



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/08929/2018  
PA/09370/2018

**THE IMMIGRATION ACTS**

Heard at Glasgow  
On 03 May 2019

Decision & Reasons Promulgated  
On 09 May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

FARRUKH [J]  
ASHMAL [J]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr S Winter, advocate, instructed by Gray & Co, solicitors  
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously for these Appellants. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge Handley promulgated on 2 November 2018, which dismissed the Appellants' appeals.

### Background

3. The first Appellant was born on 22 January 1967. The second appellant was born on 24 December 1998. Both appellants are national of Pakistan. The second appellant is the son of the first appellant.

4. On 4 July 2018 the Secretary of State refused the first Appellant's protection claim. On 5 July 2018 the Secretary of State refused the second Appellant's protection claim.

### The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Handley ("the Judge") dismissed their appeals against the Respondent's decisions. Grounds of appeal were lodged and on 29 January 2019 Deputy Upper Tribunal Judge McEachy granted permission to appeal stating inter alia

"I note that the Judge did not comment on the evidence of the first appellant's wife despite the fact that there is a statement from her in the bundle. I consider, moreover, that although he properly comments on the evidence of Rev Alan Knight it is arguable that he did not fully engage with the documentary evidence and the affidavit of Waheed Ahmad. I therefore consider that the grounds of appeal are arguable."

### The Hearing

6. (a) For the appellant, Mr Winter moved the grounds of appeal. He told me that there are three areas, in particular, which taken separately are material errors of law. He told me that the appellant's wife gave evidence corroborating both appellants, but the Judge made no findings at all in relation to her evidence Mr Winter relied on what is said by Lord Malcolm between [34] and [36] of AR [2017] CSIH 52. He told me that the failure to evaluate the evidence of a supporting witness is a material error of law which requires that the Judge's decision should be set aside and the case should be remitted to the First-tier Tribunal for fresh findings of fact.

(b) Mr Winter turned to paragraph 3(v) of the grounds of appeal and told me that (relying again [34] to [36] of AR) the Judge's consideration of the documentary evidence produced is flawed. He referred me to the first three items in the appellants inventory of productions. Mr Winter told me that the documents confirm that the first appellant has been charged with blasphemy. He argued that the confirming documents were genuine, relying on PJ (Sri Lanka) v Secretary of State for the Home Department [2014] EWCA Civ 1011, he told me that even if it was difficult to verify documents, the bona fides of the solicitor who certifies the documents goes without challenge.

(c) Turning to ground of appeal 3 (iv), Mr Winter told me that the Judge failed to reach a finding on a material matter because the Judge failed to reach a conclusion on the evidence that the appellant evangelises in the UK. Relying on AK and SK (Christians: risk) Pakistan CG [2014] UKUT 569 (IAC). Mr Winter argued that such a finding is necessary because it determines whether there is a greater risk of blasphemy charges in Pakistan.

(d) Mr Winter told me that those three matters are material errors. He then went through the remaining grounds of appeal telling me that cumulatively they create believe a further material error of law. He told me that the Judge misapplied the principles in HJ(Iran), and that the Judge erroneously relies on plausibility findings between [50] and [55] of his decision. He told me that the Judge has given inadequate consideration to the evidence of the appellant's Minister of religion in the UK. He told me that the Judge's findings run counter to the evidence. He urged me to set the decision aside and to remit this case to the First-tier Tribunal to be determined afresh.

7. (a) For the respondent, Mr Govan told me that the decision does not contain material errors of law. He took me to [49] of the decision and told me that there the Judge provides a summary of the evidence. He told me that the Judge considered the documentary evidence in accordance with the guidance given in Tanveer Ahmed (Starred) 2002 UKIAT 00439. Mr Govan told me that TF and MA v SSHD [2018] CSIH 58 has little application in this case and argued that the documentary evidence does not specifically refer to blasphemy – so that the Judge's findings at [49] and [59] of the decision are safe. Mr Govan told me that the Judge could only deal with the evidence that was placed before him.

(b) Mr Govan told me that the grounds of appeal amount to disagreement with the facts as the Judge found them to be and are merely an attempt to challenge the weight the Judge correctly attributed to different strands of evidence. He told me that at [54] the Judge accepts the evidence of the appellants' Minister of religion, but the determinative question was whether or not the appellants face an actively prosecuted charge of blasphemy. Mr Govan told me that the Judge finds that the appellants do not face prosecution for blasphemy & that the Judge correctly considers the guidance in AK and SK (Christians: risk) Pakistan CG [2014] UKUT 569 (IAC) before deciding that the appellants can safely relocate within Pakistan.

(c) Mr Govan urged me to dismiss the appeal and allow the decision to stand.

### Analysis

8. The Judge heard oral evidence from both appellants, from the Rev Alan Knight and from the first appellant's wife. Between [36] and [44] the Judge summarises the evidence of the first appellant. At [45] the Judge summarises the evidence of the second appellant. At [46] the Judge summarises the evidence of the first appellant's wife, and at [47] the Judge summarises the evidence of Rev Knight.

