



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

Appeal Number: PA/10510/2016

THE IMMIGRATION ACTS

**Heard in Liverpool
On 22 August 2017**

**Decision &
Promulgated
On 25 August 2017**

Reasons

**Before
UPPER TRIBUNAL JUDGE SMITH**

Between

**M A
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Warren, Counsel instructed by Duncan Lewis & Co
solicitors

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Although an anonymity direction was not made by the First-tier Tribunal, as a protection claim, it is appropriate that a direction is made. 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 all 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 Andrew Davies promulgated on 23 March 2017 (“the Decision”) dismissing the Appellant’s appeal against the Secretary of State’s decision dated 7 April 2016 refusing his protection and human rights claims. The focus of the appeal to this Tribunal is the protection claim.
2. The Appellant is a national of Pakistan. He arrived in the UK on 11 February 2012 as a student. When his leave expired, he sought further leave to remain which application was rejected. It was not until he was encountered as an overstayer on 17 February 2016 and threatened with removal that he claimed asylum which was refused by the Respondent’s decision under appeal.
3. The first part of the Appellant’s protection claim is that he is at risk from an individual, [T A], who is or was a politician and against whom he protested, he claims, in March and April 2009. He claims that he was the leader of a group of students and organised protests against this man and that he was beaten by individuals associated with him as a result in May 2009.
4. The second part of the claim is that, the Appellant having left his home area in May 2009 for Lahore where he studied accountancy, he came to the attention of another student who was sympathetic to an organisation called Lashkhar e Janghvi (LeJ). The Appellant claims that this was as a result of his participation in debates on topics which would be seen by LeJ as contrary to their views. He claims that the student concerned threatened him over a period of time and that the last threat involved a gun. He says that he filed a police report and that the police told him to move away from the area. He did so, relocating to the Punjab, where he lived with an aunt before leaving Pakistan on a student visa in February 2012.
5. In relation to the first part of the claim, the Judge accepted that the Appellant might have been beaten for organising the protests against T A but not that this was done because the Appellant held any particular political opinion. The Judge found that the beating was a one-off incident. The medical evidence produced did not assist the Appellant’s claim, in particular because the account given by the Appellant to the doctor differed from what he said in his asylum interview. The injuries observed by the doctor also did not match the Appellant’s account of what happened to him. Whilst accepting that the attack occurred in

2009, as claimed, the Judge found that the Appellant would not remain at risk on this account in his home area. The Judge did not accept the Appellant's account that his family had recently been targeted again after a number of years of insults against them. The Judge did not accept that the Appellant's profile was such that [TA]'s supporters would have continued to be interested in him many years after the protests he claimed to have organised. He also noted that whilst the system of protection in Pakistan may have deficiencies and not provide complete protection, it would be sufficient. For those reasons, the Judge rejected the claim that the Appellant would be at risk in his home area in relation to the first part of the claim.

6. In relation to the second part of the claim, the Judge accepted that LeJ is a terrorist group and is to some extent tolerated in some areas by the authorities and can therefore act with some impunity. The Judge accepted that there would not be a sufficiency of protection against a risk from LeJ if an individual were targeted by the group, and also accepted that the Appellant had been targeted by an individual who was a sympathiser with that group. The Judge did not accept however that this went beyond threats from a specific individual. He noted that those involved in the debates had not been targeted by LeJ, he did not accept that the Appellant was targeted by the organisation generally and would not be at real risk on that account on return to Lahore.
7. The Appellant's grounds are two-fold. First, he says that the Judge has failed properly to consider the risk from LeJ. Second, he says that the Judge erred in failing to apply to his case, the principle arising in SA (political activist – internal relocation) Iran [2011] UKUT 30 (IAC) (“SA”) to his case. Ms Warren accepts that the second ground stands or falls with the first. In relation to the first part of the claim, the Appellant has been found not to be at risk in his home area on account of what happened to him there. That finding is not challenged. As the Judge himself says at [36] of the Decision, internal relocation does not arise because the Judge finds that the Appellant is not at risk in his home area or Lahore. In fact, the Respondent says that this is a complete answer to the challenge. It is not, however, because if it were accepted that LeJ (as a group) continued to be interested in the Appellant, there is evidence that they may be able to track down an individual and internal relocation would then be relevant, it being accepted that there is no sufficiency of protection against this risk.
8. Permission was granted by First-tier Tribunal Judge Adio in the following terms so far as relevant:-

