



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/00663/2016

**THE IMMIGRATION ACTS**

**Heard at Bennett House, Stoke  
On 7<sup>th</sup> August 2017**

**Decision & Reasons Promulgated  
On 10 August 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**U S  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms A Imamovic of Counsel instructed by Braitch Solicitors  
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appealed against a decision of Judge Hawden-Beal of the First-tier Tribunal (the FtT) promulgated on 22<sup>nd</sup> November 2016.
2. The Appellant claimed that he arrived in the UK with his stepmother in June or July 2012. His father and elder brother were already in the UK. The Appellant claimed that firstly his stepmother abandoned him, leaving him with his father and brother. Then his father disappeared, and his brother left him at a police station and abandoned him there. The

Appellant made an asylum claim on 2<sup>nd</sup> August 2013. There was a screening interview on that date and a substantive asylum interview on 30<sup>th</sup> September 2013. Prior to the asylum interview the Appellant submitted a witness statement dated 15<sup>th</sup> August 2013 setting out his claim. He explained that he had had no contact with his biological mother. His father came to the UK in 2002. The Appellant originates from Lahore where he went to school until 2012.

3. The Appellant lived with his stepmother in Lahore. On occasions his father returned from the UK to visit. The Appellant first visited the UK in 2009 with his stepmother and older brother. He travelled using his own passport. He and his stepmother returned to Pakistan after two or three months. His brother remained with his father in the UK.
4. The Appellant returned to the UK with his stepmother in June or July 2012. They stayed with his father in Burton-on-Trent. The Appellant attended school. After about three months he returned from school to be told that his stepmother had returned to Pakistan.
5. The Appellant and his father and brother moved houses and during the move the Appellant lost his passport.
6. Four or five months after his stepmother left, the Appellant returned from school to discover that his father had also left. He remained with his brother for about two months before his brother took him to a police station and abandoned him there. Thereafter the Appellant was taken into foster care.
7. The application for asylum and the accompanying human rights claim was refused by the Respondent on 3<sup>rd</sup> March 2015. However the Appellant was granted leave to remain as an unaccompanied asylum seeking child until 10<sup>th</sup> November 2015. The Respondent accepted his nationality, and that he had been abandoned by his family as claimed. The Respondent's records indicated that the Appellant's father came to the UK to work on a permitted basis in approximately 2002. The records confirmed that the Appellant together with his brother and stepmother had been issued a visa and it was accepted that they had travelled to the UK in 2012.
8. The Appellant's asylum claim as the member of a particular social group was not accepted, as the Respondent concluded that there was a sufficiency of protection available in Pakistan.
9. Having been granted leave to remain until 10<sup>th</sup> November 2015 the Appellant applied for further leave to remain on 9<sup>th</sup> November 2015. This application was refused on 25<sup>th</sup> April 2016. The Respondent pointed out that the Appellant's family had been traced and his father and three sisters were living in Lahore, and at the time the enquiry was made the Appellant's brother was also in Pakistan, but he had married a British national and was planning to return to the UK. Enquiries made in Pakistan confirmed that the Appellant was in the UK.

10. The Respondent therefore did not accept that the Appellant would be returned as a member of a particular social group, that being an unaccompanied child. It was not accepted that he would be at risk if returned to Pakistan as there was a sufficiency of protection. It was not accepted that his return would breach Articles 2, 3 or 8 of the 1950 Convention.
11. The Appellant appealed to the FtT, and the appeal was heard on 7<sup>th</sup> November 2016. The FtT dismissed the appeal on all grounds. The FtT rejected the Appellant's claim that he had been abandoned by his family, on the basis that the family had been located in Lahore. The Appellant, who was unrepresented at the hearing, claimed that he would be at risk if returned to Pakistan because he is gay. This claim had not been made in either of the two previous applications for leave to remain. The FtT rejected that claim, and did not accept the Appellant was gay.
12. Following dismissal of his appeal the Appellant applied for and was granted permission to appeal to the Upper Tribunal.

