



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

Appeal Number: PA/06033/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 24th September 2018**

**Decision & Reasons
Promulgated
On 16th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

**[K J]
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Gajja
For the Respondent: Ms A Everett, HOPO

DECISION AND REASONS

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Griffith dismissing his appeal against the decision of the respondent dated 26 April 2018 to refuse him asylum in the UK.

2. The appellant is a citizen of Pakistan born on 9 July 1991. He is a single man with no dependants. He came to the UK in July 2010 with a visit visa (child) valid from 4 June 2007 until 4 December 2007. He was refused further leave to remain as a Tier 2 child in December 2009. After being refused leave to remain as a Tier 4 (General) Student he was subsequently granted leave valid from 23 July 2010 until 31 December 2012. This was extended until 15 September 2015.
3. His application for leave to remain outside the Rules based on compassionate grounds was refused on 28 April 2016, with an out of country right of appeal. Permission to proceed with a judicial review was refused on 20 October 2016.
4. On 23 November 2016, he applied for leave to remain on the basis of family and private life. This was refused with no right of appeal on 31 August 2017. He claimed asylum on 9 November 2017.
5. He claimed asylum on the basis that owing to his Muhajir ethnicity and his political activity within MQM London, he would be at risk on return to Pakistan.
6. The judge heard oral evidence from the appellant and his father.
7. The appellant adopted his witness statement, which he said he had written himself. He said his father is part of the MQM. The appellant said he joined APMSO, the student wing of MQM, for his personal safety. He was an ordinary worker in APMSO and when he came to the UK he became a member of the MQM in the London branch. He has attended protests and other activities, usually outside 10 Downing Street. He said the events were broadcast in Pakistan. He has never been involved in organising an entire protest but has been involved in doing so with other party members.
8. He said that his parents left Pakistan in 2010 and neighbours had told them that their property had been ransacked and had taken some photographs. They raised an FIR, a copy of which he said he had provided with the asylum claim. He believed that the Taliban and perhaps members of other political parties were responsible because evidence of clothing and weapons were found.
9. When asked why he had not claimed asylum until 2017, the appellant said he had been issued with a visa for more than three years and did not wish to claim in case it jeopardised his stay. His intention was to return if the situation improved but the situation got worse. He had heard from a friend that he would be forced to leave if his asylum claim was unsuccessful and because his family was British, he believed he had a right to family life. He said that discrepancies in his earlier evidence were owing to his depressed state of mind and that he had told the truth as far as he could understand.

10. He was asked about an apparent contradiction in the evidence about the state of his mother's health. The doctor had reported that she was in quite good health. He said her condition has deteriorated and that was why she was unable to attend the hearing. When he was in detention, some friends had been looking after her and she had been to visit him every day.
11. He said his father supported him when he was a student. His father is now retired from his previous job but was still working at Heathrow Airport. His father is a member of MQM and when he was at work he had close connections with senior members of MQM in Pakistan. His father attends protests and is a long-standing member of the party. He started accompanying his father to MQM events when he came to the UK. MQM does not issue membership cards.
12. He said that until 2013 there was a single MQM party. In 2013 the party split and in Pakistan there is a separate party with their own leader and that is why he believes he would have no security in Pakistan because the leader of his faction has been banned.
13. The judge then asked the appellant some questions. He said he did not report the attack on him when he was at college because he was frightened there might be repercussions for his family. When the family left in 2010, the property remained empty and there was no one to care for it. He fears the Taliban and other political parties, state actors including the police and the rangers. He said he had suffered no personal physical harm because at the time he had security.
14. The appellant's father adopted his witness statement in which he stated that the appellant is politically active with MQM, which he joined in Pakistan and with which he still maintains ties in the UK.
15. The appellant's father referred to the incident when he and his wife were captured by the Taliban and robbed and the house was illegally occupied. They no longer feel safe there and claimed that the appellant's life would be in danger. As they are from the Muhajir ethnic group, they would be targeted by state actors. He referred to his wife's medical conditions and to the dependency on the appellant.
16. The judge then heard submissions from Mr Pareek on behalf of the respondent, who relied on the refusal letter. She also heard submissions on behalf of the appellant from Mr M Alam.
17. The judge considered the appellant's reliance on his ethnicity as part of his claim for asylum. The judge said the issue of his ethnicity was not pursued in interview and his written evidence did not address it, neither did his father's evidence. Even if she accepted that he is of Muhajir ethnicity, there was no objective evidence that that in itself would give rise to a risk

of persecution. The objective evidence set out in the refusal letter shows the Muhajir is a main ethnic group in Pakistan, not affiliated to one particular political party although many support MQM. She did not find, even applying the lower standard of proof, that the appellant has established a protection claim based on race, as there was no evidence that Muhajir are persecuted on account of their ethnicity.

