



**Upper Tribunal  
(Immigration and Asylum Chamber)** Appeal Number: PA/05359/2018

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 28<sup>th</sup> March 2019**

**Decision & Reasons  
Promulgated  
On 26 April 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DEANS**

**Between**

**MR KHURRAM GUL**  
**and**

**Appellant**

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

For the Appellant: Mr S Winter, Advocate, instructed by Livingstone Brown, Solicitors

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a decision by Judge of the First-tier Tribunal Sean Fox dismissing an appeal on protection and human rights grounds.
2. The appellant is a national of Pakistan. As a Shia Muslim he claims to fear persecution on the grounds of religion in his home area of Gilgit-Baltistan. He also claims that he is in a relationship with a British citizen and that he suffers from certain medical conditions.

3. Permission to appeal was granted on several grounds, relating chiefly to the structure of the decision. It was arguable that the judge erred by beginning his consideration with section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 and by considering the proportionality of removal before considering the protection claim. It was also arguable that the judge erred by not making findings of fact on the question of the appellant's faith and by not properly considering Article 8.

## **Submissions**

4. Before me Mr Winter acknowledged that to consider proportionality before assessing the claim for protection, although unusual, was not material to the outcome of the appeal. I agree with Mr Winter on this point and this ground, the first stated in the application for permission to appeal, requires no further attention.
5. The second ground was the contention that the judge erred by considering section 8 of the 2004 Act before looking at the evidence as a whole. In this regard Mr Winter relied on SM (Section 8: Judge's process) [2005] UKAIT 00116. By starting his assessment of credibility, at paragraph 16 of the decision, with consideration of section 8 the judge did not follow SM.
6. Turning to the third ground of the application, Mr Winter submitted that the judge erred by not making a specific finding on whether the appellant is a Shia Muslim. In addition the judge did not have regard to documentary evidence showing that the appellant is Shia. This included letters from the Shia Islamic Centre. The judge, however, made a finding based on the appellant not having gone to the police when he was assaulted. This finding was contrary to country information on the lack of a sufficiency of protection. The issue was material to the question of internal relocation. Although the judge referred at paragraph 39 to the case of AW [2011] UKUT 31 on sufficiency of protection in Pakistan, this was different because it concerned a claim made on political grounds.
7. Mr Winter continued by referring to paragraph 41 of the decision, where the judge commented on the evidence of other witnesses, who were the appellant's partner and a friend of his. The judge stated that where the evidence of the witnesses related to the appellant's experiences in Pakistan it was based on what the appellant had told them. Mr Winter submitted that even if this was correct it was wrong of the judge to discount this evidence as hearsay. There were no discrepancies or inconsistencies in what the witnesses were told.

8. The fourth ground related to the Article 8 assessment and, in particular, the position of the appellant's partner. In the application it was stated that in finding that the appellant's partner might accompany the appellant to Pakistan and continue to receive medical treatment there the judge did not have proper regard to the medical evidence, particularly in relation to the degree of medical supervision and support she requires. Mr Winter submitted that at paragraph 53 of the decision the judge applied a threshold for considering Article 8 outwith the Immigration Rules. This was based on old case law. In terms of Agyarko [2017] UKSC 11 there was no threshold. Mr Winter nevertheless acknowledged that this error was not material because the judge proceeded in any event to consider Article 8 outwith the Rules. Mr Winter further submitted that the errors made by the judge in relation to the protection claim were relevant to Article 8. For instance, if there was no sufficiency of protection for the appellant in Pakistan then this would be an insurmountable obstacle to the couple carrying on their relationship there. There needed to be a finding on whether the appellant was a Shia Muslim. The medical treatment required by the appellant's partner was also a key issue. There was an issue as to the medical support which would be available for her.
9. For the respondent Mr Govan described the structure of the decision as slightly unusual. He submitted that if there was a holistic assessment of the facts then the order issues were considered mattered less. The reference to section 8 near the start of the decision did not mean it was the starting point or governing factor. The appellant was in the UK for 13 years before claiming asylum and it was natural for the judge to see this as a relevant factor. There was nothing to show section 8 was the starting point; it was weighed up with other factors adverse to the appellant. There was no error of law in the judge's findings on credibility.
10. Mr Govan referred to the third ground of the application regarding the lack of a finding on the appellant's faith. According to the oral evidence the appellant rarely attended a mosque. The respondent did not accept there was no sufficiency of protection for Shia Muslims, or that there could be no internal relocation. Even giving the appellant the benefit of the doubt and accepting that he was Shia, there was no real risk of persecution or serious harm. This was in effect the finding made by the judge at paragraph 24 of the decision. At paragraph 38 the judge noted the appellant's evidence that he was safe one mile from his home in Pakistan. It did not matter either way whether the appellant was Shia or Sunni and it did not matter that the judge had not made a finding on this.
11. Mr Govan continued by pointing out that the appellant had not sought help for his alleged experiences. Seeking help was the

