



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

Appeal Number: PA/03613/2018

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On the 23<sup>rd</sup> May 2019**

**Decision & Reasons Promulgated  
On the 12<sup>th</sup> June 2019**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

**MA  
(ANONYMITY DIRECTION MADE)**

Appellant

**AND**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Greer, Counsel instructed on behalf of the Appellant  
For the Respondent: Miss Petterson, Senior 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. 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 national of Pakistan. He appeals with permission against the decision of First-tier Tribunal (“FtTJ”), promulgated on the 19<sup>th</sup> February 2019 dismissing his appeal against the decision to refuse his protection and human rights claim.
- 2.** The appellant’s history is set out in the decision letter of 4<sup>th</sup> March 2018. The appellant arrived in the United Kingdom on 9 February 2012 and on the 28<sup>th</sup> May 2013 applied for further leave to remain as a Tier 4 student which was granted on the 19<sup>th</sup> June 2013 to expire on the 29<sup>th</sup> March 2015. In March 2014, he returned to Pakistan for four weeks before returning to the UK and on 2 April 2014 curtailment of his leave was considered. On the 2 June 2014 his leave was curtailed. He made a claim for asylum on 4<sup>th</sup> September 2017.
- 3.** He provided a screening interview and later provided a statement of evidence (SEF statement) and was interviewed about the factual basis of his claim.
- 4.** The basis of his claim related to his activities for and membership of the Jammu Kashmir National Awami Party (hereinafter referred to as “JKNAP”). He stated that he had joined that party in a proximally 2001 and had been a member since he was a student.
- 5.** Between 2010 and 2011 he stated that the authorities had come to his home once or twice as he was reading songs and anthems and seeking support for the JK party. However, they arrested his cousin. The authorities did not say that they were from the ISI, but his family thought they were from the way that they were asking questions. The appellant was not in his home area as he was moving around Mirpur and Rawalpindi.
- 6.** At the end of 2011, the appellant stated that he was arrested while giving a speech and singing songs and anthems for freedom. He could not remember the date of his arrest, but someone gave a guarantee and he was released. He was released on the promise not to undertake any anti-government activity in Pakistan.
- 7.** In 2012 he entered the UK as a student using his own passport but had no problems when leaving the airport. He did not claim asylum in 2012 as he was waiting for the situation to get better.
- 8.** In 2014, the appellant returned to Pakistan in secret as his mother was seriously ill. He had no problems entering Pakistan nor were there any incidents whilst he was in that country. Whilst he was there, he also got married. It is said that when party members found out he was back in Pakistan; he sang a song on 18 April which the police found out about through social media activities and lodged a FIR against him. The authorities were not able to arrest him as he moved with his wife to his relatives and then to Mirpur and Rawalpindi. He had no problems leaving Pakistan.

- 9.** The appellant did not make a claim for asylum on returning in 2014 as he stated he was waiting for the situation to improve. In 2015 he applied for travel documents to return but withdrew the application as his wife and friends told him that the police would still be interested in him. He then decided to apply for asylum in 2017.
- 10.** Whilst he has been in the UK, he has been involved with JKNAP UK and the local branch; his current role as an organiser for the party and being responsible for setting up new units. His support for the party has been demonstrated by his attendance at a number of demonstrations and protests outside of the Pakistani High Commission. On 22 October 2017 he gave a speech outside the Commission and also attended a further demonstration on 18 April 2018 which was a separate rally and protest in Parliament Square on the same day as the PO JK government planned a protest against India. It was said that at that protest the JKNAP members were attacked by those who were attending the protest on behalf of the PO JK. The appellant believed that he was attacked by pro-Pakistani supporters who are funded by the Pakistani agencies.
- 11.** The appellant also asserted that the authorities had visited his wife and mother at the end of 2018 and his brother in January 2019 as a result of his activity in United Kingdom. Furthermore, a FIR (First Information Report) dated 13 May 2018 was filed against the appellant on the basis that he attended a demonstration in London and that the flag of Pakistan and the High Commissions vehicle been damaged; that he had been previously involved in antisocial activities and they were categorised as treason.
- 12.** In a decision letter dated the 4 March 2018, the respondent refused his claim for asylum and humanitarian protection.
- 13.** The respondent rejected his claim to be a member of the JKNAP in Pakistan and at paragraphs 28 - 34 set out the evidence that was considered to be inconsistent with his claim support for the party. For example, he was unable to provide a reasonable account as to why he began to support the JKNAP and the account given that his cousin had been martyred was not consistent with the documentary evidence provided on his behalf that stated that in fact his cousin had been kidnapped (see paragraph 28 of the decision letter). The respondent made reference to the appellant's inability to recall the contents of the membership card or provide such a document and was unable to provide sufficient level of detail concerning the aims of the party consistent with someone who would be a member since 2001.
- 14.** As to his membership of the party in the UK, the respondent considered his evidence to be vague and lacking in detail expected of someone who claimed to be a joint secretary of the party. His claim to have travelled to London on five or six occasions to protest had not been evidenced and the letter from the JKNAP(UK) was viewed as "self-serving". The respondent

considered the photographs which had been provided but it was unclear what those photographs demonstrated.