“In view of the judge's finding at paragraph 33 that the appellant was targeted by a terrorist organisation such as Lashgar e Jhanghvi and that such organisation depended on the profile of the person concerned reached persons outside the areas where they are most active and that they have targeted ordinary Pakistanis including students, it is arguable that there is an arguable error of law in concluding that there is no

likelihood of risk of persecution to the appellant due to the fact that he relocated to another city. I note that the judge also did not take into account evidence from another student Muhammed Ashgar that he too was targeted in a violent attack because of his participation in student debates and had to flee in Saudi Arabia. His statement is at page 13 of the appellant's bundle. This does not feature in the judge's decision and is relevant. It is arguable that the findings of the judge has underestimated the overall participation of an ordinary Pakistani student against the organisation by finding that the prior persecutory threat had abated. I find that the application for permission to appeal raises arguable errors of law and that all grounds are arguable."

9. The matter comes before me to decide whether the Decision contains a material error of law and, if so, to re-make the decision or remit the appeal for rehearing to the First-Tier Tribunal.

Decision and Reasons

10. In short summary, the Appellant's case as put by Ms Warren is that the Judge's finding that the Appellant is not at risk from LeJ was not open to him based on his findings. Those findings so far as relevant to the issue before me are as follows:-

"[30] The Appellant's experience in Lahore concerns a different type of threat. He fears Lashkar e Jhangvi. The objective evidence about this group confirms that they are a significant terrorist group with links with other terrorist organisations. This is confirmed by various short articles included in the Appellant's bundle and the more detailed documents. There is some suggestion that it is tolerated by the Pakistan security establishment and allowed to operate with impunity even in areas where state authority is well established such as the Punjab. The Home Office Country Information and Guidance - **'Pakistan: Security and humanitarian situation'** of November 2015 deals with the threat from militant groups such as the Taliban and others in some detail. I am satisfied that it would be applicable in respect of the threat from Lashkar e Jhangvi. The guidance indicates the areas where the Taliban and other militant groups are most active. They are, however, able to reach persons outside those areas *"depending on their profile and the area in which the person resides"*. The guidance highlighted particular targets such as political or tribal leaders, journalists and aid workers. It added: *"In addition, ordinary Pakistanis, including students and those perceived to be opposing the Taliban and other militant groups or not following sharia law have also been targeted by these groups."* If a person is at real risk it is likely to be for a Convention reason, probably (imputed) political opinion. If the applicant is unable to acquire effective protection or relocate internally a grant of asylum would normally be appropriate.

....

[32] The Appellant did report the incident to the police. The police advised him to be careful and that he should consider moving somewhere safer. His evidence was not challenged on that point. The Appellant did name his would-be assailant, [A A]. The police took no action. The Appellant claimed that he moved away to stay with a relative in another part of Punjab. I accept that the exception referred to in **A W** is reasonably likely to apply here and that if the Appellant is a target for a

terrorist group then he would be unlikely to obtain a sufficiency of protection from the Pakistan police, particularly in light of some of the objective evidence suggesting the relative impunity enjoyed in some areas by Lashgar e Jhanvi. I must consider however whether the Appellant is a likely target. I remind myself of the low standard of proof.

[33] It is clear that the Appellant is a person of low profile in political terms but nonetheless the Respondent's guidance does suggest that ordinary Pakistanis, including students, can be targeted. He is far less likely to be targeted than someone in one of the target groups. I have considered the evidence about his role in the debates and in the demonstration. He confirmed at the asylum interview that he was merely a participant in the demonstration at which 400 to 500 people attended. He did not do anything else of a political nature. Nor did he organise the debates in his hostel. In response to question 134 he stated that: "*We started to contact those people in the hostel and we started debating within the students.*" The debates were organised by a [M A]. The Appellant's role was as a participant. Everybody had to say something. That was the extent of his involvement on that account. He was not, on the basis of his own evidence, in a leadership role. However, he subsequently indicated that he was one of four or five who organised the debates. He was threatened by a student from the nearby Punjab University. The account of the threat has not been challenged. I accept that it occurred. However, I take note of the Appellant's account of when the threat first occurred. At the asylum interview he indicated that he was warned in the month of March 2011 for the first time. Verbal threats continued until October when the other student threatened him with a gun. Nonetheless, [A A] was allowed to continue attending debates and the threats occurred on a weekly basis. The Appellant was unconcerned about the verbal threats. I accept it is entirely feasible that he would have been very frightened by [A A] producing a gun. I am satisfied however that if the Appellant was targeted by a terrorist organisation such as Lashgar e Jhanvi that he would not have been given a long series of verbal warnings. Such behaviour is inconsistent with what the objective evidence indicates about that organisation or other militant groups such as the Taliban.

