mr. Rehman, on their mother’s account, has only been living at their home for about 18 months and there is no reliable evidence that his relationship with them will cause them significant difficulties if he is removed to Pakistan. There is no evidence that they will not be able to keep in contact with him by using modern methods of communication and visit him during holidays if they so wish.”

5. Hence the appeal failed on all counts.

The Permission Stage

6. The Appellant applied for permission to appeal to the Upper Tribunal. Permission was granted by a Judge of the First-tier Tribunal. The salient part of the grant reads as follows;
 - “2. The Appellant’s grounds are as follows:
 - (a) the judge failed to consider the substantial lapse of time over the past twenty years and its effect on A’s ability to recall information;
 - (b) the judge failed to grasp that the genuine threat of an honour killing is as equally applicable to a male as to a female, particularly as 2.219 of the COIS Report clearly states “the majority of victims were women, though men were also affected”;
 - (c) the judge perversely concludes that the COIS Report does not expand on what is meant by affected even though this is

“**Robinson** obvious”, and it would otherwise be discriminatory to limit the interpretation only to women;

- (d) the judge failed to consider the claim under the Immigration Rules, or under Para.276ADE despite A’s 20+ years’ residence in the UK;
- (e) the judge failed to shift the burden of proof to the Respondent to show that A had not been in the UK continuously from 1992;
- (f) the judge erred in failing to make a proper assessment under Section 55 as to the best interests of the two children of his British partner.

3. The judge was in error in [57] in referring to the ‘Ten-Year Route’, which in any event only applies to lawful residence. A’s claim is to have resided continuously in the UK since 1992, a period of 23 years, and in those circumstances it is arguably that the judge ought to have considered the matter in light of Court of Appeal’s decision in **Edgehill and Anor v SSHD [2014] EWCA Civ 402**. Moreover, it is arguable that the comments in [58] as to the meaning of ‘affected’ suggests that the judge has not given sufficient weight to the COIS Report as to the prevalence of honour killing in Pakistan in relation to both men and women.”

7. The hearing was convened so that consideration could be given by the Upper Tribunal to the contention that the First-tier Tribunal had erred in law such that its decision ought to be set aside. Provision was also made for the decision to be remade at the same hearing if that was necessary and appropriate.

8. Mr Thathall, for the Appellant, made oral submissions which were, essentially, in line with what he had said in his written grounds which were summarised, succinctly but accurately in my view, in the grant of permission. He submitted that the First-tier Tribunal had failed to bear in mind the lapse of time when taking points against the Appellant for his failure to remember where he had lived in previous years. He took me to documentation contained within the bundle which had been filed on behalf of the Appellant for the purposes of the First-tier Tribunal hearing and contended that the First-tier Tribunal had not sufficiently taken those documents into account. Further, it had not properly considered the evidence of Mr Kahut. In general, it had “placed too high a burden on the Appellant” when assessing his credibility. It had been wrong to reject evidence touching upon the relationship with Ms Rehman. It had not properly considered background country material indicating that males as well as females might well be the target of honour killings. Mrs Pettersen, for the Respondent, submitted that all the First-tier Tribunal’s findings had been open to it and have been properly explained. It had been entitled to make what it did of the evidence before it.