- 15.** His claim as to what had occurred in Pakistan was also not accepted for the reasons given at paragraphs 40 – 49. As regards his claim that the Pakistani authorities first began looking for him between 2010 and 2011 as a result of his support for the party, it was not deemed credible that the intelligence services would be unable to track down or were interested in tracking down, a low level JKNAP member (see paragraph 41).
- 16.** Other credibility issues were outlined in the decision letter which included the appellant's inability to recall the date upon which he was arrested, his account as to how he could be released from police custody given the interest from the ISI (paragraph 44) and that he was able to leave the UK via the airport at a time when the intelligence services were looking for him. The respondent considered that his ability to leave Pakistan was inconsistent with his claim that he was of interest to the Pakistani intelligence authorities (see paragraph 45).
- 17.** As to his return in Pakistan in 2014, was considered to be inconsistent with his earlier claim that he had left Pakistan in fear stop furthermore it was not deemed credible that he would return in secret and continue to publicly make speeches or post on social media.
- 18.** The respondent gave consideration to the documents provided including copies of the two FIR's and the "warrant" but in the light of the lack of original documentation and in the light of the objective material which made reference to the ease upon which. You can be obtained in Pakistan waited been attributed to those documents.
- 19.** In determining the asylum human rights claim, consideration was given to section 8 of the 2004 act and that his failure to claim asylum before being notified of an immigration decision damages credibility under Section 8 (5) of the 2004 Act.
- 20.** The appellant sought to appeal that decision and his appeal was heard on the 23<sup>rd</sup> January 2019. In a decision promulgated on the 19<sup>th</sup> February 2019, the FtTJ dismissed the appeal having concluded that the appellant had not given a credible or consistent account as to his activities in Pakistan for the JKNAP.
- 21.** His findings of fact can be summarised as follows:
  1. The judge rejected his account that he was involved with the JKNAP in Pakistan as a member, supporter, agitator or singer or would have perceived to have been.
  2. In reaching that finding, the judge rejected the documentary evidence of the FIR dated 11 September 2009 (see paragraph 62), the FIR dated 20 March 2014 and the "warrant "dated 1 April 2014 on the

basis that it was inconsistent with his ability to leave Pakistan shortly thereafter in April 2014 without any problems and also the light of the objective material which demonstrated the ease with which forged documents can be obtained in Pakistan. The judge took into account the appellants evidence about people being unable to “pin a really big crime on him” but the judge rejected this as “lacking in credibility” as he was “accused of treason which by any measure is a very serious crime, and background evidence produced noted the strength of the ISI”( see [61]).

3. He rejected the evidence of the witness Mr R in relation to events in Pakistan. The judge stated at [60] that Mr R had not been a witness to the events in Pakistan and his evidence was based on what he had been told by others including the appellant. The judge found that he had “plainly been in touch with people in the JKNAP in Pakistan “but that no evidence had been produced from anyone in that country to confirm what was said about the appellant. In this context the judge accepted there was no requirement to obtain corroboration but that on the facts of this appeal there was no reason why evidence could not have been obtained from someone who had personal knowledge of the appellant in Pakistan.
4. As to the document dated 13 May 2018, the judge took into account the report provided by Dr Wali that the FIR was a genuine document having seen a colour notarised copy (see paragraph 37). The judge found it [69] that he could place little weight on the report as Dr Wali had not seen the original document, his ability to comment on the authenticity of the document had not been established as opposed to talk about the general situation in Pakistan. The judge also did not accept that an FIR would be issued in 2018 on the basis that the appellant had no profile in Pakistan or that the authorities would have known who he was thus the judge concluded that he did not find it reasonably likely that the F IR had been issued or that the family had been visited by the authorities on account of his activities.
5. The judge accepted that he had attended demonstrations and joined JKNAP in the UK based on the evidence of Mr R and Mr M, the photographs and the appellant’s oral evidence (see [69]) but concluded at [70] that

“70. I am satisfied his JKNAP activity he has been purely to create a false asylum claim. If by chance anyone at the airport in Pakistan was aware of the creation of this false claim and asked why he was there, who would not need to lie as he would simply say he tried to create a false asylum claim. He therefore does not require police protection or need to internally relocate.”

