Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06817/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 June 2019	**On 2 July 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS
UPPER TRIBUNAL JUDGE KEBEDE

Between

MUHAMMAD [H]
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: The appellant appeared in person
For the Respondent: Mr T Lindsay, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought with the permission of the First-tier Tribunal against the decision of the First-tier Tribunal, promulgated on 21 March 2019, dismissing the appeal of the appellant against a decision of the Secretary of State on 4 July 2017 refusing him asylum and/or leave to remain on human rights grounds. Counsel for the appellant in the First-tier Tribunal made clear that he was only relying on "private and family life" grounds and the First-tier Tribunal's decision and reasons appropriately made findings limited to that ground. The protection claims

were withdrawn before the First-tier Tribunal. There is no need for anonymity.

2. At the hearing before us the appellant repeated orally an application that had been made administratively and refused for the hearing to be adjourned. He had been represented by solicitors but he had lost confidence in them and wanted the appeal adjourned in order to obtain fresh representation. He had contacted a different firm of solicitors who had tried to obtain some kind of public funding but were not able to arrange it time. The appellant explained to us some of his reasons for being dissatisfied with the former solicitors who had been criticised by the First-tier Tribunal Judge for poor preparation. Be that as it may, they are an experienced firm who represent appellants in this Tribunal frequently and it was under the guidance of Counsel they had instructed that permission to appeal was granted.

3. The appellant complained that he was not legally qualified and did not feel able to present the appeal. He is not a lawyer but he is an educated man. He had adduced evidence showing that he has been studying philosophy at Nottingham Trent University and his exam results put him in the upper second division. The essence of the appeal to the Upper Tribunal is that the First-tier Tribunal should have adjourned the hearing in Birmingham. It is unthinkable that the appellant did not contemplate the possibility of the renewed adjournment application to the Upper Tribunal being refused and indeed he indicated to us that his solicitors, who are not on the record, had encouraged him to attend to *try* to get an adjournment. We had regard not only to the interests of the appellant, which lay in the appeal being adjourned, but also to the fact there was no satisfactory reason to think that public funding would ever be extended to the appellant in this case, to the fact that the solicitors who have been criticised before us had not been invited to respond to the criticisms and also to the overall merits of the case as they appeared to be from reading the papers. We remembered as well that adjourning this appeal would not only waste time today but would delay other appellant's cases being heard as the list had to be adjusted to accommodate the resumed hearing. Having regard to all of these factors, it was our view that the balance of justice required the case to continue.

4. For the record, Mr Lindsay opposed the application.

5. We had at the forefront of our minds the duty to act fairly but that requires fairness to the parties and other Tribunal users, not simply the wishes of the appellant.

6. We refused the application

7. Although the appellant appeared a little distressed when he was told of our decision he quickly composed himself and was clearly able to present his case in a way that was articulate and which showed at least some understanding of immigration law. He certainly appreciated that people

relying on Article 8 of the European Convention on Human Rights can in some circumstances present a strong case if they have lived in the United Kingdom for more than half of their lives and he was quick to correct Mr Lindsay who made an inconsequential slip about the time in which an application for judicial review can be brought. The appellant is not a lawyer but neither is he ignorant or timid.

8. As Mr Lindsay pointed out correctly in his submissions, there are really two lines of attack on the First-tier Tribunal's decision. The first is the procedural challenge asserting that the First-tier Tribunal was wrong not to adjourn. That is the point that most concerned the First-tier Tribunal Judge who gave permission, but there is also a challenge based on the underlying merit of the appellant's case that he is entitled to remain on human rights grounds which the First-tier Tribunal Judge was said to have disregarded.

9. The appellant was provided with a copy of the First-tier Tribunal's decision and took the opportunity of the time given to read it. He commented on almost every paragraph. We have not found it necessary or desirable to consider here every point made, not least because some of the points that concerned him were resolved by an explanation offered at the hearing. The appellant presented as someone willing to listen and able and inclined to understand that some matters had been resolved correctly by the First-tier Tribunal, even if in the absence of an explanation he reasonably thought otherwise.

