



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

Appeal Number: AA/02810/2014

THE IMMIGRATION ACTS

**Heard at : IAC Stoke
On 6 July 2015**

**Determination Promulgated
On 13 July 2015**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SULTAN E ROME

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Draycott, instructed by Paragon Law Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Pakistan born on 2 January 1981. He arrived in the United Kingdom on 20 May 2011, with a student visa valid until 15 October 2012. His visa was subsequently curtailed on 17 May 2012. On 26 October 2012 he requested an appointment at the Asylum Screening Unit and on 19 November 2012 he attended a screening interview and claimed asylum. He was interviewed about his claim on 14 March 2013. His claim was refused on 4 April 2014. On 11 April 2014 a decision was made to remove him from the United Kingdom.

2. The appellant appealed against that decision and his appeal was heard before the First-tier Tribunal on 29 July 2014 and dismissed. Permission to

appeal to the Upper Tribunal was initially refused but was granted on a renewed application to the Upper Tribunal on 5 December 2014.

The Appellant's Case

3. The basis of the appellant's claim is that his life is at risk in Pakistan. He is from the Mardan district in northern Pakistan. His father was an undercover Deputy Superintendent of police who retired in 1998 and died in 2002 of a brain haemorrhage. There were people in his village who hated his father because he was a police officer. One of those people was a man called Ikram, known as Chutakhan, who was a powerful criminal gang leader who kidnapped and killed people for money, who supported the Taliban financially in the Swat region and who had men from Afghanistan under his command. The police would accept bribes from Chutakhan because they were scared not to. The appellant started working for an NGO in 2009. He worked in Besham which was not a safe place as it was close to the Malakand agency and to the Swat district. In early 2010 he began having problem because of his father's profession and received telephone threats. On 5 January 2010 he was kidnapped by armed men when driving to work and money was demanded from his family as ransom. His cousin Asif went to report his kidnap to the police and the police contacted his kidnappers who then called Asif and told him to stop making the report or he would be killed. The kidnappers talked about how his father had arrested members of their gang and they were angry. Asif paid the ransom and eventually he was released, after 25 to 26 days of detention, together with his driver.

4. The appellant did not report the kidnapping to the police. However after a few months he heard rumours from local people that Chutakhan was responsible for his kidnapping and he then told an undercover policeman, a Deputy Superintendent, who had been a friend of his father. Chutakhan was then arrested in August 2010, three months after his release, and was killed when trying to escape. Threatening telephone calls were made to the appellant's home as he was suspected of being involved in Chutakhan's capture and he believed that Chutakhan's family wanted revenge. He moved to Lahore but did not feel safe there as there was fighting in the street and a suicide bomb. He then moved to Islamabad but did not feel safe as his car was stolen. He believed that that was by criminals who knew about his kidnapping. He returned to Mardan and remained there until he left the country. He managed to organise a student visa for the United Kingdom and borrowed money from a loan-shark in Pakistan. After his arrival in the United Kingdom, in June 2013, his mother and wife's home was invaded by farmers who broke in demanding to see him and claimed that they had previously kidnapped him. His wife filed an FIR report and his mother requested police protection as a result.

5. The respondent considered the appellant's account of his father's role in the police to be vague. His account of being kidnapped was not accepted, owing to discrepancies in his evidence. No weight was placed upon a newspaper report of the kidnapping since it was dated two days after the event and it was not considered credible that the newspaper would be aware of the details in such a short space of time. His account of reporting Chutakhan to the

police was not accepted as it was discrepant and, likewise, it was considered that there were inconsistencies in his evidence in relation to Chutakhan's arrest. His account of his wife and mother being threatened two years after he came to the United Kingdom was not accepted. The appellant's delay in claiming asylum was considered to further undermine his credibility. The respondent did not accept the appellant's account and considered that in any event there was a sufficiency of protection available to him and that he could also safely relocate to another part of Pakistan.

