



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000289

First-tier Tribunal No: PA/55624/2022
LP/02130/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

3rd September 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MRK
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Toora instructed by AB Legal Solicitors.
For the Respondent: Mrs Arif, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 15 July 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. Following a hearing at Birmingham on 25 March 2024 it was found a Judge of the First-tier Tribunal had materially erred in law and that decision set aside. The reason for given for this conclusion were (1) failure to adequately explain why a

report of Dr Smith's was given the reduced weight it was by the Judge and a failure to adequately reason the findings in relation to the merits of the appeal, with reference to Dr Smith's report, and, (2) a failure to address the HJ (Iran) point as the appellant's activities were found to be genuine at leadership level albeit at a local branch in Nottingham. It was found the Judge did not analyse whether the appellant will continue with his political activities in Pakistan if returned and, if not, why not. If as a result of the fear of persecution that would infringe the HJ (Iran) principle.

2. The appellant is a citizen of Pakistan born on 8 December 1960. He Judge's findings in relation to his political activities in the UK are preserved.
3. The appellant joined UKPNP in 1990 and has been elected as the President of the Nottingham branch which has been reported in the Pakistan media. The appellant attended some meetings and demonstrations for his party but it was found by a First-tier Tribunal that it was notable from his own photographs that he did not appear to be taking a particularly leading role, and that placard he was seen to be holding were critical of India rather than Pakistan and asking for a plebiscite.
4. The First-tier Tribunal accepted a degree of sur place activities had taken place in the UK.
5. The appellant's involvement with the party considered by the First-tier Tribunal is set out in his witness statement dated 16 May 2023.
6. For the purposes of this hearing before the Upper Tribunal the appellant has filed a further witness statement dated 16 April 2024, providing an update in relation to his sur place activities.
7. The appellant states that he has continued to be politically active with the UKPNP. In August 2023 he organised a meeting of the Nottingham branch with the UKPNP Chairman, with the party's spokesperson and Senior Vice President of UKPNP Europe Zone in attendance.
8. On 18 December 2023 he attended the formation of the Doncaster UKPNP which was also attended by UKPNP President and the Secretary of Information for the UK party.
9. On 15 January 2024 the appellant attended a conference held by the UKPNP in the Jubilee Room of Westminster Hall in the House of Commons, the topic of which was 'Force Division and Injustice in Jammu & Kashmir: Strategies for Redressing Historical Conflict'. Photographic evidence shows that speakers included UK parliamentarian such as Jeremy Corbyn, the UKPNP chairman together with the Senior Vice President UKPNP Europe Zone and group spokesperson. It is stated GPO Newsday Pakistan news channel was also in attendance and interviews with speakers at the event were reported in Pakistani newspapers, the Daily Kashmir Times, Daily Sadaechar and Daily Jammu & Kashmir.
10. On 16 January 2024 the appellant attended a meeting of the Doncaster UKPNP which was also attended by the UK Chairman, and other members, which was reported in the Daily Jammu & Kashmir and Daily Sadaechar newspapers.
11. On 17 January 2024 the appellant attending a meeting of the Leeds UKPNP which had been arranged to make a presentation to the UK based chairman which was reported in the newspaper Daily Jammu & Kashmir.
12. On 4 March 2024 the appellant along with other party members issued a statement condemning the arrest in Pakistan of the UKPNP Vice President Rashad Ahmad.
13. On 19 March 2024 the appellant attended a UKPNP event in Leeds to celebrate the original formation of the state of Azad Kashmir before it was partitioned in 1947 and occupied by India and Pakistan which was reported in the above-mentioned newspapers.