basis for any finding of a lack of sufficiency of protection. Anyway, the appellant could relocate internally. These were the important findings made by the judge and there was no error of law, as contended in the third ground of the application.

12. Mr Govan then turned to the appellant's relationship with a British citizen. The appellant could not meet the Immigration Rules in respect of this as the couple had not been living together for two years. The judge considered the relationship outwith the Rules. The judge was aware of the history of the relationship. The judge was not satisfied that medical treatment would not be available in Pakistan. The judge took into account the statutory requirements of section 117B. Little weight was to be given to a relationship commenced when the appellant was in the UK unlawfully. The judge considered whether the appellant could make a visa application from abroad. All the relevant considerations were assessed.
13. In response Mr Winter submitted that the judge had failed to consider key passages in the country information to which he was referred. The issue of internal relocation was not relevant as there would be problems throughout Pakistan. The question of whether there was a sufficiency of protection for this appellant was not addressed by the judge. This was relevant also to the issues of the proportionality of returning to Pakistan to apply for entry clearance and of relocation by the appellant and his partner. The judge failed to have proper regard to the country information, which was a matter arising from the third ground of the application. The judge also failed to have regard to documentary evidence relating to the appellant. If the documentary evidence had been considered in the round the judge might not have made adverse findings. The decision should be set aside and remitted to the First-tier Tribunal.

## **Discussion**

14. Mr Winter was of course correct to point out that consideration of whether there is a sufficiency of protection must be linked to the circumstances of the particular appellant. A finding simply to the effect that Shia Muslims have a sufficiency of protection in general in Pakistan is not enough. In this decision though the Judge of the First-tier Tribunal did consider the circumstances of the appellant in considering whether there was a sufficiency of protection. The judge took into account that the appellant had never been to the police to complain of having been attacked. Mr Winter submitted that the appellant had good reason not to trust the police to provide protection in matters of religion. The judge noted, however, that the appellant had not sought medical treatment, even though he claimed he had been shot on one occasion and had

his arm broken on another. When he was aged 21 he move a mile from his home, where he remained for 8 years without being attacked. The appellant appeared to have played cricket on a regular basis without being attacked.