9. I have decided, after careful consideration, that the First-tier Tribunal did not make an error of law and that its decision must, therefore, stand. I set out my reasoning below.
10. The key to most if not all of the arguments advanced when permission was sought and before me, is the soundness or otherwise of the First-tier Tribunal's assessment as to credibility. In this case, not unusually, there were two standards of proof in play. The "real risk test" was applicable with respect to the claim for international protection. The balance of probabilities test was applicable with respect to the Immigration Rules and Article 8.
11. The First-tier Tribunal correctly directed itself as to the applicable standard of proof with respect to the claim for international protection at paragraph 5 of its determination. It did not expressly remind itself that it was assessing the other matters on the basis of a balance of probabilities. However, it is a very basic principle that with respect to matters other than those relating to international protection, the applicable standard is that of a balance of probabilities and I cannot see that, without anything positively to suggest otherwise, the First-tier Tribunal would have been unaware of or would have lost sight of something as fundamental as that. Judge Hillis, I might add, is a very experienced judge but I would not expect even a novice judge to lose sight of it.
12. The credibility assessment which I have set out in full above, is certainly detailed and holistic. Mr Thathall, though, contested that too strict or too high a standard was applied. I cannot see anything at all in what the First-tier Tribunal said to indicate that that is so. In looking at the particular criticisms made during the course of the oral hearing, it is right to say, and the contrary is not suggested, that the Appellant did give inconsistent information regarding the times he said he had been living at various locations in the UK since 1992. The difficulties with his evidence, in that regard, are highlighted from paragraph 39 to 45 of the determination. The First-tier Tribunal did not expressly say that it had taken into account that the Appellant was attempting to recollect matters which had occurred some years ago but it can be taken to have appreciated that. That much was obvious. Further, it did not base its adverse credibility finding solely upon such matters, relying, additionally, upon the lack of evidence from family members in the UK where there appeared to be no impediment to such evidence being obtained, inconsistencies between the Appellant and Ms Rehman regarding the history of their relationship and the implausibility of Ms Rehman's former husband, who is living in the UK, wishing to have him killed in Pakistan yet making no attempts to seek retribution in the UK.
13. As to the failure to take into account documentary evidence, it is certainly the case, as Mr Thathall submits, that there was documentary evidence placing the Appellant in the UK from around the latter end of 2000 and early 2001 and, thereafter, in and beyond 2012. Mr Thathall took me to it. The point the First-tier Tribunal was seeking to make, though, was that the

Appellant had, in its view, failed to demonstrate that he had been in the UK continuously from 1992 until a twenty year period from the date of his arrival had been reached. The word continuously is the key here. Thus, for example, evidence placing him in the UK in 1992 and evidence placing him in the UK in 2000 did not mean, necessarily, that he had been in the UK, without any break, from 1992 to 2000. Similarly for the period, for example from 2000 until 2012. The First-tier Tribunal had the Appellant's bundle, which contained the documents relied upon by the Appellant as to long residence, in front of it and can be taken to have known what was in it. Indeed, it referred to certain of the documents therein in its determination. I do not accept that it would have forgotten or failed to take into account the content of those documents when reaching its decision. It was, of course, not required to refer to each and every document when explaining its reasons for making the findings that it did.

14. Mr Thathall submitted, at one point, that the First-tier Tribunal had been irrational in requiring documentary evidence to indicate that he had been living at specific addresses. However, it does not seem to me that it did impose any such requirement. It was not the lack of documentation concerning the addresses which caused it to decide to disbelieve the Appellant's claims as to where and when he had been living but, rather, the inconsistency in what he had had to say about his historical places of residence.
15. As to the oral evidence of Mr Kahut, he had said that he had played in cricket matches involving the Appellant in the summer of 1992 and 1993 (see paragraphs 5 and 6 of his witness statement). He had also said he had seen him "intermittently for many years" but that he was not able to recall exact dates or occasions (paragraph 8 of the witness statement). Mr Thathall, in his initial oral submissions on the point and in his Grounds of Appeal, had criticised the First-tier Tribunal for rejecting Mr Kahut's evidence. However, it does not seem to me that it did reject his evidence. When one looks at paragraph 57 of the determination, it seems to me that the First-tier Tribunal was implicitly accepting that Mr Kahut had or may have seen him at cricket matches in 1992 as might a Mr Majid who had given written, though not oral, evidence of a similar nature but that, again, that was not capable of demonstrating the amount of continuous residence claimed or required. Mr Thathall also contended, I think by way of an alternative argument, that the First-tier Tribunal had not sufficiently considered or borne in mind the evidence of Mr Kahut and Mr Majid. It seems to me quite clear, though, from what it said at paragraph 57, that it did properly bear it in mind and take account of it.
16. As to the credibility of the claims regarding the relationship with Ms Rehman, Mr Thathall submitted that the First-tier Tribunal had applied what he described as "too wide a test". I assume he means too strict a test. However, it noted what it clearly found to be significant inconsistencies in the evidence the two had given regarding the dates they had started cohabiting from and the date on which Ms Rehman was able to return to work following a period of ill health due to depression. It

thought their evidence to the effect that they had delayed moving in together because such behaviour outside marriage is culturally disapproved of to be inconsistent with their claim that they had actually done so. It considered written evidence from Ms Rehman's daughters but explained, at paragraph 55 of its determination, why it was not attaching weight to them. It noted the lack of any evidence as to the existence of the relationship from the Appellant's UK based family members and friends.

