



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

Appeal Number: PA/06386/2017

**THE IMMIGRATION ACTS**

**Heard at the Royal Courts of Justice**

**On 9<sup>th</sup> October 2017**

**Decision & Reasons  
Promulgated**

**On 23<sup>rd</sup> October 2017**

**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

**NAS  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr B Bundock of Counsel

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Pears promulgated on 8 August 2017, in which the Appellant's appeal against the Respondent's decision to refuse his protection and human rights claim dated 20 June 2017 was dismissed.

2. The Appellant is a national of Pakistan, born on 21 April 1981, who entered the United Kingdom in 2011 as a Tier 4 Student with leave to remain granted to 30 August 2012. A further application for leave to remain was refused. The Appellant sought asylum on 11 January 2015 and underwent a screening interview on 27 February 2015, but the claim was treated as implicitly withdrawn after the Appellant failed to attend a substantive asylum interview. On 21 April 2017, the Appellant made further representations which were considered as a fresh application asylum which he underwent a screening interview on 10 May 2017 and the substantive interview on 6 June 2017. The Appellant's protection claim is based on fear of return to Pakistan following his conversion to Christianity from being brought up as a Shia Muslim and following an incident in 2010 where he was involved in an argument in a snooker hall.
3. The Respondent refused the application on 20 June 2017 on the basis that it was not accepted that the Appellant had converted to Christianity, nor that anyone in Pakistan knew about his interest in another religion, nor that he was attacked by police officers in Pakistan in 2010, nor that any in any event such an attack was anything other than by a rogue individual. The Appellant's credibility was deemed to have been damaged pursuant to section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 on the basis of his immigration history and late claim for asylum. For these reasons the Respondent did not accept the Appellant would be at risk on return to Pakistan. The Respondent further considered the Appellant's private and family life in the United Kingdom but did not grant leave to remain on this basis, or on health grounds either.
4. Judge Pears dismissed the appeal in a decision promulgated on 8 August 2017 on all grounds. Judge Pears made adverse credibility findings against the Appellant and found that he had not converted to Christianity in 2012 or at all; nor was there any risk from an isolated incident in 2010. Although the Appellant raised issues as to private and family life under Article 8 of the European Convention on Human Rights within his appeal documentation, the appeal was not advanced on that basis, although limited findings were made as the ground was not formally expressly abandoned.

### **The appeal**

5. The Appellant appeals on two grounds. First, that the refusal to grant an adjournment of the oral hearing on 26 July 2017 was procedurally unfair and secondly, that inadequate reasons were given for the adverse findings made as to the credibility of the Appellant's conversion to Christianity.
6. Permission to appeal was granted by Judge Baker on 25 August 2017 without restriction as to the grounds of appeal, albeit the reasons given focused on the first ground of appeal only.
7. At the oral hearing, Mr Jarvis indicated at the outset that in light of the very tight timetable for this appeal, the refusal to grant an adjournment in

all of the circumstances amounted to an error of procedural fairness. For the avoidance of doubt, however, he submitted that the Respondent had significant concerns as to the underlying merit of the claim.

### **Findings and reasons**

8. On 24 July 2017, an application was made on behalf of the Appellant for adjournment of the oral hearing before the First-tier Tribunal, which was supported by a statement from the Appellant's solicitor and material showing communication with possible expert witnesses. The application for an adjournment was made on the basis that further time was required to file a medicolegal expert report and a country expert report in support of the Appellant's claim and on the basis that there were witnesses that would be willing and able to attend the oral hearing to give evidence on the Appellant's behalf, but who were out of the country on the date on which the appeal has been listed.
9. Judge Pears considered that a country expert report was not necessary in this case given that the Respondent accepted that if the Appellant was a genuine Christian convert then he would be at risk in Pakistan. As to the medicolegal expert report, this was relevant to the question of whether the Appellant was a vulnerable adult and as for witnesses, problems with their availability was something that would probably apply to a great number of cases and should be dealt with when the hearing date was fixed. The application for an adjournment was refused following consideration of factors set out in the overriding objective to deal with the case fairly and justly.
10. The chronology leading up to the listing of the oral hearing is an important consideration in the context of whether the refusal to grant adjournment was procedurally fair in this case. The Appellant was unrepresented when he made his asylum claim and has been identified as an adult at risk on 10/11 April 2017 following a Rule 35 report indicating that he may be a victim of torture. Solicitors were instructed on the Appellant's behalf on 31 May 2017 and they took steps to identify relevant experts to provide reports in relation to the claim. While this was underway, the Appellant underwent his substantive asylum interview on 6 June 2017 and his claim was refused on 20 June 2017. His appeal against that refusal was made on 4 July 2017 and the notice of hearing was sent on 18 July 2017 with a listing six working days later on 26 July 2017. I accept that in the time available and despite the efforts detailed by the Appellant's solicitors, it was not realistically possible to obtain the desired expert reports. In addition, one of the Appellant's proposed witnesses, his pastor, was on annual leave at the date of hearing and it would also be unrealistic for this to be rearranged with such short notice of a listing date for the hearing.
11. As confirmed by the Upper Tribunal in Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC), in practice the question will be whether the refusal of an adjournment deprived the affected party of his right to a fair hearing, rather than whether the refusal was reasonable. In the context of

an asylum appeal where credibility and the genuineness of conversion to Christianity was the central issue, fairness required that the Appellant was given the opportunity to obtain relevant reports and for witnesses to attend to give evidence on his behalf. That opportunity was not practically available to the Appellant in the absence of an adjournment, given the very short period of notice of a hearing date. The fact that in many cases the hearing date may not be convenient for witnesses is no answer to the specific grounds on which adjournment was sought and failed to take into account whether the refusal would result in any unfairness to the Appellant in all of the circumstances. The refusal to grant an adjournment deprived the Appellant of the right to a fair hearing and the First-tier Tribunal therefore erred in proceeding. No view is required as to the underlying merit of the claim given this is a question of procedural fairness.

12. The refusal of the application for an adjournment of the oral hearing before the First-tier Tribunal was an error of procedural fairness the reasons set out above and it is therefore necessary to set aside that decision and remit the appeal for a de novo hearing before a different First-tier Tribunal Judge. In these circumstances, it is not necessary to consider the second ground of appeal as to whether adequate reasons were given as the decision has to be set aside in any event.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

### **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.

Signed  
2017



Date 20<sup>th</sup> October

Upper Tribunal Judge Jackson