



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08897/2016

THE IMMIGRATION ACTS

Heard at Field House
On 19 December 2017

Decision & Reasons Promulgated
On 24 January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

S H
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Khan of Thompson & Co.

For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Fletcher-Hill promulgated on 26 April 2017 dismissing the Appellant's appeal against a refusal of a protection claim.
2. The Appellant was refused permission to appeal by First-tier Tribunal Judge Page on 7 September 2017, but was subsequently granted permission to appeal by Upper Tribunal Judge Bruce on 11 October 2017.

3. Judge Bruce granted the Appellant permission to appeal on the basis that *“it is arguable that credibility findings made over five months after the evidence was heard may be unsafe”*. Judge Bruce added that *“All grounds are arguable”*; however, before me Mr Khan on behalf of the Appellant has acknowledged that the second and third grounds relied upon in the grounds in support of the application for permission to appeal are contingent upon succeeding on the principal ground in respect of the delay in preparing and promulgating the Decision.
4. By way of background to the challenge it is to be noted that the appeal was heard at Hatton Cross before Judge Fletcher-Hill on 4 November 2016. The Decision is dated as having been signed on 18 April 2017, and promulgated on 26 April 2017.
5. Both representatives before me today have acknowledged the application and relevance of dicta in the case of **Secretary of State for the Home Department and RK Algeria [2007] EWCA Civ 868**, in particular at paragraphs 21-23. The substance of that decision has found expression in a decision of this Tribunal in the case of **Arusha and Demushi (deprivation of citizenship – delay) [2012] UKUT 80 (IAC)**. This was a decision of Judges Latta and Waumsley; paragraph 2 of the headnote is in these terms:

*“To establish that a delay in the promulgation of a decision has led to an error of law it has to be shown that the decision was not safe and therefore unlawful. There must be a nexus between the delay and the safety of the decision, see **Secretary of State v RK Algeria [2007] EWCA Civ 868**”.*
6. It is against these principles and guidance that I turn to a consideration of the decision of Judge Fletcher-Hill.
7. At paragraphs 1.2 to 1.7 of the Decision the Judge rehearses the Appellant’s immigration history. No criticisms or inaccuracies are identifiable therein. At paragraphs 6.1 to 6.26 - over approximately four pages - the Judge sets out at length the evidence that was before her, by reference to both documentary and oral evidence. Mr Khan has acknowledged that there are no criticisms to be made of the rehearsal of the evidence - no inaccuracies may be identified. Similarly, no criticism is made of the Judge’s recitation of the submissions made before her at paragraphs 7.1 to 7.20 - over approximately three pages.
8. The Judge’s findings are then set out at paragraphs 8.1 to 8.19.

9. In circumstances where the Judge has fully set out the factual basis of the Appellant's claim – and has done so accurately, as acknowledged by his representative - I do not propose to reiterate the claim here. It is a matter of record and is known to the parties. I will however refer to certain aspects of the case as is incidental for the purposes of my decision.
10. I have ultimately accepted Ms Fijiwala's submission that there is no nexus shown between the delay and the safety of the decision. In my judgement it is plain, given the unchallenged detailed rehearsal of both evidence and submissions in her Decision, that the Judge must have had clearly in mind all aspects of the case and evidence when preparing her Decision notwithstanding the time that had elapsed between the hearing and the completion of the Decision. Moreover, in my judgment it is also clear that the adverse evaluation of aspects of the Appellant's case is based on the facts of the case as claimed, and is not in any way made by reference to such matters as demeanour or the impression that a witness might have made at the hearing.
11. Mr Khan urges me to consider that the Judge likely had in mind the impression that the Appellant and his supporting witnesses may have made during the course of giving their evidence. In this regard he emphasises in particular the Judge's reference at paragraph 8.8 to there being "*not a shred of documentary evidence to support any of the Appellant's assertions relating to threats whether made in person or by telephone or of attempted kidnapping*".
12. Mr Khan invites me to consider that the absence of documentary evidence to support the Appellant's case made it inevitable that the Judge was relying upon written and oral testimony, and to that extent is likely to have had regard to the impression that a witness made. I do not accept that submission. Judges in this jurisdiction are generally well aware that such matters as demeanour are not reliable indicators of credibility in circumstances where evidence is being heard through persons from different cultures and through interpreters. There is nothing to suggest in the body of the First-tier Tribunal Judge's Decision that any such matters influenced her evaluation of the evidence. Indeed the opposite is the case. It seems to me absolutely clear, particularly for example at paragraph 8.6 (see below) that the Judge had regard to the *substance* of what the Appellant was saying, and not the *manner* of saying it. Whilst it is indeed the case that the Appellant was primarily relying upon oral and written testimony in the absence of supporting documents, I cannot see that such a circumstance in itself is sufficient to establish any error on the part of the Judge or the necessary nexus contemplated in the guidance of **RK Algeria**.
13. In making her findings the Judge had consideration to Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and offered reasons for

