



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

Appeal Numbers: AA/10555/2014
AA/10556/2014
AA/10558/2014
AA/10561/2014
AA/10562/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 15 January 2016**

**Decision & Reasons Promulgated
On 25 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**WH
AJW
WH
ZA
HQ**

(ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellants: Mr Karim, Counsel instructed by Law Lane Solicitors
For the Respondent: Ms. A. Broklesby Weller, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellants. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.
2. The first appellant (hereinafter “the appellant”) is a citizen of Pakistan born on 3rd September 1977. This appeal arises out of a decision of the respondent, made on 18th November 2014, whereby it refused to grant the appellant asylum or humanitarian protection and determined that his removal, and that of the other appellants, from the UK would not be in breach of Article 8 ECHR. The second appellant is the appellant’s wife and the third, fourth and fifth appellants are his children.
3. The appellant entered the UK in November 2011 as a dependent of his wife, a Tier 4 student with leave ending on 27 October 2014. He returned to Pakistan on two occasions for brief periods in 2013. On 28 May 2014 he claimed asylum.
4. The appellant’s asylum and humanitarian claim, in sum, is that:
 - a. He is a longstanding member of the political party MQM (Muttahida Quami Movement)
 - b. He was previously known by a different name but changed his name to protect his life.
 - c. He has been subject to harassment in Pakistan since 2000 because of his MQM involvement. In 2000 his home was raided and his parents beaten.
 - d. He moved in 2002 to Dubai to protect his life, returning in 2008 because he felt it would be safe.
 - e. In 2009 his children and family members were subject to threats and later that year he was arrested and tortured based on suspicion of being an Indian Agent. He was released after a policeman was bribed.
 - f. He was arrested in 2010 and questioned for working for MQM and Indian Intelligence. He escaped and was thereafter hospitalised for his injuries.
 - g. After he came to the UK there were raids on his mother and brother’s house.
 - h. Since coming to the UK he has been working for the MQM
5. The respondent did not accept the appellant’s account of his experiences in Pakistan or of his involvement with the MQM and concluded that there was not a reasonable degree of likelihood he would be persecuted on return to Pakistan.
6. The appellants appealed and their appeal was heard by First-tier Tribunal (“FtT”) Judge Lucas. In a decision promulgated on 7th October 2015, the

FtT dismissed the appellants' appeal on the basis that it did not consider the appellant's account credible or plausible and found it to have "clearly been manufactured". The appellants' Article 8 claims were also dismissed.

Grounds of appeal and submissions

7. The grounds of appeal submit:
 - a. The FtT materially erred in taking factors under section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 as a starting point, when they should be considered in the round.
 - b. The FtT's credibility findings are unsustainable as they are not based on the totality of the evidence and fail to give reasons. In respect of credibility, the grounds refer to a failure make findings in respect of the oral evidence which was said to be consistent with what was stated at interview, and a failure to give due care and consideration to the circumstances of the appellant's name change.
 - c. The FtT erred in respect of documents by questioning whether they were genuine contrary to *Tanveer Ahmed*.
 - d. The FtT erred in finding that the appellant had manufactured his alias because inadequate reasons were given for this finding and improperly described evidence from the appellant's brother in law as self serving.
 - e. The FtT failed to properly assess the *sur place* claim and make sustainable findings regarding the same.
 - f. The FtT erred in respect of Article 8 ECHR by failing to consider, inter alia, the best interests of the children.
8. Before me, Mr Karim argued that the FtT failed to give reasons for its credibility findings both in respect of the appellant and the documents in support of his claim. With regard to the documents, he argued that the FtT did not have a basis for concluding they were manufactured and it had failed to apply *Tanveer Ahmed*. Mr Karim also submitted that the FtT had failed to take into account clear photographic evidence substantiating the appellant's *sur place* activities, in particular photographs of him with the MQM leader.
9. In respect of Article 8, Mr Karim commented that the FtT appears to have ignored that there were multiple appellants. There is no assessment of the other four appellants, including three minor children, and the assessment is wholly inadequate.
10. Ms Broklesby Weller's response was that the FtT gave adequate reasons for its findings on credibility. It set out the evidence extensively before reaching its conclusion. She drew attention to several findings about credibility including the appellant's failure to apply for asylum upon arrival, his trips to Pakistan after coming to the UK, and the absence of independent verification of his MQM membership. Regarding the FtT's

approach to documents, Ms Broklesby Weller argued that the FtT found them to be of little value to the appellant's case *even if* they were genuine. The credibility assessment should be looked at in the round.

