



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01913/2018

THE IMMIGRATION ACTS

Heard at Manchester CJC
On 1st November 2018

Decision & Reasons Promulgated
On 30th November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[M R]
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss J Sachdev (Solicitor)

For the Respondent: Mr A Tann (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This was an appeal against the determination of First-tier Tribunal Judge M Davies, promulgated on 23rd August 2018, following a hearing at Manchester Piccadilly on 17th August 2018. In the determination, the judge allowed the appeal of the Appellant, whereby the Respondent Secretary of State, applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, and was born on 23rd April 1989. He appealed against the decision of the Respondent Secretary of State dated 25th January 2018, refusing his claim for asylum and humanitarian protection pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The basis of the Appellant's claim is that he worked for a non-governmental organisation called "Noble Cause" in Pakistan from 2009 onwards, before arriving in the United Kingdom on 22nd June 2012, with valid leave as a Tier 4 student. This Leave was subsequently curtailed on 16th June 2004, due to the licence of the college, where the Appellant was attending, being revoked. The Appellant then submitted an EEA application which was withdrawn on 19th October 2015. On 2nd May 2016 he was encountered and arrested, whereupon he claimed asylum whilst in detention on 4th May 2016.
4. The Appellant maintained that as a result of the work he was doing for Noble Cause he received threatening telephone calls from extremists in April 2012. On 15th May 2012 whilst working home from work he was kidnapped by members of the Taliban, and held for four hours, and tortured. The Appellant then received threatening calls from his kidnappers and on 25th May 2012, he went to stay with an uncle in Islamabad, for a week, and then a sister in Faisalabad. He applied to come to the UK as a student thereafter, and was issued with a visa, arriving on 22nd June 2012.
5. All these matters are properly recounted by Judge Davies in his determination, when setting up the Respondent's case (see paragraphs 13 to 18 of the determination).

The Judge's Finding

6. At the hearing before Judge Davies, the Appellant was cross-examined by Mr Bilsland at some length, as the Home Office Presenting Officer. However, as the judge pointed out the Appellant was not cross-examined about the treatment he claims to have received in Pakistan and nor was there any cross-examination in relation to the report of the expert, Dr Mary Anderson, or the report of the country expert, which directly relates to the authenticity of the documentation produced by the Appellant (see paragraph 33 of the determination).
7. The judge took into account the fact that there was a medico-legal report and a country expert's report before him (paragraph 64). He took into account the fact that the Appellant claimed asylum only after he was encountered as an overstayer (paragraph 65). Nonetheless, the judge found that the Appellant was a truthful witness, and, bearing in mind the doctor who prepared the medico-legal report, it could not be said that the Appellant "could have fabricated such an elaborate account of the circumstances in which he left Pakistan and why he fears returning to Pakistan" (paragraph 66).

8. Applying the lower standard in asylum claims, the judge allowed the appeal.

Grounds of Application

9. The grounds of application state that the judge erred in failing to provide adequate reasons for his analysis in resolving the conflicts in the Appellant's evidence. For example paragraphs 30 to 34 of the reasons for refusal letter (which had raised several credibility issues with respect to the Appellant's claimed employment with the NGO by the name of "Noble Cause"), given that this NGO had not started in operation until eight years later on 20th April 2017, if one is to go by the date of incorporation. Furthermore, the refusal letter had drawn attention to a range of credibility issues (see paragraphs 60 to 83 of the refusal letter), which were simply not addressed by the judge.
10. On 17th September 2018, permission to appeal was granted by the Tribunal. It was stated that "exactly why the Appellant's account is accepted and why the extra report resolves these issues" where regard is had to the seven credibility issues that were raised at paragraphs 34 to 54 of the refusal letter.
11. Thereafter, a Rule 24 response was entered by those representing the Appellant (of twelve paragraphs).

