Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06823/2017

THE IMMIGRATION ACTS

Heard at RCJ	**Decision & Reasons Promulgated**
On 16 October 2017	**On 01st November 2017**
Extempore judgement	

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

MA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Sesay,Duncan Lewis & Solicitors (Harrow Office)
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

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 his 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.

1. The Appellant is a citizen of Pakistan and he was born on 8 July 1988. He made a claim for asylum which the Respondent refused on 6 July 1017.

The Appellant appealed and his appeal was dismissed by Judge of the First-tier Tribunal Housego in a decision promulgated on 10 August 2017, following a hearing on 8 August 2017. Permission to appeal was granted by Judge of the First-tier Tribunal Scott Baker on 25 August 2017.

2. The Appellant's account, very much summarised, is that is a Sunni Muslim. His father was a scholar, imam and former member of Jamaat-e-Islami. The Appellant used to accompany his father around the country visiting mosques. Proscribed terrorist organisations issued threats against his father as they perceived him to have liberal views. His father then became a schoolteacher. The Appellant was groomed to be his father's successor. His views were more liberal than those of his father. The Appellant became sympathetic to the Shia sect of Islam, although he did not convert. He made speeches and recited poems. He was deemed to be an apostate by religious extremists.

3. In 2008 or 2009 he suffered a brain haemorrhage which he attributed to living in fear. He was admitted to Lahore Mental Hospital where he remained for six months. He suffered from memory loss. His evidence was that in 2010 he was tortured, dragged along the ground and hit on the head. He was warned not to contact the police. In 2010, whilst listening to a speech by a Shia scholar, there was an incident involving gunfire, but the Appellant was saved by his father. It was at this time that his parents decided that the Appellant should leave Pakistan. The Appellant's evidence was that he had links in the UK with Shia Muslims, but that he respected all faiths. He came to the UK as a student in 2010.

4. The Appellant returned to Pakistan in 2011. He returned to see his father on his return from a pilgrimage to Mecca. However, the Appellant was kidnapped for 24 hours, during which time he was beaten. His father died in 2012 and his mother told the Appellant that he had been poisoned. She received an anonymous threatening phone call. The Appellant could not return to attend his father's funeral because of the threats. When his father died he was told that the perpetrators were still after him.

5. The Appellant's family was known in Pakistan. The Appellant's evidence was that he could not go anywhere in Pakistan because he would go to Shia Majlis and would not stay quiet. He would recite poems and he would be identified. Although the Appellant is Sunni, he wanted a united Islam and in the view of the extremists this made him an apostate. He will continue to speak publicly about this. If he went to Shia gatherings this would put him, a Sunni, at risk. He made an asylum claim on 22 May 2017 whilst in detention.

6. In cross-examination the Appellant stated that he had been told that tissues were dead down the left side of his body, but he had lost any documents relating to this. The Appellant was asked about his memory loss directly by the judge. He said that he forgot things and he had forgotten things. He was asked how he recited poems and he stated that this was because he repeated them and because they were written.

7. The judge recorded (at paragraph 48.1) that there was no medical evidence of a brain haemorrhage or memory loss. The judge recorded the

Appellant's evidence in respect of *sur place* activities. He had not been to a mosque, but he had been to someone's home in Peterborough with a friend. There was no witness statement from the friend who, according to the Appellant, had been ill for the last two weeks. The judge recorded that there was no supporting statements. The Appellant's evidence was that people were willing to give statements in support of his appeal but there had not been enough time to gather such evidence.

8. The judge made findings as follows;

> "78. The appellant provided no medical evidence to support his contention that he suffers from memory loss, and his evidence was given in a clear and focused way with no difficulty and recollection. There is no evidence of a brain haemorrhage. The appellant claims to have physical difficulty down his left-hand side, but there is no medical evidence of it (and nor was it apparent in the hearing). The challenge to his credibility based on failing to mention a very serious physical attack is not to be explained by memory loss. This was the single biggest assault upon him, and if it were genuine it would have been remembered. This was a subsequent embellishment to his claim.
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> 79. The appellant provided no evidence of any religious activity during his seven years in the UK. That he had been to someone's house in Peterborough on a few occasions, that person not giving any form of evidence it is not supportive of the appellant's credibility.
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> 80. The profile of his father increased throughout the hearing. It appeared that he commenced as an imam, then became someone of district importance, and then became an Islamic scholar of national importance, such that he had travelled to all the major cities of Pakistan, with such renown that the appellant, as his son, could not pass unnoticed in any of them. As the Home Office Presenting Officer pointed out, such a person would have a profile on the internet, or there would be some other means of showing his renown. This is a tale that has grown in the telling.
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> 81. Further, the appellant said that he ceased to travel around with his father at the age of 12 or 13 when his father had given up that role. That would have been some 17 years ago, and the idea that he might be recognised now is fanciful. The appellant also asserted but it was his role to assume his father's position. However, he described his father as having a PhD and a national Islamic scholar reputation. Such positions are not passed on by inheritance.
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> 82. The account that his father was murdered by being poisoned by members of SSS or LeJ while he was entertaining them at his home, so causing a heart attack has a very high degree of implausibility and I reject it.
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> 83. S8 of the Asylum and Immigration (Treatment of Claimants) Act 2004 and JT (Cameroon) v SSHD [2008] EWCA Civ 878 our (sic) not determinative of a claim, but they are relevant to this claim. The appellant made an application which was refused with no right of appeal. Nevertheless, he submitted an appeal. It was struck out on 15 November 2013. He was served with removal papers on 21 January 2014 but still did not claim asylum. He was encountered working

illegally, and detained, but even then did not claim asylum until after removal directions were set a week later.

84. It is not credible that the appellant would, as he said he did, mention his fears to a whole series of representatives, and that none of them put in a claim for asylum for him. The present representative put this down to unscrupulous lawyers or unqualified representatives making money from those in need. This appellant would have been remarkably unlucky to have found so many poor advisers.

85. I asked the representative several times whether he had any submissions concerning the period 2013 to 2017 when the appellant was knowingly in the country illegally, but none was forthcoming, for the simple reason that the appellant was knowingly an overstayer. His screening interview was conducted in English and he has some knowledge of the language. I do not believe that any person who has been in the UK the last four years has not heard of asylum, and gained no understanding of what it is about. The answers given by the appellant to questions I asked of him in an effort to understand his case were deeply unimpressive. He was not truthful.

86. Claims based on the health of the appellant are misconceived. There is no medical evidence of anything seriously amiss with the Appellant. Insofar as he may need mental health treatment it is available in Pakistan, but I am not satisfied that he needs it. The evidence about memory loss was in evidence, and not apparent from his evidence given in the Tribunal. The case of *N* cited in the decision, and *GS India* means an Article 3 claim cannot succeed.

87. I note the letter of concern from the Helen Bamber foundation (sic) at A1:75 – 77, and while anything from that foundation must be accorded considerable respect, I note that this expresses a prime facie the view only (sic), and is based on the report of the appellant. The weight to be given to the letter from the Helen Bamber foundation (sic) depends upon my assessment of his credibility. I have not found him credible and so the letter does not have greater weight.

88. I note the appellant has some scars to his hand consistent with his account that he grabbed the knife of an attacker. There are any number of ways such scars could be obtained, street violence being one of them. There was no detail given to this accountant as to how the attacker desisted once the knife had cut the appellant's hand. I do not find as (sic) the accounts as to how the scars were obtained to be credible. The appellant offered no explanation as to how he escaped this asserted attack."

9. The Appellant saw Dr Sayed on 6 July 2017 who concluded in his Rule 35 report the following:-

> "On examination he has some scars which may be due to the attack described. He claims he has been depressed since the attack and suffered a brain haemorrhage in 2009 – just prior to the attack. He feels this was due to the stress of being threatened and harassed."

10. There was also before the judge a letter from the Helen Bamber Foundation of 29 June 2017. This was a letter to Duncan Lewis Solicitors and the letter states as follows:-

> "In our clinical opinion, formed following expert multidisciplinary consideration of the available information listed above, this appears to be a prima facie case of torture or other cruel, inhumane or degrading treatment. Your client reports to have suffered both physical and psychological symptoms as a result of mistreatment and, in our view, this should be further assessed by a medico legal expert as soon as possible".

11. There was as a matter of fact no medico-legal expert report produced. The letter from the Helen Bamber Foundation and the Rule 35 report was the totality of independent evidence before the judge. Mr Sesay's view is that it supported the evidence of the Appellant that he had a brain haemorrhage in 2009 and that he has memory loss. In addition that he has scarring resulting from an attack.

12. Mr Sesay's main challenge to the assessment of the evidence by the judge is that the judge did not consider the evidence of the Rule 35 report. I do not accept this. It is clear the judge was aware of the existence and the content of the Rule 35 report (see paragraphs 11 and 88). The judge was clearly aware, on a proper reading of paragraph 88, that the Appellant had scars to his hand as concluded by Dr Sayed. There is no specific mention (at paragraph 88) of the Rule 35 report; however, I am satisfied that the judge took it into account. At very best the report was evidence of scarring and established a causative link with an attack. The judge accepted the scarring, but rejected causation as asserted by the Appellant. Furthermore, the judge was entitled to conclude that there may be other causes of scarring other than the account given by the Appellant, in the light of the evidence before him and the absence of an Istanbul Protocol compliant report. The findings were open to the judge.

13. Mr Sesay argued the judge erred, at paragraph 78, when concluding that there was no evidence of memory loss, in the light of the Rule 35 report. I disagree. The Rule 35 report does not, on a proper reading, corroborate the Appellant's evidence of memory loss. Furthermore, the judge was entitled to conclude that there is no medical evidence "of anything seriously amiss with the Appellant." The Rule 35 report was evidence the Appellant told Dr Sayed that he had suffered a haemorrhage and that he was depressed. It was not independent evidence corroborating the Appellant's evidence that he had had a brain haemorrhage and suffered memory loss and depression. In the absence of supporting evidence the judge was manifestly entitled to attach very little weight to what the Appellant told Dr Syed and to conclude that there was no evidence of memory loss.

14. Although not specifically raised by Mr Sesay, I have considered the assessment of the letter from the Helen Bamber Medical Foundation and the findings of the judge at paragraphs 87. I have considered whether the judge assessed this evidence in the round. Having considered the very limited probative value of the evidence before the judge and the lack of a medico-legal report in respect of mental health, neurological problems and causation of scarring, I conclude that there is no material error of law. There were problems with the Appellant's evidence (including the

significant delay in claiming asylum) and the judge made a number of adverse credibility findings which as a matter of fact have not been challenged.

Notice of Decision

15. For all of the reasons that I have given there is no material error of law and the decision of the judge to dismiss the appeal on asylum grounds is maintained.

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Signed Joanna McWilliam Date 31 October 2017

Upper Tribunal Judge McWilliam