11. I advised the parties that my decision was reserved but that I wished to hear any further submissions the parties may have in respect of the Article 8 claim. Mr Karim submitted that if I were to find an error of law in respect of Article 8 the case should be remitted to the first-tier and that it is difficult to isolate the Article 8 claim from the asylum case. However, he highlighted that the appellant's children, the eldest of whom is now ten, attend school in the UK and have established ties. The eldest is now transitioning to secondary school and is at a critical stage where her best interests are to continue with her education in the UK. Ms Broklesby Weller responded that the children have been in the UK for less than seven years and their best interests are to remain with their parents in a family unit.

Consideration

12. The claimant's first ground of appeal is that the FtT erred by taking section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 as a starting point rather than considering the factors specified therein in the round. The grounds refer to, in support of this contention, paragraph [78] of the decision where the FtT stated that the appellant's "immigration history and the general background" undermine the credibility of the claim.
13. There is no merit to this ground. Paragraph [78] is referring to the multiple findings the FtT made about the appellant's immigration history and general background including, for example, his trips to Pakistan whilst living in the UK even though he claimed to fear for his life in Pakistan, the absence of difficulties he faced in leaving Pakistan to travel to Dubai and the UK despite his alleged profile and experiences in Pakistan, his claim to have a second identity as a citizen of India, and the manner in which he entered the UK as a dependent of his wife on a student visa. Based on these and other factors the FtT reached the view that the appellant's claim was neither credible nor truthful. That conclusion did not depend on undue weight being given to the factors specified in Section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 or these factors being considered as a starting point rather than in round.
14. The second ground of appeal is a direct challenge to the credibility findings. Mr Karim argues, *inter alia*, that the FtT failed to give proper reasons for not believing the appellant and didn't deal properly with crucial parts of the evidence that showed the appellant had been consistent in his evidence.
15. It is apparent from the decision that the FtT has given several reasons for its findings in respect of credibility. These include:

- a. The FtT did not consider it credible that if, as the appellant claimed, he originally had an Indian passport and was born in Calcutta and had obtained a Pakistani passport in his present identity in 2001, he would not have tried to reacquire an Indian passport given the danger he claims to have faced in Pakistan.
- b. The FtT also did not accept that the appellant and a person by the name of GHN were the same person. This is important to the appellant's case as the documentary evidence he submitted concerning the mistreatment he claimed to have suffered appears to have in fact been perpetrated against a person by the name of GHN. Having considered the various permutations to the appellant's account of his two names (including his purported attempt to change the names on his educational certificates to that of his assumed identity, despite in his screening interview stating that the assumed identity was used only to save his life) the FtT did not accept that the appellant and GHN were the same person.
- c. Despite claiming to have an important role in MQM he produced no documentation or witness statement confirming his involvement in the organisation. No ID card or official confirmation was provided. The photographs purporting to show the appellant engaged in MQM activity can be given little weight without any corroboration, for example from someone from MQM attending the hearing.
- d. He returned voluntarily on two occasions to visit Pakistan in 2013 which would be surprising given the degree of risk to his life he claims to face in Pakistan including because of *sur place* activities
- e. Despite the difficulties with the authorities he claimed to face in 2000 he obtained a visa to travel to Dubai and returned from Dubai without difficulty.
- f. The FtT considered that the appellant's account of changing his name in educational documents after returning from Dubai undermined his credibility on the basis that if the authorities already knew who he was, as he claimed, why would he be seeking to change the name on certain certificates.
- g. The appellant entered the UK as a dependent of his wife on a student visa but did not make an asylum claim until he had been in the UK for two and a half years about 6 months before his leave to remain would expire.
- h. The appellant faced no difficulty applying for a visa to join his wife in the UK in 2011, which is not consistent with him having an adverse profile with the authorities or his account of escaping from the authorities not long before then.
- i. The FtT did not accept the appellant's claim to be suspected of involvement with the Secret Service as the only support for this was an alleged raid over fifteen years earlier when his Indian identity documents were said to be stolen.

