Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12501/2017

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Decision & Reasons Promulgated**
On: 5 March 2018	**On: 9 March 2018**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

M A

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms K Reid, Counsel instructed by Lupins solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
An anonymity order was made by the First-tier Tribunal. As this is an appeal on protection grounds, it is appropriate to continue that order. 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, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Background

1. The Appellant appeals against a decision of First-Tier Tribunal Judge Rowlands promulgated on 10 January 2018 ("the Decision") dismissing the Appellant's appeal against the Secretary of State's decision dated 9 October 2017 refusing his asylum, humanitarian protection and human rights claim.

2. The Appellant is a national of Pakistan. He arrived in the UK as a student with leave to 26 February 2011 which was subsequently extended to 26 June 2013. A further application made on the same basis was refused and his appeal against that decision was dismissed. He was appeal rights exhausted on 9 January 2015.

3. On 26 July 2017, the Appellant was encountered working illegally. He claimed asylum on 5 August 2017. His claim relies upon a fear of a group called Jammat Ul Dawah ("JUD") which is an organisation which the Appellant at one time supported. However, he claims that JUD attacked him because he refused to fight for them. The Appellant also claimed that he was previously a member of Jammu Kashmir Liberation Front ("JKLF") although he did not claim to be at risk from this organisation.

4. The Judge found the Appellant not to be credible. The Judge concluded that, even if the Appellant had been threatened and faced a risk from JUD (which was not accepted) there was no evidence that JUD would be able to find him following return.

5. There is one issue raised by the grounds of appeal and that is whether the Decision is unlawful for the Judge's refusal to adjourn the appeal hearing in order to allow the Appellant to obtain a report from a country expert in relation to Pakistan.

6. Permission to appeal was granted by First-tier Tribunal Judge Keane on 30 January 2018 in the following terms (so far as relevant):-

> "…The grounds disclosed an arguable error of law but for which the outcome of the appeal might have been different. In refusing a request for an adjournment which the judge recorded at paragraph 3 of the judge's decision the judge arguably applied an incorrect test in according weight the judge's own opinion as to whether an expert's report would assist. The judge arguably perpetrated an irregularity capable of making a material difference to the outcome or the fairness of the proceedings in refusing the request for an adjournment on such a ground. The application for permission is granted."

7. The matter comes before me to decide whether the Decision contains a material error of law. Both parties accepted that, if I found there to be

an error of law in the Decision, given the basis of the challenge, the appeal would have to be remitted to the First-Tier Tribunal for re-hearing.

Decision and Reasons

8. As set out in the grounds, the question for the Judge dealing with an application for an adjournment is whether the appeal can be dealt with fairly and justly. That arises from the Tribunal's obligation to comply with the overriding objective which provides as follows (rule 2 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014):-

> "2. - (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
>
> (2) Dealing with a case fairly and justly includes—
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> (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;
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> (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
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> (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
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> (d) using any special expertise of the Tribunal effectively; and
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> (e) avoiding delay, so far as compatible with proper consideration of the issues."

9. As is stated in Nwaigwe (adjournment; fairness) [2014] UKUT 00418 (IAC), the question on appeal challenging a refusal to adjourn is not whether the Judge acted reasonably but whether he acted fairly. The essential issue is whether by refusing the adjournment sought, the party seeking the adjournment has been deprived of the right to a fair hearing.

10. Those principles are uncontroversial. However, at this point I depart from the way in which the Appellant frames the challenge. It is said that the question whether the expert report could assist was not the right question to ask. It may not be the only question but I disagree that it is not material to the issue whether the appeal can be dealt with fairly and justly without the expert report, bearing in mind the Tribunal's expertise in the determination of asylum appeals.

11. I accept that the Judge's reasons are very shortly stated at [3] of the Decision where the Judge says this:-

> "[3] In the skeleton argument provided by the Appellant's representative there had been application to adjourn the matter to obtain a country experts report. I considered that and decided it

> was not appropriate to adjourn on the basis of what might or might not be country expert report without indication as to whether it would assist."

12. I accept that this paragraph does not refer expressly to the overriding objective of dealing with the matter fairly and justly. However, in my estimation, the Judge can be assumed to have considered that in the context of whether it was "appropriate" to adjourn. As I have already indicated, the question whether the report might assist is part and parcel of that consideration.

13. For those reasons, I do not accept that the Judge misdirected himself as to the test to be applied. The issue for me then is whether the Judge's refusal to adjourn can be shown to have deprived the Appellant of his right to a fair hearing.

14. My starting point is the basis of the application to adjourn. I note that the application was not made for the first time in the skeleton argument for the hearing. It was made for the first time in a letter from the Appellant's solicitors dated 12 December 2017. Having set out the background to the application, the basis for it is stated as follows:-

> "We submit that such a report is highly probative evidence in his appeal and could support the credibility of the Appellant's account which is a key issue for determination by a judge at the full hearing. This is because a report which shows that it was plausible that:
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> (1) the Appellant was a member of the JUD;
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> (2) had then left the JUD; and
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> (3) was later approached by them to join them in their fight against India and was severely beaten as he refused.
>
> would support the Appellant's general credibility. We further submit that generally there is insufficient objective material on JUD and other political organisations, how they operate, whether the state can provide sufficient protection and whether they can internally relocate."

15. That application was refused on 14 December 2017. The reasons are shortly stated as being "There is ample evidence about Pakistan in the public domain" which is another way of saying that an expert report was not needed.

