Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05182/2013
AA/05180/2013
AA/05184/2013
AA/05186/2013
AA/05188/2013

THE IMMIGRATION ACTS

Heard at Newport
On 20 March 2014

Determination sent
On 6 May 2014

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB

Between

HRG
SS
MHG
WHG
BHG

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M McGarvey of Garvey Immigration Practitioners Ltd
For the Respondent: Mr I Richards, Home Office Presenting Officer

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DETERMINATION AND REASONS

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited us to rescind the order and we continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

Background

2. The first appellant is a citizen of Pakistan who was born on 1 February 1965. The second appellant is his wife and the third, fourth and fifth appellants are their daughter and sons respectively. The second appellant arrived in the UK on 27 January 2010 with leave as a student valid until 31 May 2011. Thereafter, she applied for an extension of her leave which was granted until 12 November 2014. She returned to Pakistan on 9 November 2012 and returned on 6 December 2012 to the UK. The first appellant and their children came to the UK on 1 February 2013 as her dependents and were granted leave in line with that of the second appellant. On 18 March 2013, the first and second appellants applied for asylum and the third and fourth appellants were their dependents to that claim. On 15 May 2013, the Secretary of State refused the claims for asylum. On 20 May 2013, the Secretary of state curtailed each of the leave to remain of each appellants either as a student or a student dependent and also made against each appellant a removal decision to Pakistan by way of directions under s.47 of the Immigration, Asylum and Nationality Act 2006.

The First-tier Tribunal Decision

3. The appellants appealed to the First-tier Tribunal. In a determination dated 15 July 2012 Judge Archer dismissed their appeals on all grounds. The Judge found the appellants to be “broadly credible” and their accounts to be supported by documentary evidence (see para 34). The Judge accepted the evidence of the first appellant that he had worked for the forest department in Pakistan and had had problems since 1999 with the timber mafia. He accepted that the first appellant had been attacked with dogs in 1999 and then by an individual with an axe in 2005. He further accepted that in April 2008 four masked men had come into the family home with a gun but had fled when they were disturbed. Further, he accepted that in July 2008 the second appellant and two of the children were attacked in the street. Finally, he accepted that on 4 December 2012 the second appellant was attacked by two individuals on a motorbike when she was shot at and one bullet went through her arm. Nevertheless, the Judge went on to find that the appellant’s would be able to find a “sufficiency of state protection” from the Pakistan authorities, in particular the police if they returned to Pakistan (para 39). He did not accept that the police would be unwilling or unable to protect the

appellant and there was no objective evidence that the timber mafia are a serious threat for the police in Pakistan.

4. The Judge's reasons are set out at paras 35-39 of his determination as follows:

> "35. However, the next hurdle for the appellants is sufficiency of state protection. I accept Ms Goodfellow's submission that on the appellants' own accounts there is a sufficiency of state protection in this case. The first appellant states that he was a Forester and filed many FIRs against the timber mafia. He was attacked by his own colleagues in 2005 but the primary assailant was convicted and sentenced to 21 months imprisonment. The first appellant chose to return to his job in 2007, albeit in an office capacity. His previous officer who was involved in the attack was suspended and sent to Lahore. His new officer was very sympathetic and helpful.
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> 36. The attacks in 2008 and 2012 were clearly very frightening but there were police investigations and sympathetic media coverage in 2012. A prosecution in relation to the April 2008 attack failed because the first appellant could not identify the men whom the police charged. Many criminal prosecutions fail because of problems with identity issues and the attackers did wear masks. That does not suggest that the police were unable or unwilling to protect the family.
>
> 37. The most serious attack was the shooting on 4 December 2012 but again, there is no evidence that police are unwilling to investigate and prosecute if possible. The incident was reported in the media as a robbery and there is very little evidence that it was an assassination attempt by the timber mafia. The evidence is that the timber mafia run away when they fear confrontation with the police and there is no evidence of police collusion with the timber mafia. The main mafia person was killed as long ago as 2001. There is no objective evidence that the timber mafia are a serious threat for the police in Pakistan.
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> 38. The second appellant confirmed in oral evidence that she was pursuing the court case against the timber mafia up until 3 years ago. Her brother in law is also involved and the case is on-going. The children have attended the Al Fazal public school since 2010 although the third appellant chose to study at home and to pass her exams privately. The first appellant did not even tell the school about the 2008 incident. There is no evidence that the children cannot return to school if they return to Pakistan. The first appellant still has his job in Pakistan.
>
> 39. Overall, I find that there is a sufficiency of state protection in Pakistan and therefore the asylum claims and claims under Articles 2/3 of the Human Rights Convention must fail."

5. In addition, Judge Archer dismissed the appellants' appeals under Article 8 concluding that their removal would be proportionate and that it was in the best interests of the children, who are citizens of Pakistan, to be with their parents and to continue to be brought up in their own culture in Pakistan (see para 43).

6. Finally, Judge Archer accepted a submission made on behalf of the appellants that the Secretary of State had not offered any explanation why the appellants' leave had been curtailed since the second appellant was still a student and the remaining appellants were her dependents. He concluded as follows (at para 44):

> "44. ....There is no clear reason why the second appellant's period as a student in the UK cannot continue. That (*sic*) respondent may choose to further consider that issue."

The Appeal to the Upper Tribunal

7. The appellants sought permission to appeal on three grounds. First, the Judge had erred in finding that a sufficiency of protection was available to the appellant's in Pakistan. Secondly, the Judge had erred in assessing the best interests of the children including consideration of their right to receive education which would be disrupted in Pakistan by the hostility faced from the timber mafia. Thirdly, the Judge had arguably erred in failing to resolve the lawfulness of the curtailment of the leave of each appellant.