18. As to the appellant's political affiliations, the judge accepted that the appellant was a student member of MQM by virtue of his association with the APMSO. The judge found that the one incident in Pakistan in 2008 when he was attacked by individuals he believed were supporters of another political party, to have been an isolated incident, which was not reported to the police. Therefore between 2007 when he went to college and 2010 when he left for the UK, there was no evidence that he suffered any adverse attention from the authorities or any other source and his oral evidence was that he did not suffer any physical harm.
19. The judge found that the only purpose for the appellant coming to the UK in 2010 was to pursue his studies. She rejected as untruthful his father's evidence that the appellant was tortured in Pakistan and that when he came here it was because he feared torture. She rejected the appellant's claims that he did not claim asylum because he did not wish to jeopardize his stay. She found the delay in claiming asylum damaging to his credibility and that it was made as a last resort to seek to remain in the UK with his family when all other attempts had failed. She found that when he left Pakistan in 2010 he had not suffered treatment amounting to persecution nor was he at risk on account of his student politics and his affiliation with MQM. His father had no high political profile and it was not his father's evidence that he suffered discrimination or ill-treatment from any source on account of his political activities in Pakistan.
20. The judge said there was no corroborative evidence to support the appellant's claims that his parents were robbed either in 2002 or 2008 and held for ransom, and that their house was occupied by the Taliban. The property was left abandoned in 2010 and the photographs, which the appellant claims were taken by a neighbour were of no evidential value. Even if the Taliban did occupy the property, given that it was abandoned, there was nothing to link the action taken by the Taliban with the political affiliation of the former owners or occupants.
21. As to the appellant's political activities to the UK, the judge was prepared to accept that he is connected with the MQM in London. The letter from Nadeem Ehsan states that he has been a member since 2008 but apart from a general statement that the appellant "has continued his active association with the party from the United Kingdom" provides no further information about the appellant's activities or profile nor does he mention the split in the party or claim the party is banned in Pakistan.

22. The judge considered the objective evidence cited in the refusal letter about the MQM which appeared to indicate that the London faction is not banned but only that it is not recognised as having any authority to represent MQM in Pakistan.
23. The judge found that taking the evidence at its highest, the appellant has a low profile within the MQM in the UK and there was no evidence to show that merely taking part in demonstrations – the only evidence being a few photographs which are undated and with the location as specified – gives him a profile sufficient to make him a person of interest to the authorities or to the other political parties such that he would be at risk on return. She held that the objective material suggests that members of MQM are not at risk of treatment amounting to persecution and that relocating to Karachi would be an option as the general security situation has improved there.
24. The judge considered the appellant's claim to be suffering from depression and at one stage was suicidal. She said he has offered no medical evidence in support. The judge was not satisfied that the appellant has demonstrated the high threshold required to meet an Article 3 claim.
25. The judge considered the appellant's claim under Article 8 of the CHR. She said the appellant has no partner or children and therefore cannot bring himself within Appendix FM. As to his private life, he has been in the UK for eight years and cannot meet the residence requirements of paragraph 276ADE. He is an educated young man and there is no medical evidence that he is in poor health. She was therefore unable to find in the light of her findings in the asylum claim, that there would be very significant obstacles to his integration into Pakistan.
26. The judge considered the appellant's relationship with his parents, particularly his mother. She took into account the medical report. His mother is a British citizen and is entitled to treatment and support from the NHS. The judge said when the appellant was in detention, alternative arrangements were made for her care and no reasons were advanced why, in the event of the appellant's removal, alternative arrangements could not be made. She appreciated that the appellant's mother would prefer to have her son at home to look after her but, if he were allowed to work, alternative arrangements would need to be made in that event. The judge said that if there was a dependency, it was one of choice rather than of necessity and that the appellant has exaggerated the extent of his mother's disability and her dependence on him.
27. The judge held that the appellant's removal would amount to an interference in his current domestic arrangements and in the enjoyment of his private life. She went on to consider the proportionality of his removal which involved balancing the public interest against the appellant's particular circumstances and has had regard to the public interest considerations in Section 117B. She said the appellant speaks English, is

not financially independent as he is not allowed to work. His immigration status has throughout been precarious, as leave that he was granted as a student was temporary and for a specific purpose.

