Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06790/2018

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**
On 4th October 2018 **On 22 October 2018**

Before

UPPER TRIBUNAL JUDGE RINTOUL
UPPER TRIBNAL JUDGE BLUM

Between

A R
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms C Hulse, Counsel instructed by M & K Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Dean, promulgated on 25th July 2018, in which he dismissed the protection and human rights appeal of the appellant against a refusal by the respondent, dated 23 May 2018, of the appellant's protection and human rights claims.

Background

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2. The appellant is a national of Pakistan. He was born in 1984. He entered the United Kingdom in September 2009 as a student. He applied for leave to remain as a Tier 1 (Post-Study Work) Migrant and then again as a Tier 4 (General) Student, the last period being valid until 30th April 2016. On 2nd May 2016 the appellant made an application on the basis of his family/private life. This was refused by the respondent on 24th July 2017. The appellant had also made an application for leave to remain on compassionate grounds. This application was refused on 10th August 2017. The appellant was then detained on 20th November 2017. It is pertinent to note that, in the interview following his arrest, he claimed to have witnessed suicide attacks in Pakistan but did not mention any attack on him or that he received any threats.

3. On 28th November 2017 the appellant made an asylum claim based on a fear of persecution in Pakistan as a Shia Muslim. We summarise his claim. From 2004 or 2005 he worked as a youth coordinator for a religious organisation, the Khairul Amal Foundation which was part of the NWM, a political organisation. In 2007 he started to experience problems because of his religion. He was attacked on his way home and beaten whilst being subjected to anti-Shia abuse. Whilst participating in a procession around September/October 2007 he apprehended a person who was acting suspiciously and brought this person to the attention of security guards. After this incident he started to receive threatening letters from Lashkar-e-Jhangvi, a banned extremist organisation very much opposed to the rights of the Shia Muslim population. These threats occurred seven to eight times around 2008. As a result, he believed that his life would be in danger and fled the country.

4. In his refusal letter the respondent accepted that the appellant was Shia but did not accept that he was an activist and rejected his account to have encountered any difficulties in Pakistan as a result.

The First-tier Tribunal decision

5. The appellant exercised his right of appeal. At the outset of his appeal hearing before the First-tier Tribunal on 28th June 2018 the judge noted, as a preliminary matter, that there was medical evidence before him, and noted the submission that the appellant ought to be treated as a vulnerable witness.

6. The medical evidence indicated that the appellant was receiving antidepressants, was on a course for depression and low mood, and was receiving CBT (Cognitive Behavioural Therapy). There was no clear medical diagnosis of PTSD, although a chartered psychologist indicated (in letters dated 8th June 2017 and 21st June 2017) that the appellant displayed some symptoms of PTSD. These included, *inter alia*,

hopelessness, loss of appetite, motivation and concentration, and problems with short and long-term memory. The letters also indicated that the appellant thought of the suicide but had no immediate plans, and that his religiosity was a strong protective factor. His immigration case was said to be making his condition worse, and the letter dated 21st June 2017 described the appellant's immigration status as the major source of distress for him. We remind ourselves that in the interview following his arrest on 20th November 2017 the appellant said he witnessed suicide bomb blasts and the death of a neighbour, but he did not mention any threats made to him personally.

7. At [4] the judge reminded himself of the Joint Presidential Guidance Note No. 2 of 2010 and indicated that he conducted the hearing accordingly. He observation that, at the end of the hearing, the appellant's representative confirmed that he had no concerns about the conduct of the proceedings. The judge heard oral evidence from the appellant and submissions from the representatives. In the section of his decision entitled findings of fact and credibility the judge accepted the appellant's evidence of his involvement with the Khairul Amal Group and, having looked at the totality of the evidence, accepted that the appellant had been involved in community activities and that he continued to practise his Shia faith in the UK.

8. The judge observed that the appellant had never reported any incident to the police in Pakistan. When asked why he had not, the appellant said he did not trust the police and that there were people in the police who did not like Shia. The CIG Report on Pakistan dealing with the position of Shia Muslims stated that there was, in general, a willingness by the Pakistan authorities to protect Shia, although there was a lack of resources which limited the security forces' ability to protect the community at all times. The judge additionally noted the Tribunal decision in **<u>AW</u> (sufficiency of protection) Pakistan [2011] UKUT 31** which found that there was a systematic sufficiency of State protection.

