



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

Appeal Number: PA/09453/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 21 June 2019**

**Decision & Reasons Promulgated
On 2 July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**MR K D K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mahmood of Counsel

For the Respondent: Mr Whitwell, Senior Home Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan. He was born on 3 April 1966. He appealed against the respondent's decision dated 18 August 2016 to refuse his asylum and human rights claim raised in response to a deportation decision made in March 2015 following his conviction for conspiracy to facilitate a breach of immigration laws.
2. In a decision promulgated on 4 March 2019 Judge O'Malley (the judge) dismissed the appellant's appeal because she found he was not at risk on return but that in any event he could relocate. As regards Article 8, she found the respondent's decision proportionate.

3. The grounds claim the judge erred as follows:
 - (i) Failure to consider the expert report or failure to provide adequate reasoning with regard to the report.
 - (ii) Error in the judge's consideration of the threat by the Taliban.
 - (iii) Error in relation to the newspaper articles from the Daily Urran and Daily Mahasib.
 - (iv) Error in relation to the appellant's reasons for leaving the UNDP job.
 - (v) Error in the judge's approach to deportation aspects and Article 8.

4. Judge Grant-Hutchinson refused permission to appeal on 29 March 2019. She said inter alia as follows:

"2. It is submitted that the judge has erred in law

- (a) by failing to consider the expert report or failing to provide due reasons in consideration of it and the weight to be given to it in the round alongside the witnesses;*
- (b) by finding that the evidence given by the witnesses is in part truthful, in part exaggeration and in part fabrication which shows an error of approach in not considering the evidence in the round;*
- (c) in the consideration to the threat by the Taliban;*
- (d) in the assessment of the evidence pertaining to the newspaper articles;*
- (e) in relation to the appellant's intentions for leaving the UNDP job; and*
- (f) in relation to relocation for the family unit which would be harsh or the fact that it would be harsh to sever the appellant's children from him (as his wife and children have made separate applications) considering that the three children have been in the UK since August 2011 and two are qualifying children and one child is now age 19.*

3. The judge has carefully considered all the documentary and oral evidence including the evidence as detailed in the grounds for permission to appeal which is summarised above before coming to a decision. The judge has made appropriate findings which she was entitled to make. It was open for the judge to consider what weight she felt it appropriate to place on all the evidence before her. The judge has applied the statutory law and case law properly. The judge has given detailed reasons for her decision.

4. The grounds disclose no arguable error of law."

5. The grounds were renewed to the Upper Tribunal. In particular:

6. As regards ground 1, that the judge erred when she concluded at [41] that *"I am not satisfied to put weight on evidence given only in writing where it relates to areas in dispute"* because the judge thereby excluded from her assessment a notable part of the evidence relied upon by the appellant from both within and outside the UK. Whilst weight was a matter for the judge, it was an error to give no weight to certain evidence.
7. As regards ground 2, the judge imposed too high a burden of proof in respect of the newspaper reports. Further, she gave inadequate reasoning. She said at [76] that the newspaper reports were not genuine, her reasoning being that the newspapers were not from an accurate source and that there was no evidence that the groups were with whom he was working in 2004. The issues the judge referred to at [77] about Mr Mohammed should have been put specifically to him. If such findings about the "inadequacy" of his evidence were going to be raised.
8. As to ground 3, the protection claim was made out on the facts such that the judge erred in dismissing the appeal.
9. As regards ground 4, the judge erred because she failed to follow **KO (Nigeria) [2018] UKSC 33**. The ills of the parents should not fall at the feet of the children. **JG (s.117(6): reasonable to leave UK) Turkey [2019] UKUT 00072 (IAC)** was also relevant.
10. Deputy Upper Tribunal Judge Phillips granted permission to appeal on 24 May 2019. He said inter alia as follows:
 2. *First it is asserted that the Tribunal erred in giving 'no weight' to written evidence and 'no weight' to reports given by friends. In my judgment this reveals an arguable error. The weight given to evidence is a matter for the judge and it may be that the judge will find that little or limited weight can be given to certain types of evidence but to give 'no weight' because evidence is in writing may arguably indicate that too high a burden is being required.*
 3. *Secondly it is asserted that inadequate reasoning has been given or too high a burden of proof sought in respect of newspaper reports in the finding that reports submitted are not genuine. I find no arguable error here."At paragraph 78 the judge concludes that she is not satisfied that the reports are genuine. This finding is explained as was open to her. She did not make a finding that the reports were not genuine.*
 4. *Ground 3 is not argued. The assertion is that 'the protection claim was made out even on the facts as found'. The judge found at paragraph 83 that there was no well-founded fear of the Taliban. The finding on internal flight in the following paragraph was not therefore made on the basis that the appellant had had a well-founded fear in his home area.*

