



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

Appeal Number: PA/00914/2017

THE IMMIGRATION ACTS

Heard at Birmingham

On 2nd October 2018

Decision & Reasons

Promulgated

On 30th October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[M K]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr D Mills (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge J. J. Maxwell, promulgated on 14th September 2017, following a hearing at Stoke-on-Trent, Bennett House, on 31st August 2017. In the determination, the judge, having found the Appellant's claim to be entirely bogus and unsustainable, purported then to allow the appeal, whereupon the Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, and was born on [~] 1985. He appealed against the decision of the Respondent dated 13th January 2017, refusing his claim for asylum and humanitarian protection, pursuant to paragraph 339F of HC 395.

The Appellant's Claim

3. The basis of the Appellant's claim is that he is a Kashmiri nationalist, fighting for the rights of people in Azad Kashmir, to be liberated from any foreign occupation, and to have independence. He claims that he became a local member in his village and became active in his party. Due to his activities he was given an interview with the party in 2007. He was then given full membership to recruit people and put up posters and go door to door. He was not paid for this. He dedicated himself to the cause of independence. His family supported him. He was then elected as vice president after this. He suffered threats and harassment from 2007 onwards. The situation got worse. He received threats from the intelligence services. He was told in threatening letters that he would be killed by the police or the intelligence services. In June 2011 elections were held in Kashmir and he was blocked by a group of hostile people who wanted him to sign papers to show his approval of Pakistan and this he refused to do.
4. Following his arrival in the UK, the Appellant has been attending meetings in London and Birmingham. He is a general secretary for the party in Nottingham. He fears he will be killed by his local Government and police if he were to return to Pakistan due to his political activities (paragraph 17).

The Judge's Findings

5. The judge, at the hearing on 31st August 2017, found that the Appellant was not in attendance, and nor was anybody else appearing on his behalf. The judge found that no reason was given for the nonattendance. He concluded that it was not a funding issue because the Appellant did have benefit of legal aid. In fact, the appeal ought to have been properly heard on 28th February 2017, but an application was made by his former representative for an adjournment because they wanted to rely upon expert evidence from a psychiatrist and a document verifying through an expert the Pakistani first incident reports, but none of this was available when Judge Maxwell sat to determine the appeal. And, neither was there any explanation. There was no application for an adjournment either. The judge proceeded to hear the appeal (see paragraph 9).
6. The judge found there to be "significant credibility issues" in the Appellant's case. These ranged from vague responses when asked about party policies, to inconsistencies in his asylum interview, to when he acquired the membership card for his party. Importantly also the judge

referred to how the Appellant had been unable to accurately describe the flag for his party (see paragraph 22(vi)). The Appellant was also inconsistent about the injuries he received, referring to how he “received a bullet” but then stating it was not a bullet but that there were knives involved and he was hit on the head and arm (see paragraph 22(vi)). The judge was not satisfied that there was an extremely largescale fight and a public disturbance in 2000 involving 2,000 and 3,000 people because there were no such reports in the media at all.

7. Finally, the judge concluded that he could not ignore the fact that the Appellant had failed to attend the hearing of this appeal,

“Particularly as it was adjourned for the specific purpose of enabling him to adduce evidence for which the funding was in place. I draw the inference he is not prepared to allow his evidence to be tested. I find this significantly undermines the credibility of his account” (see paragraph 22(ix)).

8. The judge then went on to consider a letter from Tanvir Azam, who is the party president of the district (at paragraph 24), together with “series of newspaper articles submitted by the Appellant in support of both his claimed activities in Kashmir and in the United Kingdom” (paragraph 25). The judge concluded that the veracity and accuracy of these articles was not an issue. The issue was whether “the Pakistan Authorities would or might be inclined to believe their contents” (paragraph 25). The judge observed that if they did not then it is clear that their conclusion would be that the Appellant was not a threat to anyone. There were no less than seventeen articles in the bundle (paragraph 25).

9. The judge’s firm conclusion was that,

“I do not find any of the documentation submitted by the Appellant can be accurate or reliable however, so far as the newspaper articles are concerned, it is fruitless expectation that the Pakistani Authorities would apply this standard if they are aware of these newspaper articles” (paragraph 27).

