



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL

APPEAL NUMBER: PA/03977/2018

THE IMMIGRATION ACTS

Heard at: Field House
On: 4 October 2018

Decision and Reasons Promulgated
On: 20 November 2018

Before

Deputy Upper Tribunal Judge Mailer

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[H R]

ANONYMITY DIRECTION MADE

Respondent

Representation

For the Appellant: Ms K Pal, Senior Home Office Presenting Officer

For the Respondent: Miss R Popal, counsel, instructed by Hunter Stone Law

DECISION AND REASONS

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them 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.

1. I shall refer to the appellant as “the secretary of state” and to the respondent as “the claimant.”

2. The claimant is a national of Pakistan, born on [~] 1990. His appeal against the secretary of state's decision refusing his application for asylum and humanitarian protection was allowed by First-tier Tribunal Judge P Tsamados, in a decision promulgated on 10 July 2018.
3. On 31 July 2018, First-tier Tribunal Judge Saffer granted the secretary of state permission to appeal against that decision. He found that it was arguable that the findings were inadequately reasoned and the internal relocation option was "inadequately explored." All grounds may be argued.

The decision appealed against

4. Judge Tsamados noted that the claimant arrived in the UK on 11 June 2011 on a Tier 4 (General) student visa. This was extended on a number of occasions until December 2013. His application for further leave to remain was refused on 27 July 2015 on the basis that he had submitted false documents. The appellant was arrested on 9 July 2017. On 10 July 2017 he was served with an RED.001 for overstaying his visa. He then claimed asylum on 8 December 2017 [4].
5. He accepted at [41] that he is a Christian, and has had a sexual relationship out of marriage with a Muslim "girl", Ms [B]. He told his brother of the relationship when he was departing Pakistan but his parents were unaware of it. He then left Pakistan to come to study in the UK and was unaware for many years that Ms [B] had become pregnant. She then contacted the claimant's father to arrange an abortion. After she had married, the fact of the relationship and the abortion, but not the claimant's father's involvement, came to light. His father and brother were beaten by Ms [B]'s parents and in laws. An FIR was made against him alleging serious but untrue and impossible complaints, given the claimant's absence from the country at the time [41]
6. His father had kept this state of affairs from the claimant on a previous occasion when his mother became ill and had lied to him by stating that his mother had recovered, to prevent the claimant travelling to Pakistan. He only became aware of the true state of affairs after his arrest in the UK when he had volunteered to the secretary of state to return to Pakistan and approached his father to purchase the air ticket. His father then told him what had happened regarding Ms [B] and her family. He told him not to come to the UK (sic) because his life and liberty were at risk.
7. Judge Tsamados accepted that the claimant would be likely to face arrest on return given the arrangement reached between the family and with the intervention of the claimant's father's church. It is reasonably likely that the claimant would be detained on the basis of what were very serious charges in Pakistan, but he did not

believe there is a serious possibility that this could include blasphemy, punishable by death [41]

8. He accepted that it is more possible that if he were released or accessible he would face the possibility of injury or death by virtue of an honour crime or killing, wherever he lived in Pakistan, given that Ms [B]'s family are Pashtun, her uncle is a major in the Pakistani army and the family have political connections. He did not accept that the matter could escalate into a religious conflict or battle as suggested by the claimant's father [41].
9. With regard to the secretary of state's submissions under s.8 of the 2004 Act, he accepted that the claimant's father did not tell his son of the situation until it was clear that the claimant intended to return to Pakistan and that he had no choice [43]. He had previously lied to the claimant to stop him returning at the time of his mothers' ill health. He took account of the fact that the claimant had volunteered to leave the UK and return to Pakistan after his arrest.
10. In the circumstances, he did not accept that the delay and timing in applying for asylum affected his credibility [43].
11. He found that the appellant fell within the 1951 Refugee Convention and the secretary of state was wrong to state otherwise. He had regard to the Home Office Country Information and Guidance (Pakistan): Women Fearing Gender Based Violence, February 2016, which indicates that honour killings are committed against men and women accused of sexual infidelity or indiscretion where the killers, often male family members, seek to avenge the dishonour brought against the family [45].
12. He took into account that the claimant's father and brother have already been attacked by members of Ms [B]'s family as well as her husband's family. A false FIR has been laid and through Jirga, an arrangement whereby the claimant's father has to inform her family of the appellant's return to Pakistan has been reached.
13. He also had regard to the Country Information and Guidance (Pakistan): Prison Conditions, June 2016. On detention, the claimant would face a period of time in prison awaiting questioning, conviction or worse. He had regard to the prison conditions and the treatment of religious minorities and to crimes carrying the death penalty, including Zina, abduction and blasphemy.
14. It is likely that the deficiencies in the FIR would be revealed quite quickly. He found that there is a serious possibility that the claimant has more to fear from the actions of Ms [B]'s family and in-laws 'by why (sic) of honour crimes/killing' [47].

