Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02426/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17th January 2018	**On 21st February 2018**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

A Q
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Hulse instructed by Rashid and Rashid Solicitors
For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant seeks permission to appeal to the Upper Tribunal against the decision of First-tier Tribunal Judge Black dated 4th January 2017 to refuse his protection claim.

2. The appellant is a Pakistan national born on [ ] 1983 and asserts that whilst in Pakistan he worked as a well-known poet, journalist, television

and radio presenter in Rahim Yar Khan (RYK) district (his home area). He maintains he is the author of published poetry and a number of books. He initially wrote love poems but became inspired to write revolutionary poetry. He asserts that he worked for a radio station called Jeevay Pakistan FGM 99 (and for a TV channel which was shut down by politicians in 2008). He had problems with politicians and had to leave the area in 2009. He, however, had started to experience problems in 2007 having held a high profile public function against the then President Pervez Musharraf at the Bar Council Association in RYK on 31st May 2007. He states he was threatened by the government agencies as a result and he received more threats towards the end of 2007 and was attacked by a political group in December 2007. Those attacks he asserts were reported to the police but to no avail and fatwas were issued against him on 10th March 2008 and 1st June 2009.

3. He then states that on 7th May 2009 he was involved in a "road show" and subsequently received threats by supporters of the Taliban and relocated to Lahore. In May 2009 he was kidnapped by the Taliban and interrogated but released having agreed to stop writing. He then fled to another city Bakhar and then to the village called Notak.

4. The appellant applied for student visas to enter the United Kingdom on three occasions, on 10th October 2006, on 3rd November 2006 and 17th July 2008. His applications were refused but the last allowed on appeal and his visa was valid for 27 months. He arrived in the UK on 20th January 2010. He was arrested and detained under immigration powers on 24th February 2012 and claimed asylum after his arrest and detention. His application was refused on 4th April 2014 and he appealed that decision. The First-tier Tribunal allowed his appeal on asylum grounds but the decision was set aside by Upper Tribunal Judge Martins on the basis that there had been no consideration of the Secretary of State's case. A further consideration of the appeal was made de novo by First-tier Tribunal Judge Traynor on 16th March 2016 and that decision was set aside for irrationality which arguably led to an unsafe decision. The appellant's appeal was considered again de novo by First-tier Tribunal Judge Black on 22nd February 2017 and she dismissed his appeal in a decision dated 10th March 2017.

Application for Permission to Appeal

5. There were four grounds for permission to appeal:

Ground (i) a failure by the judge to make findings of fact on material that the appellant was a high profile published poet, journalist and news anchor in Pakistan

Ground (ii) the judge made a material misdirection in the law and in her approach to corroborating evidence.

Ground (iii) the judge had effected procedural unfairness and erroneous findings because they were based on evidence that was not before the Tribunal

Ground (iv) the judge made irrational findings on the basis of mistakes of fact or lack of further reasoning

I will deal with each ground in turn.

6. Ground (i) it was asserted there was a failure to make findings of fact on material matters and a failure to take into account material evidence which asserted that the core of the appellant's claim was that he was a high profile published poet, journalist and news anchor in Pakistan who had been subject to persecution and clear findings of fact needed to be made on those points. The Tribunal Judge failed to do so as indicated at paragraph 51 of her decision.

> *"I have not sought to analyse the appellant's poetry and other writings to make a finding as to whether or not it might be such as to cause fatwas to be issued, the Taliban to kidnap and threaten the appellant or politicians to threaten and attack him on the basis of his revolutionary poetry and speeches. In any event, I have only been provided with summaries of some of the poetry and his speeches at public gatherings. I am unable to make such a judgment as to whether the appellant's activities are such as to cause the degree of adverse attention he claims. There is no expert evidence, for example from a country expert, as to whether that is the case. I nonetheless consider the evidence on aspect of the claim in the round."*

7. It was asserted that there was ample evidence before Judge Black to make a finding on these crucial points and it was incorrect to say that she had only been provided with summaries of some of the poetry most of which had been translated in complete form and contained overt political and anti-extremist messages.

8. The situation faced by journalists and those who challenged extreme groups' ideas was well-known in Pakistan and country background was before the judge which noted the NGOs and their staff suffered numerous attacks by extremist groups who accused them of promoting a western agenda and that Pakistan was known as the most dangerous country of journalists in the year under review as identified at Paragraph 11 of the First-tier Tribunal Judge's decision. Country background evidence must be taken into account when determining whether an asylum claim was credible.

