



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

Appeal Number: PA/05720/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 19th September 2018**

**Decision & Reasons
Promulgated
on 03 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MR T A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss S Anzani, Counsel, instructed by Goodfellows Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

The Appellant, a citizen of Pakistan, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 20th April 2018 to refuse his application for asylum in the UK. First-tier Tribunal Judge Hembrough dismissed the appeal in a decision promulgated on 22nd June 2018. The Appellant now appeals with permission to this Tribunal, granted by Judge Hollingworth on 1st August 2018.

The background to this appeal is that the Appellant claims to have entered the UK clandestinely on 13th September 1993. On 12th October 2013 he applied for

indefinite leave to remain in the UK on the basis of his long residence. However, that application was refused on 30th March 2014 as the Respondent was not satisfied that the Appellant had entered the UK on the date claimed or that he had been continuously resident for more than twenty years, further, the provenance of documents submitted by the Appellant in support of his application were not accepted. The Appellant lodged an appeal against that decision which he later withdrew on 29th October 2014. On 8th November 2014 he applied for an EEA residence card as an extended family member. That application was refused on 17th November 2014. On 23rd January 2015 he applied for leave to remain on human rights grounds of appeal but that application was withdrawn on 30th March 2015. On 16th October 2015 he applied for an EEA derivative residence card and that application was refused on 19th January 2016. On 23rd October 2017 he claimed asylum.

The basis of his claim for asylum is that, as a result of his opposition to jihadist groups in Pakistan, he was threatened on several occasions and in December 1991 he was beaten by members of a jihadist group and sustained significant injuries. He claims that he was detained, beaten and sexually abused over a period of three days. He claims that he was thrown from a moving vehicle onto the road and suffered serious head injuries and stayed in hospital for about thirteen months and recuperated at home for a further six months before leaving Pakistan. He says that he has been left with facial scarring as a result of his injuries. He claims that since he left jihadist elements had been making enquiries about his whereabouts and issuing threats against him and that in 2017 they pinned a message to the family home, stating that he should contact Jamat u Dawa Choburji Lahore immediately or face serious consequences. He claims that he fears persecution at the hands of Jamat u Dawa or the Pakistani government if returned to Pakistan.

The First-tier Tribunal Judge considered that the Appellant's account was vague. However, the judge accepted that the Appellant suffered very serious and life-threatening injuries, in particular to his head and spine, in December 1991 for which he was hospitalised for a substantial period [57]. He accepted that the Appellant sustained the injuries in the manner described by him as a result of a quarrel which may have had its genesis in his opposition to the recruitment of young men to fight in Kashmir [61]. However, the judge considered that there was no reliable evidence that would point towards the involvement of the Pakistani government in either of his alleged kidnappings and did not accept that the Appellant is at risk of persecution at the hands of the Pakistani government on account of his political opinions or at all. The judge was not satisfied either that the Appellant would continue to be of interest to jihadist groups or Jamat u Dawa after 25 years [62]. The judge specifically rejected the Appellant's claim that Jihadists had been attending his father's home two or three times a year. The judge rejected the Appellant's evidence of a photograph and message claiming to be from Jamat u Dawa pinned to his father's door and found that it was a fabrication with the aim of bolstering his claim. At any event, the judge considered that, even if the Appellant were at risk in his home area, it was reasonable for him to internally relocate within Pakistan [66].

The judge went on to consider the appeal on human rights grounds considering the Appellant's length of residence in the UK. The judge said at paragraph 69 that he was unable to make any finding in relation to the date upon which the Appellant entered the UK, noting that there were no documents to establish his presence in the UK prior to October 2013. The judge assessed the evidence of the witnesses. The judge considered that the Appellant "has lived in the UK for a substantial period of time" [72] but was not satisfied that he had been living here for twenty years so as to meet the requirements of paragraph 276ADE(1) (iii). The judge was not satisfied that there were very substantial obstacles to the Appellant's integration on return to Pakistan where his father, with whom he has regular contact, continues to reside. The judge dismissed the appeal on asylum and humanitarian protection and on human rights grounds with reference to Articles 2, 3 and 8 of the ECHR.

