



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002016

First-tier Tribunal No: PA/52552/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 24th of October 2024

Before

UPPER TRIBUNAL JUDGE LANDES

Between

I S
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Pipe, Counsel instructed by Axis Solicitors Limited
For the Respondent: Ms S Lecointe, Senior Home Office Presenting Officer

Heard at Field House (by CVP) on 10 September 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Background

1. The appellant, a national of Pakistan, appeals, with the permission of Deputy Upper Tribunal Judge Doyle, the decision of Judge Ruck promulgated on 13

October 2023 dismissing his appeal against the respondent's refusal of 13 April 2023 of his international protection claim made on 6 May 2020.

2. The appellant's case as summarised by the judge at [5] was that he claimed he was in fear of members of the Islami Jamiat Talba (IJT), an Islamist political party in Pakistan and the student wing of Jamaat-e-Islami. The appellant was for a time, part of this organisation, however he claimed that having realised their true ideologies, he left and started his own student political group. He claimed that IJT initially threatened him verbally for standing in opposition, however this escalated into the group fabricating a false murder allegation against him and he is now in fear as the authorities wish to arrest him. The appellant said that certain sections of the police and the authorities were in league with IJT/Jamaat-e-Islami and did their bidding.
3. The respondent in the RFRL did not accept that the appellant had worked in several positions for IJT, or that he was the subject of their adverse attention, or that two FIRs had been registered against him. The respondent did not accept that the appellant's full name was ISW or that he was the person named as AW, A's suspected killer, in the newspaper articles or other documents produced. The respondent did not accept that the appellant was the subject of adverse attention from the Pakistani state or that he was on a blacklist or exit control list, citing the different names. General Tanveer Ahmed reliability points were made. There were adverse credibility points arising under the provisions of section 8 of the 2004 Act because the appellant had entered the UK on a false passport, had delayed claiming asylum, and had not claimed asylum in Germany or Ireland which countries he had passed through before arriving in the UK. It was however accepted that if the appellant were the receipt of adverse attention from the Pakistani state and two FIRs were registered against him that he would not be able to obtain the protection of the authorities. Section 11 of RFRL stated "*Therefore, if it was accepted that you would be persecuted by the Pakistani state or that there were two FIRs registered against you, there would not be sufficient protection from persecution in Pakistan*".
4. The RFRL continued to consider the position on the alternative basis that the appellant had worked for IJT or had started his own political party and considered that as a low level member of an opposition party he would not be of interest to the authorities; if he had been the recipient of adverse attention from Jamaat-e-Islami there would be sufficiency of protection for him from the authorities or he would be able to internally relocate and that would be reasonable.

The issues before the judge and the judge's findings

5. The judge noted that the issues in dispute at the hearing were agreed as being:
 - (a) *Whether the Appellant's account of events occurring in Pakistan are true?*
 - (b) *Whether the Appellant is at serious risk of harm on return to Pakistan on account of those events?*
 - (c) *Whether there would be sufficient state protection?*
6. The judge was not satisfied that the appellant's account of events occurring in Pakistan was reasonably likely to have occurred as he claimed.
7. She found that:

- (i) The appellant's account of his involvement with IJT was credible [13];
 - (ii) To the lower standard of proof he was involved with the Student Rights Committee the student political group he said he had started [14];
 - (iii) On the lower standard of proof all the documents produced, including the FIRs and the exit control list and blacklist related to the appellant [18].
8. She continued at [19]: *"The Appellant claims the First Information Reports consist of false accusations fabricated against him by members of the IJT because he formed an opposition political party. Furthermore, he claims the police are influenced by the IJT. Having considered all the evidence in the round, I find the Appellant has not proved these assertions even on the lower standard of proof."*
9. The judge explained that she did not accept the appellant's claims that the police and authorities were influenced by the IJT and had falsely named him in the FIR. She said that the police had produced the FIR following a complaint by a witness who named the appellant as responsible and so the police would have wanted to speak to him as part of the investigation. The appellant was in contact with his lawyer in Pakistan, but he had not at any point sought to protest his innocence to the authorities in Pakistan. She said at [21] *"I therefore find there is no evidence to support the assertion that the police have fabricated the report or are influenced by the IJT."*
10. To the second issue, whether the appellant was at serious risk of harm on return to Pakistan she found *"As I have not accepted the appellant's account of events, I find that he is not at serious risk of harm on return to Pakistan from either the IJT or the state"* [26]. She found that there would be sufficiency of protection available to him because of her earlier findings [28].