[34] I therefore accept that it is reasonably likely that the Appellant was verbally threatened over a long period of time culminating in the production of a gun. It would be speculative to discuss what might have happened if the Appellant had remained in his hostel rather than relocating elsewhere. However, on the basis of the behaviour of the Lashgar e Jhanvi sympathiser in giving the Appellant numerous weekly warnings and the fact that this terrorist organisation took no action against either the Appellant or indeed the organisers of the debates or any of the student majority who expressed views against them and allied with the Appellant's lack of involvement generally in politics and the absence of any sort of profile, I am satisfied that he has not shown even to the lower standard that he would be at real risk of persecution or serious harm on return to Pakistan, including to Lahore."

11. I can reject very shortly Ms Warren's opening submission that the finding of no real risk was not open to the Judge based on his finding that the Appellant was targeted by LeJ. That is not the Judge's finding at all. He finds very clearly that the threats were from [AA] and that the actions of that individual in making continuing threats rather than

taking any action are inconsistent with the methods of the LeJ. Further, he finds that the Appellant has no particular profile. There was some discussion at the hearing whether the Judge accepted that the Appellant was one of those prominent in the debates. It is noted at [33] of the Decision, that the Appellant's evidence changed between interview and later evidence as to his role. He began by claiming that he was only a participant but later said that he was one of four or five who organised the debates. Whilst Ms Warren is right to say there is no express finding whether that was indeed his role or whether that evidence was rejected for inconsistency, it is implicit in what is said at [34] of the Decision that the Judge did not accept that the Appellant had gained any particular profile arising from the debates.

12. If the challenge to the appeal had turned only on the Judge's assessment of risk from LeJ based on his findings, I would have had no difficulty at all with rejecting it. It is abundantly clear that the Judge's finding is that the threats emanated from an individual albeit a LeJ sympathiser and that the Appellant is not of any interest to the group as a whole. Taking account of the fact that the Appellant successfully relocated to another area (being one where on the background evidence the LeJ is able to act with impunity [30]) and was not threatened or targeted again for a number of months, coupled with the fact that he delayed in claiming asylum on arrival (as noted at [35] of the Decision), the Judge's findings and conclusion were undoubtedly open to him.
13. The only difficulty with the Decision arises from the failure of the Judge to take account of the evidence of [M A] who is said to be another of the students who was involved in the debates. In fact, this person has the same name as the person who the Appellant said at interview was the organiser of the debates but Ms Warren suggested that this may be just coincidence. I do not know as I do not have evidence on that point.
14. The content of the letter from [M A] which appears at [AB/13] can be summarised thus. [M A] says that he and the Appellant and others created a group the purpose of which was to rise up against terrorism and fanaticism. He says that the Appellant was "the most prominent member of our group". He says that banned organisations such as LeJ gave them threats. He does not say how many threats, with what regularity, from what source and when those took place. He mentions only the threats by [A A] and the attack on the Appellant which was avoided because the Appellant was in a public place. [M A] says that he moved to Faisalabad after the incident but was himself targeted in December 2013, abducted, tortured and interrogated in relation to the whereabouts of the Appellant and others. He was then released. He then fled to Saudi Arabia.