14. The appellant states the Nottingham Branch remains active but that they mainly organise themselves to attend bigger meetings that are arranged such as in Leeds or UKPNP events in London. The appellant claims they have informal meetings in each other's houses as they do not have the funds to regularly hire somewhere for meetings, although this does occur at times, such as in August 2023 when senior members visited.
15. The appellant claims if he is returned to Pakistan, he will continue to be politically active for the UKPNP but it will be impossible for him to do so due to the fear of being arrested and ill-treated, as a result of which he would hide his political beliefs.
16. Mrs Arif stated she had not seen the appellant's up-to-date bundle containing his latest witness statement. Mr Toora indicated that they had tried to send it through but it was rejected by the Home Office IT systems as it was too large.
17. To enable progress to be made, with the agreement of the advocates, Mrs Arif was able to read the copy bundle I had on the CE file on my laptop. Mr Toora remained in court while she did so.
18. Following consideration of the up-to-date witness statement the advocates agreed that the matter could proceed by way of submissions only.
19. Mr Toora submitted that weight could be given to the report of Dr Smith's as he was a qualified expert and his assessment should be considered. That report sets out that the appellant would face a real risk of ill-treatment.
20. It was submitted that the appellant has provided significant evidence which is in the public domain.
21. I was referred to [24 - 25] of Dr Smith's report where he discusses the issue of risk on return.
22. Mr Toora submitted that the risk arose as there is a separatist element to the party's activities. It was submitted there is a risk to those who support a separatist agenda in Pakistan.
23. Mr Toora submitted the appellant will be ill-treated in Pakistan and that he had remained active in relation to his political activities as detailed in his latest witness statement. His activities will have come to the attention of the authorities as his profile is noted, especially in relation to the meeting in Westminster Hall attended by Jeremy Corbyn and interview with the Pakistan news channel.
24. In relation to the HJ (Iran), point was submitted it was accepted the appellant has a role in the UK. It was submitted he is an active and significant member who will be arrested and ill-treated on return.
25. It was submitted UKPNP condemned actions in Pakistan and that the appellant will act as he has in the UK in Pakistan if returned, which will give rise to a well-founded fear of persecution.
26. On behalf of the Secretary of State Mrs Arif relied on the reasons for refusal letter dated 23 November 2022. She submitted the appellant's claim is based on his having an alleged high-profile as a result of his sur place activities and the report of Dr Smith.
27. Mrs Arif accepted that Dr Smith has the necessary expertise in relation to Pakistan and political issues.
28. Dr Smith's report was criticised for not containing much background in relation to political or country evidence.
29. Mrs Arif submitted the expert accepts the appellant will be persecuted on account of events but submitted the material the expert had seen was limited and it was not made out that he had seen all available information, which is relevant to the weight that could be given to the report.

Discussion and analysis

30. Dr Smith's report is dated 24 May 2024. There is no challenge to his qualifications or status as an expert witness.
31. In relation to the aims of UKPNP he writes:
- 1) UKPNP is a splinter party from the Jammu and Kashmir People's National Party (JKPNP) a revolutionary organisation, located in Azad Kashmir. It was established in April 1985 and exists to restore Kashmir's independence from both India and Pakistan, to create a 'Sovereign Socialist Kashmir'. It is spearheaded by educationists, students and lawyers. Its main focus in Azad Kashmir is to support civil society organisations, such as trade unions and peasant organisations. The split was caused by differences over policy and strategy and created enduring enmity between the two organisations. UKPNP adopted similar aims but disagreed with JKPNP over tactics and strategy.
32. Dr Smith's opinion is that within Pakistan there is certainly a threat to UKPNP members and supporters as the party is described as a self-conscious threat to the territorial integrity of Pakistan, even though objectively it could never realistically achieve its aims. Risk is said to arise, not as a result of any military conflict, but because the party effectively raises issues relating to the part of Kashmir controlled by Pakistan on the international stage, highlighting Pakistan's record on civil liberties and human rights.
33. Dr Smith refers to UKPNP almost certainly attracting the adverse attention of the Pakistan authorities demonstrated by the fact a former leader, Sardar Shaukat Ali Kashmir, was arrested twice and tortured, and now lives in exile in Switzerland.
34. At [6] of his report Dr Smith writes:
- 6) UKPNP remains at heart a revolutionary party at the political/intellectual levels but also emphasises the need for democratic processes, which is clearly expressed on the party's website, United Kashmir Peoples National Party is striving hard to raise the political and ideological rationale of the people to shun orthodox ideas and accept democratic and revolutionary ideals. It is working to fight against all types of prejudices and narrow mindedness at all stages. Party will continue its struggle to promote democratic and plural approach among the people of the state. It will continue its struggle for unity, integrity, fraternity and friendship so that people of the state may achieve their higher ideals in an organized form. As the struggle of the people of Jammu and Kashmir for their national liberation is getting faster and faster, its impact in international community and particularly India and Pakistan is very positive. The deprived and oppressed nationalities of these countries are sympathetically supporting the national cause of Kashmiris.
35. In Dr Smith's opinion members of any group that threaten, however weakly, the territorial integrity of Pakistan state will be of adverse interest. It is said the primary adverse interest will emanate from the ISI which takes an uncompromising line on threats to national security, which is its primary function. Dr Smith states this organisation is defined by impunity and its people can act virtually as they wish, completely protected by the military and beyond the purvey of the legislature.
36. At [10] Dr Smith also states another possibility for the Appellant is that he is targeted by the police. As a result, at [12] Dr Smith writes:
- 12) If forced to return, the Client would be forced to live discretely. He would not be able to express his opinions, not least in relation to the aims articulated by UKPNP. Therefore, the principle applied established in HJ (Iran) and applied in cases concerning political opinions in RT (Zimbabwe) are extremely relevant in this case.

