H-AKM-V1

AH (Sufficiency of Protection – Sunni Extremists) Pakistan CG [2002] UKIAT 05862

IMMIGRATION APPEAL TRIBUNAL

Heard at : Field House
on : 4 October 2002
Delivered in Court

Determination Promulgated
31 December 2002
.....

Before:

Mr J Barnes - Chairman
Mr F T Jamieson

between

Appellant

and

The Secretary of State for the Home Department

Respondent

DETERMINATION AND REASONS

1. The Appellant was represented before us by Mr V McCusker, a solicitor of MCauley McCarthy and Co. The Secretary of State was represented by A Mullen, Home Office Presenting Officer.

2. The Appellant is citizen of Pakistan born on 15 June 1970 who arrived in the United Kingdom on 30 March 2001 using a valid Pakistani passport and UK visa and was given six months leave to enter the United Kingdom on the usual visiting conditions. On 7 June 2001 during the currency of that lawful entry the Appellant claimed asylum and was subsequently interviewed on behalf of the Secretary of State. His wife and his daughter who had accompanied him were treated as his dependants.

3. For the reasons set out in a letter dated 6 August 2001 the asylum application was refused. On the same day, leave having been curtailed on the basis of deception on entry, the Secretary of State gave notice of his decision for the removal of the Appellant to Pakistan following refusal of the asylum application.

4. The Appellant appealed against that decision on both asylum and human rights grounds and his appeal was heard on 8 May 2002 by an Adjudicator, Mrs S M Agnew. She dismissed his claims under the Refugee Convention and in relation to claimed breach of his human rights by removal under Articles 2, 3 and 8 of the European Convention. He now appeals with leave against that decision to us.

5. In support of his appeal he had produced a very substantial volume of documents, which in general terms were rejected by the Adjudicator for reasons which she very carefully sets out in her determination, and the first part of the very substantial grounds of appeal are directed towards what are claimed to be errors of approach on the part of the Adjudicator, in relation to her treatment of these documents.

6. At the commencement of the hearing, we put it to the parties that if, taking the Appellant's claims at their highest he could not succeed before us, then there was no necessity to analyse the lengthy grounds of appeal in relation to the documents and their treatment by the Adjudicator because it would ultimately make no difference.

7. We took the view, which was accepted by both advocates, that the approach, then, was to consider whether on the facts so taken there could arguably be a lack of sufficiency of protection for the Appellant in Pakistan. That formed the subject of an alternative and secondary finding on the part of the Adjudicator, who then went on also to consider the human rights issues.

8. The factual background of the Appellant's claim is it is accepted fairly summarised at paragraph 4 of the Adjudicator's determination. This reads as follows:

> "A Statement of Evidence Form (SEF) was completed by the Appellant which enclosed a statement and various translated documents. He stated that the basis of his claim for asylum was his religion (B4). In the statement he claimed that he was a follower of the religious group, the Imamia Organisation (IO). Whilst at university he was promoted within the IO to social secretary. The IO was opposed by various Sunni groups.
>
> He left university at the age of 27 with a law degree and began practicing as a lawyer. He was promoted by the IO to secretary general for the Azad Kashmir Region in 1998 which he held until 23 March 2000. He was in charge of training the IO members and resolving any problems which arose. After he had stepped down as secretary general he opened his own legal practice. He continued to work for the IO, doing free legal work and making plans to build a mosque in his village. The IO workers were threatened, threatening telephone calls were made, stones were thrown at their houses (B14).
>
> On 27 November 2000 2 or 3 people fired shots at the Appellant's home. The firing went on for about 10 to 15 minutes. He knew the shooting had been carried out by one of the opposing groups, Anjuman Sepai Saba, which had a head office nearby. The Appellant reported the matter to the police but they did not do anything. They had nowhere else to go and stayed on in the village living in fear until the Appellant's wife's sister invited them to London for a visit to get away from

the situation. They wanted to avoid the month of March in which Muharram took place. They came to the United Kingdom on 30 March 2001.

On 12 April 2001 the Appellant received a phone call from his parents saying that the situation in Pakistan had deteriorated and that it was not safe for them to return. Opposing groups were still looking for him, had found out he had come to the United Kingdom and had made threats to kill him if he returned".