28. The judge found that there is a strong public interest in maintaining immigration control and has been unable to identify any particular circumstance that outweighs the public interest in his removal.
29. First-tier Tribunal Judge Birrell granted the appellant permission to appeal. He said that the grounds asserted that the judge erred in that it was procedurally unfair to proceed without a copy of either the screening interview and asylum interview; the judge failed to give adequate reasons for finding that his credibility was undermined by his late claim when he had valid leave to remain; her findings in respect of paragraph 276ADE(vi) were inadequate.
30. Judge Birrell held that given that the respondent in submission relied on a refusal letter which itself relied on issues arising out of what was said in the interviews and discrepancies therein, it was arguably procedurally unfair to proceed without those interviews given that there was no reason given for why they could not be produced. Judge Birrell said there was little merit in the other grounds but gave permission for those grounds to be argued.
31. Mr Gajja submitted that paragraph 8 of the grounds which criticised paragraph 16 of the judge's decision was not sustainable because in that paragraph the judge was only setting out what was in the respondent's refusal letter.
32. Mr Gajjar said that the basis of the appellant's appeal was in respect of what the judge said at paragraph 10 of the decision. The judge said there was no respondent's bundle. Therefore, she had not had sight of the appellant's screening interview or substantive asylum interview. Mr Gajja said the absence of these documents was fatal to the judge's decision. He accepted that there was no specific indication that could be seen from the determination that either party raised this at the hearing. He accepted that it was something that should have been raised but was not. He said that from paragraphs 54 onwards the judge adopted what was said in the respondent's Reasons for Refusal Letter.
33. Mr Gajja submitted that within the asylum interviews there were references to the appellant's suicidal tendencies. However the judge failed to consider this matter. It was also explored in the screening interview. He said the appellant had attempted to take his life and was given treatment. The judge mentioned at paragraph 65 that the appellant claimed to be suffering from depression and was at one stage suicidal. He said the judge failed to properly consider this issue. He said the judge failed to have proper regard to the relationship the appellant has with his mother which in his opinion goes beyond the normal emotional ties, and

the role he plays within her life. He said the judge gave insufficient reasoning for dismissing this issue.

34. Ms Everett submitted that the difficulty with the argument about the absence of the screening and substantive interview records was that it was not raised at the hearing before the judge. She found in her file a letter dated 13 June 2018 (a copy is also on the court file) which was sent by the Home Office to the appellant's solicitors, Law Lane Solicitors, enclosing the respondent bundle. The appellant's hearing was heard on 8 June 2018. This meant that the respondent's bundle was sent five days after the hearing.
35. In any event when I asked the appellant some questions about this, he told me that at the end of the screening and substantive interviews, the Home Office interviewing officer made copies of the interview records and gave them to him. He scanned a copy of each interview to his solicitor in preparation for consultation with them. I find that this would be the explanation as to why the absence of the interview records were not raised by the appellant's solicitor at the hearing. They were not probably aware that the judge did not have copies of the interview records.
36. In any event, the judge had a copy of the Reasons for Refusal Letter dated 30 April 2018 from which she was able to set out the respondent's reasons for refusing the appellant's asylum claim. (Paragraphs 15 to 26 of the judge's decision).
37. I find that the absence of the screening interview and substantive interview records was not fatal to the judge's decision. The judge heard evidence from the appellant and his father. They adopted their witness statements. They were cross-examined by the HOPO below. The judge's findings did not rely on the interview records or the discrepancies highlighted by the HOPO below that arose from the interviews.
38. The judge identified the evidence that she accepted and the evidence that she rejected. She had regard to the objective evidence and the documentary evidence submitted by the appellant. She reached findings that were perfectly sustainable and open to her on the evidence.
39. I reject Mr Gajja's submission that the judge was dismissive of the appellant's Article 8 claim. The judge had misgivings about the appellant's mother's health. She said so at paragraph 67. She found that if there was a dependency it was one of choice rather than one of necessity and that the appellant had exaggerated the extent of his mother's disability and her dependence on him.
40. Mr Gajja sought to raise an issue which was not in the grounds of appeal. He claimed that the judge failed to give proper regard to the appellant's mental health and his attempt to commit suicide. I find that the judge gave sufficient consideration to it at paragraph 65.

41. I find that the judge's decision does not disclose an error of law. The judge's decision dismissing the appellant's appeal 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: 10 October 2018

Deputy Upper Tribunal Judge Eshun