



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

Appeal Number: AA/03628/2015

THE IMMIGRATION ACTS

Heard at Birmingham CJC

**Decision & Reasons
Promulgated**

On 1 November 2018

On 13 November 2018

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR AM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Rashid, Counsel, instructed by ASR Legal Solicitors
For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Pakistan, has permission to challenge the decision of Judge Malik of the First-tier Tribunal (FtT) sent on 12 June 2018 dismissing his appeal against the decision made by the respondent on 24 February 2015 refusing his protection claim.
2. Amplifying the written grounds, Mr Rashid submitted that the judge's decision was vitiated by legal error in two respects:

- (1) in erroneously assessing credibility; and
 - (2) in failing to conduct a proper Article 8 proportionality assessment.
3. The main target of ground (1) concerns the judge's analysis as set out in paragraph 42:
- “42. The appellant now says an incident occurred in 2012 when he and his family were shot at whilst driving home by a man on a motorbike. Yet the appellant made no mention of this incident in his AI. Whilst I have considered his explanation(s) as to why, I find this to be self-serving – and even if it was raised as part of his (ex-) wife's claim, I am not hearing an appeal for his wife. If the appellant genuinely had concerns that this incident placed him (and his family in danger), there is no reasonable explanation as to why, even if he was stressed at his AI, he did not raise it with the respondent in the intervening years. That he has only made reference to it in his statement now causes me to find it is not reasonably likely to be true.”
4. In seeking to develop ground (1) the written grounds sought to argue that since the appellant had said he only relied on his latest witness statement of 21 May 2018 the judge erred in relying on his earlier statements. That submission has the plain defect that the appellant's previous statements were part of the evidence. Whether or not arising from recognised weakness of this submission, Mr Rashid's main focus was on a different point, namely that if the judge was minded to take account of the absence of any mention in the appellant's earlier witness statements of the 2012 incident, he should have put this discrepancy to the appellant. The simple answer to this submission is contained in paragraph 29 of the judge's decision:
- “29. It was put to the appellant, at paragraph 5 of his statement, he had mentioned a man in 2012 on a motorbike. He was asked why he had not mentioned this in his AI. He said he was not able to see the person on the motorbike as they were wearing a helmet; he could not find out why they wanted to kill them; he was confused and only answered the questions asked of him. It was put to the appellant at Q2 AI, he was asked why he could not return to Pakistan; he had mentioned all the reasons, but not mentioned the 2012 incident. He said he was stressed out on medication, separated from his (ex-) wife and children and not able to sleep. He apologised for not mentioning it, but said the incidents were real. It had been raised at the FC and found the incident had happened; his children and witnessed it; they were quite young at the time, but it had not gone from their mind. *(I asked the appellant's representative whether he had a report of this, but he did not, nor did the appellant).*”
5. From this it is clear the discrepancy was raised with the appellant by the HOPO and hence there was no procedural unfairness in the judge taking the view that the issue had been put to the appellant and that the latter had been afforded a proper opportunity to provide a satisfactory explanation but had failed to do so. At paras 38 and 39 the judge also

recorded the parties' respective submission about the significance or otherwise of this discrepancy. It is to be observed as well that the appellant made no mention of the 2012 incident either in his AI or in his statement of 26 May 2018.

6. I see no force in the contention that the judge failed to take into account that the respondent, by granting the appellant's wife settled status, had accepted that the 2012 incident was credible. Paragraph 32 only confirms she had mentioned it as part of her claim.
7. The appellant's grounds also take issue with the judge's treatment of the witness evidence. The judge was aware that Mr M S Sharif had mentioned the 2012 incident in his witness statement. The judge was entitled to attach limited weight to it.
8. The judge's assessment of credibility was multi-layered and at paragraphs 42-49 properly identified a number of inconsistencies and implausibilities, some of which were assessed as having been satisfactorily addressed in the appellant's grounds. The judge also gave sound reasons for finding the appellant's documents unreliable.
9. In short the judge's adverse assessment of credibility was not vitiated by legal error.
10. Turning to ground (2), the grounds contend that the judge failed to follow Court of Appeal authority as set out in **MS (Ivory Coast)** [2007] EWCA Civ 133 holding that where family proceedings are underway a period of discretionary leave should be granted to enable the person being removed to remain lawfully in the UK to participate in these proceedings.
11. In my judgment the grounds reflect a misunderstanding of the ratio of **MS**. As the Court of Appeal made clear in **DS (Jamaica)** [2010] EWCA Civ 0007 there is no universal obligation that a period of discretionary leave must be granted where family proceedings remain unresolved. In **RS (Immigration and family court proceedings) India [2012]** UKUT 00218 (IAC) the UT identified a number of questions that should be asked when a claimant seeks to argue that the existence of pending family court proceedings would breach his Article 8 rights. Whilst the judge did not refer to **MS** or any other case law, I see no legal error in his assessment at paragraph 59. At paragraph 59 the judge stated:

"59. It is not for me to predict the outcome of the FC proceedings and whilst the FC hearing has now been put back to 4 October 2018, given the appeal before me proceeded at the request of the appellant, I do not consider this is a case in which the appellant should be granted some form of leave pending the outcome of the FC proceedings, in circumstances where he has had no contact with his children for a number of years. It may be the appellant's wish to have contact with his children, but at the CMR his stated intention then was to see them a minimum of every month. Weighing up his intentions, I find this in itself does not render the respondent's decision disproportionate, nor is there evidence

before me now to suggest the status quo regarding the children is detrimental to their best interests.”

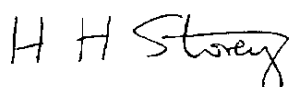
12. It was open to the judge to weigh in the balance the evidence indicating that not only had the appellant not had any contact with his children since December 2013/June 2014 but that in the context of family proceedings there was nothing to suggest that he sought anything more than indirect and limited contact at periodic intervals. It was also open to the judge to weigh in the balance what the evidence was assessed as indicating regarding the appellant’s intentions, which included his stated intention to go to the US on a Green Card.
13. The judge was also entitled to conclude that these circumstances did not indicate that the appellant’s removal from the UK would be detrimental to the children’s best interests. It is not disputed that he had perpetrated domestic violence on the children’s mother. There was no evidence before the judge to indicate that the children wanted contact with the appellant.
14. Far from a parent being left in limbo by the unresolved family court proceedings, the appellant had made very concrete plans to live in the US.
15. For the above reasons I consider the appellant’s second ground is not made out either.
16. As regards the other matters raised in the grounds, none of them has any degree of cogency.
17. For the above reasons I conclude that the judge did not materially err in law and accordingly his decision to dismiss the appeal must stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 7 November 2018



Dr H H Storey
Judge of the Upper Tribunal