Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00832/2017

THE IMMIGRATION ACTS

Royal Courts of Justice	**Decision & Reasons Promulgated**
On 15 May 2017	**On 17 May 2017**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

SAQIB WAQAS
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Khan of Counsel, instructed by Thompson and Co Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant challenges the determination of First-tier Tribunal Judge Amin dismissing his appeal on asylum, human rights and humanitarian protection grounds. He is a Pakistani national born on 10 April 1986. He arrived here as a student in September 2009 and obtained an extension until January 2012. He applied for an EEA residence card as the spouse of a Polish National but the respondent

considered he had entered into a sham marriage and the application and ensuing appeal were unsuccessful. The appellant exhausted his appeal rights in April 2015 and was placed on reporting restrictions but failed to report. He was encountered at a fast food restaurant on 13 November 2016 and three days later he claimed asylum. The claim was refused on 16 January 2017.

2. The appellant claimed that he would face ill treatment in Pakistan because he would be seen as a convert to Shia Islam (even though he had not converted). He claimed to have been abducted from a bus stop in 2008 and to have been questioned about his involvement with Shia people. He maintained that he had been ordered to go to a Shia mosque and shoot at the worshippers but he refused. As a result, he was beaten and threatened with death. One of the perpetrators was a Christian friend who was also an MQM supporter. The appellant was treated for his injuries in a hospital and then spent some 3-4 months with a friend. He was located there by the MQM and so he moved to his uncle's house where he remained without incident for some eight months before he left the country. Additionally, he claimed to be involved in a land dispute with his brothers.

3. The judge did not believe either limb of the appellant's claim and dismissed his appeal. No article 8 claim was pursued.

4. Permission was granted by First-tier Tribunal Judge Keane on 24 March 2017.

The Hearing

5. At the hearing before me on 15 May 2017, I heard submissions from the parties.

6. Mr Khan submitted that the judge had unreasonably required corroboration of the asylum claim and had made findings on plausibility. Reliance was placed on the decision of Gheisari [2004] EWCA Civ 1854. It was the appellant's case that the judge failed to carry out an assessment about whether the events actually took place and simply found them to be "incredible". He submitted that the respondent had not complained of the lack of a medical report in the refusal decision and yet the judge had indicated that one should have been obtained. The judge also erred in finding that it was not credible that the appellant had not disclosed the alleged beatings to his doctor in the UK. Finally, the judge had erred in concluding that the appellant's claim of a corrupt Pakistani police force was speculative when there was background material confirming that.

7. Mr Clarke responded. He placed reliance on HK [2006] EWCA Civ 1037 and ST (Corroboration – Kasola) Ethipia [2004] UKIAT 00119. He submitted that the judge had taken a text book approach and had

properly directed herself. She was entitled to conclude that it was reasonable to expect the appellant to provide corroborative evidence in circumstances described in the determination. The plausibility point was not made out. The judge gave ample reasons for her conclusions. She was also entitled to find that it was speculative for the appellant to maintain the police would inform the MQM about him when he also claimed to be under government protection at his uncle's house. There had also been a lengthy delay of seven years in the making of the claim and a previous failed EEA application based on a sham marriage. The appellant had been legally represented so it was not accepted that he would not have been aware of asylum. Furthermore, he had failed to report as required and had been caught working illegally. The claim about a land dispute was an addition to his account and the judge was entitled to reject it given that there had been no dispute between the appellant and his brothers in the 17 years since their father's death. The appeal should be dismissed.

8. Mr Khan repeated his submission that there had been evidence before the judge of police corruption. He submitted that the judge was wrong to reject the appellant's explanation for the lack of corroborative evidence. The judge had taken the wrong approach and not made considered findings of fact.

9. At the conclusion of the hearing I reserved my determination which I now give.

Findings and conclusions

10. Essentially the appellant takes issue with the findings of the judge on the credibility of his claim; specifically, with respect to the claim of a kidnapping and assault and the sufficiency of protection available to him. The judge was also criticised for requiring corroborative evidence from the appellant.

11. Three judgments have been relied on by the parties. On the issue of fact finding, the court held in Gheisari: *"Fact finding is a sensitive exercise and never more so than in asylum cases, where the judge of fact is not choosing between two sides but trying to evaluate the truthfulness of what is usually one person's account. We know that in real life the improbable, even the incredible, sometimes happens. The question for a Tribunal of fact is not whether an event which has been described to it was likely to occur but is whether the event, however improbable (or for that matter however probable), did in fact occur"* (at paragraph 10). The court also held that the judge has to make his or her own evaluation of the claim and the probability of an event *"is not a guarantee of its veracity"* (at 12).