9. It was arguable that the judge's failure to make clear findings on crucial facts and to determine risk on return without a country expert report when there was an abundance of country background evidence, amounted to material errors of law.

10. At the hearing before Ms Hulse submitted that there was ample evidence before the judge and that the poems were clearly critical of politicians and religious radicalism. She submitted that Pakistan was a dangerous place

for journalists and the judge had failed to make clear findings on the basis of no expert evidence which was not open to her.

11. Ms Willocks-Briscoe submitted that reading the decision as a whole the judge took the steps carefully and at paragraph 56 set out her findings looking at all the matters in the round. There was a clear finding that the appellant was a journalist and poet and the ground was not arguable.

12. In addressing ground (i), I find that the judge addressed the evidence in relation to the appellant's activities as a journalist, writer and poet and that can be seen from paragraphs 34 onwards. It is incorrect to assert that the Judge failed to make a clear finding as to whether the appellant was a journalist. At paragraph 56 she states "I accept he worked as a journalist in Pakistan and that he is a published poet of some renown in his local area of RYK". She details his activities at paragraphs 34 to 37 analysing the extent of his activity as a journalist. The judge was well aware from her recitation at paragraph 11 of the Country of Origin Information in relation to journalists. At paragraph 11, as acknowledged by the grounds, she stated as follows:

> *"In addition, the parties' representatives agreed it was appropriate for me to check the Country of Origin Information currently available on the respondent's website. I have done so and noted the following at paragraph 7.3.3 and 7.3.4 of the respondent's Country Information and Guidance (CIG) on Pakistan: Security and humanitarian situation, dated November 2015:*
>
> > *'7.3.3. The HRCP reported that, regardless of the nature of their work, non-governmental organisations (NGOs) and their staff suffered numerous attacks by extremist groups who accused them of promoting a Western agenda.*
> >
> > *7.3.4. The same report stated: 'Pakistan was named as the most dangerous country for journalists in the year under review, according to the International Federation of Journalists (IFJ), a global organization of journalists based in Belgium. The threat was most pronounced in volatile regions such as FATA and troubled districts such as Khuzdarin Balochistan. The targeting of journalists in these regions was a direct consequence of their association with journalism, whether through press clubs or as employees of print and electronic media outlets. According to HRCP's monitoring of 48 volatile districts in Pakistan, journalists and human rights defenders suffered 19 attacks in 2014."*

13. It is clear that the judge was well aware of the country background material and it was inconceivable that she did not take it in account. At paragraph 51 the judge sets out the following

> *'I have not sought to analyse the appellant's poetry and other writings to make a finding as to whether or not it might be such*

> *as to cause fatwas to be issued, the Taliban to kidnap and threaten the appellant or politicians to threaten and attack him on the basis of his revolutionary poetry and speeches. In any even, I have only be provided with summaries of some of the poetry and his speeches at public gatherings. I am unable to make such a judgment as to whether the appellant's activities are such as to cause the degree of adverse attention he claims. There is no expert evidence, for example from a country expert, as to whether that is the case. I nonetheless consider the evidence on [this] aspect of the claim in the round'.*

14. I find this approach was open to the judge. She did not ignore the background evidence or the appellant's evidence, but she did not profess to have special expertise regarding the content of the publications and its impact in Pakistan. Indeed the Country of Origin Information relates to the dangers of journalism in being *most pronounced* in "*volatile regions*" such as FATA and troubled districts such as Khuzdarin Balochistan, which are not identified as the area from which the appellant hailed. Indeed he could relocate but was found by the judge to have given contrary evidence about where he had last lived in Pakistan. In the circumstances it was open to the judge to conclude that without expert evidence she was unable to make a judgment as to whether the appellant's activities were such as to cause the *degree* of adverse attention he claimed. Clearly the nature and content of poems will be relevant but it is for the appellant to prove his case albeit on the lower standard of proof. It is the appellant's assertion that he was at risk on return from extremist groups and from politicians but it was open to the judge to require expert evidence regarding the effect of the publications themselves. That was not present. Indeed had she advanced or asserted specific knowledge she may well have been criticised for that approach. I repeat it is for the appellant to prove his case. The use of the expert report is widely acknowledged and I note from **RR (Challenging evidence) Sri Lanka** [2010] UKUT 000274 (IAC) that

> "*In a case where there are obvious but not necessarily determinative difficulties in an appellant's oral evidence the Tribunal is likely to be helped considerably by independent expert evidence that supports the appellant's story"*