9. At paragraph 15 the judge stated,

> I find it is not credible that if the appellant received death threats from Lashkar-e-Jhangvi he would fail to report it to the police because it is a known anti-Shia extremist organisation which has been banned in Pakistan. Even if the appellant thought he would not be protected at all times I find that, at the very least, he could reasonably be expected to have reported the letters to the police so that they were aware that this extremist organisation was active in his area. I therefore find that the appellant's failure to report the death threats from Lashkar-e-Jhangvi goes against the credibility of his account of the facts.

10. The judge then considered the appellant's account of the suspicious person he observed during a procession. The appellant had been unable to explain how this person knew who he was or how this person

could have obtained the appellant’s home address in order for the threatening letters to be delivered. Nor was the appellant able to offer any explanation as to how his telephone number had been obtained. The judge found that the appellant’s inability to provide any such explanation undermined his credibility.

11. The judge then noted the significant delay in the appellant’s asylum claim and the relevance of such a delay under Section 8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004. The judge noted that, in the appellant’s asylum interview, he said he did not claim asylum when he arrived in the United Kingdom because he had a visa and felt safe. However, in the appellant’s statement he claimed that the events in 2007 were an extremely terrifying ordeal and caused him extreme fear, anxiety and distress. The judge did not find it credible that someone who claimed to have fled the home country in fear of their life, having undergone a terrifying ordeal, would wait so many years before claiming asylum.

12. At [21] the judge noted that the appellant was an educated man who had a number of opportunities to mention his claimed fears when making various applications, and that in his asylum interview reference was made to his 2016 application where the appellant even mentioned that there was violence in Karachi, but did not mention any of the facts that formed the basis of his asylum claim.

13. Then at [23] the judge found that the appellant’s credibility was further undermined because he did not mention, when interviewed by the Home Office on 20th November 2017, that he had been attacked or received death threats. The appellant was however able to mention that he had witnessed suicide bombings and that this was a very harrowing experience. At [25] the judge stated,

> Looking at the totality of the evidence before me I find that the appellant has not provided evidence to the required standard to demonstrate that he is at risk of persecution in Pakistan, or that there are substantial grounds for believing he faces a real risk of suffering serious harm if returned to the country.

14. The judge then went on to consider an Article 3/Article 8 claim based on the appellant’s physical and mental health. The judge considered, in significant detail, the evidence before him relating to the appellant’s mental health. At [34] the judge accepted that the appellant had been receiving “talking therapies” and medication for anxiety and depression, and that his depression had, at times, been severe. The judge noted however that without an expert report from a suitably qualified consultant the evidence did not demonstrate to the required standard that the appellant had received a clinical diagnosis of PTSD. The judge proceeded to dismiss the appeal on asylum grounds and also in relation to the appellant’s medical condition on Articles 2, 3 and 8 grounds.

The grounds of appeal

15. The grounds of appeal challenged several aspects of the judge's conclusion. It is however only necessary for us to detail the first two grounds as, for the reasons set out below, permission was granted only on these. The first ground contends that the judge failed to give the benefit of the doubt to the appellant's evidence in light of his mental health. While the judge recognised that the appellant had mental health issues he "completely failed to demonstrate that he had considered this when assessing credibility throughout the determination under the protection claim." The grounds accepted that, as a preliminary issue, the judge made reference to the Joint Presidential Guidance Note, but argue that he failed to bear this guidance in mind when considering the appellant's credibility and "… the need to apply the benefit of the doubt more liberally."

16. The second ground contends that the judge erred in law by making no reference to the appellant falling ill during the proceedings. It is submitted that the appellant had to lie on the floor and was given water and the hearing was adjourned to allow the appellant time to recover, but no reference was made to this in the determination. It was submitted that this was relevant as it might have impacted upon the appellant's ability to give oral evidence to the best of his ability. It was additionally submitted that the same might clearly have been relevant in the judge's assessment under Article 8.

17. Permission was granted by Judge of the First-tier Tribunal Kelly, but only in respect of the first two grounds. We are grateful to Ms Hulse who, in difficult circumstances, has done her best to expand upon those limited grounds. Ms Hulse accepted the limited basis of the appeal. The essence of her submissions was that there was no indication in the decision that the judge had adequately assessed the appellant's credibility by reference to his mental health, especially given the extent to which the judge had acknowledged the appellant's mental health problems. It was submitted that there was no consideration given to any 'memory' or 'focus' problems that may have prevented the appellant from giving evidence and that, in these circumstances, the judge should have applied the "benefit of the doubt". In relation to the second ground Ms Hulse submits that it was extraordinary that there was no mention of the incident of the appellant lying down and that this was a material fact.