9. Between [49] and [53] the Judge analyses the evidence of the first appellant. The Judge analyses Rev Knight's evidence and draws conclusions from that evidence. At [55] the Judge considers the documentary evidence from the first appellant's lawyers in Pakistan. The Judge then goes on to consider the background materials and caselaw. The Judge makes no findings in relation to the second appellant's evidence and no findings or analysis of the first appellant's wife can be found.

10. At paragraph 36 of AR [2017] CSIH 52 Lord Malcolm said

"Similar comments apply to the lack of any proper consideration and assessment of the evidence from the supporting witness ... One cannot simply dismiss this evidence, or in effect ignore it, because one has already decided that the claimant's account is false. No finding was made by the First-tier Tribunal Judge as to whether the evidence was credible and reliable, and if not, for what reason. Again it provides direct support for something which is acknowledged to be difficult to prove. ... His evidence, which was summarised earlier, was effectively ignored. We are unable to agree with the proposition that this was "regrettable, but immaterial," especially given that it was a declared purpose of the re-hearing that the evidence be given proper consideration. Given the obvious relevance of this evidence, in our opinion it was not sufficient for the Upper Tribunal Judge simply to declare that the First-tier Tribunal Judge had reached "an overall sustainable conclusion", ..."

11. It is understandable that the Judge would focus on the first appellant's evidence, but the absence of consideration of the evidence from supporting witnesses is a material error of law.

12. In PJ (Sri Lanka) v Secretary of State for the Home Department [2014] EWCA Civ 1011 it was held that in asylum claims, where local lawyers obtained documents from courts in the home country, that did not create a rebuttable presumption that the documents were reliable. On the facts, however, although it was undoubtedly the case that false documents were widely available in Sri Lanka, where it had been established that the documents in question originated from a court and had been obtained by 2 independent lawyers on 2 separate occasions it was difficult to see how the claimant could have falsified a letter from the magistrate of the relevant court and placed it in the court records to be later retrieved in this way and at very least the evidence required detailed analysis and explanation.

13. The first four items of the appellant's inventory of productions are letters and affidavits from the appellant's solicitor in Pakistan. The solicitor certified copies of what is said to be a petition filed against the first appellant. At [55] the Judge considers the purpose of an FIR and draws the conclusion that the appellant's evidence is inconsistent and lacks clarity. The Judge does not, however, properly engage with the documents produced nor does he engage with the contribution of the author of the documents.

14. In AK and SK (Christians: risk) Pakistan CG [2014] UKUT 569 (IAC) it was held that along with Christians, Sunnis, Shi'as, Ahmadis and Hindus may all be potentially charged with blasphemy. Those citizens who are more marginalised and

occupy low standing social positions, may be less able to deal with the consequences of such proceedings; The risk of becoming a victim of a blasphemy allegation will depend upon a number of factors and must be assessed on a case by case basis. Relevant factors will include the place of residence, whether it is an urban or rural area, and the individual's level of education, financial and employment status and level of public religious activity such as preaching. These factors are not exhaustive; Non state agents who use blasphemy laws against Christians, are often motivated by spite, personal or business disputes, arguments over land and property. Certain political events may also trigger such accusations. A blasphemy allegation, without more, will not generally be enough to make out a claim under the Refugee Convention. It has to be actively followed either by the authorities in the form of charges being brought or by those making the complaint. If it is, or will be, actively pursued, then an applicant may be able to establish a real risk of harm in the home area and an insufficiency of state protection; Relocation is normally a viable option unless an individual is accused of blasphemy which is being seriously pursued; in that situation there is, in general, no internal relocation alternative.

15. The Judge correctly takes guidance from AK and SK (Christians: risk) Pakistan CG [2014] UKUT 569 (IAC) and carefully focusses on the determinative issue. That issue is whether or not the appellant faces an actively prosecuted charge of blasphemy. The problem is that, because the Judge creates the impression that he has ignored evidence from supporting witness, and because of the way the Judge deals with the documentary evidence, his findings of fact on the core issues are undermined.

16. The Judge's decision is tainted by material errors of law. I set the decision aside.

17. I consider whether or not I can substitute my own decision. There was an inadequacy of fact finding in the First-tier Tribunal. I find that none of the First-tier Judge's findings of fact can be preserved. One of the central issues in this case is whether or not the appellant faces an actively prosecuted charge of blasphemy. That is a question which cannot be answered without further evidence and clear fact-finding. I am asked by both parties' agents to remit this case the First-tier Tribunal.

18. The material error of law in the decision relates to an inadequacy of fact finding. I cannot substitute my own decision. A further fact-finding exercise is necessary.

#### Remittal to First-Tier Tribunal

19. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

20. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re-hearing is necessary.

21. I remit the matter to the First-tier Tribunal sitting at Glasgow to be heard before any First-tier Judge other than Judge R Handley.

### **Decision**

22. **The decision of the First-tier Tribunal is tainted by material errors of law.**

23. **I set aside the Judge's decision promulgated on 2 November 2018. The appeal is remitted to the First-tier Tribunal to be determined af new.**

Signed

A handwritten signature in grey ink, appearing to read 'Paul Doyle', is written over a light grey circular background.

Date 8 May 2019

Deputy Upper Tribunal Judge Doyle