15. His claim was assessed in the round, in the context of the background material, with an assessment of the documentation and having found specific and significant difficulties with the appellant's account. The judge concluded, for example, the appellant did not, until his oral evidence, identify any particular politician he perceived as a threat [45], that in his screening interview the appellant gave his last address as being Rahim Yar Khan and yet that contradicted his evidence that he had previously left his home area for Lahore and then went to Bakhar [46]. Further the appellant stated that he claimed to be in contact with journalists in Pakistan but there were no statements or letters to support the appellant's claim that he was under threat. That clearly was in relation to a specific well-known

terrorist but as the judge points out at paragraphs [47] and [48] there was no evidence from his contact in Pakistan to witness any current threat. The judge gave numerous examples throughout the decision of contradictions within the appellant's account and these can be gleaned from a detailed reading of the decision. The findings in relation to the appellant's profile are found throughout the judge's determination as a whole and this ground is not made out. It is for the appellant to establish the risk of the threat to himself, on the basis of evidence, and the judge was entitled to conclude on the evidence before her, that without expert evidence she was not satisfied his claim had been made out even to the lower standard of proof.

16. Ground (ii) it was asserted that the judge made a material misdirection in the law and in her approach to corroborating evidence. It was submitted that the appellant relied on a wealth of corroborating evidence to show that he was a high profile published poet journalist and news anchor in Pakistan and that he was subject to past persecution. These included books, articles, video footage and press cards. Evidence of the latter included a First Information Report and two fatwas. The evidence he relied on was rejected or given little weight solely because the country background material asserted fraudulent documents were readily available (paragraph 42). It was submitted that the judge concluded that the fatwas were not genuine documents without giving any reasons other than concerns about inconsistencies and the implausible nature of his account. This approach ran counter to the principles established in **Tanveer Ahmed(Documents unreliable and forged)/Pakistan [2002] UKIAT 00439**. Documents should not be viewed in isolation and the documents should be considered after looking at the evidence in the round. Further the judge rejected the evidence because they had been "produced to support the appellant's appeal" (paragraph 43) but that was misconceived because all evidence about its very nature supports an appeal and such a finding was akin to a misdirection in law.

17. The corroborating evidence relied on by the appellant was crucial in supporting the crux of his claim.

18. Ms Hulse submitted at the hearing that it was important for the judge to look at the documentation before deciding and to consider all of the documents when assessing the claim.

19. Ms Willocks-Briscoe submitted that at paragraph 33 to 35 the judge did refer to the documentation in detail and did not simply reject it on the basis that they came from Pakistan but gave reasons. She submitted that the judge, having looked at the documents, considered that they did not sit alongside each other well. To submit that there were no reasons given was incorrect. The judge had considered the documentation and not in isolation.

20. My view is that it was open to the judge to give little weight to the mere quantity of the documentary evidence produced and she was quite right to

concentrate on the quality of the evidence and to consider the reliability of the documentary evidence which is what she did from paragraph 39 onwards. The analysis is consistent with the guidance given in **Tanveer Ahmed(Documents unreliable and forged)/Pakistan [2002] UKIAT 00439** and I repeat the summary conclusions at paragraph [38] which confirm that

> *'In asylum and human rights cases it is for an individual claimant to show that a document on which he seeks to rely can be relied on.*
>
> *The decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round'.*

21. The judge's findings are intertwined, she addressed the issue of the publications and further the intricacies of his account, and I will not repeat the significant points made by the judge to which I have already alluded. At paragraph 40 the judge made a detailed assessment of the First Information Report and why she rejected it on the basis that it was not consistent with the appellant's own evidence. The judge was entitled to do that. She gave reasons. She did not accept that his evidence that he was not permitted by the police to cite the perpetrators of the FIR.

22. It was open to the judge also, and in addition to her previous findings, to note that the CIG identified the prevalence of fraudulent documents in Pakistan but the important point is that the judge had given other reasons for rejecting the FIR.

23. From paragraph 43 the judge also considered the fatwas and was clearly sceptical and entitled to be sceptical given that the fatwa was said to be issued on 24th April 2014, which was ten days after the Secretary of State's refusal, and bearing her mind her approach to the remaining evidence. She was entitled to give less weight to documents which were produced after the claim. In addition, the judge states that the "letter from the Pakistani lawyer instructed by the appellant's solicitors in London refers to having 'approached the concerned authorities and enquired the case'". The judge opines the letter did not state who was approached or when. The letter referred to the FIR being verified by the concerned police station and attested by the "concerned court" but the judge stated "it is not clear which court that is". The judge at paragraph 43 also notes further inconsistencies between the "note to whom it may concern" from the Special Branch of the Punjab Police dated 26th September 2016, and which refer to the FIR, and the FIR itself. One referred to telephonic threats and the other referred to simply 'attacks' rather than telephone threats.