15. As I note, [M A] is resident in Saudi Arabia. As such, as Mr Bates observed, his evidence would not be capable of testing by cross-examination which would reduce the weight which it could be given. The evidence contained in that letter would have to be assessed in the context of the Appellant's own evidence which would bear more weight because it had been/could be tested. As such, whilst accepting that the Judge did not deal with the letter and had in fact noted at [34] of the Decision that none of those involved in the debates including the organisers had been targeted, Mr Bates said that any error was not material.
16. As Ms Warren pointed out, Mr Bates' submission appeared to proceed on the basis that the Judge had found the Appellant not to be credible. His credibility has in fact been accepted for the most part, certainly in relation to what occurred in Lahore. She submitted that the evidence contained in this letter is crucial and may well lead to a finding of a real risk based on the fact that one other member of the group of students in Lahore has been targeted since the attack by [AA].
17. There are a number of difficulties with the content of the letter which I explored in discussion at the hearing. The first is that the Appellant said in interview that the organiser of the debates was [M A] and that he (the Appellant) was merely a participant. Even if Ms Warren is right to say that the writer of the letter and [M A] as referred to at interview are not necessarily the same person, the Appellant's answer at interview casts doubt on what is said in the letter about the Appellant being "the most prominent member of our group". I note also in passing that the assertion in the letter that the Appellant and others set up a group is inconsistent with the Appellant's answer at Q136 that the group was not an organised one.
18. The letter does of course confirm the threats which the Appellant received from [A A] including the final threat with a gun. But, as Ms Warren points out, the Judge accepted that the threats occurred so that part of the letter does not impact on the Judge's conclusions.
19. The only part of the letter which could even potentially make any difference is the attack which [M A] says occurred in December 2013 when he says that he was abducted and ill-treated and which caused him to flee Pakistan for Saudi Arabia. To assess whether this could make any difference to the Appellant's case, I set out that passage of the letter:-
- "On 19th December 2013, I finished my work and left the office. Some people came and put a cloth on my mouth and took me away. And they subjected me to physical and mental torture. They tortured me and interrogated me several times. They asked the whereabouts of [the Appellant] and other people. They kept me for 29 days and took about 35 lac from me and then released me, and warned me that if I did something like this again, they will kill me straightaway. I came to Saudi Arabia to escape from further troubles. I am scared to go back again.

In my opinion, [the Appellant] will also have to face this, or a worse situation that this because this organisation has many links.”

20. There are a number of very obvious difficulties with this evidence, leaving aside the weight which could be given to it as evidence which cannot be tested by cross-examination. First, the lack of detail about the attack is striking. The Appellant does not say how many people abducted him. He does not say that they were members of LeJ although the implication may be there from the earlier part of the letter but even so, he does not say how he knew that they were from that organisation. He does not say how he was tortured, what his abductors said about their reasons for abducting him, how he was taken away, where he was taken or provide any detail at all about the attack and abduction. Even taking the letter at its highest, [M A]’s evidence it is that a number of people kidnapped [M A] and knew the Appellant as well as [M A]. It is not explained why the group would threaten [M A] not to “do something like this again” when on [M A]’s own account he had left Lahore after the attack on the Appellant in late 2011 and this attack occurred two years later. Most importantly, as the Judge observed when dealing with the Appellant’s case, the background evidence is that if a group such as LeJ considers an individual worth targeting (particularly on [M A]’s case more than two years after the offending events took place) they would not trouble with making idle threats. They would not have released [M A]. It is also notable that, although [M A] says that he fled Pakistan as a result of this attack and has relocated to Saudi Arabia, there is nothing to suggest that he has there claimed asylum or been recognised as a refugee.
21. If anything, this letter may cast doubt on the Appellant’s case. There are some inconsistencies as I have already observed. Ms Warren submitted that there is not necessarily an inconsistency between [M A] being said to be the organiser and the Appellant being a prominent member particularly since he said he was one of four or five who organised the debates (albeit I have already noted that this was not his initial claim). Whilst it might be possible to read the two as consistent if [M A] had said that either he or someone of the same name was the organiser and the Appellant was a prominent member, [M A]’s letter says that the Appellant was “the most prominent member” (my emphasis). That is not the Appellant’s case and is inconsistent with it.
22. Further, for the reasons I have already given, I am quite unable to accept that the evidence which this letter contains about the later abduction and interrogation/torture is capable of undermining the Judge’s findings. Even though the Judge does refer to there being no evidence that others involved in the debates were targeted, this evidence is far too vague to be capable of supporting the Appellant’s case, particularly when measured in the context of the Appellant’s own evidence of his relocation following [A A]’s threats and the fact of the late claim for asylum. Moreover, it is inconsistent with the background

evidence about the methods of operation of groups like LeJ if they are involved in such targeting.

23. A Judge is not required to deal with each individual piece of evidence. Even if the Judge's failure to refer to this letter did amount to an error, I do not set aside the Decision. For the foregoing reasons, the error is not material. It is inconceivable that the evidence contained in the letter could lead to any different result in relation to the Appellant's claim.

DECISION

I am satisfied that the Decision does not contain a material error of law. I uphold the decision of First-tier Tribunal Judge Andrew Davies promulgated on 23 March 2017 with the consequence that the Appellant's appeal stands dismissed

Signed



Dated: 25 August 2017

Upper Tribunal Judge Smith