9. The Adjudicator then went on to summarise the country background evidence before her at paragraph 11 of her determination and 12 in the following terms:

> "11. Whilst the majority of the Muslim population of Pakistan belong to the Sunni sect, some 20% are Shia and they are generally protected by the government and are well integrated into Pakistani society but there have been outbreaks of violence between the two sects. Most Sunni Muslims live peacefully with Shia Muslims (5.77 CIPU Report). Pre-emptive action has been taken by the Pakistani authorities on occasion to detain leaders of one group who they believed were contemplating violent actions against members of the other group. The Pakistani Government has been quick to respond to outbursts of sectarian violence although their action has not effectively curtailed sectarian murders (5.78). Shias are not systematically discriminated against by other elements in Pakistani society. They are not an economically disadvantaged group. They are found in all of the professions, in government and the army (5.79). However, it appears that sectarian violence by extremists of both sects is a continuing problem and whilst the anti-terrorism Act was introduced in an attempt to curb the problem, a ban was also imposed on 5 groups in January 2002 in a further attempt by the government to stop the problem. Troops were put on high alert during Moharram."
>
> 12. Police corruption is reported to be widespread and in general the police continue to commit serious abuses with impunity despite efforts to redress police excesses. Police professionalism is low. They accept money for registering cases on false charges and may torture innocent citizens"

10. The issue before us is whether, assuming that the factual basis of the Appellant's claim is credible, it can be said that he is at risk in Pakistan because there is a lack of sufficiency of state protection for him.

11. There is no suggestion on his part that he has any fear of the authorities as such. His fear is of extremist Islamic Sunni movements, such the Sepai Saba. We accept that there is a record that this sect have carried out a series of assassinations of those to whom they are opposed, including both Shia Muslims, Ahmadi's and Christians. It is the Appellant's case that the Anjuman Sepai Saba are a similar group who have sought to target him.

12. The Adjudicator came to the conclusion at paragraphs 33 to 36 of the determination that there was a sufficiency of protection in the sense set out in **Horvath v Secretary of State for the Home Department HL 6 July 2000**. She referred specifically to the

recent Tribunal decision in **Said Zahoor Ali 01/TH/3067**, promulgated on 9 January 2002 where the Tribunal had held, following **Horvath,** that there was a sufficiency of protection in that case for the Appellant against the adverse actions of extremist Sunni Muslim groups.

13. It was the burden of Mr McCusker's submissions to us that the state did not take sufficient steps to provide for the protection of its inhabitants and in particular that there was not an adequate system of witness protection support to overcome the difficulties in prosecuting the actions of the extremists where witnesses were often said to be afraid to come forward.

14. That entails a consideration of what is required to satisfy the protection test under the **Horvath** doctrine. It does not require that there should be a guarantee of safety to an individual in the state. No state can hope to provide that. It requires essentially, simply that there be an effective criminal system, operative within the state, which will usually result in criminal process being taken against those who break the law and in respect of which the state does not operate on a discriminatory basis against particular groups of which an applicant for asylum forms part.

15. The background evidence as summarised by the Adjudicator supports the clear conclusion that there is no discriminatory approach on the part of the state. On the contrary, it is quite clear that they are acutely aware of the difficulties posed by extremists of both the Sunni and Shia Muslims and that they take steps to pre-empt violence at particular times of the year or when there are threatened demonstrations which they fear will breach public order. They are, therefore, not solely concerned with dealing with such matters under criminal process but in fact in taking pre-emptive action to prevent trouble arising.

16. We bear in mind also that there is a population of some 150 million in Pakistan of whom 20 to 25 million are Shia Muslims and the recorded attacks of groups such as Sepai Saba must be looked at in terms of the very small percentage of the Shia Muslim population affected by them.

17. Mr McCusker pointed to the lack of adequate victim protection support and witness protection support as inhibiting the process, but it does not seem to us that this is a substantial attack on the existence of a sufficiency of protection within the Pakistan state. It has a functioning system of criminal law and criminal acts are prosecuted albeit that there may be difficulties which will arise in individual cases in successfully doing so. The degree of protection which the state is required to provide to its subjects is clearly illustrated in the approach of the European Court in Strasbourg to the need to have regard to the difficulties involved in policing modern societies and resources.

18. This was dealt with in some detail in the case of **Osman v UK** [1998] 29 EHRR 235, which was referred to with approval by Lord Clyde in the course of his judgement in **Horvath** as assisting and identifying the practical level of protection which Appellants are entitled to expect from their home state. To illustrate the difficulties which Appellants will meet in seeking to establish that there is a lack of sufficiency of protection for operational reasons, it is helpful to review the case of **Osman**.

