Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/11008/2012
AA/11015/2012
AA/11017/2012

THE IMMIGRATION ACTS

Heard at North Shields
on 12th August 2013

Determination Sent
on 24th September 2013

Before

UPPER TRIBUNAL JUDGE HANSON

Between

KAR
MG
MG

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rana instructed by Bokhari & Co Solicitors.
For the Respondent: Mr Mangian – Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Cope promulgated on 12th February 2013 following a hearing at North Shields, in which he dismissed the appeals of all three appellants against the direction for their removal to Pakistan that accompanied

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the rejection of their claims for asylum or any other form of international protection.

2. Permission to appeal the above decision was refused by a Designated Judge of the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge Chalkley on 22nd April 2013.

Background

3. The first appellant was born on 12th December 1982. The remaining two appellants are her minor children who are dependent upon her claim and who, due to their ages, did not give evidence and were not involved in the proceedings before Judge Cope.

4. Judge Cope considered the written and oral evidence he received and set out his findings from paragraph 24 the determination which can be summarised as follows:

i. The principal issue in the case is the credibility of the first appellant [25].

ii. The first appellant has in effect given an account of events affecting her on six different occasions set out in paragraph 28.

iii. There is some degree of consistency between the accounts given on the various occasions. First appellant has made it clear she feels she will face death or serious ill treatment at the hands of her husband and that she and the other appellants will not be safe anywhere in Pakistan [29].

iv. It was accepted that something of what the first appellant had to say about the general situation of women and domestic violence in Pakistan and how they are viewed in that country by the authorities, particularly the police and within society as a whole is not inconsistent with the background evidence [30].

v. Consistency between the accounts and the background evidence is a factor which should be put to the credit of the appellant which the Judge did [31].

vi. Consistency in itself should and does not lead necessarily to a finding of credibility as there could be adverse explanations for a witness being able on a number of occasions to provide a similar account of events which it is claimed happened to them. It is an assessment that has to be made in the context of the evidence in the case as a whole [31].

vii. Domestic violence is a serious and widespread problem for women in Pakistan. Many women face violence and abuse at the hands of their own families particularly if they are perceived in some way to be dishonouring the family name [34].

viii. Background evidence relating to Pakistan and that relating to women is the starting point in the case and it is within the context of this background evidence that the claims of the first and second appellant to have suffered domestic violence at the hands of her husband/father are to be considered [35].

ix. The appellant has provided a document described as a police report but there are significant difficulties with that and whether it supports her case as she contends [37].

x. The Judge stated he was aware not only from the background evidence but from having heard many appeals from Pakistan that there is a system of First Information Reports [FIR] which are formal written records of complaints made to the police [39].

xi. The format of the police report relied upon by the appellant is not in the same format as those the Judge was used to seeing for such reports from Pakistan. The Judge states he has seen a considerable number in the years he has been sitting in this jurisdiction [40].

xii. The police report is stated by the Judge to read quite simply as a letter written by the first appellant, it being in the first person, rather than being some form of statement or report taken by a police officer which would be in the third person [40].

xiii. Even if this was a complaint made by the first appellant and if the purple ink stamps stating "Police Station Defence Lahore" is genuine, this gives rise to the question why would they have accepted the complaint given the comments made by the first appellants in her screening and asylum interviews about their reaction to her going to the police station [41].

xiv. It does not make sense that the police would have allowed the first appellant to report the matter, and thus stamp the document from her, if her husband really was as powerful and influential as she claims he was – question 42 first SEF interview and reply to question 157 of the second asylum interview [42].

xv. It was also noted that the translation of the police report makes no mention of the second appellant having had his

arm broken. The first appellant claimed in her second asylum interview that the police officer did not write this down even though she asked him to. It is difficult to see why the officer would have been prepared to say the first appellant's husband would kill her within two weeks and also break the children's bones, but not record this event [43].

xvi. In light of the above and other issues with regard to the rest of the appellant’s evidence set out in the determination, and in light of the guidance in Tanveer Ahmed, the Judge considered he was unable to place any reliance upon the police report [44].

xvii. A letter from a nurse at the Newcroft Centre in Newcastle upon Tyne, a community-based health clinic, notes a scar on the inner aspect of the first appellant's right thigh, although there was no attempt to independently state what caused the scar nor was there a detailed description of it. All there is was a note that the first appellant told the nurses that this was an injury sustained during a sexual assault on 18th May 2012 when the assailant dug his thumbnail into her flesh [46].