The grounds of appeal

11. There were two grounds, procedural irregularity and failure to have regard to material matters.
12. As far as procedural irregularity was concerned, the grounds pleaded that the judge had a theory of the case which was never advanced by the respondent or by the judge herself at the hearing. It appeared for the first time in the decision.
13. It was said that the judge appeared to conclude that both the documents and their content were reliable. The judge appeared to conclude that the appellant was at best a genuine suspect and at worse a perpetrator to a murder. However that had never formed part of the respondent's case.
14. The judge's unanticipated conclusion that the appellant was genuinely sought as the perpetrator of a capital offence suggested that the appellant was at real risk of imprisonment and a death sentence. There was no consideration of whether detention conditions in Pakistan or the imposition of the death penalty might be a breach of the Article 3 threshold. As the judge's theory of the case had not been raised with the parties, neither party had been able to make submissions or call evidence.
15. Judge Roots in the First-Tier Tribunal refused permission to appeal. Judge Roots said that the grounds misrepresented the judge's findings which were that the documents were not reliable in accordance with Tanveer Ahmed. When the

decision was read properly, it was clear that the judge did not accept the claim that the FIRs were reliable evidence of the false accusations against the appellant and the judge's conclusions were adequately explained.

16. The renewed grounds of appeal relied on the original grounds and emphasised how the judge had found that the documents were reliable.
17. When granting permission, Deputy Upper Tribunal Judge Doyle said that it was arguable that the judge's findings which favoured the appellant created an unexplained contradiction to her conclusion at [26] and that it was arguable that overall her findings were inadequately reasoned and unclear.

The hearing before me

18. Mr Pipe submitted that there was indeed an unexplained contradiction to the judge's conclusion. She had considered Tanveer Ahmed, and she had accepted that all the documents related to the appellant. It was not clear however whether the judge accepted the documents to be genuine; if she did that did not explain the basis for her conclusion at [26] that the appellant was not at risk and no doubt that was why Deputy Upper Tribunal Judge Doyle had concluded as he did. That the charges were genuine flowed from the judge's conclusions and in that case her findings were unsustainable in the light of the positive findings she had made.
19. He submitted that he would put it that the judge had not set out the basis on which she had reached her ultimate conclusions and that was where she had gone wrong. However if I were to find that the judge had made a finding of prosecution rather than persecution then she should have considered other matters and the judge's findings in that respect had never been put to the appellant. Whichever way one looked at it, the judge had not made proper findings. Mr Pipe made it clear that despite the part I have quoted at paragraph 3 above from paragraph 11 of RFRL he was not submitting, when RFRL was considered as a whole, that the respondent had accepted that the appellant would be at risk simply because FIRs had been issued against him, he accepted the quoted passage was ambiguous when RFRL was read as a whole.
20. Ms Lecointe submitted that the respondent had concluded in RFRL that the Pakistani state would be able to provide protection from non-state actors and the appellant had failed to establish anything about his personal circumstances which should lead to a deviation from that finding. The judge had just concluded that the appellant had not proved his assertions. She accepted that the judge had not specifically highlighted the issue of prosecution or persecution but said she was entitled to come to the consideration she had given that once the documents were reliable, they were either genuine documents or fraudulent documents. The appellant's case had not been that he needed to evade the authorities because he was implicated in a murder; the appellant's case had been that completely false documents had been manufactured against him. The judge had simply found that she had not been satisfied of that.
21. I told the representatives at the conclusion of the hearing that I had concluded that there was a material error of law in the judge's decision and I would in my decision, explain my reasons and what followed.

Discussion and analysis

22. The judge's decision from [13] - [18] is very carefully and thoughtfully reasoned.
23. The judge accepted the appellant's involvement in the political groups and accepted that his name would not have been likely to have appeared on the exit control list in respect of the first FIR which explained why he had been able to leave the country initially.
24. At [17] the judge carefully went through the documents about the appellant being wanted by the authorities and explained that those documents referred to the appellant's passport number and/or identification card number even though the person referred to might have a slightly different name from the appellant. She directed herself to Tanveer Ahmed and was satisfied to the appropriate standard that the documents related to the appellant.
25. The central document in this case was the May 2012 FIR accusing IW of murder. There can be no doubt that the judge was satisfied that the person referred to as "IW" was the appellant. There are two ways in which the FIR could be "genuine" and it is important not to elide those two ways. The first is that the FIR is genuinely an FIR issued against the appellant, in other words that it is a document produced by the police which would appear in their records as issued against the appellant. The second is that the information recorded in it is true. That requires a bit more unpicking because there are two possibilities which are not mutually exclusive. First that it is true that the witness went to the police to complain that the appellant was responsible for A's death (which says nothing about whether the accusation was a deliberately false accusation); second that the witness genuinely believed that the appellant was responsible for A's death (i.e. that the accusation was genuinely made).
26. What is, I consider, overwhelmingly clear, is that the judge found that the FIR was a genuine FIR in the sense that she could rely on it as an FIR appearing in police records. The combination of the reference to Tanveer Ahmed in this context and that the documents related to the appellant rather than someone else is a clear indication that she found the document reliable as an FIR. She gave, as I have said, clear and cogent reasons for so doing.
27. The judge has found at [21] that the information recorded in the FIR is true in the first sense that the witness went to the police to complain that the appellant was responsible for A's death - that follows from her conclusion that the police have not falsely named him in the FIR.
28. Her conclusion that she was not satisfied even to the lower standard that the FIR was a fabricated false accusation [19] means at least that she concluded that there were no reasonable grounds for believing that the witness who accused the appellant did not genuinely believe that the appellant was implicated in A's death. I agree with Mr Holmes who settled the grounds that it follows from that the judge concluded that the appellant was, genuinely, a murder suspect, as Mr Holmes put it, at best a genuine suspect and at worst a perpetrator. I consider that Mr Pipe has elided the different ways in which the FIR could be "genuine."
29. That being so, was there a procedural irregularity as averred in the grounds? Whilst the issue was whether the appellant's account was reasonably likely to be true, the respondent's case was that the documents could not be relied on and that the appellant's account was simply not credible in the sense that it was not credible that he was the subject of an FIR and on the exit control list, i.e. that it