### **Error of Law**

13. On 23<sup>rd</sup> May 2017 I heard submissions from both parties in relation to error of law. By the time of the Upper Tribunal hearing the Appellant had secured legal representation and was represented by Ms Imamovic. It was contended that the FtT had erred in law by not providing adequate reasons for conclusion. It was conceded by the Respondent that the FtT had erred in law in considering the Appellant's claim to be abandoned, but it was not conceded the FtT had erred in rejecting the Appellant's claim to be at risk based upon his sexual orientation. I found that the FtT had materially erred in law, and I set out below the findings;

"14. As accepted by the Respondent the FtT materially erred in considering the Appellant's claim to be at risk if returned to Pakistan because he had been abandoned by his family. The FtT findings on this issue are contained in paragraph 27, the FtT finding that this aspect of the Appellant's claim 'can no longer succeed' because his family had been traced and were living in Lahore. The FtT went no further in providing reasons for concluding that the Appellant had not been abandoned. As conceded by the Respondent, this aspect of the FtT decision is set aside because of inadequacy of reasons.

15. I find no error of law contained in the conclusion reached by the FtT that the Appellant has not proved he is gay. The findings are set out in paragraphs 28-30, and they are findings which were open to the FtT to make on the evidence, and are supported by adequate reasons."

14. The hearing on 23<sup>rd</sup> May 2017 was adjourned so that the decision could be re-made by the Upper Tribunal after further evidence was given. The FtT findings in relation to the Appellant's sexuality were preserved.

## **Re-Making the Decision**

15. At the commencement of the hearing on 7<sup>th</sup> August 2017 I ascertained that I had received all documentation upon which the parties intended to rely, and that each party had served the other with any documentation upon which reliance was to be placed.
16. I had received the following documents;
  - Respondent's bundle with Annex A-I;
  - Appellant's supplementary trial bundle comprising 31 pages;
  - Expert report dated 4<sup>th</sup> August 2017 prepared by Uzma Moeen;
  - Appellant's skeleton argument.
17. Ms Imamovic informed that the Appellant did not pursue the appeal on asylum grounds. The appeal was based upon the Appellant's claim that he is entitled to humanitarian protection pursuant to paragraph 339C of the Immigration Rules, and that to return him to Pakistan would breach Article 3 of the 1950 European Convention on Human Rights (the 1950 Convention). The Appellant also contended that his appeal should be allowed by reliance upon paragraph 276ADE(1)(vi) and Article 8 outside the Immigration Rules. His Article 8 claim was based upon private life. It was not contended that he had established family life which engaged Article 8.
18. Ms Imamovic confirmed that the Appellant would be giving oral evidence as would Miss Teresa Gotham who is the Appellant's personal advisor, and who is employed by Staffordshire County Council. Both representatives indicated that they were ready to proceed and there was no application for an adjournment.

## **The Oral Evidence**

19. The Appellant gave oral evidence in English. The interpreter in Urdu remained throughout the hearing in case of difficulty but was not required.
20. The Appellant adopted the contents of his witness statement dated 15<sup>th</sup> August 2013 which has already been summarised, and his witness statement dated 1<sup>st</sup> August 2017. A brief summary of this statement confirms his abandonment by his family. He was placed with a foster family. He remained for three years with a foster family before living independently.
21. Teresa Gotham has been his personal advisor since he attained 18 years of age. She helps him manage his shopping and expenses.

22. The Appellant has no wish to join his family in Lahore. This is because they abandoned him. He has not had any contact with them since being abandoned in 2013.
23. The Appellant maintained his contention that he is gay. He contends that he would find it very difficult to integrate back into Pakistani culture, pointing out that the last time he read or wrote something in Urdu was in Pakistan. He has no experience of employment.
24. The Appellant was cross-examined. I have recorded all questions and answers in my Record of Proceedings and it is not necessary to reiterate them here. If relevant I will refer to the oral evidence when I set out my findings and conclusions. The Appellant did say that he did not wish to return to Pakistan, as he would have to start again, and he had established a life in this country in the last five years. When asked if he practised his religion he replied not much, and he had not attended a mosque since 2013.
25. Oral evidence was then given by Miss Gotham who confirmed that she had been his advisor since he turned 18. She described the Appellant as polite and well-mannered and a very nice and kind person. The Appellant wishes to be able to engage in full-time employment, and has been attending a full-time course which is a BTec carpentry and joinery course. The Appellant has lived independently, but has required ongoing support, more than average, to maintain his tenancy as he struggled to understand bills, benefits and to deal with letters. There was no cross-examination of Miss Gotham.