Submissions

12. At the hearing before me on 1st November 2018, Mr Tann, appearing on behalf of the Respondent Secretary of State, relied upon the grounds of application. He submitted that there were two essential issues. First, the Appellant claimed to have worked for "Noble Cause" an NGO, which operated on a charitable basis, but which had not been so registered. The evidence, however, showed that this NGO, where the Appellant claimed to have started employment in 2009, did not actually come into existence until eight years later on 20th April 2017, when the NGO was actually incorporated. To this, however, Miss Sachdev, who appeared for the Appellant, pointed out that there was a confusion here between the NGO by the name of "Noble Cause", and another NGO, which had initially started off life in India, by the name of "Noble Cause Foundation", and it is the latter, which the refusal letter is confusing the reference to "Noble Cause" with. This is because the latter is the organisation with which the Appellant worked, but which has since ceased to exist, because it was unregistered. Mr Tann submitted, that he was in no position to say whether this was right or wrong, but he would simply rely upon the grounds of application, and state that the Appellant had still not been able to show that he had worked for an NGO at any point at all during his time in Pakistan, prior to coming to the UK.
13. Second, Mr Tann submitted that, even if Miss Sachdev was right in relation to the existence of "Noble Cause" as a charitable organisation, the fact still remained that there were a range of credibility issues raised in the refusal letter from paragraphs 60 to 83, which had simply not been addressed by the judge. It was not enough for him to say, that the Home Office Presenting Officer failed to cross-examine on these issues, and that being so, what the Appellant said, as supported by the medico-legal

report, would be taken at face value. That did not follow. The concerns raised in the refusal letter were basic enough and serious enough to enable the judge to draw his own conclusions without accepting at face value what the appellant was saying.

14. For her part, Miss Sachdev, took me through the contents of the expert reports, and submitted that if one looked at these reports, it was plain that the judge had ample basis upon which to allow the appeal. The judge had made it clear (at paragraph 12) that he had read and evaluated all the evidence that was before the Respondent at the date of the decision appealed against, together with the additional evidence. He had made it clear (at paragraph 33) that he found it “significant” that the cross-examination by the HOPO did not raise questions in relation to Dr Mary Anderson’s report for the Helen Bamber Foundation, or the country expert report, which directly related to the authenticity of the documents produced by the Appellant. The judge also found (at paragraph 69) that the Presenting Officer made no reference to the medico-legal report or the country expert report. The judge was entitled to conclude that the Appellant, on the lower standard had satisfied the burden of proof that was upon him.
15. In addition, Miss Sachdev submitted that the cross-examination by Mr Bilsland, the Presenting Officer on the day of the hearing, focused essentially on the Respondent’s immigration history after arriving in the United Kingdom, and the judge expressly stated that the Appellant’s credibility was not damaged as a result of such cross-examination (see paragraph 64). The plain fact was that there were no challenges to the medical or country expert reports (see paragraphs 43 to 51). All in all, therefore, this was nothing more than an attempt to re-argue the case.
16. In reply, Mr Tann submitted that the judge was not entitled to simply state that the medical expert report resolves the issues that he had to deal with. The medico-legal report was simply supporting the account that the Appellant himself gave.

Error of Law

17. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.
18. First, there is the question of the Appellant having worked for the charity by the name of “Noble Cause”. There is a considerable lack of clarity about this issue. The expert report by Dr Farhan Wali, of Bangor University, dated 16th March 2018, simply refers to there being “limited operational history regarding the Noble Cause because it no longer operates” and that one reason for this may have been that in 2013 the Pakistani government passed a Regulation requiring all NGOs to get a memorandum of understanding from the Division of Economic Affairs, with the result that 131 NGOs did not receive approval to operate and thus ceased operations. Dr Farhan Wali states that, “this may have happened to the Noble Cause NGO”. Such a conclusion is speculative, and required the judge to come to a firm decision in relation to its existence and the Appellant having worked for it.

