



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

Appeal Number: PA/09521/2018

THE IMMIGRATION ACTS

Heard at : Field House

**Decision and Reasons
Promulgated**

On : 24 January 2019

On 4 February 2019

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**AFTAB [R]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Eaton, instructed by Fadiga & Co Solicitors

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 22 July 2018 to refuse his protection and human rights claim.

2. The appellant is a national of Pakistan born on 10 January 1975. He first entered the UK on 12 April 2006. He was granted leave to remain as a student nurse on 29 August 2007 until 30 June 2009. He travelled to Pakistan on 26 August 2008 and returned to the UK on 24 September 2008 and was

subsequently granted leave to remain as a Tier 4 student until 22 August 2011. His application for further leave to remain as a student was refused on 3 February 2012 and his appeal against that decision was dismissed on 19 September 2012. He became appeal rights exhausted on 25 January 2013. He claimed to have then travelled to Pakistan on a stolen British passport on 5 September 2013.

3. The appellant claims to have returned to the UK on 18 July 2017. He was encountered by immigration officers on 21 August 2017 when working illegally and was arrested, detained as an overstayer and then released on reporting conditions and served with removal papers. On 9 October 2017 he claimed asylum.

4. The basis of the appellant's claim is as follows. He was involved with the National Student Federation (NSF) when at college and was president of the NSF from 1992 until 1993. He worked as a lawyer until he came to the UK to study in 2006. He also owned a hotel which he managed and had land on which he grew vegetables. He returned to Pakistan from UK on 5 September 2013 to visit his sick father. He joined the United Kashmir People's Party (UKPNP) in February 2015 and became the president of the Sarsawa branch of the UKPNP in May 2015. His problems began on 6 June 2017 when he spoke at a conference in Rawlakot about a friend who had been killed by Pakistani security agencies on 13 May 2013 and spoke out against the government. The police tried to arrest him but he managed to run away. A First Information Report (FIR) was filed against him for treason and the police raided his house whilst he was not there. He stayed with friends who arranged documentation through an agent to enable him to travel to the UK. He had continued to be politically active in the UK.

5. The respondent did not accept that the appellant was a member of the UKPNP. The respondent noted that a document verification report (DVR) concluded that the UKPNP membership form he had submitted was not genuine since the secretary general of the party had confirmed that there was no record of him being a member and that his name was not known in the area. The appellant's claim to have become president of the UKPNP Sarsawa area in May 2015 was considered to be inconsistent with his evidence at the screening interview that he had never been involved with any political organisations and raised inconsistencies with a letter of support submitted from the central senior vice chairperson of the UKPNP. The respondent gave little weight to the newspaper articles produced by the appellant and considered that little weight could be given to the photographs of him attending demonstrations in the UK. The respondent considered the appellant's Facebook activities, noting that the one post had been put up after he had made his asylum claim and that he had a limited audience, and concluded that that would not put him at risk on return to Pakistan. The respondent noted that the FIR and arrest warrant which the appellant had produced in support of his claim had been found in a DVR not to be genuine and rejected his claim to have had problems as a result of his membership of the UKPNP. The respondent considered that the appellant would be at no risk on return to Pakistan and that his removal would not breach his human rights.

6. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Nicholls on 30 August 2018. Judge Nicholls refused an adjournment request which was made towards the end of the appellant's evidence for him to obtain additional evidence in regard to the provenance of the FIR and arrest warrant. The judge recorded the appellant's evidence in his witness statement and asylum interview about his involvement with the UKPNP in Pakistan and his activities in the UK which included a meeting and demonstration outside the Pakistan High Commission in London on 22 October 2017 and a meeting in Birmingham on 1 February 2018 which was attended by Sardar Shaukat Ali Kashmiri, the founder of the UKPNP, as well as Facebook posts. He claimed to fear the Pakistani security and intelligence agencies because of his active promotion of the independence of Azad Kashmir. The appellant relied at the hearing upon letters from two senior officials of the UKPNP confirming that they had spoken to the British High Commission and could not recall the appellant and so could not confirm his membership of the party at the time, but were now confirming his role in the party. The appellant claimed that the FIR and arrest warrant were genuine and had been sent to him by his lawyer. He argued that the Pakistani security forces would not be prepared to confirm to British government officials that there was an FIR and arrest warrant, as they wanted him to return to Pakistan, and therefore their response to the enquiry could not be relied upon. The appellant referred to photographs of him at three different events and said that he had attended five or more meetings and demonstrations in the UK. He stated that he started his activities for the UKPNP in the UK from October 2017. He denied having worked illegally in the UK. The FIR and arrest warrant had been sent to him by his lawyer in Pakistan and there were two letters from his lawyer in the bundle of evidence. The appellant also relied upon an expert report from Professor Christopher Bluth, a professor of international relations and security at the University of Bradford.

7. The judge concluded that the letters from the two senior officials of the UKPNP confirming the enquiries made to them from the British High Commission carried little weight as they were not accompanied by any form of identification evidence and there were no documents with which the signatures could be compared. The judge considered that the provenance of the FIR and arrest warrant was a significant issue and that there was no evidence to show that the person's name stamped on the documents was the appellant's lawyer. He refused to grant an adjournment requested by the appellant to obtain further evidence of the provenance of the documents. The judge did not accept the appellant's explanation, that the Pakistani authorities would not confirm the documents because they wanted him back in Pakistan, noting that the DVR confirmed that the appellant's name was not given to the police. The judge concluded that the documents were false. He accorded no weight to the newspaper articles, noting that they were inconsistent with the document verification enquiries. With regard to the expert report from Professor Bluth, the judge considered that he had not seen the DVRs and in any event that it was not for him to assess credibility. The judge considered that there was no evidence to show that the Pakistan intelligence and security forces were monitoring demonstrations and events in the UK and would be likely to take

action against an identified activist who returned to Pakistan. The judge concluded that the appellant was at no risk on return to Pakistan and that his removal would not breach his Article 2, 3 and 8 human rights. He accordingly dismissed the appeal on all grounds.

8. The appellant then sought permission to appeal to the Upper Tribunal on four grounds. Firstly, that the judge's conclusion, that the appellant had produced no evidence to show that the Pakistan intelligence and security forces were monitoring activities in the UK and would be likely to take action on an identified activist on return to Pakistan, was arguably perverse, since the expert report did provide such evidence. Secondly, that the judge erred by refusing an adjournment request to enable the appellant to obtain corroborative evidence relating to the FIR and arrest warrant. Thirdly, that the judge failed to consider correspondence from senior officials of the UKPNP corroborating the appellant's UKPNP activities and supporting his fear of returning to Pakistan. Fourthly that the judge gave no consideration to the expert's findings of plausibility and wrongly said that Professor Bluth had not seen the DVRs when he had, in fact, been provided with the full respondent's bundle containing the reports.

9. Permission was refused in the First-tier Tribunal but was subsequently granted in the Upper Tribunal on 7 December 2018.

Appeal hearing and submissions

10. The matter came before me on 24 January 2109. I heard submissions from both parties.

11. With regard to grounds 1 and 4, Mr Eaton submitted that the judge failed to deal with the evidence of the appellant's media interest at pages 38 to 60 of the appeal bundle and failed properly to deal with the expert report. The judge considered there to be no evidence to suggest that the Pakistani authorities monitored UKPNP activities in the UK, whereas the expert said that they did and found it highly probable that the authorities would have a file on the appellant. The judge also considered that the expert did not have sight of the DVRs, whereas he did. The expert considered the appellant's documentation to be genuine, but the judge did not consider that. Mr Eaton submitted, with regard to grounds 2 and 3, that the judge erred in his treatment of the corroborative evidence. There was no analysis of the appellant's evidence and no findings on the credibility of his evidence, but the judge only considered whether the appellant had rebutted the presumption of the documents being false. The judge failed to consider the letters from [NK] and [RK] at pages 21, 24 and 25 and therefore ignored cogent evidence which rebutted the DVR. There was no opportunity for the appellant to rebut the judge's adverse findings on the signatories of the letters. The judge erred by dismissing the newspaper articles on the basis of contradictions in the appellant's evidence when there were no contradictions. The judge also erred by refusing to adjourn the matter to enable the appellant to produce corroborative evidence from his lawyer in Pakistan. Therefore the judge erred by not dealing with the expert

report properly and by giving spurious reasons for rejecting the appellant's claim as to his involvement with the UKPNP.

12. Mr Tarlow submitted that the challenge was little more than a disagreement with the judge's decision. Whilst there was an error in the judge saying that there was no evidence of the Pakistani security forces monitoring activities in the UK, that was not material as the judge properly concluded that the appellant's evidence was not consistent and did not demonstrate that the appellant was an activist. The determination, taken as a whole, was sound and there were no errors of law.

13. In response, Mr Eaton submitted that the error was material as the appellant was likely to be known to the Pakistani authorities on the basis of his sur place activities.

Consideration and findings.

14. It is the appellant's case that the judge ignored much of the evidence supporting the appellant's claim and instead focussed on the DVRs and the appellant's ability to rebut the findings in those reports. However the judge clearly gave detailed consideration to the evidence as a whole and was fully entitled to give weight to the DVRs.

15. At [13] to [15] the judge considered in detail the appellant's response to the DVR dealing with his UKPNP membership form, at E45 and E46 of the respondent's appeal bundle, and the evidence he had submitted in that regard, consisting of the letters at pages 22 and 23 of the appeal bundle, purporting to come from Sardar Ishtiaq Hussain and Syed Tahir Hussain Gardaizi. The judge provided cogent reasons for rejecting that evidence at [15] and [18]. Considering the evidence as a whole and the appellant's previous use of forged documents, the judge was perfectly entitled to entertain doubts as to the authenticity of the two letters and to require more in order to be satisfied that they were genuine. Mr Eaton submitted that the judge failed to make any reference to the letters from [NK] and [RK], at pages 21 and 24/5, which supported the appellant's rebuttal of the DVR. However the judge specifically referred at [18] to the document at page 21. The findings he made in regard to that document apply equally to the letter at pages 24 and 25. The judge plainly had regard to all the evidence in any event and was not required to address each and every document in detail. Furthermore, and whilst not an observation made by the judge, it is of note that the previous letter from [NK], at M67 in the respondent's bundle, omitted to mention that the appellant had held the office of President of the UKPNP and referred to him only as a member of the party whilst the second letter, at page 21 of the appellant's appeal bundle, sought to amend that rather material omission. It seems to me that that is another matter supporting the judge's adverse findings on the document and the documentary evidence as a whole.

16. At [16] and [17] the judge gave detailed consideration to the DVR dealing with the FIR and arrest warrant produced by the appellant and again considered and rejected the appellant's response. It seems to me that the

reasons given in the DVR for doubting the authenticity of those documents were particularly strong and the appellant's explanation went nowhere near undermining the outcome of the verification. The judge found that the appellant's explanation was "fanciful and flies in the face of the reliable evidence" and he was, in my view, fully and properly entitled to conclude as such. The appellant asserts that the judge unfairly deprived him of an opportunity to provide further evidence to support his claim as to how he obtained the documents. However the judge was fully entitled to refuse to adjourn the proceedings at the stage the request was made. The appellant's evidence as to the provenance of the documents was inconsistent. At [9(l)] he referred initially to the documents having been sent by the author of the letter at K64, Ch. Muhammad Saddique Advocate, but when it was pointed out to him that neither of the two letters written by the lawyer mentioned obtaining such documents, he then relied upon a stamp on the documents from a different advocate, SM Mumtaz Khan. The judge expressed concerns about the appellant's evidence in that regard at [16] and properly refused to adjourn the proceedings for the reasons given at [3] and [16]. There was no unfairness in him doing so. The suggestion, in the grounds, that the judge refused to adjourn the proceedings because he was due to retire, was quite rightly not raised by Mr Eaton and was entirely inappropriate.

