



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004286

First-tier Tribunal No: PA/50215/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 6th of June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

KK
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. S. Woodhouse, Freedom Solicitors

For the Respondent: Mr. P. Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 16 May 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. By way of a decision dated 30 November 2023, I set aside the decision of the First-tier Tribunal. No findings were preserved. The appeal came before me to be remade.

The hearing

2. I heard oral evidence from the appellant and YAK. They were assisted by the interpreter, Mr. Q. Ibrahimkhil, who confirmed before proceeding that they fully understood each other. The language used was Pashto. Both representatives made oral submissions. I reserved my decision.
3. I have taken into account the documents in the stitched Upper Tribunal bundle (221 pages).
4. As confirmed in my decision of 30 November 2023, the appellant's account of events in Pakistan and his involvement with the PTM in the United Kingdom are accepted by the respondent. The issue before me was the risk on return to Pakistan on account of the accepted facts.

Basis of the appellant's claim

5. The appellant appeals on the basis that he would be at risk of persecution from the Taliban and/ or the army in Pakistan. His claim engages the Refugee Convention.
6. The standard of proof is to a reasonable degree of likelihood. This standard applies to both past and current circumstances, and also to establishing the future risk in the country to which he will be returned.

Decision and reasons

7. The appellant's account of events in Pakistan has been accepted by the respondent. As set out in his decision, the respondent was satisfied that the appellant was of Pashtun ethnicity. He had been a supporter of the PTM attending gatherings and demonstrations in Pakistan. The respondent accepted that the appellant had remained a supported of the PTM in the United Kingdom and continued to attend gatherings.
8. The respondent accepted that the appellant had had problems with the Taliban in Pakistan. He accepted that he had been arrested and detained by the Pakistan army for two days. However, the respondent considered that the appellant would not be at risk on return. Although evidence stated that PTM supporters had been targeted by the authorities in the past, it was considered that the appellant was a "low-level supporter of PTM" and so would not be of adverse interest to the authorities in Pakistan. The army had released the appellant from their custody "with just a warning". As there was nothing to demonstrate that they had an ongoing interest in him, internal relocation was a "viable alternative". The respondent considered that PTM supporters who openly expressed their views would not be liable to persecution. The appellant had stated that he would continue with his political activities and openly express his political views were he to return to Pakistan.
9. In relation to the appellant's fear of being persecuted by the Taliban, the respondent accepted that the appellant may be viewed as a "person of interest" by the Taliban in his home area, but considered that he could internally relocate.

10. The respondent has accepted that the appellant cannot return to his home area on account of the Taliban. In relation to his fear of the army, the respondent stated that the appellant could internally relocate to avoid this risk. However, as the army is an arm of the state, internal relocation is not a viable option.
11. The respondent has accepted that the appellant was released by the army with a warning. The appellant's evidence, as set out in his further responses to the respondent's questions at Q40, is as follows (page 212):

"While I was taken by the army, they warn me to stop propaganda against them. They accused me that PTM members blame army affiliated and support the Taliban. One of their seniors told me that they do not support the Taliban. He further said that I must stop accusing the army otherwise they will punish me for this.

The army took me on one occasion. They release me themselves with a warning that I must stop propaganda against them."
12. The warning was specifically not to continue his activities for the PTM. It is acknowledged that the appellant has continued his support for the PTM since he has been in the United Kingdom. I therefore find that the appellant has not paid heed to the warning given to him by the Pakistan army. He has also been detained by the army, which I find to be an indication of future risk.
13. The respondent's contention is that the appellant is a "low-level" supporter of the PTM. The appellant's evidence in his statement and in oral evidence was consistent as to the role that he plays. His evidence was consistent with YAK's oral evidence.
14. The appellant's evidence is that he is responsible for informing people about meetings and encouraging them to attend. I attach little weight to the fact that YAK said that the appellant had been involved in organising "more than 10" meetings, whereas the appellant said that it was "more than 100". Neither do I attach any weight to the fact that he does not hold an official position. The evidence before me was that there is not a strict hierarchy. The appellant said it was "not like a police organisation with different roles". In his statement at [5] he said that he did not have an official title as "we consider ourselves to be a movement as opposed to a political party".
15. YAK gave evidence that the appellant's duties were to contact and inform people of events, which was consistent with the appellant's evidence. Much was made by Mr. Lawson of whether there was a list of people, and if so where the appellant would get this list from in order to contact people to attend meetings. The appellant and YAK gave consistent evidence that the appellant would get this list from the central committee. YAK is a member of the central committee, and said that he would give the names to the appellant. The appellant was asked to name senior members who would give him the list, and he included YAK's name in his response. This was consistent with his evidence in his statement where he said that he would be given responsibilities when a meeting was planned "for example to contact a list of people and inform them of the gathering" [6].
16. I accept that the appellant would continue his support for the PTM were he to return to Pakistan. He supported them when was in Pakistan and he has continued to support them in the United Kingdom, helping to organise meetings.