was not credible he was wanted by the authorities. The respondent accepted that if the appellant had been framed by the authorities or framed by IJT with the connivance of the authorities, then he would succeed, but never considered what the position would be if the appellant were the subject of a genuine investigation and he had evaded that investigation by coming to the UK.

30. As Mr Holmes points out at paragraph 17 grounds, the respondent's CPIN explains that the death penalty applies in Pakistan. There is therefore a Robinson obvious argument that Articles 2 and 3 ECHR would be breached if the appellant were returned to Pakistan. It does not follow therefore that the appellant was not at serious risk of harm on return to Pakistan because the judge had not accepted his account of events [26].
31. It is usually up to the parties to consider the issues with sufficient specificity and judges do not err in law if they fail to take account of a point which was never raised for their consideration - Lata (FtT: principal controversial issues) [2023] UKUT 163 (IAC). However, Lata explains that this is not so if the point is a Robinson obvious one. Given my conclusions in the paragraph above I consider that this means that the judge did indeed fail to have regard to material matters as ground 2 avers.
32. I also consider that if there was a possibility that the judge was going to come to the conclusion that the appellant was the subject of a genuine investigation this should have been raised at the hearing, so that submissions could have been made and, evidence called on the point. Whilst it might be said that the appellant or his representatives did not follow through with sufficient specificity all the possible credibility findings which could be made, I consider this is the benefit of hindsight, as the case had proceeded on a binary basis, either the appellant was telling the truth about what had happened or he was not. Given the implications of the judge's findings, findings which neither party had considered, the judge should in fairness have raised the issue with the appellant and his representatives, to give them the opportunity to address it - see Abdi v Entry Clearance Officer [2023] EWCA Civ 1455 discussing the implications of Griffiths v Tui UK Ltd [2023] UKSC 48. The fact she did not do so meant, I consider, that ground 1, procedural irregularity is also made out.
33. The judge's conclusions on why she found the documents were reliable were clear and cogent and thoughtfully reasoned as I have said above. She was not helped by the issue of credibility not being broken down with sufficient specificity by the representatives. Nevertheless the potential implications of her findings were so significant that the appellant and his representatives needed a proper opportunity to deal with the point. They did not have that.
34. I have considered carefully what should happen. It was submitted to me by Mr Pipe that the appeal could be retained in the Upper Tribunal as the judge's findings on the reliability of the documents could be preserved and there needed to be limited further findings. The difficulty with that submission is that I have found that there was a procedural irregularity. I cannot say what would have happened if the appellant had been asked to deal in evidence with the contention that he was a genuine murder suspect, indeed that he might have committed the murder. His evidence in response might well have had implications for the general credibility of his account.
35. Having considered the case of Begum (remaking or remittal) Bangladesh [2023] UKUT 46 and the terms of paragraph 7.2 (a) of the Practice Statement I consider

that this is a case where the effect of the error has been to deprive a party of an opportunity for their case to be put to and considered by the First-Tier Tribunal and I consequently consider that the appeal should be remitted to the First-Tier Tribunal.

36. Mr Pipe submitted very attractively that the judge's positive findings in favour of the appellant and in respect to the documents should be preserved but given what I have said at paragraph 34 above, I do not think it right to preserve any factual findings.
37. I do however urge the parties to think carefully about how the issues should be framed for the benefit of the First-Tier Tribunal and whether the respondent maintains that none of the documents produced by the appellant can be relied upon. It would be sensible for there to be a case management hearing before the appeal is listed again in the First-Tier Tribunal. For the avoidance of doubt, unless it is no longer an issue due to concessions made by the respondent, or is otherwise ruled out at a case management hearing, the parties should prepare on the basis that one of the findings potentially open to the judge is that the appellant was wanted as a suspect in a genuine murder inquiry.

Notice of Decision and directions

The judge's decision contains errors of law and is set aside with no findings preserved.

The appeal is remitted to the First-Tier Tribunal at Manchester to be heard by a judge other than Judge Ruck.

A case management hearing should be listed in the First-Tier Tribunal.

A-R Landes

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 October 2024