19. In that case Ahmed Osman and his father, Ali, were shot at by Ahmed's former teacher who had developed an obsessional interest in him which had led to the teacher's dismissal. There were complaints to the school, the education authority and the police about his activities. He was suspected of a related theft at the school of certain files and of responsibility for graffiti referring to Ahmed. He her on three occasions sent threats which could have been seen as presaging his later attack in which Ahmed was wounded and his father Ali died. The Osman family complained of a failure by the police properly to investigate their claims over a long period or to provide appropriate action in breach of their Article 2 rights.

20. The Court accepted that the Article 2 obligations extended to "putting in place effective criminal law provisions to deter the commission of offences against the person backed up by law enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions" and that each case must be considered on its own facts. The judgment contains the following informative general passages:

> "… bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Articles 5 and 8 of the Convention.
>
> In the opinion of the court, where there is an allegation that the authorities violated their positive obligations to protect the right to life in the context of their above mentioned duty to prevent and suppress offences against the person … it must be established to our satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal act of a third party, and that they failed to take reasonable measures within the scope of their powers, which judged reasonably, might have been expected to avoid that risk."

21. There are other passages in the judgement which go on to elaborate on those basic propositions, and the decision was that there had been no breach of the human rights of the Osman family by reason of the conduct of the authorities and the police are in that particular case, even where it was know that there was a specific risk of attack which had been threatened by an identified third party.

22. Since this European judgement has specifically referred to in the course of the judgments in the House of Lords, it must be taken to assist any Tribunal in identifying the level of protection which is required under **Horvath** in order for it to be regarded as sufficient, given the fact that there is an existing and operative criminal system of justice within the country concerned.

23. Approaching matters on this basis, we are satisfied that the Appellant cannot discharge the comparatively low burden of proof upon him to show that there is no sufficiency of protection provided to him by the Pakistan state and since his fear is only of non-state actors, it follows that in our judgment, he cannot succeed in this appeal, even taking all the facts at their highest from his point of view.

24. We are therefore satisfied that the findings of the Adjudicator, in relation to the asylum and Articles 2 and 3 claims cannot be regarded as unsustainable on the evidence which was before her. And the appeal fails in this respect.

25. Mr McCusker also made submissions to us in relation to the Article 8 claim, which relied effectively upon the proposition that there would be a lack of sufficient medical care for the Appellant's wife, if returned to Pakistan with him and their children as part of his family, and which is dealt with by the Adjudicator at paragraph 47 of her determination.

26. At paragraph 40 the Adjudicator makes it clear that she has considered the legal position bearing in mind a number of decided cases including that of **Bensaid v UK [2001] INLR 325,** which clearly illustrates the very high threshold which has to be reached before any medical provision for those known to be suffering from a mental condition under current treatment might be said to lead to a potential breach either of Article 3 or of Article 8 of the European Convention by their removal.

27. The CIPU Country Assessment makes clear at paragraphs 4.72 to 4.74 that there are extensive medical facilities within Pakistan, and that in the larger cities there are well reputed hospitals with excellent facilities and well respected internationally experienced medical specialist, many of whom either trained or obtained post-graduate qualifications in the United Kingdom or the United States.

28. The Adjudicator dismissed the Article 8 claim on the basis that the decision did not amount to a disproportionate interference with the Appellant's right to respect for family and private life, taking into account the consideration of the necessity of maintenance of a regular immigration policy under Article 8(2). When we put the matter in such terms to Mr McCusker and invited him to say on what basis he submitted that the Adjudicator's findings in this respect were unsustainable, he very properly conceded that he was unable to advance any further argument to this effect before us.

29. We say that not in any sense as a criticism of Mr McCusker, who has put forward every argument which could properly be put forward on behalf of the Appellant in the course of this hearing, but simply to reflect the professionalism which he has shown throughout.

30. For the reasons which we have set out above, we are satisfied that this appeal should be dismissed.

31. The findings and conclusions of the Adjudicator are not unsustainable in relation to the approaches which we have identified above and the Appellant cannot therefore hope to succeed even were his criticisms of her findings in relation to the supporting documents produced of validity.

32. This appeal is accordingly dismissed.

J BARNES
VICE PRESIDENT