8. On 6 August 2013, the First-tier (Judge RC Campbell) granted the appellants permission to appeal. Whilst he was unimpressed with grounds one and two, he concluded that ground three was arguable. Thus, the appeal came before us.

Discussion

9. In his submissions before us, Mr McGarvey accepted that the Secretary of State was entitled to curtail the leave of the appellants following the refusal to grant them asylum. He no longer pursued that ground before us. Further, he did not address us on the issue of the Judge's consideration of the children's best interest. Suffice it for us to say, therefore, that we are entirely satisfied that the Judge was entitled to take the view that the children's best interests were to be with their parents in Pakistan in the absence of any evidence that their interests would be harmed on return to Pakistan.

10. Mr McGarvey relied exclusively upon the "sufficiency of protection" ground. He submitted that given the Judge's positive findings on the facts, it was not open to him to conclude that the Pakistan authorities, in particular the police, would be able or willing to provide a sufficiency of protection to the appellants. He submitted that, even though the police had prosecuted the primary assailant who attacked the first appellant in 2005, did not demonstrate that the police would be wiling to provide protection now. Mr McGarvey submitted that the second appellant had been attacked twice and, most recently on 4 December 2012 and she reasonably believed that it was by the timber mafia. Mr McGarvey, however, accepted that the appellant had left Pakistan after that attack

without seeking the protection of the police. Mr McGarvey drew our attention to the *Country of Origin Information Report* (COI) (7 December 2012) referred to at para 29 of his skeleton argument which, he submitted, demonstrated that the police in Pakistan are corrupt and largely responsible for the breakdown of law and order in the country and the steady erosion of the criminal justice system. (see para 9.03, *COI*). Further, he relied upon para 9.04 of the *COI* report which, quoting a US Department of State Report 2011, states that:

> "Frequent failure to punish abuses contributed to a climate of impunity."

11. Mr McGarvey submitted that the Judge should have concluded that the Pakistan authorities knew or ought to have known of circumstances particular to the appellants' situation and had failed to provide additional required protection (see Osman v UK [1999] 1 FLR 193 (ECtHR)).

12. The general approach to the issue of "sufficiency of protection" to be provided by a state against non-state actors is set out in the Qualification Directive (Council Directive 2004/83/EC) at Article 7.2 which states as follows:

> "Protection is generally provided when the [state] take[s] reasonable steps to prevent the persecution or suffering or serious harm, *inter alia*, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm and the applicant has access to such protection."

13. We accept, in the light of the Strasbourg Court's decision in Osman, that a reasonable level of protection is required where the state knows or ought to know of a particular risk to an individual.

14. Paragraph 9.03 of the *COI* report, quoting from the Asia Society "Report by the Independent Commission on Pakistan Police Reform" (July 2012), states:

> "The police in Pakistan are perceived to be corrupt as a matter of course, and are thought to be largely, if not solely, responsible for the breakdown of law and order in the country and for the steady erosion of the criminal justice system. Apart from its effect on law and order, police corruption is also responsible for the weak prosecution of criminals, the failure of trial prisoners to appear in court, flawed court proceedings, and an alarming high rate of acquittals. Some have argued that police corruption merely reflects the corruption of Pakistani society at large. They contend that in a sea of corruption it is impossible to create islands of honesty and integrity..."

15. As we understand it, that extract together with the single sentence in para 9.04 of the *COI* report that "frequent failure to punish abuse has contributed to a climate of impunity", is (and was before the Judge) the only background material relied upon. Whilst that does paint a somewhat bleak picture of the integrity of the Pakistan police, the fact remains that these appellants have not been treated in that way. The evidence before

the Judge, which he accepted in para 35, was that the police had in fact prosecuted the first appellant's assailant in 2005 and that had resulted in a conviction. Further, in relation to an attack in April 2008, the police again investigated and a prosecution only failed because the first appellant could not identify the men whom the police charged. Far from demonstrating an unwillingness to protect the appellant, this (like the previous prosecution) demonstrates a willingness to do so. The prosecution only failed because the first appellant was unable to give identifying information. Further, in relation to the incident in July 2008 that was reported to the police but, in her witness statement, the second appellant described the attack as being by "unknown men". It is difficult to see what more could reasonably have been done by the police to pursue the complaint. Finally in relation to the attack on 4 December 2012, this was reported to the police and a newspaper report described the incident as involving a robbery rather than an attack by (as the appellants claim) the timber mafia. In any event, two days later the second appellant came to the UK. It is not clear what further action was taken by the Pakistan police but the fact remains that the second appellant was no longer in Pakistan to assist the police in any investigation into the attack upon her.

16. The Judge accepted, at para 37 of his determination, that the timber mafia feared confrontation with the police and there was no evidence of police collusion with the timber mafia. That, in our judgment, is wholly borne out by the actions of the police in relation to the appellants' reports of attacks by the timber mafia. Even if the evidence established that corruption existed in the Pakistan police that had no impact upon the police response to the appellants' reports of attacks by the timber mafia. The Judge was entitled to find, given the appellants past circumstances, that the appellants had not established that the Pakistan police would be unwilling or unable to provide a reasonable level of protection.

17. In our judgment, on the evidence before the Judge, he was fully entitled to find that the appellants had failed to establish that the Pakistan police were unable or unwilling to offer a reasonable level of protection to the appellants from the timber mafia.

Decision

18. Consequently, for these reasons the First-tier Tribunal's decision to dismiss the appellants' appeals on all grounds did not involve the making of an error of law.

19. The First-tier Tribunal's decision to dismiss each of the appellants' appeals on all grounds stands.

20. The appellants' appeals to the Upper Tribunal are, accordingly, dismissed.

Signed

A Grubb
Judge of the Upper Tribunal

Date: