Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/02206/2017**

THE IMMIGRATION ACTS

Heard at Liverpool	**Decision & Reasons Promulgated**
On 31st January 2018	**On 14th February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

MIRZA ZESHAN BAIG
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Moksud of International Immigration Advisory Services
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge M Davies (the judge) of the First-tier Tribunal (the FtT) promulgated on 4th May 2017.

2. The Appellant is a citizen of Pakistan born 1st July 1979. He arrived in the UK together with his wife on 2nd April 2011. The Appellant had a visa as a Tier 4 (Student) Dependant. The Appellant and his wife have three children, all born in the UK, in 2011, 2013 and 2014.

3. The Appellant made an asylum and human rights claim on 16 August 2016. His claim was based upon a dispute with a local police officer and the police officer's

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nephew, caused by the political affiliation of the Appellant's family. In addition the Appellant claimed that he had been threatened by a terrorist group, Lashkar-e-Omar.

4. The asylum and human rights application was refused on 13th February 2017 and the appeal was heard by the FtT on 25th April 2017. The judge heard evidence from the Appellant and found his claim to be in fear of persecution to be "wholly unbelievable". The judge placed very significant weight upon the fact that the Appellant had delayed making an asylum claim for a period of approximately five years four months. The judge did not believe the Appellant's claim that he and his brother had been kidnapped and tortured in Pakistan, and found that the Appellant had fabricated his asylum claim in order to avoid being removed from the United Kingdom. The judge attached little weight to documentation that the Appellant had produced. Although the judge found the Appellant to be an incredible witness, he went on to consider sufficiency of protection and internal relocation, finding that there was a sufficiency of protection in Pakistan, and the Appellant had a reasonable internal relocation option.

5. The judge considered Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention) finding that the Appellant, his wife and three children are all citizens of Pakistan, and would be returned to Pakistan as a family unit where they could continue their family life. There would therefore be no interference with their family or private life.

6. The Appellant applied for permission to appeal to the Upper Tribunal. The grounds are summarised below.

7. It was contended that the judge had placed too much weight on the delay in claiming asylum. It was contended that the Appellant had given evidence and there were no inconsistencies in his evidence, and objective evidence supported the Appellant's account but was not referred to by the judge. It was contended that the judge had failed to give reasons for findings.

8. It was contended that the judge had materially erred in law by concluding that the delay in claiming asylum, in itself, had fatally damaged the Appellant's credibility.

9. With reference to internal relocation it was contended that this would be unduly harsh, and the judge had erred by not reaching that conclusion.

10. It was further contended that the judge had erred by failing to refer to paragraph 276ADE(1)(vi) of the Immigration Rules in relation to the Appellant's private life.

11. It was contended that the judge had erred by not referring to section 55 of the Borders, Citizenship and Immigration Act 2009. The judge had not taken into account that the Appellant and his wife had been in the UK since April 2011 and had entered lawfully and have three children who were born in the UK.

12. Permission to appeal was granted by Judge Bird of the FtT in the following terms;

> 2. The Appellant seeks permission to appeal against this decision on the grounds that the judge made an arguable error of law in his assessment of his claim.

Ground 1 alleges that the "nub" of the reasons given by the judge was that the Appellant claimed asylum with a delay of five years and four months. It is alleged that this dictated the judge's findings on the totality of the Appellant's evidence. In this the judge failed to properly consider the evidence that the Appellant had submitted which included documentary evidence, the validity of which was not disputed by the Respondent.

3. In considering the decision of the judge it is clear that the starting point for the assessment of the Appellant's credibility was the delay in making a claim for asylum (paragraph 28). The consideration of the judge's findings in relation to the Appellant's credibility started at paragraph 45 and again, it is evident that the delay was the foundation from which the Appellant's credibility was considered. It is arguable that in basing the totality of the Appellant's evidence on this the judge has made an arguable error of law.

13. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In summary it was contended that the judge had not erred in law and had directed himself appropriately. It was submitted that any error in dealing with the delay was not material as the judge had dealt with the factual matrix of the asylum claim at paragraphs 47-49, and reached a conclusion which was open to him, that the Appellant was not credible and had fabricated the claim. The judge was entitled to reach his own conclusion on the documentary evidence produced and dealt with internal relocation at paragraph 48 of the decision.

14. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the judge had erred in law such that the decision should be set aside.

Submissions

15. Mr Moksud relied upon the grounds contained within the application for permission to appeal. It was submitted that the judge had erred at paragraph 38 by describing the delay in claiming asylum as fatal to credibility. It was further contended that the judge had erred by finding unreliable, an FIR which the Respondent had accepted as genuine. Mr Moksud submitted that the Appellant had explained the delay in his witness statement at paragraph 13 and this had not been taken into account, and the judge was wrong to regard delay in claiming asylum as the sole factor when considering credibility.

16. Mr Moksud pointed out that the Appellant had three children in the UK, the eldest being approximately 6½ years of age. The judge had not considered the best interests of the children which was a material error of law.

17. Mr Moksud submitted that Article 8 proportionality had not been considered, and it was an error not to consider paragraph 276ADE(1)(vi). I was asked to set aside the FtT decision.

18. Mrs Aboni relied upon the rule 24 response and submitted that the judge had not materially erred in law. I was asked to accept that the judge had made findings which were open to him to make on the evidence, and it was open to the judge to

attach significant weight to the delay in claiming asylum. The judge had made it clear at the beginning of the hearing he was concerned by the delay, and the judge found that the evidence given by the Appellant and submissions made on his behalf did not deal with the question of delay.

19. Mrs Aboni submitted that delay was not the only reason for making an adverse credibility finding against the Appellant, as other reasons had been given.

20. Mrs Aboni submitted that it was open to the judge to reach his own conclusions on documentary evidence, but in the alternative, even if the judge had erred in assessing credibility, there was no error in relation to the conclusions reached in relation to sufficiency of protection and internal relocation.

21. I was asked to accept that Article 8 was adequately addressed at paragraph 51 and to note that the children were not British citizens, and had not resided in the UK for at least seven years. It was submitted that the FtT decision should stand.

22. By way of response, Mr Moksud submitted that there was no adequate consideration of sufficiency of protection or internal relocation.

23. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

24. The conclusions reached by the judge commence at paragraph 45 in which the judge records that before receiving evidence he stressed to the Appellant's representative that he must deal with the question of delay, both in the evidence given by the Appellant and in his submissions, but this was not done. The judge records that the delay is fatally damaging to the Appellant's credibility. The Respondent did not raise the delay in claiming asylum as a major issue in the reasons for refusal, and did not raise section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. That of course does not mean that the judge was not entitled to raise delay, and in my view he was clearly fully entitled to consider the substantial delay before an asylum claim was made.

25. However, the evidence must be considered holistically and in the round. The impression gained from reading this decision, is that the judge has made an adverse credibility finding based upon the delay in claiming asylum, and reached this view before considering other evidence.

26. The judge does not consider the explanation given by the Appellant for the delay. That explanation is contained within the Appellant's witness statement at paragraph 13, which the Appellant relied upon before the FtT. The explanation is that the Appellant feared if he submitted an application he would be arrested and sent back to Pakistan, and made his claim for asylum after obtaining sufficient information. It may be that the judge would not have found this a satisfactory explanation, but there is no analysis of that explanation apparent in the FtT decision.

27. At paragraph 46 the judge makes a finding that the Appellant's claim to be in fear of persecution is wholly unbelievable and states that he makes that finding on the basis of delay of five years and four months in making an asylum claim.

28. At paragraph 47 the judge finds that the Appellant and his brother were not kidnapped and tortured as claimed, and the asylum claim is fabricated, and goes on to record, "That being the case I attach little weight to the documentation that the Appellant has produced". The judge notes that the Respondent concluded that the FIR which the Appellant had produced was likely to be genuine, but finds it reasonably likely that it is not genuine "bearing in mind the fatal damage to the Appellant's credibility". The reason given by the judge for concluding that the Appellant's credibility is fatally damaged is the delay in claiming asylum.