concluding that the Appellant had not claimed asylum at the earliest opportunity, and that this was damaging to his credibility. This reasoning is also echoed later in aspects of the Judge's reasoning, for example at paragraph 8.7. Nonetheless the Judge identified that she needed to consider all matters 'in the round' (see paragraph 8.3). At paragraph 8.4 the Judge reiterated in summary the substance of the Appellant's case. At paragraph 8.5 she identified that members of the Appellant's family had continued to reside in Pakistan well after the key events of 2006-2008 - which were said to be the primary matters that had led to the Appellant being at risk, including the persecutory treatment of his father and his older brother. The Judge then made the following observations at paragraph 8.6

"Dealing first with the Appellant's claimed difficulties in Pakistan I have found his evidence to be completely lacking in credibility. I accept that his family may have had a dispute with [S]'s family but I do not find it credible that he was at risk because of this. His evidence is that his family's difficulties with [K] began in 2006, and that in 2008 his father and sister-in-law moved to the UK. However, his evidence is that he was not personally threatened at this time and the only threats he has recounted amount to a threatening stare in the market in 2011 and phone calls in 2013. His evidence is that he did not report any of the matters to the police".

14. As indicated above, it seems to me that it is significant that in this paragraph the Judge repeatedly bases her analysis upon "*his evidence*". It is clear that it is the nature of the account that is troubling the Judge, rather than anything to do with the manner in which it was presented. To that extent, given that the Judge clearly accurately rehearsed the nature of the account, I cannot see that the delay has impacted in any way upon her analysis of the substance of the Appellant's claim.

15. The Judge gave consideration to an incident that was said to have occurred in 2015 when the Appellant had returned to Pakistan to attend the wedding of a younger brother: see paragraphs 8.7 and 8.11. The Judge noted at paragraph 8.9 that at no stage during any of the Appellant's claimed difficulties had he ever reported any events to the authorities. At paragraphs 8.8 and 8.10 the Judge identified deficiencies or gaps in the evidence: I have already referred to the Judge's reference to an absence of documentary evidence; further to this the Judge also refers to the absence of any telephone records. The key findings are then made at paragraphs 8.12 and 8.13 in these terms

"8.12 I do not find the Appellant's account plausible or credible. I find that had [S]'s father wished to harm the Appellant he would have had ample opportunity to do so in the many years that the Appellant continued to live in Pakistan after the love marriage of 2006 which commenced the family feud.

8.13 I find that the Appellant's older brother [A] and his father were the victims of the family feud but there is no evidence that the other members of the family including the Appellant have been targeted or harmed in any way".

16. In my judgement such a conclusion was open to the Judge on the analysis set out in the foregoing paragraphs. Moreover, the analysis in the foregoing paragraphs clearly drew upon the factual narrative claimed by the Appellant and made findings adequately reasoned. I can see nothing that suggests that the Judge fell into error; more particularly I can see nothing that suggests that the passage of time had in any way impacted upon the Judge's ability to consider and determine this particular appeal.
16. In those circumstances I find that there is no relevant nexus, there is no error of law, and the decision of the First-tier Tribunal stands.

Notice of Decision

17. The decision of the First-tier Tribunal contained no error of law and stands.
18. The Appellant's appeal remains dismissed.

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 his 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.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: 22 January 2018

Deputy Upper Tribunal Judge I A Lewis