6. The appellant appealed that decision to the First-tier Tribunal and his appeal was heard before First-tier Tribunal Judge Colyer on 29 July 2014. Judge Colyer accepted that the appellant's father was a police officer but considered the evidence as to his exact role to be limited. He did not find it credible that persons wished to persecute the appellant and his family because of his father's actions, given the lack of activity since his father's retirement in 1998 and death in 2002 and until 2010. The judge accepted that the appellant worked for an NGO as a civil engineer from the end of 2009. He considered that the appellant's account of the kidnapping was consistent with the background information and consistent with the actions of a criminal gang wishing to extort money from his family or employers. He accepted that a ransom had been paid for his release. He did not accept that he would be blamed for Chutakhan's arrest or that he would be sought out by the criminal gang, given that there was no indication to the kidnappers that he had identified them to the police. He did not accept that he had received threatening telephone calls but found in any event that there would be a sufficiency of protection available to him from the police and that he could also relocate to another part of Pakistan. He did not accept that, even if his account were true, the gang members would want to seek him out in other parts of Pakistan and did not accept that it would be unduly harsh to expect him to relocate, as he had done previously. He found that the appellant's removal would not breach his human rights under Article 3 or 8 of the ECHR.

7. Permission to appeal was sought by the appellant on several grounds: (1) that the judge had erred in finding that there was only limited evidence about the appellant's father's role in the police and that his rejection of the appellant's assertion that his father's position was a factor in his kidnapping failed to take account of the expert evidence; (2) that the judge's finding that it was not plausible that the appellant would have reported Chutakhan's involvement in his kidnapping on no more than a rumour was inconsistent with the expert report; (3) that the judge failed to take past persecution into account in considering risk on return, in breach of Article 4(4) of the Qualification Directive; (4) that the judge failed to engage with the expert report in relation to sufficiency of protection and erred by rejecting the evidence of reports made by his wife and mother to the police in relation to threats received; (5) that the judge erred in his approach to internal relocation and failed to engage with the expert evidence in that regard; and (6) that the judge erred in his assessment of the medical evidence and by failing to consider the risk of suicide.

8. Permission to appeal was initially refused, but was subsequently granted by Upper Tribunal Judge Freeman, essentially on the grounds relating to internal relocation.

Hearing and submissions

9. I heard submissions on the error of law.

10. Mr Draycott's submissions were extremely lengthy and expanded upon the grounds of appeal. In summary they are as follows. He submitted that the judge had failed to have regard to the expert report in making findings on the plausibility of the kidnapping being related to his father's role in the police. The risk to the appellant escalated after Chutakhan was killed. The judge erred in rejecting the appellant's claim to have reported the kidnapping to his father's colleague in the police and in requiring there to be corroboration. With regard to future risk, the judge was wrong to have considered that the kidnappers would have no further interest in the appellant on the basis that the family's money had already been spent on the first ransom, when the family retained significant assets and the appellant therefore remained a target. The judge failed to engage with the appellant's ill-treatment during his captivity and failed to consider the relevance of past persecution on future risk, contrary to the terms of Article 4(4) of the Directive. With regard to sufficiency of protection, the judge had erred by considering the matter only in general terms without a consideration of the individual circumstances and individual risk and had failed to consider the findings of the expert in her report. The judge had erred by rejecting the documentary evidence of the appellant's mother's application for protection. As regards internal relocation, the judge, in relying upon previous periods of time spent in other parts of Pakistan with no problems, had failed to recognise that the risk crystallised when Chutakhan was arrested and killed and to consider that there had therefore only been a short period of time before his departure the country. The judge had failed to engage with the expert report in regard to the difficulties faced in seeking to relocate and had failed to consider the appellant's psychiatric state, both in relation to the risk of suicide and Article 3, and with regard to the reasonableness of relocation.

11. Mr McVeety submitted that the grounds were simply a disagreement with the judge's findings. Whilst the grounds complained about the judge's failure to engage with the expert report, it was significant that the expert report was completely silent on the question of the length of time between the appellant's father's death and the kidnapping. The judge was therefore entitled to conclude that the kidnapping was not connected to his father's role but was linked instead to money and to his job with the NGO. The judge was entitled to find it lacking in credibility that the appellant would have approached the police on no more than a rumour that Chutakhan was involved in his kidnapping. He was entitled to place the weight that he did about the documents relating to his mother's request for protection. Article 4(4) was not relevant to the appellant's case since the previous incident was a criminal act and was not an indicator of future risk. The judge was entitled to find that protection was available from the police on the basis of the claim that they had previously arrested Chutakhan on no more than a rumour and was entitled to find that there was

no reason for the appellant to be suspected as having been behind his arrest. The judge did engage with the expert report on internal relocation and was entitled to conclude as he did. The medical evidence did not support a claim that the appellant was a suicide risk.

