



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

Appeal Number: PA/01481/2017

THE IMMIGRATION ACTS

Heard at Birmingham

On 16 January 2019

**Decision & Reasons
Promulgated
On 6 February 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**DJ
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Masih, Counsel, instructed by Fadiga & Co Solicitors

For the Respondent: Mr D Mills, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. In a decision of 27 January 2017 the respondent refused the protection claim made by the appellant, a national of Pakistan. His appeal came before Judge O'Garro of the First-tier Tribunal (FtT) who in a decision sent on 24 October 2017 dismissed his appeal. Despite accepting that in 2006 the appellant had been president of a student branch of JKSLF in his home area in Pakistan (Northern Punjab region) and had been involved in UKPNP meetings and activities in the UK, the judge did not find credible his claim to be at risk from the authorities in Pakistan due to his political profile.

2. The appellant was successful in obtaining a grant of permission and advances seven grounds. They contend that the judge erred in:
 - (1) giving the photographs he had produced no weight because she did not find him credible;
 - (2) in not accepting the evidence of the witness, Mr Khan, in full, despite accepting that he was credible;
 - (3) in selectively drawing on the expert report of Christopher Bluth concerning Kashmir and the role of the Pakistan Intelligence Service (ISI);
 - (4) in misconstruing background country information, the CPIN in Pakistan: Background Information, including actors of protection, and internal relocation country report in particular;
 - (5) in irrationally assuming that because the appellant said that a false FIR had been taken out against him this meant that the incident to which it referred did not happen;
 - (6) in rejecting the evidence of the lawyer on a mistaken basis; and
 - (7) in disregarding the opinion of the expert that “the ISI will be aware of the appellant and have file on him and that on return to Pakistan he will be at risk due to his political activities in the United Kingdom as well as in Pakistan.” In relation to the final ground, Ms Masih highlighted the fact that the judge appeared to have misread the expert’s report and background country information to say that only those with a high political profile would be at risk.
3. I received very careful submissions from both representatives.
4. Whilst I do not consider all these grounds to have merit, I am persuaded that several do and that taken cumulatively they identify more than one error of law on the part of the judge. As regards (1), whilst the final sentence of paragraph 54 taken in isolation indicates a false compartmentalisation of the evidence (“...as I do not find the appellant credible I will give these photographs no weight”), the earlier sentences make clear that the photographs were considered quite inconclusive in any event. Ground (2), however, is troubling. Despite stating at paragraph 59 that “I have no doubt about the credibility of the witness himself”, the judge goes on to doubt his independence and incorrectly portrays Mr Khan’s evidence as to his knowledge of the appellant’s political activities to “when he left Pakistan” (paragraph 59). In fact Mr Khan’s witness statement spoke of knowing about the appellant’s political activities in Pakistan and of the appellant having a significant profile (being “an active member of JKSLF” and “well known in our area”) and did

not state (as the judge implies in paragraph 59), that the authorities in Pakistan had no real concerns about him.

5. Also troubling is the judge's treatment of the country expert and background information (grounds (3) and (4)). The judge drew on both to count against the appellant his claim to have been politically active in the JKSLF and later the UKPNP in Pakistan which were seen to be undermined by the fact that he had avoided detention and have had no family members subjected to detention. Yet neither Mr Bluth nor the CIPIN stated that all those active in the UKPNP in Pakistan are detained without exception or that their family members are. Further, these sources addressed the situation of all those involved in the campaign for independence of Kashmir, not just the UKPNP, and on the judge's own findings at paragraph 43 she accepted that the appellant, along with other JKSLF members, may have been arrested and detained at JKSLF demonstrations. Even assuming the judge was entitled to reject the appellant's claims to have become involved with the UKPNP in 2009, the appellant's own evidence relating to his earlier experiences whilst a member of the JKSLF includes a claim that in October 2008 he was detained for six weeks and beaten and tortured after giving a speech about Kashmir rights in Kotli. The judge did not address this element of the appellant's account at all, even though if it was accepted as credible it would have demonstrated past persecution. The judge's statement at paragraph 75 that "[t]he appellant had no political profile that brought him to the interest of the authorities before he left Pakistan..." is very hard to square with that evidence.
6. In relation to ground (5), Mr Mills accepted that it was difficult to follow the judge's logic at paragraph 49 wherein she stated that "the appellant's evidence is that the FIR [relating to a public meeting 12 December 2009] is a fake charge against him which I interpret to mean the incident did not occur at all." The appellant's evidence was that the authorities had decided to charge him as a result of a speech he gave against the government on this date; that is, he was not saying the incident did not happen, only that the charge meted out to him in response was fake. This is not at all to say that the judge was wrong to identify discrepancies in the charges contained in the FIR and the appellant's claim that they arrested and charged him with treason. But it remains that the FIR was not said by the appellant to be false in the way the judge assumed.
7. I see no arguable merit in ground (6), but consider that ground 7 encapsulates a difficulty running through all the judge's analysis, namely that she seeks to find that the appellant would not be at risk because in truth he has a "low-profile" politically, without explaining how that was consistent with her apparent acceptance of the expert's report. The latter had concluded that the ISI would know of the appellant and have a file on him and that as a result of his political activities in Pakistan and the UK he would at risk. Certainly the judge nowhere set out reasons for not accepting the expert's assessment.

8. For the above reasons I conclude that the decision of the FtT Judge must be set aside for material error of law.
9. Given that the principal challenges are to the judge's adverse credibility findings, I see no alternative to remitting the case to the FtT (not before Judge O'Garro) to be heard de novo.

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: 3 January 2019



Dr H H Storey
Judge of the Upper Tribunal