16. I am satisfied that the FtT was entitled, based on the evidence before it and for the reasons it gave, as set out above, to conclude that the appellant was not credible. This ground of appeal amounts to no more than a disagreement with the FtT's conclusions about the appellant's credibility and as such it does not identify an error of law.
17. The third ground is that the FtT erred in respect of its assessment of the documents before it by finding them to be false without giving sufficient reasons for that conclusion. Mr Karim argued that the FtT's approach was inconsistent with *Tanveer Ahmed*. I do not agree. *Tanveer Ahmed* requires that decisions as to the reliance that should be placed on documents should be made after looking at all the evidence in the round. That, however, is what the FtT has done. It is clear that the FtT has looked at the documentary and oral evidence in the round and having done so it has made very clear findings about the appellant's credibility, much of which does not depend on the documentary evidence. For example, at paragraph [81], the FtT, having expressed doubts as to whether certain documents are genuine, went on to explain why even if they were genuine they would not assist the appellant.
18. The fourth argument made by Mr Karim is that the FtT erred by treating emails from the appellant's brother in law as "self serving" and failing to give them weight. If this were the FtT's only reason for not giving weight to the emails there might be some merit to this argument. However, the FtT's approach must be considered in the context of its overall findings whereby the veracity of the appellant's account has not been accepted for multiple reasons.
19. The fifth ground concerns the appellant's *sur place* activities - the argument being that proper consideration was not given to this part of the claim and that weight should have been given to the appellant's photographs showing him engaged in MQM activity including meetings with its leader. This ground is not accepted. At paragraph [95] and [100] the FtT found that there was no official or independent verification, in the form of an ID card or otherwise, of the appellant's claimed role in MQM. In the absence of such confirmatory evidence, the FtT was entitled to not place weight on the appellant's photographs.
20. The final ground concerns Article 8 ECHR. The FtT gave this only cursory consideration. However, having heard submissions from the parties in respect of Article 8 ECHR, I am satisfied that this is not a case where there the appellants can succeed under Article 8.
21. The appellant and his wife, along with their two eldest children, entered the UK in 2011 on a student visa. Whilst in the UK they had a child. The children are being educated and raised in the UK. Mr Karim highlighted that the eldest child is at a key stage in her education - transitioning to secondary school - and that she has developed connections and friendships in the UK.

22. None of the appellants satisfy requirements under the Immigration Rules that would permit them to remain in the UK and Mr Karim did not argue before me that they did. His argument was that, having regard to the best interests of the children, removal of the appellants from the UK would not be proportionate and therefore would be in breach of Article 8 ECHR.
23. In considering the proportionality of this family's removal from the UK, the best interests of the children must be a primary consideration. I accept that the FtT has failed to articulate this or analyse the interests of the children. However, had it done so it would not have come to a different conclusion and therefore I find that it has not made a material error of law.
24. In considering Article 8 the starting point is that it is in the appellant's children's best interests to remain with their parents, whether in the UK or elsewhere, as part of the family unit. It would also be in their best interests to remain in the UK (so long as their parents also do so) as this will most likely result in them having a higher standard of living and better education, as well as a greater continuity in their education, than if they are removed from the UK. It would also enable them to live in the country in which their parents desire to live. Important though these factors are given that they pertain to the best interests of children, they must be balanced against the public interest (in particular that of maintaining immigration control) and considered in light of Section 117B of the Nationality Immigration and Asylum Act 2002.
25. The appellant's family have been in the UK a relatively short time on a student visa which would not have given them any reason to believe they would be entitled to make a permanent home in the UK. Their family and private life in the UK was established whilst in the UK on that visa and therefore when their immigration status was precarious. The family would be removed to Pakistan as a family unit. Although the children have spent much (or in one case all) of their lives outside of Pakistan, and have benefited from an education in the UK, no evidence was put before me which would lead me to the conclusion that they would have particular difficulty integrating into life in Pakistan.
26. This is a case where the balancing exercise under Article 8 weighs firmly in favour of the family, as a unit, being removed to Pakistan. Although the best interests of the children would be served by the family remaining in the UK, it would not be unreasonable for them to leave the UK with their parents. Their interest in remaining in the UK is significantly outweighed by the public interest in effective immigration control.

Decision

- a. The appeal is dismissed.
- b. The decision of the First-tier Tribunal did not involve the making of a material error of law and shall stand.
- c. No anonymity order is made.

Appeal Numbers: AA/10555/2014
AA/10556/2014
AA/10558/2014
AA/10561/2014
AA/10562/2014

Signed

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line.

Deputy Upper Tribunal Judge Sheridan

Dated: 22 January 2016