



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-004138

On appeal from PA/57562/2023
LP/01875/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 14 January 2025**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**M K
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Carlton Williams, legal representative with Fountain Solicitors

For the Respondent: Mr Alan Tan, a Senior Home Office Presenting Officer

Heard at Field House on 7 November 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. He will be referred to in these proceedings as M K.

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

Introduction

1. The appellant challenges the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 1 September 2023 to refuse him international protection pursuant to the Refugee Convention or leave to remain on human rights grounds. He is a citizen of Pakistan.
2. **Mode of hearing.** The hearing today took place by video link over CVP. There were no technical difficulties. I am satisfied that all parties were in a quiet and private place and that the hearing was completed fairly, with the cooperation of both representatives.
3. For the reasons set out in this decision, I have come to the conclusion that [conclusion and outcome].

Background

4. The main basis of the appellant's case is that he fears the Taliban, who (on one account) considered him to be a government informant; alternatively, because a show room owner whom he knew was shot, and the appellant received a threat from the Taliban that the same would happen to him.
5. The respondent did not make her decision until 7 years after the appellant's original international protection claim. She then accepted the appellant's identity, his age (46) and his Pakistani nationality. The rest of his account was rejected. The appellant appealed to the First-tier Tribunal.

First-tier Tribunal decision

6. The First-tier Judge dismissed the appeal because he preferred the respondent's analysis to the appellant's evidence. The discrepancies which concerned him are set out at [18]. He rejected entirely the appellant's account of having come to adverse attention from the Taliban.
7. The appellant appealed to the Upper Tribunal.

Permission to appeal

8. The grounds of appeal challenge the First-tier Tribunal's findings of fact and credibility, in particular those at [18] of the Judge's decision.
 - (i) At ground 1, the appellant challenged the formulation used by the First-tier Judge that he 'prefer[red] the evidence of the respondent', arguing that the First-tier Judge had set himself the wrong task: he was required to determine 'whether the appellant's account was true, applying the appropriate standard of proof'.
 - (ii) At ground 2, he argued that insufficient weight had been given to the appellant's poor mental health and/or the respondent's delay in reaching a decision on the international protection claim made in 2016, which should have given additional weight to his private life, relying on *EB (Kosovo) v Secretary of State for the Home Department* [2008] UKHL 41; and
 - (iii) At ground 3, the appellant contended that the First-tier Judge's consideration of proportionality in relation to his private life was erroneous, since the First-tier Judge had treated him as fully dependent on state benefits, whereas a letter from Apex Property

Services dated 23 October 2023 confirmed that he was a fulltime employee of that business.

9. When granting permission, First-tier Judge Scott said this:

“2. The grounds assert that the Judge erred in (1) failing to consider the totality of the evidence when assessing the appellant’s credibility; (2) failing to have regard to the appellant’s mental health and delay by the respondent in determining his claim when considering proportionality of his removal under Article 8 of the ECHR; and (3) making a mistake of fact when considering public interest factors in the proportionality exercise.

3. There is an arguable error of law. As to (2), the Judge makes no reference to the delay of 7 years by the respondent in considering the appellant’s claim for asylum. As per the House of Lords in *EB (Kosovo)*, delay is a relevant consideration to be considered in an Article 8 claim.

4. Permission to appeal is granted on all grounds.”

Rule 24 Reply

10. The respondent did not file a Rule 24 Reply.

11. That is the basis on which this appeal came before the Upper Tribunal.

Rule 15(2A) application

12. On 21 October 2024, the appellant’s solicitors made an application under rule 15(2A) to adduce the following evidence showing that the appellant did exercise his internal relocation option: his Pakistani identity card, his Pakistan driving licence dated 30 December 2024; a HBL cheque book request for an address in Pathan Colony, Karachi; his shop address; and an HBL bank cheque book bearing an address in Aligarh Colony, Karachi. These documents were not before the First-tier Judge and cannot, therefore, be evidence of an error of fact amounting to a material error of law.