15. At paragraph 47 the judge noted problems in the police in Pakistan. He further noted in the succeeding paragraph that the appellant claimed to fear no one apart from the people who attacked him. At paragraph 23 the judge considered the appellant's evidence that he could not move to other border areas of Pakistan because of the presence of the Taliban in those areas. While the judge did not go through the country information in detail, the burden was on the appellant to show that as a Shia Muslim he would not have sufficient protection in Pakistan. At paragraph 23 the judge observed that as much as 20% of the population of Pakistan is Shia. It was a considerable burden indeed for the appellant to show that as a Shia Muslim he would not have a sufficiency of protection in Pakistan.
16. As Mr Govan pointed out, the test to be applied in deciding whether the appellant requires international protection is whether there is a real risk to him of persecution or serious harm. As the judge observed at paragraph 48, serious crimes may occur notwithstanding measures taken by the state. The appellant would not succeed without showing a real risk. It may be inferred that notwithstanding he did not set out a detailed analysis of the country information and key passages the judge was not satisfied there was a real risk. This was a finding the judge was entitled to make.
17. This brings me a related point made by Mr Winter, namely that the judge did not make adequate findings on the appellant's particular circumstances. So far as the appellant's religion is concerned, although the judge was not satisfied the appellant is a Shia, at paragraph 47 the judge stated that he would consider sufficiency of protection taking the appellant's claim at its highest and assuming he was a Shia. Mr Winter submitted that the judge did not have regard to documentary evidence in support of the appellant's faith. Even if the judge neglected this, however, it would not have altered the judge's finding that the appellant was not at risk even assuming he was a Shia Muslim.
18. Mr Winter submitted that the issue of protection was relevant to the assessment of proportionality, in relation to the question of whether the appellant and his partner could be expected to relocate to Pakistan. I accept that if the judge had found there was an issue with the sufficiency of protection, or if the judge had erred in considering this issue, then there might be a consequence for the issue of proportionality. However, for the reasons I have given

above, I am not satisfied the judge erred in considering the sufficiency of protection.

19. It was contended that the judge's credibility findings were flawed. The judge's mistaken approach to section 8 of the 2004 Act was said to be an important factor in this regard. As Mr Govan pointed out, however, the order in which the judge set out various factors affecting credibility was less important than the question of whether the judge had had proper regard to the evidence as a whole.
20. The judge referred to section 8 and, in particular, the delay in claiming asylum, at paragraph 16 of the decision. Thereafter, at paragraphs 19-44 the judge assessed the appellant's evidence in detail and gave reasons for not accepting as credible the appellant's account of his alleged problems and difficulties in Pakistan. As Mr Govan submitted, there was nothing to indicate that this assessment was tainted by the earlier reference to section 8. I see no reason to suppose that if paragraph 16 had been inserted after paragraph 44 it would have made any difference to the judge's findings. This was not an error of the type identified in SM.
21. It is pointed out in the application for permission to appeal that the judge assumed that the appellant claimed asylum because he was seeking medical treatment. This suggestion is made in paragraph 16 of the decision. According to the application for permission to appeal there was no evidential basis for such a suggestion. While this may be so, it is not disputed that the appellant was in the UK for over 12 years before claiming asylum. If there was a reason the appellant did not claim asylum earlier this might have been relevant under section 8 but it is difficult to see any adverse significance in the judge suggesting a reason why the appellant claimed asylum when he did, even if the judge was speculating about this. This particular challenge to the judge's decision is of no assistance to the appellant.
22. In assessing proportionality, the judge had proper regard to section 117B and the fact that the appellant's relationship began when the appellant was in the UK unlawfully. While the judge did not cite up-to-date authorities on Article 8, he was well aware that the appellant would have to show circumstances which were compelling and exceptional, although as the judge pointed out at paragraph 53 there is no legal test of exceptionality. It is contended that the judge did not have proper regard to the medical needs of the appellant's partner. The judge refers to these at paragraph 57 but does not list them in detail. It should not be inferred from the lack of a detailed list that the judge was not aware of them. The judge comments that there was no evidence that treatment would not be available in Pakistan. In the

circumstances the judge was not required to state anything more in this regard.

23. The parties accepted that the structure of this decision of the First-tier Tribunal is unusual. It may be that when the judge referred at paragraph 14 to section 117B and at paragraph 16 to section 8 his intention was to provide some sort of summary of his conclusions with detailed reasoning to follow. If this was the judge's intention, it should have been stated more clearly. I have not been persuaded, however, that this variation on the usual structure of a decision discloses any underlying error of law.

## **Conclusions**

24. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
25. The decision dismissing the appeal shall stand.

## **Anonymity**

The Judge of the First-tier tribunal did not make a direction for anonymity. I have not been asked to make such a direction and I see no reason of substance for doing so.

M E Deans  
Deputy Upper Tribunal Judge

23rd April 2019