xviii. The Judge accepted there is a scar as described in the letter but without a further description or any suggestion of causation it was not considered the letter actually assists the first appellant’s case [47].

xix. Although the appellant told the nurse she was sexually assaulted on 18th May 2012 this date is not referred to by her in any other account she has given during the asylum application process. She claims the rape by the police took place on either 11th May when she first reported her husband or 16th May which might have been when she made her first report or might have been the second time she went back to the police, if she did so [48].

xx. Health records from the Health Integration Team in Barnsley made no mention of the first appellant claiming she was raped in May 2012 [49].

xxi. In relation to the second appellant, although there is mention of him having a fractured left wrist in May 2012 there is no suggestion as to causation and in particular no complaint that this was caused by his father. Instead it is recorded that the first appellant said the second appellant had been slapped on his left ear by his father four years ago during an argument between the parents which had left him suffering from pain and altered hearing [50].

xxii. If the first appellant was prepared to tell the person conducting the initial accommodation health assessment about the incident that had been caused by the second appellant's father it is not plausible that she would not mention the fractured wrist if this had been caused by him much more recently [51].

xxiii. The claim by the first appellant in the medical document that the second appellant was having hearing problems caused by his father slapping him is mentioned elsewhere in the various accounts the first appellant has given of events in Pakistan [52].

xxiv. It is not credible that if the incident had taken place with such serious consequences for the second appellant, that the first appellant would not have mentioned it during her lengthy asylum interviews or in either of her written statements [53].

xxv. Related to this issue is the considerable difficulties there are for the first appellant in what she had to say in the first asylum interview about whether her husband had previously beaten the second appellant or not [54].

xxvi. The first appellant stated in that interview that before she reported the matter to the police in May 2012 her husband had not touched her children. In the next question she completely contradicted herself and said that her husband had hit the second appellant many times and thrown the third appellant on the bed [55].

xxvii. In her appeal statement the first appellant suggested that she had mentioned several times in the interview that her husband had threatened to kill them all and used to beat them many times but having read the records of interview, these show this is not true in relation to the second and third appellant so far as physical abuse is concerned [56].

xxviii. There are numerous significant contradictions between what the first appellant said in her first asylum interview and what she said in her second asylum interview as identified in the reasons for refusal letter [58]. Having considered the responses and other documentary evidence the Judge was satisfied that the matters of concern were well founded and that the response of the first appellant does not adequately deal with the adverse conclusions reached [59].

xxix. An example of such contradiction includes that relating to the account given by the first appellant as to how her husband broke the arm of the second appellant. At question

35 of the first interview the appellant claimed that her husband had hit him with a cricket bat whereas in the second interview she describes the arm being broken by her husband pulling the second appellant away from her [61]. In her response the first appellant has not deal with these contradictions and does not say how the arm was actually broken, it was considered she would be expected to have been able to find out [62]. The medical records from Pakistan, which include x-rays, record a fracture of the second appellant's wrist as a result of his falling off a slide [63].

xxx. The Judge notes that he has no difficulty with the concept of a victim of domestic violence not being willing to describe the real cause of an injury to a doctor although there is an alternative explanation namely the first appellant is not telling the truth and the second appellant did indeed fall off a slide resulting in injury [65].

xxxi. The appellant claims that on one occasion she took refuge in a women's shelter although there was nothing provided from the refuge to which it is claimed the first appellant went in order to support that aspect of her case [66].

xxxii. A further major discrepancy relates to the question of whether the first appellant did report the matter to the police in May 2012 as the appellant contradicted herself as to whether there had been one or more visits to the police station [67]. In her first interview the first appellant clearly stated she did not return to the police station after she made the initial complaint. She alleged her husband had telephoned her and threatened her and the children because she involved the police [68]. At the second interview a different picture emerged as she said the police came to the house of a friend of hers where she and the children were living and told her to go back to the police station. There she was interviewed about her complaint and assaulted [69].

xxxiii. The appellant's explanation for the discrepancy was not accepted as being plausible. There was nothing in her asylum interview to suggest she was forced to go back to the police, for instance by being arrested. In question 188 the appellant appears to suggest it was a voluntary second attendance prompted by a visit from the police to her friend's house [71].

