



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

Appeal Number: AA/03812/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
On 27 March 2015**

**Determination Promulgated
On 28 April 2015**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

**M Z
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D McGlashan, Solicitor

For the Respondent: Mr M Matthews, Senior Presenting Officer

DECISION AND REASONS

1. This appeal concerns a reasons challenge to the decision of First-tier Tribunal Judge Fox dated 25 August 2014. The judge dismissed the appeal by the appellant, who is a national of Pakistan born in 1986, under the Refugee Convention and on grounds of humanitarian protection and breach of Article 2 and 3 of the Human Rights Convention.
2. The background is that the appellant who had been in the United Kingdom as a Tier 4 (General) Student claimed asylum in October 2013, some eighteen months after expiry of his leave on 21 April 2012. That claim was

based on difficulties encountered by his family from the Taliban. The respondent has not accepted that the appellant or his family had been threatened by the Taliban in Pakistan as claimed or that his uncle had been murdered by them. In any event, she considered there was a sufficiency of protection or the option of internal relocation.

3. The following specific grounds of complaint can be distilled from the grounds:

(i) The judge had been unclear as to the evidence he had accepted and that which he had rejected.

(ii) The judge's assessment of credibility had been inadequate with reference to an expert's report which post-dated the Country of Origin Information Report.

(iii) Part of the judge's reasoning made no sense.

(iv) Even if the judge had been entitled to reach adverse conclusions on the credibility he had erred in his consideration of a sufficiency of protection and the availability of internal flight.

4. Mr McGlashan clarified the significance of the credibility issue in this claim and accepted that if the appellant was found not to be truthful, the claim would have no substance, rendering considerations of the sufficiency of protection and internal flight redundant. Mr Matthews acknowledged that the determination could not be described as a model one and that there were difficult passages. He urged me however to take an overall approach and that, when read as a whole, the determination showed that the judge had given adequate reasons why the appellant had not told the truth.

5. I am unable to agree with Mr Matthews. An aspect that seems to have exercised the judge's mind was an absence of any reference to the protection issue when the appellant had been arrested. He observed at [23] :

"In investigating the claim made by the appellant he states that he only become aware of the difficulties that were arising at home after his arrest. This may be true. However, I have considered that his explanations do not hold much credibility. He has sought to explain the different explanations by submission of a statement and his oral evidence. I find this evidence does not go far enough in persuading me that he is telling the truth."

6. Thereafter the judge explained that he had reviewed the background information and observed that "... the explanations provided by the appellant are not fully supported by the information contained in the COIR and to a lesser extent in the expert's report". He went on to reject documentary evidence produced in support of the claim as not true but does not give reasons why he had come to that conclusion.

7. As to the expert's report, the judge observed that it was helpful, and of advantage to him in assessing the appellant's credibility. Legitimately the judge expressed doubt whether the expert had accessed the same information as he had, in particular the statements made at the time of the arrest. As I observed to Mr Matthews, the task of the expert was not to express a view on the credibility of the appellant. That was firmly a matter for the judge.
8. As to the accounts of difficulties by the family members, after observing that they had given no consideration to moving to another location in Pakistan and the fact of the appellant's brothers continuing their studies, as well as an absence of complaint made to the authorities regarding threatening letters sent to the appellant's solicitor, the judge concluded "it suggests to me therefore that the complaints that nobody bases are foundation in fact". Both representatives accepted that the meaning of that concluding sentence is elusive.
9. The judge considered the connection between the uncle's death and threatening behaviour as "beyond tenuous". An absence of careful proof reading infects other aspects of the paragraph in question [29]. At [30] the judge concluded "when I take all of these matters in the round I am satisfied that the appellant's credibility may not be relied upon".
10. Having accepted the possibility of truth of the appellant's explanation that the difficulties had arisen after his arrest, the judge does not give a reasoned explanation why he did not consider that evidence persuaded him he was being told the truth. There is a disconnection between the two and that difficulty infects also the way in which the judge approached the expert's report.
11. Whilst I accept Mr Matthews's submission that the judge did not believe the appellant, his overall reasoning is not evident; the determination lacks a coherent structure. There was a failure to carry out a proper or careful analysis of the evidence as the case required, particularly in the light of the importance of credibility in the protection claim. These aspects show clear error of law.
12. I therefore set aside the decision. Mr Matthews and Mr McGlashan accepted that in the light of the extent of fact finding required, the case should properly be remitted to the First-tier Tribunal and I do so for that purpose. None of the findings of First-tier Tribunal Judge Fox is preserved. In remaking the decision the Tribunal will do so based on the acknowledgment that if the appellant is found not to be credible his claim will be without substance.

NOTICE OF DECISION

The appeal is allowed to the extent that the decision is set aside and the matter remitted to a differently constituted First-tier Tribunal for its reconsideration afresh.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

In the light of this being a protection claim, 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

Date 27 April 2015

A handwritten signature in blue ink, appearing to read 'Dawson', with a horizontal line extending to the right.

Upper Tribunal Judge Dawson