17. As for the newspaper reports produced by the appellant, the judge considered those at [19], noting inconsistencies and discrepancies in the reports and inconsistencies between the reports and the FIR in the description of the events of 6 June 2017 and the resulting charges against the appellant. Mr Eaton submitted that there was no contradiction between the documents, but I do not agree. The judge properly found that, whilst the newspaper reports referred to treason charges being registered against the appellant, that did not reflect the information provided in the FIR and arrest warrant.

18. The grounds assert that the judge, in making the adverse findings that he did about the reliability of the documentary evidence and the evidence as a whole, ignored the expert opinion of Professor Bluth on the plausibility of the appellant's claim and the authenticity of the documents. However the judge plainly did not ignore Professor's Bluth's conclusion on the plausibility of the appellant's claim, but specifically referred to his observations in that regard at [99(n)] and [99(o)]. As for Professor Bluth's supporting comments at paragraph 5.5.5 of his report in relation to the documentary evidence, the judge observed at [20] that he had apparently not seen the DVRs. The grounds challenge that observation, pointing out that Professor Bluth had the respondent's bundle containing the DVRs. However it is of note that he made no reference to those reports when listing, in some detail, the materials he had read, at paragraph 4 of his report, and at no point in his report did he refer to the DVRs or indicate that he had actually noted or had regard to them. On that basis it seems to me that the judge was perfectly entitled to accord the weight that he did to Professor Bluth's conclusions on the evidence.

19. For all of these reasons I reject the assertion made by and on behalf of the appellant that the judge's approach to the evidence was flawed. The judge undertook a full and careful assessment of all the evidence, had full regard to

the appellant's response to the respondent's concerns and provided cogent reasons for rejecting the appellant's explanations and for according the limited weight that he did to the evidence.

20. It is also asserted that the judge erred in his assessment of the risks the appellant faced as a result of his sur place activities in the UK. Mr Eaton submitted that the judge did not consider the evidence of the appellant's media interest. However the judge referred at [9(e)] to the appellant's claim to be active on Facebook and at [21] considered all his activities in the UK, noting that he had no formal position within the UKPNP in the UK and providing reasons for concluding that he would not be of adverse interest on the basis of such limited activities. It is asserted in the grounds that the judge made a material error by finding there to be no evidence of the Pakistani intelligence and security forces monitoring events in the UK when Professor Bluth made such references in his report at 5.3.9 (and, I note, at 5.5.4). However, whilst it is the case that Professor Bluth confirmed that monitoring did take place, I agree with Mr Tarlow that that did not materially undermine the judge's conclusions, given that Professor Bluth's conclusion on the risks faced by the appellant himself was very much predicated upon an acceptance of his claimed UKPNP profile, a matter unequivocally rejected by the judge for the reasons fully and properly given. There was nothing in Professor Bluth's report to suggest that a person of no previous or current UKPNP profile with sur place activities undertaken on the limited basis as the judge found in the appellant's case would be of any adverse interest to the Pakistani authorities.

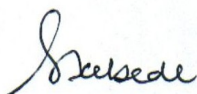
21. Accordingly I find there to be no merit in the grounds challenging the judge's decision. The judge had full and careful regard to all the evidence, provided cogent reasons for according the weight that he did to that evidence and was fully and properly entitled to reach the adverse conclusions that he did. His conclusion, that the appellant would be of no adverse interest to the Pakistani authorities, and at no risk on return, was entirely open to him on the evidence before him.

22. For all of these reasons I do not consider there to be any errors of law in Judge Nicholls's decision which would require it to be set aside. I uphold his decision.

DECISION

23. The appellant's appeal is accordingly dismissed. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring it to be set aside. I do not set aside the decision. The decision to dismiss the appellant's appeal therefore stands.

Signed



Upper Tribunal Judge Kebede

Dated: 28 January 2019