



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06346/2017

THE IMMIGRATION ACTS

Heard at Field House
On 13 February 2018

Decision & Reasons Promulgated
On 16 March 2018

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

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

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Noor, Counsel, instructed by Deo Volente Solicitors LLP
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant a national of Pakistan has permission to challenge the decision of Judge Hussain of the First-tier Tribunal (FtT) dismissing his appeal on asylum, humanitarian protection and human rights grounds.
2. The appellant's grounds as amplified by Mr Noor were essentially four-handed. It is contended that the judge erred

- (i) in misapplying s.8 of the IA (TC)A 2004;
 - (ii) in wrongly treating relevant matters as inconsistencies that were not;
 - (iii) in failing to take into account relevant documents, in particular a letter from the appellant's cousin (who is a senator), from a security adviser to the senator and a political agent; and
 - (iv) in making findings contradictory to background information.
3. I would state at the outset that I am unimpressed by what I have numbered ground (ii). It was not pleaded in the written grounds and the points made by Mr Noor under (ii) amount in my judgment to disagreements with the judge's findings of fact. In the event it is unnecessary for me to say more about ground (ii) because I am persuaded that grounds (i) and (ii) identify material errors of law.
4. As regards ground (i), although the judge at paragraph 27 directed himself correctly on the limited scope of s.8 (noting that it was "not determinative of the overall credibility of the appellant's claim"), he appears to have treated the eighteen months' delay in claiming asylum as a matter that was intrinsically not just damaging to his credibility but "severely damag[ing]". That assumption is inconsistent with the authority of **JT (Cameroon) [2008] EWCA Civ 878** – a case which also involved a claimant in respect of whom the Tribunal had said that "very serious damage has been sustained to [the claimant's] credibility by virtue of the operation of Section 8" ([8]). The Court of Appeal concluded in that case that as a result of this approach "there is a real risk that Section 8 matters were given a status and a compartment of their own ...".
5. I also consider erroneous the failure by the judge to give any evaluation of the aforementioned documentary evidence. Like the respondent, the judge was prepared to accept that the appellant was the son of an ex-senator of the Pakistan parliament named Malik Abdul Wahid. The appellant relied, inter alia, on: a letter from Senator Hilal-ur-Rehman dated September 2016 confirming that the appellant belongs to a reputable political family who would be a target if he returned; a June 2017 letter from the same senator to various agencies and bodies requesting special security measures; and a letter from Political Agent Mohmand Agency, May 2017, advising that the militants were planning to carry out terrorist attacks on Senator Jipap Ur Rehman, Malik Bilal Rehman, Shell PSO and other oil depots and security force personnel and that security precautions were in order. Potentially this evidence was probative of the risk facing the appellant in his home area as a member of a prominent political family. Of these documents the judge makes no mention. It was incumbent on him to address them and, if he did not find them probative, to state his reasons. His failure to do so renders his assessment of the evidence unsafe.
6. I will not address ground (iv) except insofar as it seeks to argue that the judge erred in his treatment of the issue of internal relocation.
7. Ms Isherwood highlighted the fact that the judge also made findings in the alternative to the effect that even if he were at risk in his home area the appellant

could safely and reasonably relocate. She argued that this finding was enough on its own and that if there was any error in the judge's treatment of the evidence relating to risk in the home area it was not material. I agree with Mr Noor, however, that whether or not the appellant could safely and reasonably relocate depended crucially on the assessment of risks he would face in his home area and their nature and extent. Hence, I do not accept that any errors on the judge's findings on risk in the appellant's home area were immaterial.

8. In the nature of the judge's errors as identified above none of his findings of fact can stand, although I note that the respondent continues to accept the appellant is the son of ex-Senator Malik Abdul Wahid.
9. For the above reasons I conclude that:

The judge materially erred in law.

The case is remitted to the FtT (not before Judge Hussain).

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

Date: 15 March 2018



Dr H H Storey
Judge of the Upper Tribunal