xxxiv. Related to this major discrepancy in the first appellant’s account is the claim she made that she was raped by the police when she reported her husband to them. The reply

to question 188-189 of the second SEF interview implies the rape took place on her first visit to the police station whereas in reply to question 190 she claims the rape took place on the second visit to the police station [72].

xxxv. The appellant’s claim the rape occurred on the first visit is implausible as she states that when she went to make a complaint to the police she was accompanied by her father. What the country material says is that rape by the police is not unknown in Pakistan, but it was found implausible that such an incident would have taken place in the presence or company of the first appellant's father [74].

xxxvi. The claim at paragraph 11 of her initial statement mentioning religion in relation to the asylum claim and in paragraph 14 regarding to a road traffic accident are both elements dependent upon her being accepted as witness of truth. In relation to the second incident Pakistan has a high rate of road traffic accidents and it could have been that, without any sinister overtones [74 -75].

xxxvii. The Judge felt unable to place significant weight upon the second appellant’s statement. A seven-year-old child can be told what to say by a parent and due to considerable concerns about the truthfulness of the first appellant [79].

xxxviii. The appellant's passports are accepted as genuine valid travel documents although vignettes placed in the passport purportedly indicating entry clearance had been granted to the appellants were forged [81-82].

xxxix. The first appellant accepted the documents were forged which seriously damages the credibility of the claim as a whole. If she was able to use genuine passports to leave Pakistan the Judge was unable to see why she would not have been able to apply for and obtain genuine entry clearance vignettes from the High Commission in Islamabad [84].

xl. Giving credit to the first appellant for the limited consistency, the factors pointing towards the first appellant being a witness of truth are completely outweighed by the difficulties identified in the determination which cannot be classed as peripheral or of no consequence but rather fundamental and extensive and affecting the core of her claim [87].

xli. It was not accepted that the first appellant has shown it was reasonably likely that she has been telling the truth about events in Pakistan and that she has a subjective fear of

persecution for the reasons she has given [89]. Whilst it is accepted the appellants' are from Pakistan and the second appellant has at some stage fractured his wrist, they had not establish their case for international protection. The first appellant had not shown it was even reasonably likely that she has been the subject of domestic violence at the hands of her husband, or that either the second or third appellants had been physically abused by their father, the first appellant reported matters to the police but was raped by them, and she and the other two appellants had to flee their husband/father lived with a friend, in a women's shelter, or with her parents; or that they face any danger at the hands of her husband/father or his associates [90].

5. Having set out his core findings Judge Cope went on to consider entitlement to asylum, humanitarian protection, or under the case under the Human Rights Act in relation to which it was not found that the appellants had discharged the burden of proof upon them to the required standard to show that they were able to succeed on any of the above grounds [91 – 99]

Discussion

6. The first ground alleges Judge Cope highlighted the fact he had heard many appeals involving FIR from Pakistan to which he then proceeded to apply his judicial knowledge. The Judge is challenged for allegedly taking on the role of an expert such that his consideration and method of assessing the evidence amounted to an error of law. In his submissions Mr Rana claimed the Judge had seven pieces of evidence before him that should have been considered and that the Judge failed to take all these into proper account. In relation to the FIR he submitted Judge Cope failed to give adequate reasons to support his conclusions as it is not known how the police in Pakistan behave and he could not know what was in the mind of the police officers regarding the issue of rape.

7. In Y v SSHD [2006] EWHC 1223 the court said that a decision maker was entitled to regard a claimant's account as incredible by drawing on his own common sense and his ability as a practical and informed person to identify what was and was not plausible - albeit that he had to take care not to reject an account as implausible because it would not seem reasonable if it happened in the UK. In essence the decision maker must look through the spectacles provided by the information he has about conditions in the country in question. I find this is clearly the approach taken by Judge Cope.

8. I accept Judge Cope has considerable experience sitting in this jurisdiction during which he has seen a number of police reports or FIR from Pakistan. This statement is factually correct as Judge Cope is an experienced fee paid judge of the First-tier Tribunal. His observation

in paragraph 40 that the document is in the form of a letter written by the first appellant, in the first person, rather than being in the form of a statement taken by a police officer, which will be in the third person, is factually correct. In paragraph 41 the Judge casts doubt upon whether this document would have been created or accepted had the circumstances the appellant alleged applied, and noted deficiencies in the information the Judge would have thought would have been in such a document, if the account were true. The FIR was also mentioned in the reasons for refusal letter, at paragraph 32, but the document the appellant submitted was not translated and, although it was returned to her at interview to obtain a translation and several months had elapsed, the translation nor original were returned to UKBA for consideration. It was found that the appellant not shown this document could be relied upon. Notwithstanding the clear rejection no expert evidence was obtained relating to the validity of the FIR. I do not accept that it has been established that a finding made based upon the judicial knowledge of Judge Cope created any unfairness or amounts to a material error in relation to the decision to dismiss the appeal, as findings made in relation to this document are in the range of findings open to him on the evidence. It is not a finding made solely upon his experience which may have necessitated him advising the parties of his opinion and inviting submissions in response, but based upon a consideration of the evidence beyond his actual knowledge.