15. He also found in any event that the claimant qualifies for a grant of humanitarian protection for the same reasons. It would also be a breach of Article 2 for the same reasons.

Submissions

16. Ms Pal referred to the secretary of state's grounds seeking permission to appeal. Prior to his asylum application, the appellant had applied to remain in the UK. This was refused on 27 July 2015 as he had attempted to gain leave by deception. He was arrested on 9 July 2017. He then had no basis to remain in the UK. He subsequently claimed asylum in September 2017 on the basis that he had a relationship with a woman with whom he had regular sexual encounters before he left Pakistan in 2011.
17. She submitted that a number of credibility issues were raised in the refusal letter. The Judge has not adequately considered how the claimant rebutted those issues. She referred to the decision in Malaba v SSHD [2006] EWCA Civ 820. Dyson LJ stated that it was imperative for the adjudicator to explain how she reached her main conclusion that, having regard to the response statement, the discrepancies did not completely undermine the core of the claim.
18. Ms Pal submitted that the claimant's deceit is clearly an indicator that he is capable of lacking honesty. That fact was clearly relevant in assessing his credibility. She noted that the Judge also acknowledged that there were some gaps or inconsistencies in his evidence [40]. He found however that this did not diminish his overall credibility.
19. She submitted that there was no reasoning given as to why he came to that conclusion. Without sufficient analysis and factoring in of the claimant's previous dishonesty, the Judge simply accepts the claimant's account without more. He did not however clarify how he came to the conclusions referred to at [31] of the decision.
20. The claimant had provided an FIR document at page 47 of his bundle, which stated that the offence is said to have occurred at 5pm on 7 December 2015.
21. It was reported at 10.30pm. The name of the complainant is Major [AK]. It is asserted that he named the claimant, resident of [~], Islamabad. The claimant has called his daughter on her cellphone various times. He enticed her against her family. He inveigled her and took her to Murree. His son saw the claimant and his

daughter in a local hotel having lunch at 5pm. When his son reached them in the hotel, the claimant saw his son, the brother of [S]. He ran away “from the occurrence.” His son brought his sister home safely. His daughter told them that the claimant used to call her on her phone and he enticed her against her family and said to him “let's run away from home together.”

22. He requested that strict legal action be taken against the claimant. After enquiry, the offence was found under section 506/25 -DPPC. This was made out.
23. Ms Pal submitted that it is not clear how the claimant was able to obtain this document. A serious anomaly is that the FIR refers to an incident which allegedly occurred in 2015. The claimant was in the UK at the time. The Judge did not even contemplate applying the Tanveer Ahmed principles to this document. Even if the document was a reliable one, the claimant would very easily be able to prove that the incident did not happen as he was in the UK.
24. She further submitted that Pakistan has a population of over 200 million. It has an area equating to the combined area of France and the UK. The Judge did not consider internal relocation. There was only a reference to the claimant's cross examination when he asserted that he could not relocate to another city such as Karachi, because sooner or later someone, even a friend, would tell Ms [B]'s family where he was. He would be living in constant fear [28.5].
25. There is thus no adequate reasoning as to why the Judge accepted the claimant's assertion that he gave under cross examination.
26. On behalf of the claimant, Ms Popal, who represented the claimant before the First-tier Tribunal, submitted that there were three issues. The first was the allegation of deceit. The second was the FIR. The third was internal relocation.
27. As to the allegation of deceit, there was a reference at paragraph 12(c) in the secretary of state's reasons for refusal letter, that he had submitted false documents. It was also referred to in the s.8 considerations at paragraph 38-39.
28. However, apart from assertion, no evidence was ever 'submitted or seen' to substantiate it. She referred to the claimant's asylum interview at B32, Questions Q100-101. He was asked why, when his application for leave to remain as a student was refused in July 2015, he did not leave the UK at the time. He stated that he did not receive any letter from the Home Office that he had been refused.
29. It was in fact put to him at the interview that the letters were sent but that they were returned as there was a problem with his address. He was asked why he did not actively try to find out the result of his application rather than staying in the country illegally. He replied that he was not sure that he had any immigration