37. In relation to whether the appellant's activities in the UK will have been monitored by the Pakistan authorities, Dr Smith refers to media coverage on UK on the monitoring and intimidation of dissident Pakistani exiles in the UK. It is stated the Pakistan government would take a keen interest in diaspora political activities which would almost certainly mean that organisations such as the UKPNP are infiltrated by the ISI or dissidents who have been 'turned' and report back to the Pakistan missions.
38. With regard to knowing who has joined UKPNP, Dr Smith states this will depend upon the level of infiltration and electronic monitoring. Dr Smith states it would also be possible to monitor activities from afar and the photographs of diaspora group activities are widely available on the Internet. A number of such photographs in the appellants bundle show him and highlight his role in the Nottingham Branch.
39. Dr Smith was asked in his report to answer a number of questions one of which was *"does the evidence of our client's activities with UKPNP, including photos of him at meetings in the UK evidence he is a genuine member of the UKPNP rather than a hanger on?"*
40. In reply to that question Dr Smith writes:
- 22) The bundle has a great deal of material evidence which indicates that the Client is clearly an extremely active member of UKPNP.
 - 23) Moreover, he is clearly at the forefront in many of the meetings and protests. He does not seem to mind being in front of the cameras.
 - 24) Almost certainly they will know that he is in the UK and continuing to play a significant role in UKPNP diaspora activities and considerably more than a 'hanger on'.
 - 25) This has major implications for the Client if he is forced to return to Pakistan.
 - 26) In Pakistan, every citizen is entitled to a passport to allow him/her to leave and re-enter the country. All citizens are entitled to Machine Readable Passports and informed, such as fingerprints, is collected and stored by the National Database and Registration Authority (NADRA). Crucially, all Pakistani adults must carry Computerised National Identity Cards and information is duly stored by NADRA. Both in practice and principle, this gives the Pakistan state the ability to identify and track the movements of all Pakistani citizens through the centralised computerisation of breeder and identity documents.
 - 27) Therefore, it is clearly the case that if forced to return to Pakistan, the Client will be vulnerable and at risk.
41. Although Mrs Arif attempted to undermine the findings of Dr Smith's I do not find she has done so. It is necessary to read the report together with the source information referred to appearing in the footer of the document. When one does so one can see there is an objective basis for Dr Smith's conclusions.
42. It has been known throughout the proceedings the appellant's case is based upon the report of Dr Smith, yet there was no request for Dr Smith to attend so his evidence and/or opinion could be challenged by way of cross-examination, or any other country information provided sufficient to undermine or counter Dr Smith's expert opinion.
43. It is known that anything that threatens the territorial integrity of the state of Pakistan is likely to result in a swift and brutal response from the authorities.
44. Even if the appellant was able to return to live in Pakistan without being arrested or facing ill treatment initially as a result of his activities in the United Kingdom, I find to the lower standard of proof that it has been established that if he continues activities in support of the PNP or any other similar organisation in Pakistan on return, he will come to the attention of the authorities who, according to Dr Smith, will be aware of his profile. In such a situation I find credible the

claim the appellant will be subjected to ill-treatment as a result of his political views sufficient to amount to persecution.

45. I find there is merit, applying the lower standard of proof, to the appellant's concerns and that his claimed that he would not continue with political activities in Pakistan as a result of the real risk of persecution if he did so is objectively well-founded. As the reason he would not continue his political activities, which have been accepted are genuine, is to avoid persecution, the appellant is entitled to succeed on the basis of the HJ (Iran) principle.
46. In conclusion, I find the Appellant is entitled to a grant of international protection.

Notice of Decision

47. Appeal allowed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 August 2024