Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/06224/2017**

THE IMMIGRATION ACTS

Heard at The Royal Courts of Justice	**Decision & Reasons Promulgated**
On 6 November 2017	**On 8 November 2017**

Before

UPPER TRIBUNAL JUDGE PITT

Between

ANSER IQBAL
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Munira, Counsel instructed by Dr. Law Solicitors
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision dated 26 July 2017 of First-tier Tribunal Judge Eldridge which dismissed the appellant's appeal against the refusal of his asylum and human rights claim.

2. The background to this matter is that the appellant is a national of Pakistan who gives his date of birth as 1 January 1982. The appellant was granted a multi visit visa valid from 1 August 2006 until 1 February 2007. He overstayed that visa and on 13 November 2007 was encountered whilst working illegally. He was served with notices indicating his liability to removal and was detained. He was released on temporary admission three days later but immediately absconded.

3. The appellant did not come to the attention of the authorities again until he was encountered by Immigration Officers on 16 April 2017. He was

again served with documents indicating his illegal status and liability to removal. He was again detained. On 21 April 2017 he claimed asylum.

4. The asylum and human rights claim was refused on 13 June 2017 and the appeal came before Judge Eldridge for a hearing on 26 July 2017. In his decision, Judge Eldridge at [13]–[16] refused to adjourn the hearing for the appellant to obtain legal advice. At [39]–[45] the judge found that the appellant's claim to fear mistreatment on return was not made out.

5. The basis of the appellant's claim was that there was a dispute over an area of land left to the appellant by his father. The dispute started in 2003. When the appellant's relatives learned that the appellant had inherited the land they indicated that they wished to own it and in 2004 arranged for the appellant's brother and cousin to be murdered by other community members. They were able to do so because they were rich and influential. The appellant was abroad at this time and told another brother to report the murders which he did and an FIR was lodged at a police station. The police did not follow up the matter however, instead recording a false allegation against the appellant that he had arranged for the individuals who wanted his land to be shot in the legs. This resulted in an FIR being lodged against the appellant and his brothers in November 2004. An arrest warrant was issued for the appellant and all of his brothers.

6. As a result of the fear of further harm from the individuals who wanted the land and of being arrested by the authorities, the appellant and his surviving brothers left the country. Before leaving, the appellant went to live with a cousin for four months and then in Hyderabad for a year with a friend and ultimately in Islamabad for five months before coming to the UK on the visit visa. During this period he did not experience any problems from the people he feared or the authorities. Albeit these events occurred before he came to the UK in 2006, the appellant maintained that he did not claim asylum on arrival or until 2017 as he was too afraid and did not know the system.

7. The First-tier Tribunal found at [37] that the appellant's claim did not disclose a Refugee Convention reason. At [39] the judge found that the appellant could be expected to have provided some of the evidence mentioned in his case such as the FIR lodged against his family but could not do so despite his account showing contact with relatives in Pakistan. He was also found to have given contrary accounts of whether an arrest warrant was issued.

8. Further, at [42] the judge noted that the appellant made no mention of any problems in Pakistan when he was first arrested in 2007 having overstayed his visit visa. He only claimed after his arrest in April 2017 after being served with removal documents. It was also found at [42] that he had given contradictory evidence about having family members in Pakistan. At [43] the judge placed weight on the very significant delay in claiming asylum. At [44] the judge concluded that the appellant was not at all credible, had not been involved in a land dispute and did not face harm for any reason on return to Pakistan.

9. The main ground of appeal was that the appellant had not had a fair hearing as the First-tier Tribunal should have adjourned in order for him to obtain legal advice. This was the only ground addressed in oral submissions.

10. The written grounds also maintained that the judge's findings were "flawed as he failed to give adequate or sufficient reasons to make the adverse credibility findings". The grounds at paragraph 3 objected to the finding that the appellant had not provided evidence which he could be expected to have obtained, for example the FIR. The claim was supported by country evidence of such disputes in Pakistan. At paragraph 5 the grounds object to the judge relying on the discrepancies in the appellant's interviews maintaining that this also breached the appellant's right to a fair and just hearing. Paragraph 6 of the grounds again reverts to a challenge against the credibility findings stating that they were "erroneous". The grounds here concede that there were discrepancies in the evidence but then go on to state that "the real question is as to whether there (sic) risk of life if the appellant is removed to Pakistan". Paragraph 7 of the grounds states that the appellant's removal would not be proportionate.

11. Other than the challenge to the First-tier Tribunal proceeding with the hearing and no adjourn for legal advice, I can deal with the remaining grounds relatively briefly. They are unparticularised disagreements with or attempts to reargue the case that was before the First-tier Tribunal. They do not set out arguable errors of law challenge and fail to engage with the specific reasoning given by the judge. Where the appellant claimed asylum only after being here illegally for ten years, after absconding for 10 years and after being arrested and in light of the accepted discrepancies between his accounts on key issues such as the existence of an arrest warrant, it was manifestly open to the FTTJ here to refuse the appeal for credibility reasons. The judge sets out those reasons in clear and detailed terms at [39]–[45] and it is simply unarguable that those reasons are anything other than rational and adequate. Where the grounds challenge the Article 8 findings at [49]–[51], the immigration history set out above shows that the appellant was wholly incapable of qualifying for leave under the Immigration Rules, that his private life weighed little in any assessment outside the Rules and that, without more, nothing could have led the judge to grant leave outside the Immigration Rules.