71. The appellant is not established he is a refugee.”

- 22.** The judge therefore dismissed his protection claim. At paragraphs 72 - 73 the judge conducted an assessment of his Article 8 claim and reached the conclusion that it not been demonstrated that there were very significant obstacles to his reintegration to Pakistan given his length of residence of

seven years, his retention of language and cultural ties and his family ties to the country and that there were no duly harsh consequences which would justify a grant of Article 8 outside of the rules. Thus, dismissed the appeal on all grounds.

- 23.** Following the dismissal of his appeal, grounds of appeal were issued for permission to appeal and that application was granted by Judge Swaney on the 21<sup>st</sup> March 2019 for the following reasons:

“The judge accepts that the appellant joined the JKNAP in the United Kingdom and has attended demonstrations here. The judge accepted the appellant’s evidence and the evidence from two other mems party. The judge did not give reasons the finding that those activities were entered into for the purpose of fabricating an asylum claim. In YB(Eritrea) v SSHD [2008] EWCA Civ 360, the Court of Appeal held that if the appellant had already been disbelieved about is surplus activity, while his motives might be disbelieved, the consequent risk on return from his activity sur place was essentially an objective question. The judges comment that the appellant constantly state that it made a full asylum claim if questioned on return does not address the issue of how his activities would be perceived in Pakistan or if they would put the appellant at real risk of persecution and/or serious harm.”

- 24.** It is as a result of that grant of permission that the appeal comes before the Upper Tribunal. The grounds advanced by the appellant are those originally provided, and Mr Greer, Counsel on behalf of the appellant, and who appeared before the FtTJ relies upon the grounds which he had drafted.
- 25.** In the written grounds, challenge is mounted to the concluding paragraph at [70] in which he set out that the judge was satisfied that his activity in the UK had been purely to create a false asylum claim. The grounds assert that that was a wholly unreasoned conclusion and that it was unclear from the decision how the judge reached that view. It had been conceded that the appellant was an active member of the party and there had been no examination of the appellant’s motivation for his involvement in the party before the Tribunal. It was it was therefore submitted that the judge’s conclusion in respect of his motivation was flawed for a lack of reasoning. Furthermore, the judge made no finding in respect of the appellant’s likely behaviour upon return to Pakistan, should his interest be genuine and any wish to continue those activities upon return. The finding in respect of his ability to evade adverse interest of the authorities by telling the truth was similarly flawed.
- 26.** He supplemented them with oral submissions which essentially comprised of the written grounds. He submitted that the judge had not given adequate reasons at paragraph 70 when reaching the conclusion that his motivation in joining the party was to create a false asylum claim. The evidence before the judge consisted of oral evidence from a leader of the party and the evidence that he had been attending demonstrations including photographs. However, the judge appeared to rely upon his findings in Pakistan to support the conclusion that his activities in the UK

were to create a false asylum claim. It is submitted that even if that was, so it was not necessarily determinative.

- 27.** Mr Greer further submitted that the judge reached no finding as to what the appellant would do on returning Pakistan and if he were changes behaviour or act discreetly (see HJ(Iran)).
- 28.** He concluded his submissions that paragraph 70 was wholly unreasoned and made no reference to the background evidence and in particular the Pakistani authorities' attitude to Kashmiri separatists. Thus, he submitted it was incumbent on the judge to deal with this issue.
- 29.** Miss Petterson on behalf of the respondent submitted that even if there was a gap in the judge's determination, that had to be viewed in the light of the findings of the FtTJ which had not been challenged in the grounds. The judge had found that there had been no FIRs issued in Pakistan, the judge did not accept he had any profile in Pakistan and that his family had not been the subject of any visits by the authorities. She submitted that his case was that because he had been involved in protests in the UK it had led to the authorities having an interest in him and that a visit took place in 2018. However, the judge rejected that evidence and there had been no challenge made to it. It is against that background that the findings [70] must be viewed as the judge found that was no current interest in the appellant as a result of him attending any demonstrations or participating in the party and there has been no historical profile.
- 30.** The appellant could not point to evidence to demonstrate that he would be objectively at risk. Whilst there was documentary evidence relied upon by Counsel relating to the situation Kashmir (either Pakistan or India) and that it is volatile, he was not able to point to any evidence someone with a profile of the appellant would be at risk. She therefore submitted that on the basis of his profile and that he had not been in Pakistan since 2014, there was nothing to show that he would be targeted on return or questioned. Any error would therefore not be material.
- 31.** At the conclusion of the hearing I reserved my decision which I now give. I should add that later on in the morning and after the case had concluded, the appellant attended at the hearing centre. Mr Greer had informed the court that the appellant would not be in attendance and thus the hearing had taken place in his absence. No court interpreter was present as this was an error of law hearing and the appellant's legal representatives had not informed the tribunal that an interpreter would be required. The appellant was informed that his Counsel, who had represented him in the hearing below, had made full submissions on the error of law but that if he had any specific instructions he would be able to inform his solicitors who in turn would write to the Tribunal setting out those additional matters. I therefore gave an extra seven days for any further information to be

provided. Counsel was contacted by the court staff and was also informed of this. No further submissions or any written communications have been received at the date of writing this decision.