12. More recently in HK, the court warned that it could be inappropriate to rely on inherent probability in asylum cases (at 29) and that it was

not right to reject a claim merely because of implausibility (at 30; relying on Awala [2005] CSOH 73).

13. In ST the Tribunal held that *"the fact that corroboration is not required does not mean that an Adjudicator is required to leave out of account the absence of documentary evidence which might reasonably be expected. An appeal must be determined on the basis of the evidence produced but the weight to be attached to oral evidence may be affected by a failure to produce other evidence in support. The Adjudicator was entitled to comment that it would not have been difficult for the appellant to provide a death certificate concerning his brother or some evidence to support his contention that he had received hospital treatment"* (at 15). At paragraph 16, the Tribunal found that the Adjudicator had not imposed a requirement for corroboration by her remarks.

14. I now look at the determination of the judge.

15. On the issue of corroboration, I note that the judge properly reminds herself of the fact that corroboration is not a requirement and that asylum seekers often have difficulties in obtaining documents in support of their claims (at paragraph 29). She found, nevertheless, properly following the guidance in ST, that *"on the facts of this case, it would not have been difficult for the appellant to provide medical evidence regarding his treatment..."*. She noted that the appellant remained in contact with his sister and that his siblings had visited him in hospital. She noted that his claim that the hospital wanted a bribe in order to provide evidence had never been previously mentioned. She also noted that there was no medical evidence to support his contention to have memory problems (at 27). That again, would have been easy evidence to obtain from his UK doctor. It is plain then, that the complaint that the judge had unreasonably required corroborative documentary evidence is without any basis. The judge was aware of the correct approach and applied it. She was entitled to conclude that evidence could reasonably have been obtained and to reject the explanation for why it was not produced.

16. I look next at the judge's rejection of the appellant's claim of having been kidnapped from a bus stop. The judge did not believe this claim was credible because the event had occurred in broad daylight (at 30), because the appellant had been taken to a college building which just happened to be shut, that he had no idea of the date of the event (and I note that he is an educated man) (at 32), that one of the kidnappers was a Christian friend and no reason had been given for why he should have turned against the appellant (at 31), that he had failed to disclose his alleged assault to doctors in the UK despite attending for assistance and without any good reason (29), that there was no explanation for why the MQM would be after him to carry out a terrorist attack on their behalf when they themselves had the

capacity within their ranks to do so or why they would then free him after having made threats to kill him (at 31 and 39), that his account was internally inconsistent (at 38), that he was able to remain without further incident at his uncle's house for 7-8 months (40), that he waited some seven years after his arrival to claim asylum and then only made it after his leave expired, after his application for a residence card following a sham marriage was rejected, after he absconded and after he was arrested for working without authority (33-35). Clear and compelling reasons have been given for the judge's rejection of the claim. I do not find that cherry picking certain words or phrases from the determination is helpful. The determination must be read as a whole and when it is, I am satisfied that the judge did not base her conclusions merely on the improbability of the account (as per Gheisari).

17. Lastly, I consider the issue of whether there would be a sufficiency of protection for the appellant on return. The judge considered that the appellant speculated when he maintained that he would not receive protection. Whilst the submissions were directed at the police generally being potentially corrupt, according to country material before the judge, it is plain that what she found speculative was the appellant's claim that the police would inform the MQM about him. There is no evidence for such an assertion. The MQM is not the party in power and Mr Khan did not, in his submissions, point to any evidence which would support the contention that the police force was aligned to this party. On that basis, and because the appellant had clearly received government protection whilst at his uncle's house, the judge was entitled to find that his assertion was speculative.

18. No submissions were made with regard to the judge's findings and conclusions on the land dispute.

19. Having considered all the submissions and the evidence before me, I conclude that the judge did not err in the manned alleged and that her decision is sustainable.

20. Decision

21. The decision does not contain any errors of law.

22. The appeal is dismissed on all grounds.

23. Anonymity

24. There was no request to continue the order for anonymity and I see no reason to do so given the circumstances of this case.

Signed

Upper Tribunal Judge

Date: 15 May 2017