12. The only matter requiring any real scrutiny in the grounds is the argument that the judge should have adjourned the hearing for the appellant to obtain legal representation. The First-tier Tribunal Judge sets out the decision relating to the adjournment at [13]–[16] as follows:

> "13. On receipt of the notice of appeal, the Tribunal arranged for a substantive hearing date of 24 July 2017, when the proceedings came before me. The Appellant wrote to the Tribunal on 21 July 2017 requesting an adjournment so that he could instruct a solicitor and said that an initial appointment had been arranged for the afternoon of the scheduled hearing. This application was considered by Assistant

Resident Judge Easterman who declined the request. He was of the opinion that the Appellant had known of the decision since 15 June 2017 at the latest and that he had had since then to arrange representation.

14. The Appellant renewed this application orally to me on the morning of the hearing. He said that he had arranged a solicitor on 20 July 2017 but that person had 'turned down' his case. He had been given the details of another solicitor, who would not answer the phone to him and finally a third name had been given to him and an appointment made.

15. Mr Lumb opposed the application on behalf of the Respondent. He reminded me that between five or six weeks had passed the decision was served on the Appellant and there was no indication of whether or when any lawyer would be able to take full instructions. He reminded me that the Appellant was in detention and submitted that it assisted no-one to encounter further delay.

16. Essentially, there was nothing put before me that had not been considered by Judge Easterman. I agreed with his reasoning. I had regard to the provisions of Rule 2 of the Tribunal Procedure Rules 2014. I considered that the case could justly and properly be disposed of by the Appellant giving evidence. He had already given a full account to the Respondent and he could supplement that in (sic) on any matter he wished. There was nothing to indicate that he would ever be represented and I had regard to the scarce resources of the Tribunal and the Respondent."

13. The First-tier Tribunal also set out at [26]–[28] the approach he took to the hearing after he decided to proceed:

"26. At the very beginning of the hearing I ensured that there was good and effective communication between the interpreter provided and the Appellant. The language was Urdu. I then dealt with his request for an adjournment as a preliminary issue and, as I have stated already, I refused that application. I had already explained that I assist (sic) the Appellant in the conduct of the appeal by asking him a number of questions, all of which would be aimed at enabling him to give a full account of his fears and his claim and to supplement whatever he had said in interview. He reiterated that he did not feel he could add to what was stated in those interviews because he was not represented and he also said that he had said everything in interview anyhow.

27. My Record of Proceedings shows that one way or another I asked him five times whether he wished to give evidence to me and how that might benefit him but also that if he did so he would be liable to be asked questions on behalf of the Respondent. On each occasion he said he did not want to give evidence. I asked him for the sixth time to listen carefully to all I had to say and repeated that if he did not give evidence I have to judge the case on the papers alone. I told him he was not obliged to give evidence but he could be assisted by me. He told me (sic) understood this and he replied 'no – I do not wish to give evidence'.

> 28. No person in the Appellant's position can be compelled to give evidence and I was satisfied he had taken an informed decision. Accordingly I proceeded to the next stage of the hearing. "

14. In my judgement the First-tier Tribunal Judge did not err in refusing to adjourn the hearing in order for the appellant to obtain legal representation. It is not a requirement that an appellant has legal advice. As the First-tier Tribunal judge indicated at [26], judges are trained and experienced in assisting unrepresented appellants to present their cases. As stated in [13], the appellant had had since at least 15 June 2017 to find legal advice for his appeal. I note that he had provided information suggesting that he had a meeting with a lawyer on the afternoon of the hearing. This is not the same as a lawyer indicating to the Tribunal that they had formally taken on the appellant's case and the First-tier Tribunal did not err in stating at [16] that it was unclear that he would be represented if an adjournment was granted.

15. There is also the wider context in that the appellant sets out a claim relating to events that occurred before he came to the UK and which, according to his account, specifically led to him coming to the UK in order to avoid harm. Following his evidence, he has known since he came to the UK in 2006 that he might want to obtain legal representation to support a protection claim and has had since then to obtain documents in support of his case.

16. Further, the appellant had the opportunity to address the discrepancies in his evidence, his concerns about the interview record and so on. He declined to take up that opportunity; see [26]-[28]. The First-tier Tribunal Judge acted with conspicuous fairness in the conduct of the hearing, including not drawing an adverse inference from the appellant's decision not to give oral evidence but focussing on the various accounts that were before him.

17. The test set out in Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) is:

> "If a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing? See SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284."

18. The appellant here was not deprived of the right to a fair hearing for the reasons set out above. The First-tier Tribunal Judge did not err in refusing the adjournment request.

19. For these reasons I do not find an error of law in the decision of the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed  Date 6 November 2017

Upper Tribunal Judge Pitt