16. The application was repeated in a letter dated 18 December 2017 in substantially the same terms safe that to the above was added the following paragraph:-

> "We submit that further to the reasons specified in our initial adjournment request, the expert will also be commenting on whether the Appellant will face future persecution in Pakistan due to his membership with Jammu Kashmir Liberation Front (JKLF). The Home Office in their reasons for refusal letter dated 09 October

2017 rely on the fact that the Appellant and his father have not been persecuted due to their membership with the JKLF. However, this does not evidence that the Appellant will not face future persecution by state actors and the expert will be instructed to comment on this. The expert will also comment on whether it is plausible that the Appellant is a member of the JKLF".

17. I pause there to note that it was not the Appellant's case that he was in fear of JKLF or on account of his membership of that group from State actors; his claim was to be at risk only from JUD. I also observe that, whilst an expert might form an opinion on the credibility of a person's account based on the consistency of a claim with what is known from background information or expertise about a particular group, it is for the Judge to assess credibility not for the expert. What the solicitors referred to as evidence about the plausibility of the Appellant's account is largely directed at the credibility of that account, save insofar as it is said that there was a need for expert evidence to support the limited background evidence about the groups in question.

18. The Judge did not of course need to direct himself to the earlier request for the adjournment as that had already been refused prior to the hearing (as recorded in the Appellant's skeleton argument). The application made by way of the skeleton argument puts the case for an adjournment on the following basis:-

"[5] The Tribunal is asked to grant an adjournment on the basis that it is in the interests of justice and fairness to do so as:

a. There is limited information in the public domain about the ability and motivation of Jamat Ul Dawah ("JUD") to pursue individuals and the geographical reach of the organisation. A country expert could comment on this. A report is therefore relevant to the issue of whether the Appellant would be at risk for having refused to fight for JUD and the credibility of the Appellant's claim to have been attacked in the past. A country report can also assist with the issues of sufficiency of protection and internal re-location.

b. The Appellant's representatives have already made an application for funding and the outcome of that is expected shortly. An expert has been identified and preliminary instructions have been sent. The expert has indicated that a report can be produced within 3 weeks of receiving formal instructions. There is therefore a clear, and relatively short, timeframe for any adjournment."

19. Ms Reid initially submitted that public funding had already been granted by the time of the appeal hearing but accepted based on her skeleton argument that this could not be correct. As such, although the adjournment might have been short if there were no delays for public funding reasons, it might equally have been longer if that were refused.

I was told by Ms Reid that in fact public funding had subsequently been made available for this purpose.

20. Ms Reid informed me that the proposed expert is a Christopher Bluth who is said to be an expert in Pakistan and who would be able to comment on political factions within that country. She said that no report had been obtained or application made to admit that as further evidence because, following the dismissal of the appeal, public funding would not allow this. That does not of course make my job easier as it is difficult to see whether the report could make any difference and, to that extent, renders the appeal hearing unfair. Ms Reid indicated that there had been a preliminary approach to the expert which showed that he expected to be able to assist. I was not shown any documentation in that regard.

21. I also asked Ms Reid how an expert might be able to provide any useful comment in particular in relation to JUD if it was said that one of the reasons that an expert report was needed is the lack of published material about that group, particularly when that group is a proscribed organisation. Ms Reid accepted that there is in fact some material in the public domain; indeed, the Appellant's bundle for the hearing includes such material.

22. In response, Mr Kotas directed me to the Judge's credibility findings at [26] to [32] of the Decision. As he pointed out, this was not a claim or appeal which foundered for lack of background information but because the Appellant's claim was rife with inconsistencies and therefore not credible. In particular, in relation to the claimed risk from JUD, the Judge made the following findings:-

> "[31]His father's statement also conflicts with his son. It says that during the ambush they fired and missed and whereas he says it jammed or misfired. He also says that the Police refused to register an FIR whereas the newspaper report says that one was lodged. It does not assist his case whatsoever. I am satisfied that effectively his case has fallen apart with all the documents that he has provided conflicting with everything that he has said concerning the matter.
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> [32] I have also considered the timetable in this case which shows, according to him that the incident took place in 2008 yet he did not submit an application for a student visa for over three years until December 2011 and actually remained for a further nearly two years before leaving. I do not accept that he could possibly be in any danger if he managed to stay in the country for five whole years without further incident."

23. The Judge did go on in the alternative to find at [36] that, even if he were wrong about the threats or risk, the Appellant could relocate. That finding does depend in part on the geographical reach of JUD which might be a matter for expert or background evidence. However, an additional factor which went to the credibility of remaining at risk from JUD was the Appellant's own evidence that he had remained in

Pakistan without incident for a number of years after the attack he claimed to have suffered at the hands of JUD.

24. I accept Mr Kotas' submission that an expert report in this case could not make any difference to the credibility findings which are based on internal inconsistencies in the Appellant's account, his delay in claiming asylum and implausibility based on what had occurred (or rather not occurred) whilst he was still in Pakistan. Even if the expert positively supported the whole of the Appellant's account in terms of its plausibility, on the facts and other evidence, that would be insufficient to dislodge the findings that the claim is not credible.

25. As I have already indicated, the issue for the Judge is whether the hearing could be conducted "fairly and justly" without the adjournment which itself encompasses the question whether the appeal could be determined fairly and justly without the expert report on which the adjournment request was based. The Judge did not err when considering that question at [3] of the Decision. Nor, based on the credibility findings which were inevitable on the evidence here, has the refusal of the adjournment request deprived the Appellant of a fair hearing. No doubt, the Appellant disagrees with the outcome. However, that is insufficient to show that the hearing and determination of his appeal was unfair.

26. For those reasons, I am satisfied that there is no error of law in the Decision. I therefore uphold the Decision.

DECISION

I am satisfied that the Decision does not contain a material error of law. I uphold the decision of First-tier Tribunal Judge Rowlands promulgated on 10 January 2018 with the consequence that the Appellant's appeal stands dismissed

Signed Dated: 8 March 2018

Upper Tribunal Judge Smith