10. The appellant is a national of Pakistan. He was born on 26 November 1995 and the records show that he claims to have entered the United Kingdom with a "child accompanied" visa. The appellant was given a "child accompanied" visa in February 2008. He says that he arrived in March 2008. There is no independent evidence to confirm that claim but plainly it would be wholly consistent with a visa being issued in February 2018 and expiring in August 2008.

11. The appellant's father applied for leave to remain in November 2012. He named the appellant as a dependant. That application was refused on 9 July 2013 and he was served with a notice of his liability for removal. On 15 December 2015 he claimed asylum and it was that application that eventually led to the decision complained of.

12. We deal first with the First-tier Tribunal's decision to refuse to adjourn the hearing.

13. As the First-tier Tribunal's Decision and Reasons recorded, the application for adjournment was based on the unavailability of two witnesses. They were the appellant's aunt and the appellant's father. The reasons for non-attendance were rather vague. In the case of the aunt there was medical evidence that she was unable to give evidence because of memory problems. The First-tier Tribunal Judge described this as being "not of particular assistance". This is mainly because there was no prognosis.

There is no point in adjourning for a witness to regain good health unless there is some reason to believe that she will recover in a reasonable time.

14. The appellant's father had been involved in a road traffic accident. That is clearly unpleasant news but the accident was some weeks before the hearing and there was no medical evidence to say that the appellant's father was not fit to attend.

15. Further, both the aunt and the father had made statements.

16. In the case of the aunt the evidence concerned the relationship between her and the appellant. It was described as close and akin to that between mother and son. The appellant's mother has mental health problems. These claims may well be correct but even if the relationship was strong enough to attract the protection appropriate to the relationship between a parent and child it would be relationship between parent and adult child and that is rarely very significant in an article 8 balancing exercise.

17. In the case of the appellant's father the evidence concerned the private life that the appellant had established in the United Kingdom. The Presenting Office confirmed, unremarkably, that he did not challenge that claim that private life had been established. Further, the First-tier Tribunal Judge stood down the case for some two hours to give the appellant's father an opportunity to attend. The First-tier Tribunal Judge noted in her Decision and Reasons that the Tribunal is used to accommodating people who have particular needs. We assume that this would be understood by the appellant's then representatives.

18. There were no additional statements from these witnesses to indicate that they had anything of value to say that had not already been disclosed.

19. We do not wish to trivialise the grounds of appeal because it obviously mattered very much to the appellant, but we can see no fault whatsoever in the decision not to adjourn. The Judge did not just rush in and refuse an adjournment but considered its utility and had regard for the evidence that had been disclosed and made findings which, as far as we can see, were broadly consistent with the evidence that was in statement form. There is nothing in this criticism.

20. The second line of attack was that the First-tier Tribunal should have had more regard to the difficulties the appellant claimed to face in the event of his trying to re-establish himself in Pakistani society.

21. Clearly the appellant has not lived there as an adult and has not lived there for many years. It would be foolish not to expect him to have some difficulty. Further, it was uncertain what support he would get. The case had to proceed on the basis that he had no relatives or friends in Pakistan because there was no evidence to the contrary.

22. However, the First-tier Tribunal determined that the appellant was able to speak Urdu, which is the language commonly spoken throughout Pakistan.

That finding was based on the appellant's own evidence that he used Urdu to speak to his mother and father in the home and also his having obtained an A-level in Urdu at grade A. Before us the appellant dismissed the value of a grade A A-level by reference to his grade A at GCSE level in French, pointing out that although he was able to satisfy the examiners he did not consider himself able to speak the French language and the advanced level examination was not that much more challenging.

23. We have considered this. The appellant is an intelligent man and we are well-able to understand that passing an examination at A-level is a very different thing from having fluency in a language. However, the fact he is able to pass an exam at A-level and at a high grade indicates that he has some aptitude for learning the language. It is his case that he has some knowledge of it. The Judge did not suggest that it would be an easy or seamless task, but she was entitled to find as she did that the appellant could speak some Urdu, and more than he was prepared to admit, and that this was a sufficiently fluent command of the language for language not to be a barrier to integration.

24. We do not say that the appellant was dishonest before us. It is a matter of nuance and inference but it is quite clear that the Judge was entitled to conclude as she did.