The army detained him, and released him with a warning to stop this activity. He has not stopped.

17. I do not accept the submission that the appellant is in the same position as other PTM supporters in Pakistan. This is not the case on the accepted facts. The respondent has not suggested that all PTM supporters have been detained by the army, and/or warned to stop their activities for the PTM. The appellant, who it has been accepted has been detained, is not in the same position as the vast majority of PTM supporters. He assists to organise the PTM in the United Kingdom, encouraging participation. I find that the appellant has a higher profile than the majority of supporters, and that he is at greater risk on account of this. I find that he is not just a low-level supporter.
18. I find that YAK was detained when he returned to Pakistan for a family funeral on account of his involvement with the PTM. The appellant provided an article from the BBC reporting on the arrest and detention of YAK (pages 61 to 63). This states that “Legal documents show [YAK] is accused of promoting “hatred” and “violence””. The article states that “Human rights groups have in the past raised concerns about a number of separate legal cases against other figures linked to the PTM, suggesting they form part of a wider clampdown on dissenting voices in Pakistan”.
19. YAK gave evidence that he had been arrested, and then held underground and tortured for four months by the authorities. The appellant provided photographs of a meeting when YAK was welcomed home (pages 25 to 30). The appellant and YAK were asked whether any of those photographed with YAK had returned to Pakistan since the photographs had been taken. They both gave evidence that none of those photographed had returned.
20. The respondent’s CPIN Pakistan: Political parties and affiliation, December 2020 covers the PTM at [7.1] onwards (pages 104 to 106). This describes the PTM as “a non-violent social group” which “campaigns for civil rights for Pashtuns and against violence by both the state and Islamist militants in ethnic Pashtun areas” [7.1.1]. It refers to the authorities continuing their efforts against members of the PTM [7.1.7]. It is clear that this is ongoing as shown by the arrest and detention of YAK. At [7.1.9] an Amnesty International report is quoted:

“The authorities intensified a crackdown on the Pashtun Tahaffuz Movement (PTM), which campaigns against human rights abuses – arresting and arbitrarily detaining dozens of its supporters, subjecting them to surveillance, intimidation, prosecution and threats of violence.”
21. The appellant provided further articles reporting on the killing of Pashtun activists in Pakistan.
22. I find that the appellant has shown that he is not a low-level supporter of the PTM. The respondent accepted his account of being involved in the PTM both in Pakistan and in the United Kingdom. The respondent accepted that the appellant had been detained in Pakistan by the army. He accepted that he had been given a warning to stop his activities for the PTM. The appellant has not stopped these activities, and his evidence is that he would not stop these activities on return to Pakistan. I find that he is not the same as any other Pashtun supporting the PTM in Pakistan as he has previously been detained on account of his activities for the PTM, which he has continued in the United Kingdom.

23. I find that the appellant has shown that he is at risk on return from the authorities in Pakistan. The respondent accepts that he cannot return to his home area on account of his fear of the Taliban. Additionally I find that he is at risk from the Pakistan army. As he fears the authorities, there is no sufficiency of protection. He cannot internally relocate as he is at risk across Pakistan.

Conclusions in relation to refugee protection, humanitarian protection and Articles 2 and 3

24. Considering all the above, I find the appellant's claim to be a genuine refugee in need of international protection to be well founded. I find that there is a real risk that he will suffer persecution on return to Pakistan and so his claim succeeds on asylum grounds. As I have allowed his claim on asylum grounds I do not need to consider his claim to humanitarian protection. I find that returning him to Pakistan would cause the United Kingdom to be in breach of its obligations under Articles 2 and 3 of the ECHR.

Notice of Decision

25. The appeal is allowed on asylum grounds.

26. The appeal is allowed on human rights grounds.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
26 May 2024