9. In relation to the reasons challenge, the reason I set out the summary of the findings at length above is to demonstrate that Judge Cope clearly considered the evidence with the degree of care required in an appeal of this nature, that of anxious scrutiny, and has given adequate reasons for the findings he made. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) Blake J) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

10. The weight to be given to the evidence as a whole was a matter for Judge Cope provided he considered the evidence with the appropriate degree of care and gave adequate reasons, which I have found in the above paragraph he did, - see SS (Sri Lanka) v SSHD [2012] EWCA Civ 155 at paragraph 21. Also in Green (Article 8 – new rules) [2013] UKUT 254 (IAC) (Blake J) the Tribunal said that "Giving weight to a factor one

way or another is for the fact finding Tribunal and the assignment of weight will rarely give rise to an error of law".

11. Mr Rana further submitted that the Judge should have taken into account the demeanour of the appellant in interview where it is recorded she became tearful. The Judge was also able to observe the appellant giving evidence and should have taken her demeanour into account then too. He submitted that her demeanour indicated she was either a good actress of her account was true and that when assessing the weight to give her evidence the Judge should have considered the element of demeanour.

12. I accept that the record indicates that the first appellant became upset when answering questions regarding the domestic violence and rape allegation but this forms part of the evidence that was clearly taken into account by the Judge. In relation to demeanour, in B (Kosovo) [2003] UKIAT 00013 the Tribunal said that, whilst a witness's demeanour is said to be a very unreliable guide to credibility, his personal appearance may in some cases form a legitimate part of the assessment of the risk (if any) that he faces. The examples given were the scarring of Tamils returning to Sri Lanka and, in this case, the non Roma like appearance of a Gorani returning to Kosovo. In MM (DRC) [2005] UKIAT 00019 (Ouseley) the Tribunal said that in general the demeanor of a witness should not be relied on but rather it is the content of the evidence as a whole which must underpin any credibility findings.

13. I find Judge Cope would have been aware of this element of the case and had the opportunity to observe the first appellant giving oral evidence before him. This is, in effect, a further challenge to the weight the Judge gave to a particular aspect of the evidence when, as stated above, that was a matter for the Judge.

14. Grounds 2 and 3 challenge the adverse credibility findings on the basis on which some were made but this only refers to findings regarding the failure to obtain evidence from the refuge and the failure to obtain legal entry clearance from the High Commission in Pakistan. The findings in relation to these matters were findings open to the Judge on the evidence and even if it was to be thought by some that they amount to legal error, a reading of the determination shows there were a considerable number of other fundamental flaws in the evidence sufficient to warrant the adverse credibility finding Judge Cope made.

15. Ground 4 alleges the Judge failed to consider the evidence with the required degree of 'anxious scrutiny' but this ground has no arguable merit as he clearly did. Ground 5 alleges inadequate and proper reasons were not given for rejecting the central core of the appellant's asylum claim notwithstanding the acceptance of some elements of the

claim were consistent, and country material. I find this ground has no arguable merit as the Judge clearly gave adequate reasons to support the findings made.

16. In summary, the appellant's challenge is based on an allegation of inadequate reasons and a challenge to the weight the Judge gave to the evidence he was asked to consider. I do not accept there was a shared burden on the Secretary of State to prove the appellant's case for her as under English law the burden is upon her to prove that she is entitled to a grant of international protection to the lower standard applied by the Judge. However eloquently the submissions have been made by Mr Rana they do not establish any material error of law in this determination. Judge Cope's findings are within the range of findings properly open to him on the evidence and have not been shown to be perverse, irrational, or contrary to the evidence. Mere disagreement does not establish legal error.

Decision

17. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

18. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed……………………………………………….
Upper Tribunal Judge Hanson

Dated the 20th September 2013