25. The focus of the criticisms before us was on the Judge's consideration of the appellant's claim that he could not integrate into society in Pakistan. We remind ourselves that he had not pursued an appeal on asylum grounds. The appellant explained to us that he had lived in the United Kingdom for nearly half his life. He had been educated in the United Kingdom and he had adopted the values of the society in which he grew up and that his attitudes towards the role of women in society, towards gay people, towards the monotheism and exclusivity of Islam, would be at odds with many people in Pakistan and he felt that he would be unable to integrate as a consequence.

26. Nevertheless, he identified himself as a Muslim. He did not present as a man who had, for example, a conscientious objection to identifying himself as a follower of a particular religion or someone who would be conscientiously opposed to visiting a Muslim place of worship or observing culturally expected religious practices.

27. The First-tier Tribunal Judge was clearly aware of the essence of the appellant's case because she refers in more than one place to the appellant's values before concluding, as she does at paragraph 32, that he "holds views which could be collectively described as 'westernised'". It is obvious from reading the rest of the Decision and Reasons that that is a description that the First-tier Tribunal Judge basically accepted.

28. The Judge did not accept that a person with westernised views could not establish himself in Pakistan. At paragraph 39 the Judge considered some background material but at paragraph 40 concluded from an expert report

that there is open debate on subjects in Pakistan and referred to workshops about religious tolerance and laws relating to women and "honour based" violence (if we may be permitted that hideously inappropriate but convenient phrase).

29. The Judge did conclude that it would be more difficult for the appellant to engage in political debate but not that the difficulties amounted to persecution or an otherwise unlawful restraint on his behaviour.

30. The Judge concluded at paragraph 56 that she was "satisfied that there is a lack of evidence before me to lead me to conclude that he would be at risk of harm or at risk of 'not fitting in' because of his non-traditional views." This conclusion was reached after reading the expert report mentioned above and was not undermined in any way by the submissions or grounds before us. The expert report is the decision of Uzma Moeen who is an academic and lawyer who has written several reports on conditions in Pakistan. Much of the report relates to difficulties the appellant claimed to have with the MQM due to his father's involvement, but that is of little relevance because his father failed to make out his claim for asylum and was fundamentally disbelieved. That of course is not a reflection on the expert who was explaining the consequences that flowed from a certain hypothesis rather than considering the truthfulness of the claim. Nevertheless, as far as the appellant is concerned, the report is much more about lack of support than any overt opposition or certainly opposition or difficulties of a kind that would result on the inability to integrate.

31. It is not suggested by anyone that re-establishing himself would be a simple task and without hitches but the First-tier Tribunal Judge was clearly entitled to find that the appellant had not made a case that there would be very significant obstacles in the way of integration. The Judge was entitled to conclude that the appellant did not satisfy the rules and this failure informed the article 8 balancing exercise that she was required to undertake.

32. The appellant's father has been refused asylum and refused permission to appeal the decision dismissing his appeal against the refusal of asylum. He has not yet sought judicial review of a decision that subsequent further submissions are not a fresh claim although there may still be time to do that. It seems unlikely that the appellant would in fact be expected to return on his own.

33. However, the First-tier Tribunal found that the appellant is an educated and able young man and that he could re-establish himself in Pakistan.

34. Before us the appellant made much of the damage done to relationships established in the United Kingdom by his removal. There was no reason to say that these points had not been considered properly by the Judge. He may well have a close relationship with his aunt but it is the close relationship of an adult man with a close female relative of an older

generation. It is not analogous to a relationship between husband and wife or parent and minor child and is not something which would ordinarily attract much weight in a balancing exercise. There is no basis for criticising the Judge's decision not to give it much weight here.

35. Clearly removing the appellant from the country where he has grown up and the relationships he has established in the United Kingdom would be a significant interference with his private and family life but there is no basis for suggesting the Judge has given it unlawfully inadequate weight in determining what is proportionate.