29. Therefore it appears from reading this decision, it is the delay that has caused the judge to disbelieve the Appellant's account, and to find that a document accepted as genuine by the Respondent was not genuine.

30. Weight that must be attached to evidence is a matter for the judge conducting the hearing, but the judge must consider the evidence holistically, and must consider any explanation offered in relation to the delay, and must give sustainable reasons for conclusions reached.

31. In my view, for the reasons given above, the judge has erred in law in considering credibility. However I do not find that error to be material for the following reasons.

32. The judge considered sufficiency of protection and internal relocation at paragraphs 48 and 55. Both sufficiency of protection and internal relocation were dealt with at some length in the Respondent's refusal letter.

33. It was the Respondent's case that there existed within Pakistan a sufficiency of protection from the authorities, and a reasonable internal relocation option. This was not a case where the Appellant feared persecution by the State, his fear was of a local policeman and that policeman's nephew, and threats made by a terrorist organisation. I have considered the Appellant's skeleton argument that was before the FtT. Sufficiency of protection is dealt with briefly, at paragraph 5 of the skeleton argument, the Appellant's case being that he would be unable to seek protection from the State, because the Appellant "believes that law enforcement agencies in Pakistan do not provide sufficient protection to the ordinary people".

34. Internal flight is dealt with at paragraph 6 of the skeleton argument on the basis that there would be no reasonable internal flight option because "Pakistan is a lawless country".

35. Based upon the evidence that was before the FtT, my view is that the judge was entitled to conclude at paragraphs 48 and 55 that the Appellant had produced no evidence to indicate that there would be a lack of adequate protection in Pakistan, or that he could not move to another area of Pakistan. I find that the conclusions reached in relation to internal relocation, and sufficiency of protection, although brief, are adequate and I do not find that the grounds upon which permission to

appeal was granted, disclose any error of law in relation to sufficiency of protection or the option of reasonable internal relocation.

36. With reference to Article 8, it is the case that there was no specific reference by the judge to paragraph 276ADE(1)(vi), but at paragraph 51 the judge concludes that the Appellant, his wife and three children would be returned to Pakistan as a family unit and that family life "can continue without any difficulty in Pakistan". In addition the judge found that there was a reasonable internal relocation option which would not be unduly harsh. Therefore although there was no specific reference to paragraph 276ADE(1)(vi) and the question of very significant obstacles, it is clear that the judge did not find that there would be very significant obstacles to the Appellant's integration into Pakistan, because of his findings in paragraphs 48, 51 and 55 which confirm his conclusion that the family could enjoy family life without any difficulty, and there was a reasonable internal relocation option. There was therefore no material error of law in failing to specifically mention 276ADE(1)(vi).

37. It is correct that the judge did not specifically refer to section 55 of the Borders, Citizenship and Immigration Act 2009. This was considered by the Respondent in the reasons for refusal letter and relates to the duty on the Secretary of State to have regard to the need to safeguard and promote the welfare of children who are in the UK. It is incumbent upon a judge to consider the best interests of children. In this case, the judge has considered the children, noting that they are citizens of Pakistan. It is common ground that the children had not resided in the UK for seven years. While the judge did not specifically refer to the best interests of the children, it is in my view apparent that he took the view that the best interest of the children, taking into account their young ages, would be served by remaining with their parents and returning to Pakistan with their parents. Taking into account the ages of the children, it is clear that their best interests would be served by remaining with their parents. The finding by the judge that the children should return to Pakistan with their parents, is a finding open to him, and is not an error of law.

38. In conclusion, although in my view the judge did err in law, as set out above, the errors were not material and the decision is not unsafe. I therefore dismiss the appeal.

Notice of Decision

The decision of the FtT does not disclose material errors of law such that it must be set aside. I do not set aside the decision. The appeal is dismissed.

Anonymity

No anonymity direction was made by the FtT. There has been no request to the Upper Tribunal for an anonymity direction, and in the circumstances I see no need to make such a direction.

Signed Date: 7th February 2018

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed. There is no fee award.

Signed Date: 7th February 2018

Deputy Upper Tribunal Judge M A Hall