10. Against this background, the judge concluded “with the greatest of reluctance” that the Appellant, on the lower standard would be at risk of persecution if returned to Pakistan “even if, as I suspect, this is a cynical and dishonest claim. The nature of the persecution is such that relocation would not be a viable option as he would remain at risk wherever he settled in Pakistan” (paragraph 30). The judge proceeded to allow the appeal.

Grounds of Application

11. The grounds of application state that the judge erred in law, having found that there were several issues which undermined the Appellant’s credibility (at paragraph 22) and having concluded (at paragraph 30) that

this was a “cynical and dishonest claim”. The judge’s reasons for allowing the appeal seems to be solely on account of the purported newspaper articles produced by the Appellant, even though the judge found (at paragraph 27) that none of the documentation submitted by the Appellant to be accurate or reliable. The judge’s reasoning seems to be that the Pakistani Authorities would not distinguish between genuine and false articles. However, it was not clear why the judge believed that such a fraudulent article would come to the attention of the Pakistani Authorities or why they would not be able to distinguish between genuine and false articles. Accordingly the decision was irrational.

12. On 14th November 2017, permission to appeal was granted by the Tribunal on the basis of **YB (Eritrea) [2008] EWCA Civ 360** (at paragraph 15), which draws attention to opportunistic and insincere claims, being such which the Authorities would be in a position to recognise as such in the home country, were a person to be returned there.

Submissions

13. At the hearing before me on 2nd October 2018, Mr Mills submitted that he would rely upon the grounds of application. The Appellant had, in fact, not been reporting for quite a period of time, and it may well be that he had absconded. Nevertheless, this was a decision which was unsustainable. The judge had found the newspaper reports to be unreliable and to be contrived for the purpose of simply gaining leave to remain in the UK. At paragraph 27, the judge is quite clear that the endeavour by the Appellant in this regard is such that none of the documentation is “accurate or reliable”. However, the judge then, without any foundation, went on to say that it was fruitless to expect the Pakistani Authorities to be able to distinguish genuine from nongenuine documents. There was no basis for this. Mr Mills relied upon **YB (Eritrea)**.
14. The Appellant was not in attendance, and neither was there anyone on his behalf to speak for him, and I heard nothing therefore from the Appellant’s side.

Error of Law

15. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
16. First, there can hardly be a more important issue to a person without legal status in the UK, and their attendance at a hearing to seek to establish a more firmer basis for their residence in this country. Yet, this is an Appellant who has persistently failed to attend. He has done so without any reasons. He has done so even when there has been legal aid in place. He has done so without providing any documentation in the form of a proper bundle for the Authorities to consider.

17. Second, the decision by the judge is plainly unsustainable below, because he has found the Appellant to have been engaged in “a cynical and dishonest claim” (paragraph 30). He has found none of the documentations submitted to have been accurate or reliable (paragraph 27). The only reason why the appeal was then allowed was that the judge found that the Authorities in Pakistan would not be able to distinguish between a genuine and an untruthful account. That does not follow.
18. It does not follow also because the articles in question do not name the Appellant. Moreover, in a country as large as Pakistan, it is entirely speculative to assume that the Authorities would, in the first instance, be aware of what various regional newspapers were publishing; and the second instance, be concerned so much as to care what was being said, especially if what was being published was with a view to bolstering an otherwise fraudulent asylum claim.
19. The decision in **YB (Eritrea) [2008] EWCA Civ 360** makes this quite clear (at paragraph 15) and there is no rule of law that an Appellant succeeds simply because of a *sur place* claim which would have to be taken at face value in the home country. That is not so.

Notice of Decision

20. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. I have taken into account the findings of the judge, the evidence before him, and the submissions that I have heard today. For the reasons I have given above, the appeal of the Appellant is dismissed.
21. No anonymity direction is made.
22. I dismiss the appeal of the Appellant.

Signed

Dated

Deputy Upper Tribunal Judge Juss

22nd October 2018