12. In response Mr Draycott reiterated his previous submissions.

Consideration and findings.

13. I find myself in agreement with Mr McVeety, that the appellant's grounds, whilst extremely lengthy, are in effect no more than a disagreement with the judge's conclusions and an attempt to re-argue the case. Contrary to the assertions in the grounds, the judge plainly engaged with the expert report in all respects and provided cogent reasons for departing from Dr Holden's conclusions when he did. Indeed it is plain that he was in fact assisted by the report in accepting the appellant's account of the kidnapping, on the basis that it was consistent with the country information relevant to that area of Pakistan.

14. The first ground asserts that the judge failed to engage with paragraph 18 of Dr Holden's report where she accepted that the appellant's father's former status as a police officer would be a relevant factor in the appellant being a target of the criminal gang. However, as Mr McVeety submitted, the point being made by the judge was that the substantial passage of time since the appellant's father's retirement and death undermined the credibility of his claim that his father's position was a reason for him being targeted, and the expert report was notably silent on that point. Accordingly the judge was perfectly entitled to conclude that the kidnapping was a criminal act carried out for financial gain and there was no reason for the judge to consider that that gave rise to any presumption of future risk pursuant to Article 4(4) of the Directive.

15. The judge was, however, entitled to conclude, for the reasons properly given, that there was no evidence that Chutakhan was responsible for the kidnapping or that even if he was, that the appellant would be held responsible in any way for Chutakhan's arrest and death. He was entitled to reject the appellant's claim that Chutakhan's arrest was instigated by a complaint made by himself to the police and he gave several reasons for so doing. At paragraph 58 he did not accept that the police would arrest Chutakhan merely on the basis of rumours he had heard from local people that he was responsible for his kidnapping. The grounds challenge his findings in that respect and assert that they are inconsistent with the expert's observations at paragraph 21 of her report. I do not agree that any such inconsistency arises, but in any event note that further, cogent, reasons were given by the judge for rejecting the appellant's claim to have reported Chutakhan's involvement to his father's colleague in the police, where he noted and endorsed, at paragraph 64, the respondent's rejection of the account of Chutakhan's arrest at paragraphs 34 to 37 of the refusal letter on the basis of inconsistencies in the appellant's evidence in that regard.

16. Further, at paragraphs 64, 66 and 77, the judge noted that there were numerous victims of Chutakhan's crimes, which included burglary, murder and kidnapping, and considered that there was no evidence to link the appellant to

Chutakhan's arrest or to consider that he was any more responsible than the families of the many other victims, given in particular that he had not made any formal complaint to the police and he had not provided any evidence against him. There was nothing in those findings that was contradicted by the expert's report and indeed that was not a matter specifically addressed by Dr Holden.

17. It was the appellant's claim that the continuing interest in him by Chutrakha's family and associates was evidenced by threatening telephone calls made to his home and by the attack on his home in April 2013 and the consequential application by his wife and mother for police protection. However the judge gave cogent reasons for rejecting that claim. He addressed the threatening telephone calls at paragraph 67 of his decision, providing detailed reasons for concluding that the appellant had simply invented that account. Although he did not specifically refer to the FIR relating to the attack on his home, he rejected the account of his wife and mother approaching the police for protection, concluding that the documentary evidence in that regard was self-serving. The grounds challenge the judge's rejection of the evidence on that basis, but it is plain that he considered the evidence in the round, and having given other cogent reasons for concluding that there was no credible reason why the criminal gang would have reason to seek the appellant out, was entitled to accord to it the weight that he did.

18. The grounds go on to criticise the judge for finding that there would be a sufficiency of protection available to the appellant and assert that he failed to engage with the expert report in that regard. Reference is made in the grounds in particular to the expert's view at paragraph 26 of her report, whereby Dr Holden opines that there would be no sufficiency of protection available to the appellant. However it seems to me that that paragraph was premised upon an understanding that the appellant would be sought out by the criminal gang and others associated with Chutakhan, whereas the judge disbelieved his account of being pursued by Chutakhan's family and associates. Indeed that was his response to Dr Holden's conclusions on internal relocation, at paragraph 93 of his decision.