problem. He said that he called the Home Office many times for his 60 day letter and fees. In the end they said they will send him the letter but he did not receive any letter and he does not know why they “post it back.”

30. Ms Popal referred to the claimant's statement at C36 in support of his asylum application. There he set out his claim in full and stated that in early 2014 he received a letter from the Home Office stating that he was being refunded his application fee. He contacted the Home Office and they advised him that it was a mistake. He was told to send a banker's draft to a PO box number. However, the college to which he had applied lost the sponsor licence and he therefore did not send the banker's draft. He was advised to wait for the 60 day letter in order to find a new college and then make a new application. He contacted the Home Office and they informed him that they were unable to tell him exactly what he would be issued, but that he would receive “something in the post”. He waited and waited but never received anything from the Home Office.
31. The claimant also asserted that he never received the ETS “deception letter”. He was not aware that he was an overstayer. He is still to be served.
32. She submitted that the burden of proof was on the Home Office but it has not been discharged.
33. Ms Popal also referred to paragraph 24(1) of the Tribunal Procedure Rules 2014. She submitted that the respondent was obliged to provide the Tribunal with any other unpublished document which is referred to in the document mentioned in sub-paragraph (a) or relied on by the respondent. The notice of decision was such a document as mentioned in sub-paragraph (a) and was relied on by the secretary of state. Accordingly, there was no attempt to rely on it before the First-tier Tribunal.
34. Ms Popal noted that no questions were asked of the claimant at the hearing about the ETS or deception. There was in fact no reference to the ETS or deception when the Home Office Presenting Officer made his submissions.
35. Accordingly, even though the allegation of deception was referred to in the reasons for refusal, it was never substantiated or relied on.
36. Ms Popal referred to decisions relating to ETS case law, including the decision of the Court of Appeal in SSHD v Shehzad and Another [2016] EWCA Civ 615.
37. On the evidence provided, the secretary of state did not discharge the burden of proof at the hearing. She repeated that no documents were produced at all. Apart from assertion in the reasons for refusal letter, there was no further reference to the alleged deceit.

38. She also submitted that the Judge dealt with the s.8 issue where the secretary of state in the refusal letter again referred to the alleged deception. The Judge dealt adequately with that issue at [42-43]. The delay did not affect the appellant's credibility. There was no evidence upon which the Judge could deal with in the absence of evidence substantiating the delay. In the absence of any evidence, the decision in that respect would have been resolved in the claimant's favour.
39. With regard to paragraph 5 of the reasons for appealing, she submitted that the secretary of state 'did not understand the claimant's case'. The First-tier Tribunal Judge was aware that the claimant was not in Pakistan at the time. In fact the FIR was made on an entirely false basis. She referred to [25-26] of the Judge's decision in which he set out the claimant's case at the hearing. At [29.2] he noted that the claimant himself in re-examination asserted that Ms [B]'s family made a false report against him as it refers to an incident which is alleged to have occurred in 2015 when he was in Pakistan. The claimant repeated this when the Judge himself asked questions, as set out at [30].
40. Accordingly this was dealt with extensively by way of cross examination, in re-examination and by questions from the Judge.
41. The Judge set out the claimant's case at [32.16]. This dealt with the claimant's father's statement. He is concerned that if the claimant returns to Pakistan, he will have to hand himself over to the police as agreed with the girl's family. They have filed an FIR against the claimant alleging the instigation of sexual encounters with the girl. If put in detention, he fears that his son will be killed. Even if not, he is likely to be killed by the girl's family.
42. If he does not comply with the agreement with the girl's family, the matter could escalate into a religious issue. Further, it would be impossible for his son to live in any other part of Pakistan given that there is an FIR against him which has been lodged with the police [32.17].
43. Ms Popal referred to her submission in this respect which was set out in her skeleton argument before the First-tier Tribunal: Although the majority of victims were women, men were also affected by violence in accordance with the Home Office Country Information and Guidance document. She referred to paragraph 10 to the Policy Guidance published in February 2016, which noted that there are some reported incidents of "honour" crimes against men – paragraph 2.4.13.
44. In addition, she also placed before the Tribunal a document from the Research Directorate, Immigration and Refugee Board of Canada, Ottawa, in respect of honour killings targeting men and women in Pakistan. The treatment of males is set out from paragraph 5.