### **The Respondent's Oral Submissions**

26. Mr Duffy submitted that the Appellant's passport details are known to the Respondent, and therefore it would be relatively straightforward to obtain a travel document to enable him to return to Pakistan. It was not accepted that the Appellant would have difficulty in obtaining identity documentation in Pakistan, or documentation to enable him to travel to Pakistan, as had been contended in the expert report. Mr Duffy also pointed out that the Appellant would be entitled to some assistance if he returned voluntarily which would assist him in reintegration.
27. In addition the Appellant had skills that would assist him in finding employment in Pakistan. It was not accepted that the Appellant would be regarded as a potential kidnap victim if he returned to Pakistan, Mr Duffy pointing out that kidnappers would chose a victim who had a family or friends who would be willing to pay large sums of money. This was not the case with the Appellant.
28. Mr Duffy contended that the Appellant would be returned to Pakistan and would not be in a different position from any other young Pakistani citizen, who did not have family support.

## **The Appellant's Oral Submissions**

29. Ms Imamovic relied upon her skeleton argument. I was asked to find that the Appellant is a vulnerable young man, and therefore would be at risk. He has been described as a shy and introverted individual, and would have no family support network.
30. I was asked to find that he would be destitute, and Ms Imamovic pointed out that the emergency travel document referred to by Mr Duffy, is not a passport or a Pakistani identity card.
31. Kidnapping would not be the only risk to the Appellant, as there would be risks of sexual exploitation and forced labour.
32. It was submitted that the risks faced by the Appellant meant that he was entitled to humanitarian protection pursuant to paragraph 339C, and the risk of ill-treatment reached the Article 3 threshold. In the alternative Ms Imamovic submitted that the Appellant would face very significant obstacles to his integration into Pakistan, and therefore should succeed in his appeal with reference to paragraph 276ADE(1)(vi). The Appellant had been in the UK since he was 14 years of age. He had developed a private life here and had friends in this country.
33. The Appellant had not read anything in Urdu since he left Pakistan, and had not written anything in Urdu and therefore would have difficulty in reading and writing.
34. At the conclusion of oral submissions I reserved my decision.

## **My Conclusions and Reasons**

35. I have taken into account all the oral and documentary evidence placed before me, and the oral submissions made by both representatives. In considering risk on return I take into account the lower standard of proof that applies, which can be described as a reasonable degree of likelihood. The burden of proof is on the Appellant.
36. In considering Article 8, my view is that the burden of proof is a balance of probabilities. I have considered the evidence in the round and with anxious scrutiny. This is not a case where the Appellant claims that he is entitled to be granted asylum. The Appellant claims that he is entitled to be granted humanitarian protection pursuant to paragraph 339C of the Immigration Rules, which means that he must prove to a reasonable degree of likelihood, that there are substantial grounds to believe that he would face a real risk of suffering serious harm, and he is unable, or owing to such risk unwilling to avail himself of the protection of the authorities in Pakistan. Serious harm is defined in paragraph 339C as the death penalty or execution, unlawful killing, torture or inhuman or degrading treatment or punishment, or a serious and individual threat to life by reason of indiscriminate violence in situations of international or internal armed conflict.

37. With reference to Article 3 the Appellant must prove to a reasonable degree of likelihood that he would be subjected to torture or to inhuman or degrading treatment or punishment.
38. I do not find that the Appellant has discharged the burden of proof for the following reasons.
39. I do not find that the Appellant would have any undue difficulty in obtaining a national identity card, or a passport or an emergency travel document enabling him to travel to Pakistan from the UK. It is common ground that the Appellant has held a valid Pakistani passport. The Respondent has records of this. The Appellant was granted a visa enabling him to visit the UK as the dependant of a work permit holder. These records will be available to the Pakistani authorities, and the authorities will have their own records which will confirm that the Appellant has previously been issued with a valid Pakistani passport. He has travelled out of Pakistan on two occasions, and returned to Pakistan once, using that passport.
40. I do not find that the Appellant would have any difficulty if he needed to obtain his birth certificate from the local council in Lahore. The expert at paragraph 32 comments that a birth certificate can be obtained from the Local Union Council in Lahore, and a birth certificate can be obtained through a friend or third person in Pakistan.
41. The Appellant has not demonstrated that he would be at risk from indiscriminate violence in Pakistan. I do not find that any objective evidence has been submitted to prove this, neither do I find that the expert report states that the Appellant would be at risk from indiscriminate violence.
42. I accept that the Appellant has been abandoned by his family. I accept that he no longer wishes to contact them. I am satisfied that his family, with the possible exception of his brother, are living in Lahore.
43. The finding made by the FtT that the Appellant is not gay was preserved. The FtT did not err in law in reaching that conclusion. I therefore do not consider in this case, the circumstances in Pakistan that relate to an individual who is gay.
44. The Appellant does not have any relevant health difficulties. He would have no linguistic difficulties. I do not find that he would have any substantial difficulty in speaking, reading or writing Urdu. Urdu is his first language, which he used both verbally and in writing until he left Pakistan at 14 years of age.
45. I do not find that the Appellant would be at risk of kidnapping simply because he has lived in the UK since 2012. The expert at paragraph 75 refers to opportunist criminals abducting a British Asian. The Appellant is not a British Asian. The Appellant is a citizen of Pakistan who has lived the

greater part of his life in Pakistan. I do not find that the Appellant, having lived in Pakistan for fourteen years, and the UK for five years, could be described as westernised.