36. We find that there was much to commend in Mr Lindsay's submission that, following the requirements of Section 117B(v) of the Nationality, Immigration and Asylum Act 2002, little weight should be given to the appellant's private life because it was established at a time when he had precarious immigration status. This is something that concerned the appellant in his submissions to us but we are satisfied that he missed the point. It is not a question of the appellant being in some way criticised for not making his immigration status better than precarious. That was almost certainly not possible. His status was precarious because he had not attained indefinite leave to remain and he had not shown himself entitled to such leave. The First-tier Tribunal Judge applied the necessary statutory test. Whilst there might be room in an academic argument to say that the relationship with the aunt was better characterised as part of his family rather than private life, that is only because of the Secretary of State's determination to separate the two ends of the spectrum of "private and family life" that is protected by article 8. It is part of his "private and family life" but there is no basis for saying it was an important part that should have been given more weight than was given by the First-tier Tribunal Judge. The contention that there was anything fundamentally wrong with the Judge's approach to the Article 8 balancing exercise is entirely misconceived.

37. There are also positive aspects of the appellant's character. Not only has he taken advantage of the university education, for which proper financial provision has been made by a well-known charity, but he has contributed to the community by doing voluntary work for the Red Cross and fundraising activities for the British Hearth Foundation. This is wholly creditable and something in which he can be properly proud but it not a reason to permit him to remain in the United Kingdom. These are positive points in an Article 8 balancing exercise but they are not strong matters in the case of a person who essentially is not entitled to remain under the Rules. They certainly do not amount to the kind of exceptional circumstances that would make a decision to grant leave outside of the Rules desirable or even permissible.

38. The appellant was very aware of the provisions of the Immigration Rules that makes his case stronger if it is established that he has lived half of his life in the United Kingdom. He is clearly of the view that he will have qualified under this Rule in a further eight months' time. We are not

satisfied that that is right. We do not rule on the point because that is not part of our function but it is only fair to point out that he needs to check his dates very carefully if he is intending to make anything of that point on another occasion. However, the arbitrary period of half of a person's life, in the case of the Rules accrued between the ages of 18 and 25, is intended to put certainty and clarity in the case of people who have been in the United Kingdom for a long time and will often be of value to people who have spent rather more than half of their life in the United Kingdom. It is not a question of this appellant almost satisfying the Rules but of his falling short of the absolute minimum requirement to satisfy the Rules. There is nothing unfair or wrong about that. Again, because of the nature of a proper Article 8 balancing exercise it is possible to postulate circumstances where a shorter stay becomes important, but generally it does not and there is nothing here to suggest that the Judge could have responsibly given much weight to the length of the appellant's stay in the United Kingdom, still less that she was wrong to deal with it in the way that she did. The simple fact is that the appellant does not satisfy the relevant Rules and the appellant has not identified anything that would permit an exceptional decision.

39. The appellant also told us that his brother, who arrived at the same time, has now been given leave to remain in the United Kingdom based on his length of residence. That was not a point argued before the First-tier Tribunal and so cannot support an error of law finding, but even if it had been argued we do not see how it can help. The fact is that his brother's case is different, based on different facts and it is not surprising that they might support a different conclusion. It adds to the appellant's sense of frustration but it has not made the decision unlawful.

40. Like the First-tier Tribunal Judge we found the appellant in some ways impressive. We understand that he has tried to contribute to society and we understand his belief that he would contribute positively to the United Kingdom if that were permitted, but these are not the tests in the law and we can find no fault in the First-tier Tribunal Judge's approach or conclusion that the appellant is not entitled to remain on Article 8 grounds.

41. We do note that the appellant has some history of a mild form of mental illness which was dealt with by counselling. He was open about this and it is nothing about which he should be in any way ashamed but it is not the kind of very serious illness that occasionally becomes a weighty point in the human rights balancing exercise. It was dealt with entirely satisfactorily by the First-tier Tribunal Judge in paragraph 43 of her Decision and Reasons, if not elsewhere as well.

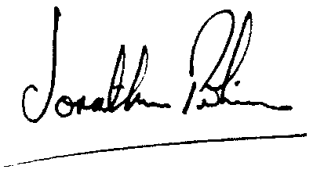
42. This is a case of a young man brought to the United Kingdom when he was a child. He could do nothing about the circumstances of his arrival but he chose to remain on achieving adult life. He introduced himself to the authorities and was trying to legitimise his position, but he does not meet the necessary requirements.

43. We find no error on the part of the First-tier Tribunal in approach or substance and we dismiss the appellant's appeal against the First-tier Tribunal Judge's decision.

Notice of Decision

44. This appeal is dismissed.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 28 June 2019