Discussion

18. We are satisfied the judge was, at all times and at all stages of his decision, aware of the appellant's mental health issues. The judge identified, as a preliminary matter, the Joint Presidential Guidance Note No. 2 of 2010. According to the Guidance Note it is a matter for a judge to determine the extent of an identified vulnerability, the effect on the

quality of the evidence caused by the vulnerability, and the weight to be placed on such vulnerability in assessing the evidence. The Guidance Note provides that, in assessing evidence, a judge should be aware that some forms of disability cause or result in impaired memory. A judge needs to be aware that the order and manner in which evidence is given may be affected by mental, psychological or emotional trauma or disability and that a judge needs to be aware that the comprehension of questions may have also been impaired. Nowhere in the guidance, or in **AM (Afghanistan) [2017] EWCA Civ 1123**, where the Court of Appeal specifically considered the Guidance Note, does it make any mention of the “benefit of the doubt being applied liberally”.

19. The second half of the judge’s decision consists of a detailed assessment of the medical evidence. The judge gave detailed consideration to the evidence relating to the appellant’s physical and mental health. We are not persuaded that this experienced judge, having indicated his awareness at the outset of the hearing that he had read the medical evidence and that he was aware of the Joint Presidential Guidance Note, and then having evaluated that evidence in considerable detail in respect of the Article 3/8 human rights appeal, would fail to consider that Guidance when evaluating the appellant’s evidence.

20. We did not read the judge’s reference to having conducted the hearing according to the Guidance Note as an indication that he somehow restricted the application of the Guidance to the hearing itself. In any event, the majority of the judge’s adverse credibility findings are based on matters that are unaffected by any impairment in the appellant’s memory, or confusion or a lack of comprehension on his part.

21. At [13], [14] and [15] the judge found it incredible that the appellant failed to report threats to the authorities given that they originated from a banned organisation, and in light of the CIG report indicating that there was, in general, a sufficiency of protection. The medical evidence, none of which dated back to 2007 or 2008, did not suggest that the appellant suffered from any cognitive impairment, and cannot explain the appellant’s failure to report the threats to the authorities at that time, it not being suggested that his recollection of not reporting the threats was impaired by any current impairment.

22. At [16] the judge drew an adverse inference from a lack of explanation given by the appellant as to how a suspicious person would have been able to obtain his home address or his telephone number. The medical evidence however provides no proper basis for showing that the appellant’s inability was attributed to his mental health.

23. At [23] the judge drew an adverse inference based on the failure by the appellant to mention, during the interview conducted on 20 November 2017, the personal attack on him or the threats he received, in circumstances where he was able to mention his witnessing of suicide bomb attacks and the killing of a neighbour. We find the judge was rationally entitled to draw an adverse inference based on this omission. The appellant described events that were harrowing on 20 November 2017, and no good explanation was offered as to why he was unable to also mention the attack and the threats. At [20] and [21] the judge gave cogent and legally sustainable reasons for drawing an adverse inference based on the delay of some eight years in the making of the protection claim, especially given that the asylum claim closely followed two applications made by the appellant, one on the basis of his human rights, the other on the basis of compassionate circumstances, and when he had explained in general terms the difficulties that Shia face. For these reasons we find no merit in the first ground.

24. In approaching the second ground we note the absence of any evidence produced by the appellant in support of the asserted incident, such as statements from the appellant or his legal representative. The grounds were not signed by counsel who appeared at the hearing, and no detail is given as to the material relied upon in drafting.

25. Reference to this incident was however made by the judge in his notes of the hearing, the judge observing that the appellant laid down at the back of the court, that this occurred after he gave his evidence and at the submissions stage, that the appellant appeared calm, and that his representative said he was fine ("just resting"). We therefore proceed on the basis advanced by the appellant in the grounds - that he did lie down during the hearing, that he was given water and that there was a brief adjournment. Neither the note nor the draft indicate that any submissions were made in respect of this incident. There is no requirement for a judge to record every occurrence during a hearing. It is apparent from the decision, holistically considered, that the judge was aware of the appellant's mental health issues, and that the judge accepted that his condition was sometimes severe. The judge made full allowance for the appellant's mental health at the hearing and in his decision. The appellant lying on the ground and being given water, necessitating a short adjournment at the submissions stage, does not meaningfully add to the probative nature of the documentary evidence before the judge relating to the appellant's mental health, and the fact that it was not included in the decision does not mean that it was not fully considered by the judge. We note that, at [4], the judge observed that the appellant's representatives confirmed he had no concern about the conduct of the hearing. In these circumstances we find there is no merit in the second ground.

Decision

First-tier Tribunal decision does not contain any material legal errors. The appeal is dismissed.

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   Date 16 October 2018

Upper Tribunal Judge Blum