19. This was because the history of the Appellant having made his asylum claim is significant. He arrived in the UK as a student, had the licence of his college withdrawn, made an EEA application which he subsequently withdrew, and then was apprehended working, and only when in detention did he then make an application for asylum. The expert, Dr Farhan Wali, ends his analysis of "Noble Cause" with the statement that, "During its alleged operation, the Noble Cause did not formally register its establishment with the Federal Authority of Pakistan, which may have resulted in this determination". This statement is problematic, which is not to say that Dr Farhan Wali is not speaking in the best way that he possibly could, because what it refers to is "its alleged operation", in a way that raises a question mark as to whether this charitable organisation ever existed in the first place, and what its offices were.
20. The issue is important because in the refusal letter, the point is made that the Appellant's FIR states that the incident that he complains about occurred "near Kalamaki Lma Chowk at the distance of 1 to 1½ kilometres towards south from police station". However, the refusal letter states that the Noble Cause office is located in "Mianwali, not Lahore, which is over 300 kilometres away" (paragraph 38). The question is whether this is correct or not. It was incumbent on the judge to consider whether this was so, because if it was not, then plainly the Appellant was not right in saying that he had worked for Noble Cause in the way that he attested.
21. Second, and in any event, whether or not there was a confusion between "Noble Cause" and another organisation by the name of "Noble Cause Foundation", the fact is that the judge does not deal with the credibility issues raised in the refusal letter. The Appellant stated that there were three threatening phone calls whilst he was in Pakistan, and the judge does refer to this as the case being put forward, when the Respondent described the contents of the refusal letter (at paragraph 15). However, what the refusal letter then states is that this was not credible, when the Appellant was aware that his friend had received anonymous threats and was then killed for working for an NGO, and the Appellant clearly did not consider this a hoax as he reported this to the police and was told that they could not help as the call was anonymous (paragraph 36). When there is a second threatening phone call on 15th April 2012, the Appellant states that he ignored it and continued to work, but the refusal letter suggests that this is inconsistent given that he carried on his employment following the kidnapping of colleagues and the death of a friend due to their involvement with NGOs, and this was after claiming to have received two targeted threats due to his own involvement with NGOs (paragraph 37).
22. In the same way in relation to the FIR, the Appellant states that he contacted his father after being tortured and he was taken for treatment. The FIR submitted claims had been registered with the medical report. It was not considered credible that whilst being treated in the hospital, that within some seven hours of being admitted and still being treated, a report was produced that was able to support the FIR being registered at 8.25am. This raises an issue about the authenticity of the FIR (paragraph 39). I am aware that the expert evidence is to the effect that there is a document verification report attesting to the authenticity of the FIR. However, all

this suggests is that the document was officially issued from an official source. It does not necessarily mean that the contents of the FIR are actually authentic.

23. This was an issue raised in the refusal letter itself. When the Appellant submitted a copy of the FIR, it was noted that in a letter from his father, that this was a new copy of the FIR, which was obtained on 23rd October 2017, as the original FIR had some "misprints and a clear attested copy would be required". The FIR also stated that the father was the applicant and had reported the crime. When asked in the asylum interview who filed the FIR, the Appellant said, "My father took me to the hospital. My father contacted the police and then police came to the hospital and took my statement". The refusal letter states that this is inconsistent with the FIR which states that his father was the applicant and it was his account. It was also noted that the card was written by the Appellant's father. However, half way through the FIR, the wording of the account changes to first person rather than the third person narrative as the report began (see paragraph 44).
24. Similarly, the Appellant's claim in relation to being kidnapped by the Taliban, and then released after only four hours, was held to be lacking in credibility, because the Appellant claimed that his colleagues, who had also been kidnapped at different times, had been held for months, and it was not clear why the Appellant himself, given his own involvement in the same way with charitable organisations, was released so quickly. When the matter was put to the Appellant he said, "I do not know that" (see paragraph 42 of the refusal letter).
25. That leaves the question of the medico-legal report. The refusal letter addresses Dr Anderson's assessment, and takes the view that it cannot be conclusive in its overall findings because they were not typical of or diagnostic of the Appellant's account of his torture. Whilst weight was given to the report it did not outweigh all the other findings that were detailed in the refusal letter (paragraph 52). The Appellant also is said in the medico-legal report to have not consulted his GP in the UK about the trauma he was suffering as a result of his torture, because he maintained that he was not aware that a GP in this country would be able to offer any help. However, this was considered not to be credible because in Pakistan itself, the Appellant had gone to a private doctor who had come to his home to assess him, and had prescribed him with anti-depressants (see paragraph 53).
26. All in all, therefore, these were matters that needed proper probing, because they comprised the basis of the refusal in the decision of the Respondent. There is no engagement with these matters, and whilst the shortcomings on the part of the Home Office Presenting Officer on the day of the hearing, cannot be laid at the door of the Tribunal, it is nevertheless incumbent upon the Tribunal to consider the reasons why the Respondent Secretary of State objected to the claims raised by the Appellant, and to give reasons for why those objections were not sustainable.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the First-tier Tribunal. I remake the decision

as follows. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge M Davies, pursuant to Practice Statement 7.2(a) of the Procedure Rules.

An anonymity order is made.

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 their 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 appeal of the Secretary of State is allowed.

Signed

Date

Deputy Upper Tribunal Judge Juss

23rd November 2018