



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08157/2016

THE IMMIGRATION ACTS

Heard at Field House
On 6th October 2017

Decision & Reasons Promulgated
On 28th December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

MR T K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Smith (Counsel)

For the Respondent: Mr S Walker (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant's appeal against a decision to refuse his protection claim was dismissed by First-tier Tribunal Judge Herbert ("the judge") in a decision promulgated on 27th March 2017. The judge accepted that the appellant was the victim of assaults in 2009 and 2010 but found that they did not reach the level of seriousness required to warrant international protection. He also found that the appellant would have available a sufficiency of protection in India. A risk assessment prepared by an expert instructed on the appellant's behalf did not have significant weight, nor did the concerns of a representative of the Shugden

community with which the appellant is associated, because the report did not address the credibility of the appellant, in the judge's view.

2. An application for permission to appeal was made and permission granted by an Upper Tribunal Judge, sitting as a Judge of the First-tier Tribunal, on 27th July 2017. It was arguable that the judge did not fully engage with the evidence of the expert or witnesses, in relation to the appellant's claim to be at risk in India because of his prominent role in the Shugden community. In a rule 24 response prepared by the Secretary of State on 17th August 2017, the appeal was opposed on the basis that it was open to the judge to conclude that the appellant did not need international protection.

Submissions on Error of Law

3. Ms Smith relied on the written grounds. The first and third concerned a lack of reasoning regarding key aspects of the appeal. The judge did engage with parts of the case, including a letter containing a threat against the appellant. The judge recorded the evidence, at paragraphs 13 and 14 of the decision. However, there were no findings made by the judge regarding whether this evidence was accepted or not. This was a serious factor which had been overlooked. In this part of the case, a witness referred to communication with the appellant before he came to the United Kingdom and to the position of Tibetans under the Central Tibetan Administration, in Dharamsala in India. Her evidence that the appellant might be prosecuted for possessing illegal documents relating to his birth was not assessed by the judge.
4. In paragraphs 25 to 27 of the decision, the judge referred to the country evidence before the Tribunal. Part of this evidence included the report from the expert, Professor Aguilar. At paragraph 30 there was a brief finding by the judge that it did not have "any significant weight" as it did not address the credibility of the appellant. At paragraph 28, however, the judge accepted that the appellant had a prominent role in the Shugden organisation. It was difficult to reconcile the two parts of the assessment as Professor Aguilar had been clear in his report that the police in India were not willing to protect members of the Shugden community. This made the appellant's fiancée's evidence all the more important because she referred to a threat made at a meeting in London. Again, the judge did not assess these aspects. The evidence from the appellant's witness, his fiancée, did not feature in the analysis from paragraph 28 onwards. There was no mention of the fiancée's evidence or any consideration of the consistency of that evidence with the threatening letter sent to the appellant.
5. Mr Walker relied upon the rule 24 response. The judge considered the evidence, drawing out some parts of the expert's evidence, albeit briefly. At paragraph 29 of the decision, he rejected the claim that the appellant received a threatening letter and concluded that the document was produced to support the asylum claim. Though paragraph 30, containing the conclusion that the report of the expert had no significant weight, was brief, it was clear that the judge considered the evidence. It

was perhaps unfortunate that the judge did not go into more detail but the Secretary of State's stance was that he had done enough to reach a conclusion that the appeal fell to be dismissed.

Conclusion on Error of Law

6. The decision is succinct, as one might expect from the experienced judge who prepared it. However, I accept Ms Smith's submission that the findings at paragraphs 28 to 33 are a little too brief and do not show engagement with material parts of the evidence.
7. First, the appellant relied upon a witness, his fiancée, whose evidence was summarised by the judge at paragraphs 13 and 14. This evidence was, at first sight, consistent with the appellant's core claim to be at risk on return and to have received a threatening letter. The evidence given by this witness does not appear in the judge's reasoning or his overall assessment. The appellant's fiancée is mentioned in paragraph 28, but in the context of the appellant's answer in his asylum interview regarding his reason for coming to the United Kingdom. The content of her evidence is not mentioned.
8. So far as the country expert is concerned, the judge reached a clear conclusion at paragraph 30 that this evidence did not have any significant weight, at least as regards risk on return to India. However, at paragraph 18 of Professor Aguilar's report, there is a finding that the appellant has a prominent role in the Shugden community, having acted as general secretary and as president of part of the community, amounting in all to "prominent roles within this movement", in Professor Aguilar's view. At paragraph 21 of the same report, Professor Aguilar concludes that the police in India are not willing to protect members of the Shugden community and would choose instead to rely on the authority of the Central Tibetan Administration. It is difficult to reconcile this part of the expert's report with the conclusion at paragraph 30 that the appellant would have available a sufficiency of protection from the security forces in India. The clear findings made by Professor Aguilar required analysis.
9. In these circumstances, I conclude that the failure to show in the decision that there has been full engagement with the evidence given by the appellant's witness and by the country expert amounts to a material error of law, such that the decision should be set aside and remade.
10. In a brief discussions, Ms Smith said that there might be a need for further country evidence and Mr Walker suggested that the proper venue for remaking the decision is the First-tier Tribunal, given the extent of the fact-finding required. I agree. The decision will be remade in the First-tier Tribunal, before a judge other than Judge Herbert.

Notice of Decision

The decision of the First-tier Tribunal is set aside. It will be remade in the First-tier Tribunal, before a judge other than First-tier Tribunal Judge Herbert.

Signed

Date 22 December 2017

Deputy Upper Tribunal Judge R C Campbell

ANONYMITY

The judge did not make an anonymity direction or order. Neither party suggested that anonymity was required. However, this is a protection appeal. In these circumstances, I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. This order will remain in force until the conclusion of the proceedings or until it is set aside (or varied) by a court or Tribunal.

Signed

Date 22 December 2017

Deputy Upper Tribunal Judge R C Campbell