5. *Ground 4 refers to the Article 8 decision and asserts that the judge has not fully taken account of the recent decision in **KO**, the best interests of the children generally or the **Mibanga** principle. This ground is arguable. Two of the appellant's children are qualifying children. There is no reference to the best interests of the children in the decision or to the recent jurisprudence including **KO**.*
6. *All grounds may be argued."*

Submissions on Error of Law

11. Mr Mahmood relied upon the grounds. The judge had been supplied with a considerable quantity of documentation with which she failed to engage.
12. Mr Whitwell conceded what he described as the judge's "poor phraseology" at [41] of her decision but overall, there had been detailed consideration of the evidence.

Conclusion on Error of Law

13. The appellant had made a protection claim and the judge's obligation was to give that claim the most anxious scrutiny. Clearly, the judge erred in saying that she would give no weight to a proportion of the appellant's evidence. The issue for me must be whether the judge's error was material.
14. The judge carried out a careful and comprehensive assessment of the evidence. She rejected a significant proportion of the appellant's evidence for the reasons she gave at [38]-[41]. She accepted that some of the evidence was truthful, some was exaggerated and some was fabricated. She said that those findings were not a bar to the appellant's success. She gave reasons why she was not persuaded by some of the evidence. That was because she found it internally inconsistent. She dismissed the protection claim because she found the inconsistent evidence related to fundamental issues. Although saying that she would not put weight on evidence given only in writing and in particular, that evidence set out by the appellant's friends who did not attend the hearing, the judge explained why it was that she did so at [41]. The evidence related to significant areas in dispute. There was no opportunity for the respondent to cross-examine. It was not clear how the evidence came to those who wrote letters in support. The written evidence of the appellant's wife had been supplied by her husband who reported in turn that it was given to him by someone else. The judge said in such circumstances that she could not be clear of the provenance of information. Having set out the difficulties that she had with some parts of the evidence, the judge set out her reasons for her findings at [43]-[90], including her consideration of internal relocation. She took into account the oral evidence at the hearing of Dr Giustozzi and gave comprehensive reasons why she did not accept the appellant's account. The judge's findings were clearly open to her on the evidence.

The grounds fail to establish any material error with regard to the judge's approach to the protection claim.

15. The judge went on to consider the appellant's family life at [98]-[114]. The grounds fail to explain how it is that the judge erred as regards Article 8. She made detailed findings as to why it was that the public interest in the appellant's deportation outweighed his family life here. She said it was pertinent to note that his Article 8 claim did not feature in evidential terms during the hearing and the only reference to Article 8 was at the conclusion of Mr Jarro's submissions when he indicated that the appellant also sought to rely upon Article 8.
16. Nevertheless, the judge took into account considerable family history at [98]-[114]. The judge's decision that it would not be unduly harsh for the appellant's wife and children to remain here was open to her on the evidence. The appellant's wife was supported by her brother here with accommodation and funds. She has English language skills and a degree in political science. The judge took into account the appellant's wife's medical condition but found there was nothing in her history which made it unduly harsh for her to remain here without the appellant. See [102]-[104].
17. The judge took into account that the appellant's wife and children had outstanding applications for leave to remain in their own right; they have since been granted. The judge took into account the report from Jasmine Smith, independent social worker, the children's educational aspirations and their extended family relationships. The judge did not consider it would be unduly harsh for the children to remain here with their mother, notwithstanding the appellant's deportation.
18. The grounds fail to explain how it is given the judge's detailed and nuanced findings and decision that her failure to consider the family's circumstances, in line with **KO** or **JG** (not a deportation decision), amount to a material error of law.

Notice of Decision

The judge made no material error of law and her decision shall 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 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 27 June 2019

Deputy Upper Tribunal Judge Peart