



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

Appeal Number: AA/06412/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 25 February 2015**

**Determination Promulgated
On 21 April 2015**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

**MA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Madubuke, Solicitor

For the Respondent: Mr M Diwncyz, Senior Presenting Officer

DECISION AND REASONS

1. The appellant, who is a national of Pakistan, has been granted permission to appeal the decision of First-tier Tribunal Judge De Haney. For reasons given in a decision dated 27 October 2014 the judge dismissed his appeal against the respondent's decision dated 26 August 2014 to remove him to Pakistan.
2. The appellant had appealed on refugee, humanitarian and human rights grounds. His case on the first two limbs was based on the consequences of having joined Muttahida Quami Movement (MQM) in 2002 and the work

he had undertaken for this party. He had been ill-treated by the authorities in January or February 2008. Whilst he was in the United Kingdom in 2011 the police raided his house seeking his whereabouts and beat his wife as well as threatened his daughter. On return to Pakistan in 2012 a friend who had been asked about the appellant's whereabouts was murdered and in the same year the appellant was attacked by three unknown persons on motorbikes. On the day prior to his arrival in the United Kingdom in July 2013 he was again attacked.

3. The appellant's wife and child have joined him in the United Kingdom and as well as the appellant, she gave evidence before the judge.
4. The judge concluded the appellant had not been targeted as claimed or that he was at risk from political opponents. In essence he did not believe the appellant apart from the possibility that he was a member of MQM. He did not consider that any interference with the family's private lives was disproportionate.
5. The grounds of challenge are several. The first essentially argues unfairness regarding the evidence of the appellant's wife. The judge noted that her statement dealt only with the claimed police raid at their house whilst he was in the United Kingdom in 2011. He considered that she could have given evidence about his membership of MQM, his detention in 2008, the murder of his friend and other matters. He considered the appellant's credibility undermined by the fact that she had not done so.
6. The second ground is tied in with the first in which it is argued that the judge had failed to make a proper finding on the evidence of the judge's wife.
7. The third ground argues error by the judge attaching undue weight to evidence that had not been called, in particular the testimony of the appellant's mother, who has lived in the United Kingdom for twelve years.
8. The fourth ground argues that the judge had failed to properly consider or "interpret the evidence" before him with regard to the power position of MQM in Karachi where the appellant lived.
9. The fifth ground argues that the judge unfairly shifted the burden of proof to the appellant in respect of the allegation of forgery raised by the respondent in the refusal letter (at paragraphs 58 to 64). The respondent had not specifically found that the documents that had been produced were forgeries and thus the appellant had discharged the burden of proof that was upon him. The judge had erred in concluding that the onus remained on the appellant.
10. The sixth ground argues an error by the judge in failing to take into account material evidence. The respondent had considered there was a lack of clarity and poor quality of certain documents which had been dealt

with in new material produced at the hearing. Furthermore the judge had erred in considering that there were inconsistencies with the FIR but had failed to mention what they were.

11. Although permission was granted on all grounds the focus of the judge's observations related to the silence in the determination on the evidence of appellant's wife and the conclusion that the appellant's credibility had been undermined by the fact that none of his family members in the United Kingdom, his mother, sister and brother-in-law had appeared to give evidence.
12. In the course of Mr Madubuke's submissions Mr Diwncyz candidly observed that his record of cross-examination of the appellant's wife indicated that she *had* been asked questions about events in 2008. This included reference to her husband having stopped membership of MQM in 2008 and whether her life was in danger. He accepted that the judge had made no findings on the credibility of the wife's evidence. He acknowledged the difficulties caused by the absence of any indication of the evidence that the appellant's family members in the United Kingdom might have led.
13. In my view the first two grounds identify legal error. The judge made these observations on the appellant's wife's testimony at [21]:

“...I note that his wife's statement deals only with the claimed police raid at their house whilst he was in the United Kingdom in 2011. The appellant's wife could surely have given evidence about his membership of the MQM, about his detention in 2008, the murder of his friend and other matters. I note that she has not done so and I find that this undermines the appellant's claim”.
14. It is correct that the appellant's wife's statement related only to matters in 2011 and the impact of those events on her and her daughter but as revealed by Mr Diwncyz from his Record of Proceedings her cross-examination included additional matters. I consider therefore the judge erred in failing to explain what weight he gave to the evidence in the statement apart from identifying its limited span; he made no finding on her credibility. Furthermore he did not explain how he factored in the additional evidence at the hearing or may well have erred by overlooking it. I consider below the impact of this error after my consideration of the other grounds which do not in my view identify error.
15. I consider the judge was entitled to comment on the absence of corroborative evidence from the appellant's family members who no doubt would have been at least aware of the events in 2011 whilst he was in the United Kingdom. With reference to [30] of the determination it appears that Mr Madubuke had made the suggestion that they had not given evidence because the children had not got on together. He was not in a position as the appellant's representative to give such evidence.

16. I find no merit at all in the fourth ground; the judge observed the appellant had produced a volume of articles and documentation and went on to observe:-
- “I also note and take account of the fact that the appellant has produced selective documentation which shows that there are ongoing feuds between different political parties in Pakistan and in Karachi. The respondent has also produced references to the fact that the MQM is, and has been, the dominant party in Karachi for many years (paragraphs 55 - 57 of the Reasons for Refusal Letter). I find there is nothing in the documentation I have referred to in the appellant’s bundle which disputes this.”
17. I am not persuaded that the judge failed to understand the evidence before him and this ground is no more than a disagreement.
18. As to the fifth ground relating to the burden of proof, the extent of the challenge to the documentation by the respondent was that:
- (a) The copy of the membership to MQM was a photocopy and not an original with a date of 3 June 2001 during which the appellant had claimed he had stopped working for MQM.
 - (b) The Daily Khabrain Karachi article dated 16 July 2013 was also not an original copy. It was considered that the quality of writing was below standard and its authenticity was therefore questionable.
19. The respondent therefore considered that the documents produced had not been found to assist the appellant’s credibility. It was not the case that the respondent had found the documents forgeries but had applied the principles of *Tanveer Ahmed* [2002] UKIAT 00439. I consider the judge was correct to observe that it had been open to the appellant to take steps in order to enhance the reliability of the evidence and was unarguably entitled to observe that the onus was on the appellant to prove his case.
20. As to the asserted failure by the judge to identify inconsistencies in the First Information Report I consider the ground misconceived. At [26] the judge noted a discrepancy in dates over the timing of the reporting of the incident in 2013. Although at [27] of his decision he does not identify the further inconsistencies, these are referred to out of sequence further on the determination at [31].
21. Despite these positive aspects of the determination, I am persuaded that the failure by the judge to reach a conclusion on the credibility of the appellant’s wife has a sufficiently material impact to require the decision to be set aside and remade. This is a protection claim where there has been a comprehensive challenge to credibility and it cannot be safely resolved without findings on all the evidence. Since this will involve a complete rehearing of the appeal on asylum and humanitarian grounds for which factual findings need to be reached, it is appropriate for the matter to be remitted to the First-tier Tribunal for this purpose for hearing by other than Judge De Haney.

NOTICE OF DECISION

The appeal is allowed on the basis that the decision of the First-tier Tribunal is set aside and the case is remitted to the First-tier Tribunal for its reconsideration afresh.

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

Unless and until a Tribunal or court directs otherwise, the appellant and his family members are 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.

Signed

Date 20 April 2015

Upper Tribunal Judge Dawson