Error of law

The Grounds of Appeal put forward five grounds. The first ground contends that the judge erred in his assessment of the credibility of the Appellant and the witnesses. It is contended that the judge did not take into account that the Appellant's memory may affect his recall as to what happened in 1991. However, the judge specifically took that into account at paragraph 59 of the decision.

It is contended that, in considering elements of the evidence of the witnesses, the judge reached an irrational conclusion. I do not accept that submission. The judge set out the evidence from the witnesses at paragraphs 45 to 47 of the decision. The judge assessed this evidence at paragraphs 70 and 71 where he said:-

"70. Two of his witnesses, Messrs Haque and Ashraq claimed to have known him for in excess of twenty years and whilst both appeared credible as I observed at the hearing in my experience people are notoriously bad at remembering dates. Mr Haque could not even remember the dates of his marriage or divorce. In his witness statement he said that he had known the Appellant for 21 years. His oral evidence was that they had met in 1995 which is 23 years. The Appellant said that they had met in "maybe 1996 or 1997". Neither was able to relate their meeting to a significant personal or historical event for example the 1996 Atlanta Olympic Games or the like."

71. The Appellant said that he met Mr Ashraq in 1998 or 1999. Mr Ashraq said 1998 but when pressed he was unable to relate their meeting to any significant event referring to a car whose plate he was unable to recall and a redundancy process which apparently took five years to complete."

Miss Anzani submitted at the hearing that the judge made no express finding in relation to the evidence of the witnesses. She submitted that it seems that the judge accepted that they were truthful witnesses. She noted that Mr Haque said that he knew the Appellant from around 1995, although she accepted that

this was not precise, and that the judge concluded that he accepted that the Appellant has lived in the UK for “a substantial period of time” at paragraph 72 of the decision. In her submission the judge made no clear findings as to how long the Appellant had lived in the UK. She submitted that this amounts to a material error because the judge has given insufficient reasons, particularly in light of the fact that the witnesses were found to be credible. In her submission the findings were incomplete. Miss Anzani submitted that there was too much left undetermined by the judge’s decision and that the reasoning was not sufficiently clear.

I do not accept this submission. In my view the judge pointed out that there was no documentary evidence before October 2013 and made a clear finding that he could not rely on the evidence of the witnesses as to when they first met the Appellant and therefore made a finding open to him that the Appellant had been in the UK for a substantial period of time which was less than twenty years. It is clear to me that the judge considered that, whilst the two witnesses appeared credible, their recall as to the period over which they had known the Appellant was not reliable and their evidence did not withstand detailed scrutiny. It is clear that the judge did not consider their evidence established what they were asserting to the appropriate standard. The judge found that there was no documentary evidence of the Appellant’s residence in the UK before October 2013. I find that these were findings open to the judge on the basis of the evidence before him and that these are sufficiently clear. On the evidence before him the judge could not make a clear finding as to how long the Appellant had resided in the UK. The judge was entitled to find that the evidence was inadequate. This ground discloses no material error.

The second ground contends that the judge erred in failing to take into account the Appellant’s subjective fear and his prospect of internal relocation within Pakistan and that the judge failed to make any findings as to whether internal relocation would be unduly harsh for this Appellant. At paragraph 66 the judge dealt with internal relocation as an alternative finding after finding that the Appellant had not established that he had a well-founded fear of persecution in Pakistan as a result of any risk from the Pakistani authorities or Jihadists in his own area. As set out below, I find that this finding was open to him on the evidence. Accordingly, even if there was an error in the approach to internal relocation, which I do not accept, any error was not material in light of the fact that the primary findings stand. In any event I find that there was no error in the judge’s approach to internal relocation. In considering whether it would be unduly harsh the judge took into account the Appellant’s continuing health issues, for which he had recently sought treatment in the UK. I note that the only evidence of medical treatment in the UK indicates that he had not sought any medical assistance until November 2017. The judge took into account that the Appellant's father is resident in Pakistan and considered that there was no reason why he could not internally relocate within Pakistan. I find that these were findings open to the judge and sustainable on the evidence.

