



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/13242/2017

THE IMMIGRATION ACTS

Heard at Field House

On September 26, 2018

**Decision & Reasons
Promulgated**

On October 5, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**KHUSHAL [K]
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Gayle, Solicitor

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

DECISION AND REASONS

1. No anonymity direction is made.
2. The appellant is a national of Pakistan. The appellant came to the United Kingdom on February 5, 2010 on a Tier 4 (Gen) Student Visa and his leave was extended until September 29, 2015. Applications to extend his leave further were refused on a number of occasions and challenges to the court

against these decisions also failed. On April 4, 2017 the appellant applied to voluntarily leave the United Kingdom but before removal he made an application on May 31, 2017 for asylum. The respondent refused his application on November 29, 2017 under paragraphs 336 and 339M HC 395.

3. The appellant lodged grounds of appeal on under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on December 14, 2017. His appeal came before Judge of the First-tier Tribunal Chana (hereinafter called "the Judge") on January 22, 2018 and in a decision promulgated on February 7, 2018 the Judge dismissed his appeal.
4. The appellant appealed this decision. Permission to appeal was refused by Judge of the First-tier Tribunal Davies on March 6, 2018. The appellant renewed his grounds of appeal on March 20, 2018 and Upper Tribunal Judge Storey found it arguable, on August 6, 2018, that the Judge had failed to take proper account of the expert evidence not only as regards the appellant's account of the raid by officers of the ISI and Frontier Corps but also the appellant's claim to come from one of the leading families in the region. Permission to appeal was given on all other grounds.
5. No Rule 24 response was filed by the respondent.

SUBMISSIONS

6. Mr Gayle adopted the grounds of appeal and submitted that the Judge had failed to consider the expert report especially the fact that the expert stated that the appellant did come from a prominent family and there was also evidence in the form of a letter from the ANP, Pakistan, which also confirmed that the appellant's family were at the forefront of a struggle. The Judge failed to take proper account of that letter or an additional letter from ANP UK which again confirmed the appellant's family were a prominent family. The expert also provided an opinion as to why low-level members would be at risk and the Judge overlooked that evidence.
7. Mr Tufan invited the Tribunal to reject the application. Even if the appellant's family was a prominent Pashtun family he submitted it lacked credibility the appellant's family home would have been targeted so long after he had left the country. There is a difference between an account being plausible and an account being credible and both the ANP letters and the letter from the appellant's father took the matter no further.

FINDINGS

8. The appellant's fear of persecution centred on a raid which he stated had taken place at his family home whilst he was in the United Kingdom. I accept that the Judge noted the basis of the appellant's claim but I am satisfied that there were deficiencies in the decision and that those deficiencies amounted to an error in law.

9. In assessing the evidence, the Judge referred to the principles of Tanveer Ahmed but I am satisfied the Judge did not demonstrate he had engaged with both the expert report and ANP letters on the issue of whether the appellant's family were prominent. The letters from the ANP described how the appellant's family were a prominent family and whilst these letters on their own could have been rejected they had to be considered alongside the evidence of the expert witness. The expert report and ANP letters and to a lesser extent the father's letter all needed to be properly considered and I am satisfied that in looking at the evidence the Judge failed to give adequate reasons in his rejection of this evidence and in places failed to demonstrate engagement with those documents.
10. Findings were needed specifically on those matters which the appellant argued he would be at risk if he was returned. The expert indicated that low level members were at risk and the Judge should therefore have engaged with that finding at the very least.
11. This was an appeal based on both credibility and risk on return and I accept the submissions advanced by Mr Gayle that there is a material error in law.
12. I therefore set aside the Judge's decision. I have considered whether any of the findings can be retained but as this is a case based on credibility and the assessment was flawed I am satisfied that no findings can be preserved.
13. I have also considered whether this is a matter that should be retained in the Upper Tribunal or remitted back to the First-tier Tribunal for a rehearing. I am satisfied that as full evidence will be needed a fresh hearing will be required and the best place for that will be the First-tier Tribunal.

DECISION

14. There is an error in law I set aside the original decision and I remit the matter back to the First-tier Tribunal under Section 12 (1) of the Tribunals, Courts and Enforcement Act 2007.

Signed

Date 29/09/2018



Deputy Upper Tribunal Judge Alis