24. The judge made further criticisms as follows:

> *"43. ... There is no indication from the correspondence with the Pakistani lawyer or the appellant's instructing solicitors' statement as to how the Pakistani lawyer was selected to verify the documentary evidence. The author of the*

statement notes that she took instructions from the appellant and then contacted 'an advocate in Pakistan'. There is no indication as to how that lawyer was selected for instruction or whether, for example his name was provided by the appellant himself. The author of the statement says the appellant was unable to carry out the investigation himself as 'he does not have contact in Pakistan'. However this is not correct: the appellant told me he had obtained the medical documentation and latest fatwa from a journalist friend in Pakistan.

44. In his first witness statement dated 16 March 2012 the appellant refers to coming to the UK 'to save his [sic] life from the Taliban and Islamic radicals, who wanted to take his [sic] life'. There is no mention of Mr Malik Ishaq in that statement. Nor is there mention of the two fatwas issued in 2008 and 2009. This is despite the fact he knew about those fatwas at that time. In his substantive interview on 18 April 2012 he referred to the threat from Malik Ishaq. He expanded upon this in a further statement dated 23 April 2012 in which he stated he fears harm from Mullahs of Lashkar-e-Jhangvi and specifically Mr Malik Ishaq who has been told the appellant writes poetry against them. He also referred in that statement to the existence of the two fatwas.

45. The appellant did not identify until his oral evidence before me any particular politicians whom he perceived as a threat. No names are given in his five witness statements or his interview record. This is despite the fact he must have been aware of the identity of those politicians at the time he made his asylum claim."

25. It is clear that the judge made a detailed assessment of the documentation and the central tenets of the appellant's claim and found the account to be wanting at the very least. The judge between [38] and [43] considered the documentary evidence and indeed throughout the determination carefully explains why she accorded weight that she did to the documents. The judge clearly carries out an assessment of the strands of evidence in the round and explains why the conclusions were reached at [56] onwards. The judge gives adequate reasons for her rejection of the evidence and I am not persuaded that there is a material error of law in her decision on this basis. The corroborating documentation may well be crucial but the fact is that the judge accorded little weight to key elements of the material after a thorough, considered and detailed analysis.

26. At ground (iii) it was asserted there was procedural unfairness and erroneous findings because they were based on evidence that was not before the Tribunal.

27. It was asserted that the judge relied on a number of details when dismissing the appellant's appeal including:

(a) his failure to mention by name a member of the Lashkar-e-Jhangvi whom he feared on return Malik Ishaq;

(b) he named politicians during his hearing but not named them before;

(c) during his screening interview he gave his last address in Pakistan as an address in RYK despite his evidence that he left that area before coming to the UK;

(d) he failed to provide evidence via statements, letters confirming he is at risk from Malik Ishaq;

(e) he mentioned in his interview almost five years ago he had some financial help from Pakistan but did not provide witness evidence, any documentary evidence; and

(f) he mentioned in his second but not his first statement his family had been contacted about his whereabouts.

28. It was submitted that the findings were made without giving the appellant an opportunity to respond to an offer an explanation on the points taken against him and it was arguable that such conduct was procedurally unfair. It was stated that it was trite law that procedural fairness required giving a party an opportunity to respond to a material point before taking against them are challenging evidence **Sri Lanka [2010] UKUT 00274**.

29. Ms Hulse submitted that the judge did not ask the appellant questions which should have been put to him in court. She conceded not all may be relevant but nonetheless they should have been addressed.

30. Ms Willocks-Briscoe submitted that it was for the appellant to bear the burden of proof.

31. In conclusion, it is important to note that the appellant himself presented swathes of evidence to be analysed by the judge and she gave reasons on the central aspects of his claim. Clearly, the appellant was legally represented and was aware of what was in his witness statements from the outset, such that from his first witness statement on 16th March 2012 he made no mention of a specific person being Malik Ishaq of whom he was afraid and further there was no mention of the two fatwas issued in 2008, 2009 despite the fact that the judge points out that the appellant knew of those fatwas at the time. The appellant was clearly aware of the contrast between the two statements and that would not have been a surprise to him.

32. It was open to the judge to conclude at paragraph 46 that there was an inconsistency that the appellant had claimed in his screening interview that his last address was Rahim Yar Khan but that was despite his further

evidence that he had to leave his home in the last year. The judge rightly points out that he was supposed to have fled that part of Pakistan. It was the appellant who put forward further evidence through his legal representatives who would have been aware of his screening interview and the contrast would have been evident and in need of explanation.