45. In addition, she relied before the First-tier Tribunal on the Country Information and Guidance, Pakistan: Prison Conditions, a Home Office report dated 2016. She set out in her skeleton the applicable paragraphs, namely 5.6.1 to 6.3 and 6.4. She also referred to the Home Office guidance relating to sexual crimes at page 16 of the document.
46. She had also referred the First-tier Tribunal to the Country Information and Guidance dated February 2016, at tab 3 of her skeleton with respect to internal relocation: Paragraphs 2.5.1 to 2.5.4. Where the person's fear is of ill treatment or persecution at the hands of the State, they will not be able to relocate to escape that risk.
47. She referred the First-tier Tribunal to the section in the Guidance on adultery and extra-marital relations: At paragraph 9.1.3 it is noted that honour killings are committed against men and women accused of sexual infidelity or indiscretion, where the killers, often male family members, seek to avenge the dishonour brought upon the family. A mere allegation of sexual misconduct is enough to perpetrate such an honour crime.
48. She submitted that the Judge did have regard to all this evidence in considering the arrangements made by the family.
49. She had also referred to the Country Policy and Information note relating to Pakistan, including internal relocation, dated June 2017. She submitted that the Judge dealt with the background evidence from [45-48]. He was expressly aware that a false FIR has been laid. Further, through Jirga, an arrangement has been reached whereby the claimant's father has to inform her family of his return to Pakistan.
50. She submitted that the grounds relied on by the secretary of state amount to a disagreement with the Judge's findings. Further, the Judge cannot be criticised for not dealing with an issue that had not been properly raised, let alone particularised.

Assessment

51. I have detailed the secretary of state's submissions. The primary assertion is that the ETS deception is clearly an indicator that the claimant is capable of "lacking honesty," which should have informed his approach to the claimant's credibility.
52. However, although asserting that the claimant was guilty of deception, in that he had submitted a false ETS language document, no evidence at all was produced in support. Accordingly, that assertion was never proved.

53. The grounds seeking permission to appeal further contend that there was a serious anomaly regarding the FIR. However, the Judge has dealt with that issue in some detail. He was fully aware that the assertions in the FIR related to an incident which occurred when the claimant was in the UK at the time. However, this did not detract from its potential use.
54. The Judge has had proper regard to the Home Office Country Information and Guidance relating to Pakistan, in terms of gender based violence and through Jirga, an arrangement was reached whereby the claimant's father had to inform Ms [B]'s family of his return to Pakistan.
55. He noted that the Pakistan authorities are able but unwilling to provide effective protection to those at risk of honour crimes. He also considered the evidence relating to internal relocation at [46].
56. Having properly directed himself, he concluded that there is a serious possibility that the claimant has more to fear from the actions of Ms [B]'s family and in laws by way of honour crimes/killing.
57. I am satisfied that First-tier Tribunal Judge Tsamados has given a detailed assessment of the evidence and has given sustainable reasons for the conclusions he arrived at.

Notice of Decision

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

Anonymity direction continued.

Signed Deputy Upper Tribunal Judge Mailer

Dated: 17 October 2018