Decision on the error of law:

**32.** Having considered the submissions of the advocates, I am satisfied that the decision demonstrates the making of an error on a point of law. The issue relates to the sur place claim.

**33.** Paragraph 339P states:

“A person may have a well-founded fear of being persecuted or a real risk of suffering serious harm based on events which have taken place since the person left the country of origin or country of return and/or activities which have been engaged in by a person since he left his country of origin or country of return, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin or country of return.”

**34.** There is no challenge to any of the findings of fact made by the Judge either advanced in the grounds or the oral submissions made. As summarised in the earlier part of this decision, the Judge made a number of adverse credibility findings in relation to his claim to have been a member and supporter of JKNAP when resident in Pakistan and expressly rejected his claim to have been arrested and detained and to have been of interest to the authorities in Pakistan in 2014. Furthermore, the judge rejected his account that a FIR had been registered against him by the authorities in 2018 as result of his attendance at a demonstration or that the authorities had visited his family home.

**35.** Whilst he accepted that the appellant had joined JKNAP in the United Kingdom and had attended demonstrations (see findings of fact at [69]) the judge made no further assessment of the sur place issue. The judge failed to give any reasoning or any adequate reasoning as to his finding at [70] that his activity has been purely to create a false asylum claim. Even if it could be inferred from the general adverse credibility findings made, as set out in Danian [1999] EWCA Civ 3000, even if his credibility might be low, it was still necessary to scrutinise and assess the new claim (sur place claim). From the submissions of Mr Greer, Counsel at the hearing, there does not appear to have been any questioning directed to his motivation or directed to Mr R who was a member of the party in the UK and had attested to his activities there for the party. Part of that assessment would necessarily include the commitment shown in the UK, the length of his association with the party and any specific activity carried out. Beyond the general acceptance of the appellant having attended demonstrations, the



judge made no assessment of the political activity carried out in the UK or in the light of the evidence of Mr R. Consequently, there was no assessment of his likely behaviour on return.

- 36.** Activities undertaken in bad faith can found a sur place claim but careful attention must be given to whether those activities are likely to come to the attention of the authorities on return - see the reasoning in YB (Eritrea) v SSHD [2008] EWCA Civ 360. The real question in, most cases is would be what followed for an individual claimant if any information reached the authorities. This was a question of fact for the judge to assess on the evidence before him. He accepted that he had attended demonstrations and even if it could be inferred that this was solely to found a sur place claim rather than any genuine political commitment, he would have to consider whether the appellant in his particular circumstances would, as a result of his activities coming to the attention of the authorities and be at a real risk of serious harm or persecution in Pakistan. Part of that assessment would necessarily include the commitment shown in the UK, and whether he would be likely to continue that political activity on return.
- 37.** There was no assessment of what part he played in any of the demonstrations or the effect of the demonstrations being reported on social media. There is also no assessment of the country materials. I would accept the submission made by Miss Petterson that the material did not expressly make reference to JKNAP ( save for the Board of Canada report) but there was general material concerning the authorities view of separatism in the context of Kashmir and an assessment of that material in conjunction with assessment of his profile in the UK and how it was likely to be perceived, if it was known , was necessary.
- 38.** I am therefore satisfied that the deciosn demonstrate the making of an error on appoint of law and it is set aside.
- 39.** As to remaking the decision, given the nature of the errors I accept the submission made by Mr Greer that the appeal should be remitted to the First-tier Tribunal.
- 40.** I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal. That reads as follows:  
"[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-  
(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or  
(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

- 41.** Thus, I have reached the conclusion that it is appropriate to remit it to the First-tier Tribunal.
- 42.** As there had been no challenge made in the grounds to the findings of fact set out at paragraphs 59-69, they shall be preserved findings of fact. Additionally, the finding made at paragraph 69 that the appellant has attended demonstrations and had joined JKNAP in the UK shall be preserved. The issue to determine relates solely to the issue of his sur place claim as identified above.

### **Notice of Decision**

- 43.** The decision of the First-tier Tribunal involved the making of an error on a point of law and is therefore set aside. It is remitted to the First-tier Tribunal for a hearing in the light of the issues set out and with the findings of fact at paragraphs 56-69 being preserved.

### **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. 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 Upper Tribunal Judge Reeds

Date 10/6/2019

Upper Tribunal Judge Reeds