46. The Appellant would be entitled to assistance with reintegration on return. This is confirmed in the Respondent's refusal letter. I do not find that the Appellant would be at risk of destitution.
47. The Appellant has learned English while in the UK. I see no reason why this would not assist him in seeking employment. He has also undertaken a two year carpentry course, and again I see no reason why this would not assist him in finding employment.
48. The Appellant has established himself in the UK, where English was not his first language. He confirmed that he has been living independently for approximately eighteen months. I accept the Appellant has had advice and assistance from Miss Gotham, and I accept that there have been occasions when she has been meeting with the Appellant on a weekly basis to give him assistance in managing his affairs. She made the comment in her oral evidence that she gave the same sort of assistance to her 24 year old son when he started living independently. I do not find that the evidence confirms that the Appellant could not live independently.
49. The evidence does not indicate to a reasonable degree of likelihood, that the Appellant would not be able to secure employment and accommodation.
50. I do not find that the evidence indicates that the Appellant would be at risk of serious harm, or at risk of treatment that would breach Article 3.
51. Turning to Article 8, it is my view that the Appellant cannot rely upon paragraph 276ADE(1)(vi) because this sub-paragraph provides that the Appellant must be aged 18 years or over, at the date of application. The date that the Appellant applied for further leave to remain is 9<sup>th</sup> November 2015. At that time the Appellant was 17 years of age. The Appellant did not attain 18 years of age until 10<sup>th</sup> May 2016.
52. Even if the Appellant could rely upon paragraph 276ADE(1)(vi) I do not find that he has proved there would be very significant obstacles to his integration into Pakistan. I accept what the Appellant said in oral evidence that if returned he would have to start again. That is what he did when he came to this country. The Upper Tribunal in Treebhawon [2017] UKUT 00013 (IAC) confirmed that mere hardship, mere difficulty, mere hurdles, mere upheaval and mere inconvenience, even where multiplied, are unlikely to satisfy the test of very significant obstacles in paragraph 276ADE(1)(vi).
53. I have considered Article 8 outside the Immigration Rules, following the principles in Hesham Ali [2016] UKSC 60 by adopting a balance sheet approach.



54. I find that Article 8 is engaged, not because the Appellant has established family life in the UK, but because he has established a private life. I take into account his wish to remain in the UK.
55. However I also have to take into account the considerations in section 117B of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act). Maintenance of effective immigration control is in the public interest. It is in the public interest that a person seeking to remain in this country can speak English. The Appellant can speak English but this must be regarded as a neutral factor in the balancing exercise.
56. It is in the public interest that a person seeking to remain is financially independent. The Appellant is not financially independent.
57. I must attach little weight to a private life established when a person has been in the UK unlawfully or with a precarious immigration status. The Appellant has had a precarious immigration status in that he has only ever been granted limited leave to remain. Therefore I am bound by section 117B to attach little weight to the private life that is established.
58. I find that I must attach weight to the fact that the Appellant will not be at risk if returned to Pakistan. He is a citizen of that country. I find that he would be able to find employment and accommodation.
59. I attach weight to the fact that the Appellant cannot satisfy the requirements of the Immigration Rules in order to be granted leave to remain. I must attach weight to the need to maintain effective immigration control. I find that this weight outweighs the weight to be placed upon the wishes of the Appellant to remain in the UK, where he has lived for approximately the last five years. In conclusion, I do not find that the Respondent's decision to refuse the Appellant leave to remain, is disproportionate, and I find that the decision does not breach Article 8 of the 1950 Convention.

### **Notice of Decision**

The decision of the FtT involved the making of an error of law such that it was set aside. I make a fresh decision as follows.

The appeal is dismissed.

### **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 his 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.

Signed

Date: 8<sup>th</sup> August 2017

Deputy Upper Tribunal Judge M A Hall