33. Similarly referring to 27(d) above, the judge was entitled to make the point at paragraph 48 that the appellant claimed to be in contact with journalists in Pakistan but there were no statements or letters to support his claim. That lacuna in the evidence was obvious to the appellant and to his representatives. The deductions by the judge at paragraphs [47] and [48] do not demonstrate a procedural unfairness in the assessment of the appellant's claim. Bearing in mind the amount of evidence there was no doubt a wealth of questions that could have been asked by the Home Office Presenting Officer or the judge but the need to ask questions on each and every detail is not to my mind required when the contrast or defect was already before the appellant in his own evidence and he was represented.

34. I am therefore not persuaded that there was any procedural unfairness in the decision such that the party had no opportunity to put a material point taken against him. The appellant was legally represented and the contrast between the evidence was quite clear. The judge wove in the appellant's oral evidence into her determination and in a way that it fitted adequate reasons. Anxious scrutiny is required and this is a detailed determination with careful analysis, and albeit it is an asylum claim, it is not incumbent on the judge to go through every single detail and refer to every piece of evidence, **Budhathoki (reasons for decision) [2014] UKUT 00341**. It is not incumbent on the judge to give reasons for reasons.

35. Turning to ground (iv) it was argue the judge's conclusions at paragraph 36 were arguably irrational with the absence of further reasoning. Those conclusions were cited as follows:

(a) it was implausible that his attendance and presentation as to gathering attracted a crowd of 10,000 attendees [36];

(b) it was implausible (a) would have thought his problems in Pakistan might dissipate to the extent that he could return at some point; [49]; and

(c) whether it was implausible that his friend would have kept a copy of the medical legal report and a fatwa issued in 2014 (paragraph 55)

36. Further the judge's finding that the appellant made no mention of his family receiving threats prior to his departure, failed to take into account that he mentioned in his first statement that people came looking for him prior to departure from Pakistan and his brother was beaten.

37. It would appear that the judge's findings have been taken out of context and I take each criticism in turn. At paragraph 36 the judge clearly stated

having viewed the video that she did not accept the number of people in attendance. There was no evidence on the video.

> *"The video showed the appellant speaking on a podium with a few others around him.* ***There was no indication of the number in the audience****. The appellant told me some people were sitting outside the immediate area around the podium but* ***even then*** *it would had to have been a significant area to accommodate such a number of people. I do not accept his evidence on this and find it to be an exaggeration."*

38. The judge was operating and proceeding on the basis of the video evidence that she was shown; there was no independent evidence and in the light of her determination as a whole this finding was adequate.

39. Turning to (b) and the criticism that the appellant thought his problems would dissipate the judge clearly at paragraph 49 stated that she did not accept his explanation that he expected things to calm down in Pakistan sufficiently for him to be able to return because as she stated

> *"By October 2009 the appellant was the subject of two fatwas issued in March 2008 and June 2009. It is inconceivable that the appellant would have expected the threat from the mullahs to dissipate in the two years he would spend in the UK such that he could return to Pakistan. This is particularly the case when he states that the threats started at the end of 2007****; given they had already lasted two years of culminating in two fatwas it is implausible the appellant would have expected to be able to return to Pakistan in two years after his arrival here"*****.**

40. That reasoning is clear and unambiguous and shows no irrationality on the part of the judge.

41. In relation to the Medico Legal Report the judge was entitled to conclude particularly bearing in mind other witness statements were not available that it was not credible that the appellant would be able to resurrect a Medico Legal Report after so many years. It is a matter for the judge as to the weight she gives to the evidence.

42. At paragraph 52 and 53 the judge is making the point of the contrast between the appellant's own statements. I can see that there is a reference in paragraph 20 of the first witness statement to the brother being beaten but that said the judge specifically states that there was no mention of this in his substantive asylum interview and in the light of the comprehensive findings regarding credibility elsewhere, I am not persuaded that this is a material error of law. The findings should not be viewed in isolation and in the face of the series of cogent adverse credibility findings made against the appellant in relation to the documentation as to his risk on return to Pakistan even though it was

accepted that he was a journalist and poet in the absence of the expert report it was open to the judge to find that he was not at risk on return.

43. The criticisms of the judge's decision are in essence a disagreement with the findings. As such I found there is no material error and the decision shall stand.

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

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 their 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 Helen Rimington Date 12th February 2018

Upper Tribunal Judge Rimington