The third ground contends that the judge erred in reaching a conclusion unsupported by the evidence. It is contended in the grounds that the medical evidence points to a sustained injury he suffered as past persecution from

Jamat u Dawa. It is contended that the judge “fails to set out adequate reasons for rejecting that the applicant suffered persecution and sustained life threatening injury from Jawad Ud Dawa which is in contradiction to the fact if returned he would face persecution from the Jihadist group and the state could not and would not protect him”. It is difficult to understand what this ground means, given that the judge found that the Appellant had sustained the injuries in the way claimed. The judge also made very clear findings that there was insufficient evidence that the Appellant would be of interest to Jihadist groups after 25 years and had rejected the evidence of ongoing interest. In my view the grounds do not point to any evidence ignored by the judge in making this finding and I find that this finding was open to the judge on the evidence.

The fourth ground contends that the judge failed to take into account relevant evidence in relation to ongoing interest by Jihadists. However, in my view the judge made clear findings in relation to this matter at paragraphs 63, 64 and 65 of the decision. The judge noted that the Appellant remained in Pakistan for two years after the attack without further harm. He rejected the Appellant's claim that Jihadists had been attending his father's home 2 or 3 times a year since his departure to make inquiries about him and rejected the claim that the Jihadists had left a photograph and message for the Appellant on his father's door. These conclusions were open to the judge on the evidence for the reasons given.

It is contended in the fifth ground that the judge failed to consider Article 8 outside of the Immigration Rules and failed to set out clear reasons for not applying the five steps set out in the decision in **R v SSHD ex parte Razgar [2004] UKHL 27**. However, the judge considered the human rights provisions from [72] to [77] where he took into the Appellant's residence in the UK. Miss Anzani submitted that there was no adequate consideration of proportionality in light of the substantial amount of time the Appellant has spent in the UK. However, I find that the judge was unable to make a definitive finding as to how long the Appellant has been in the UK but took his claim at the highest by considering that he had been in the UK for a substantial period of time in light of the confused evidence in relation to this issue. It is clear that the judge took this into account in his consideration at paragraph 72.

The judge then considered the provisions of paragraph 276ADE. Miss Anzani submitted that the judge's finding that there were no insurmountable obstacles to returning to Pakistan was not sufficiently reasoned in light of the fact that the Appellant had injuries sustained in the manner described by him. However the judge had already made clear findings that there was no ongoing risk to the Appellant. Miss Anzani referred to the Appellant's ongoing medical issues and issues in relation to depression and high blood pressure. However, the medical evidence indicates that the Appellant had not sought medical treatment throughout his time in the UK until November 2017 (according to the letter of 29th May 2018 from Tooting South Medical Centre). This does not indicate that he has had ongoing medical issues such as to be a bar to his removal to Pakistan. The evidence shows that the Appellant had received medical treatment in Pakistan after his injuries in 1991. There is no reason to

believe that such medical treatment would not be available to him upon return to Pakistan now.

The judge went on to look at the public interest considerations at Section 117 of the 2002 Act. The judge went on to consider whether there were other factors including the fact that the Appellant has many friends in the UK and took into account the oral evidence and the letters of support at paragraph 75. The judge took into account at paragraph 76 that there was no evidence that the Appellant spoke English to the required standard or that he had passed the Life in the UK test. The judge took into account the fact that the Appellant had been accessing specialist medical treatment to which he is not entitled. The judge considered all of these factors before concluding that the Appellant's removal was proportionate to the legitimate aim. These were all findings open to the judge on the basis of the evidence and the judge undertook a legitimate proportionality assessment based on the evidence.

Notice of Decision

The decision of the First-tier Tribunal Judge does not contain a material error of law.

The decision of the First-tier Tribunal will stand.

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: 28th September 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 28th September 2018

Deputy Upper Tribunal Judge Grimes