17. In light of all of the above I conclude that the First-tier Tribunal did not err in law with respect to its consideration of the Appellant's credibility. It did not, in my judgment, apply an incorrect or too demanding standard of proof with respect to any element of the account the Appellant had offered. It did not fail to take into account material considerations nor did it take account of irrelevant ones. Its findings and conclusions were open to it on the evidence and were adequately justified. I can quite see that a different First-tier Tribunal, on a different day, might have reached different conclusions, at least about the claims regarding the relationship and the claims regarding the period of the long residence but that is not the test I have to apply. I appreciate in particular, though Mr Thathall did not make this point, that a different judge might have thought that if the evidence he had been present in the UK on a date in 1992 could be accepted (and this First-tier Tribunal did seem to accept that on the basis of the evidence of Mr Kahut and Mr Majid) then it would be unlikely that, as an illegal entrant, he would then voluntarily leave the country only to come back illegally again but, of course, that does not necessarily follow. The mere fact that it would have been open to a different First-tier Tribunal to reach a different conclusion on the same facts does not mean that this tribunal erred in law. I conclude that the credibility assessment, in all its aspects, is legally sustainable.
18. There are some further matters to consider. It was contended in the grounds, although this was not expressly pursued in oral submissions before me, that the First-tier Tribunal had misdirected itself by referring to a "ten year Rule" in circumstances where it should have been asking itself whether the Appellant had been in the UK for a continuous period of at least twenty years given the content of Rule 276ADE. However, when the determination is read as a whole, it is clear that it was asking itself about a twenty year period notwithstanding its erroneous reference to the "ten year route" at paragraph 57. It correctly identified the potentially applicable Rule at paragraph 13 of the determination and, of course, that Rule does require consideration of a twenty year period rather than a ten year period. It specifically said, when recording the Respondent's submissions to it, that it had been contended by the Home Office Presenting Officer that the Appellant had not "been continuously in the UK over the last twenty years". Against that background I would conclude that it was, in fact, asking itself about a twenty year rather than a ten year period. It considered the provisions contained within paragraph 276ADE, but concluded that the requirement of at least twenty years' continuous residence had not been met.

19. Mr Thathall contended that the First-tier Tribunal had erred in failing to shift the burden of proof to the Respondent to show that the Appellant had not been in the UK continuously from 1992 given its apparent finding that he had been in the UK, at some point, in that year. Mr Thathall, though, did not provide any legal authority demonstrating that the burden of proof would be shifted to the Respondent in such circumstances. The requirements are clearly set out in paragraph 276ADE and it is, it seems to me, simply, with respect to the required time period, for the Appellant to demonstrate that he has been in the UK continuously for twenty years. I cannot see that there is any basis to conclude that if a person is in the UK for some period of time that the burden somehow shifts. On the material before me and on the basis of the argument as put I find that the burden does not shift and, therefore, the First-tier Tribunal did not make an error of law in this regard.
20. As to the arguments regarding the prevalence of honour killings in Pakistan any error that there might have been could not possibly be material if the findings that there is no relationship and is no threat from the former husband have been soundly made. I have concluded that they have. Criticisms have been made as to the claimed failings of the First-tier Tribunal with respect to findings under the Immigration Rules regarding the relationship with Ms Rehman and the Appellant's relationship with her children and the claimed failure to carry out a proper assessment as to the best interests of the children. However, again, these challenges simply fall away in the event of the findings to the effect that there is no genuine relationship being sound. I have concluded that they are.
21. The above then is really the end of the matter. The First-tier Tribunal, as I say, reached legally sustainable conclusions on the basis of the evidence before it even though others may have found differently. It is not my task to substitute my own view of the evidence for that of the First-tier Tribunal Judge who heard and decided the case. I conclude that there was no error of law so that the decision must stand.

Conclusions

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no order regarding anonymity.

Signed

Date

Upper Tribunal Judge Hemingway

**TO THE RESPONDENT
FEE AWARD**

As I have dismissed the appeal I make no fee award.

Signed

Date

Upper Tribunal Judge Hemingway