19. Turning in more detail to the judge's findings on internal relocation, it is of note that permission was granted in the appellant's application to the Upper Tribunal on this particular matter. The grant was on the basis that the judge had arguably failed to deal with Dr Holden's report, but that is manifestly not the case. On the contrary, the judge gave detailed consideration to her report in that regard, at paragraphs 92 to 95. Aside from the point mentioned above, that the expert's conclusions were based upon an acceptance of the appellant being targeted by the criminal gang, the judge also observed that her report did not address the fact that he had managed previously to relocate within Pakistan without any problems. It was Mr Draycott's submission that the previous period of internal relocation was distinguishable on two bases. Firstly, that the risk to the appellant crystallised only after the death of Chutrakhan which meant that the relevant period prior to his departure from Pakistan was much shorter than that considered by the judge. Secondly that a more permanent relocation would entail the need for a National Identity Card (NIC) in order to access employment and health and other services and that an

application for such a document would alert the criminal gangs to his presence and thus put him in danger. However both of those factors are properly addressed by the judge's conclusion that the appellant's account of being sought out by the criminal gang was not a credible one.

20. Dr Holden's conclusions on the difficulties of internal relocation were that criminal gangs, having extensive networks and access to records through corrupt police officials, would be able to find the appellant throughout Pakistan. However her views address only ability and not intent and there is nothing in her report to contradict or undermine the judge's conclusion that the appellant was not being sought out by the criminal gang. Neither is there anything in her report to undermine the judge's finding, at paragraph 97, that even if the appellant's claim were true, there was no evidence that the people he feared had any power influence or intelligence outside of the local district. Dr Holden's report referred to criminal gangs in general but made no mention of the specific source of the appellant's fear, namely Chutrakhan's family and criminal associates, and provided no support for a claim that they were a powerful and resourceful network that would be able to access information and reach out to all areas of Pakistan. Accordingly the judge was entitled to conclude that the appellant would be able to relocate to another part of Pakistan, in terms of risk.

21. Turning next to the question of the reasonableness of relocation, Mr Draycott submitted that the judge failed to take into account the medical evidence which indicated that the appellant's removal would be in breach of Article 3 and would also render relocation unduly harsh. However the judge gave detailed consideration to the medical evidence and found, for reasons cogently given, that there was no reason why appropriate medication and treatment could not be obtained by the appellant in Pakistan. I have already dealt with the submission that an application for an NIC card, which was a necessary prerequisite for accessing medical treatment, would put the appellant at risk. Absent the risk, there is no suggestion that the appellant could not obtain a NIC and thus access relevant services. The judge is criticised for having failed to consider the question of suicide risk and the guidance in J v Secretary of State for the Home Department [2005] EWCA Civ 629. However, as Mr McVeety submitted, the evidence before the judge did not support a claim that the appellant was a suicide risk.

22. The judge considered, at paragraph 110, the report from Dr Thakur at Medicare, together with the appellant's medication and a letter from Dr S Jaffer dated 27 March 2014 giving details of his mental condition. He noted the psychiatric history given in that letter and the reference to previous incidents of self-harm and an overdose. The doctor concluded that there was no current suicide intent and that the appellant was suffering from a moderate depressive episode, which his report indicated was due largely to his circumstances in the United Kingdom and separation from his family. The judge is said to have erred by finding that there was no up-to-date medical report, when in fact he had before him a very recent letter dated 26 July 2014. However that letter does no more than confirm, in very brief terms, the conclusions in the previous letter and it is clear that what the judge meant, and in fact said, was that there was no recent report indicating that he was suffering from a condition that would require him to remain in the United Kingdom.

23. Accordingly the judge gave full and proper consideration to the medical evidence and the issues arising in relation to the appellant's health and there was nothing in that evidence that undermined in any way his conclusions on internal relocation or Articles 3 and 8 of the ECHR.

24. For all of those reasons I find that the judge made no errors of law in his decision. He gave full and careful consideration to all the evidence and provided cogent reasons for making the findings that he did. He was entitled, on the evidence before him, to conclude that the appellant's removal would not put him at risk on return and would not give rise to a breach of his human rights.

DECISION

25. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed

Date

Upper Tribunal Judge Kebede