13. I do not admit this evidence at this stage. If the appeal were to proceed to remaking, it could then be filed as relevant to that remaking decision.

Upper Tribunal hearing

14. The oral and written submissions at the hearing are a matter of record and need not be set out in full here. I had access to all of the documents before the First-tier Tribunal. I have had no regard to the paragraph 15(2A) materials.

15. For the appellant, Mr Williams accepted that the Article 8 ECHR medical issue had not been raised before the First-tier Tribunal and that it would be inappropriate to raise it in the error of law hearing. In fact, in the appellant’s witness statement of 14 November 2023, which was the basis of his evidence to the First-tier Tribunal, there is no mention of Article 8 at all, nor of his work with Apex Property Services, although the letter from Afzal Shah, his manager at that job, says he had been working for them since 1 August 2023 and that his maintenance work is ‘exceptional’.

16. The appellant had travelled through Iran, Türkiye, Bulgaria, Serbia, Hungary, Germany, France and Italy, before returning to France and reaching the UK on 29 September 2016. His explanation for not claiming in all of those safe countries was not acceptable. He also went back to France while his asylum claim was pending, because he was frustrated by the slow process of his UK international protection application. There he learned that a friend of his had been killed, another asylum seeker he had got to know in Birmingham, had been killed on his return to Pakistan. He returned to the UK to pursue his asylum application here.

Conclusions

17. The First-tier Tribunal is recognised as a specialist fact-finding Tribunal and the Upper Tribunal is required to exercise judicial restraint in its oversight of the First-tier Judge's reasoning: see *Ullah v Secretary of State for the Home Department* [2024] EWCA Civ 201 at [26] in the judgment of Lord Justice Green, with whom Lord Justices Lewison and Andrews agreed.
18. I remind myself of the narrow circumstances in which an appellate Tribunal may interfere with findings of fact and credibility by the First-tier Judge, who saw and heard the appellant give his evidence below: see *Volpi & Anor v Volpi* [2022] EWCA Civ 464 (05 April 2022) at [2]-[5] in the judgment of Lord Justice Lewison, with whom Lord Justices Males and Snowden agreed, interference with findings of fact and credibility is appropriate only where such a finding is 'plainly wrong' or 'rationally insupportable'.
19. It is right that the formulation used by the First-tier Judge that he 'prefer[red] the evidence of the respondent' is unhelpful. The test is whether the appellant has established, to the lower standard, that the events relied upon occurred, and that there is a real risk and/or a reasonable degree of likelihood that he would be persecuted on return to Pakistan. The Judge's reasoning at [18] is proper, intelligible and adequate to support the negative credibility findings he made and his rejection of the core account.
20. The mental health issue was not argued below. As regards the question of delay, there is very little evidence of private life from 2016 to 2023 when the appellant began to work for Apex Property Services. Further, applying section 117B, such private life as he did have can be given little weight. As regards the delay in making a decision, I note that three of the seven years relied upon were pandemic years. I do not approach this decision on the basis that the First-tier Judge overlooked the question of delay but it was unlikely to have been determinative.
21. At ground 3, the appellant contended that the First-tier Judge's consideration of proportionality in relation to his private life was erroneous, since the First-tier Judge had treated him as fully dependent on state benefits, whereas a letter from Apex Property Services dated 23 October 2023 confirmed that he was a fulltime employee of that business. That is a factual error, but for the reasons already given above, I do not find it to be material. I note that at [21], the Judge accepted the existence of a private life, but that he still had his wife and children in Pakistan, and also friends who were willing to assist him with these proceedings. The First-tier Judge's analysis at [21] is proper, intelligible and adequate to support the conclusion reached.

22. The grounds of appeal advanced do not reach the high standard for interference with findings of fact and credibility set both in *Ullah* and in *Volpi*, and are no more than a vigorous disagreement with conclusions which were unarguably open to the Judge for the reasons given in the decision.

23. This appeal is dismissed.

Notice of Decision

24. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Judith Gleeson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 6 January 2025