



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/13005/2017

**THE IMMIGRATION ACTS**

Heard at Newport  
On 9<sup>th</sup> October 2018

Decision & Reasons Promulgated  
On 8<sup>th</sup> November 2018

Before

UPPER TRIBUNAL JUDGE GRUBB  
DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

[S H]  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Miss Grubb of Counsel

For the Respondent: Mr Howells

**DECISION AND REASONS**

**Introduction**

1. The Appellant born on 30<sup>th</sup> March 1972 is a citizen of Pakistan. The Appellant was represented by Miss Grubb of Counsel. The Respondent was represented by Mr Howells, a Senior Presenting Officer.

### **Substantive Issues Under Appeal**

2. The Appellant claimed to have arrived in the United Kingdom on 13<sup>th</sup> July 2014 and was granted a visit visa until December 2014. He made an application for asylum in August 2014 which was refused. He became appeal rights exhausted on 28<sup>th</sup> September 2015. He then lodged further submissions which were rejected and also made an application for judicial review in October 2016 and in February 2017 the decision was made to reconsider his application. That application was refused.
3. The Appellant appealed that decision and his appeal was heard by Judge of the First-tier Tribunal Suffield-Thompson sitting at Newport on 22<sup>nd</sup> January 2018. She dismissed the Appellant's appeal. Permission for application to appeal was made and that permission to appeal was initially refused on 14<sup>th</sup> March 2018. The application was renewed to the Upper Tribunal and on 12<sup>th</sup> June 2018 Upper Tribunal Judge Grubb granted permission to appeal in respect of Grounds 3 and 4, namely that the judge had failed to give appropriate weight to the expert evidence and had failed to give the necessary anxious scrutiny to in particular the video footage. Directions were issued for the Upper Tribunal to first of all decide whether an error of law had been made by the First-tier Tribunal in this case. The matter came before us in accordance with those directions. On enquiry neither party had any concerns with Upper Tribunal Judge Grubb who had granted permission to appeal being on a member of the panel.

### **Submissions on Behalf of the Appellant**

4. Miss Grubb provided us with submissions in respect of Grounds 3 and 4 of the Grounds of Appeal. In respect of Ground 3, it was said that there had not been appropriate weight given to the expert report which had been prepared and submitted on behalf of the Appellant. It was submitted that at paragraphs 55 and 56 of the decision where the judge had dealt with the expert report it appeared the judge had taken the view that the lawyer was not an expert in respect of those legal documents and it was said that that was a wrong approach. It was further said that the decision had only focused on that part of the expertise that considered the verification of documents and at least some weight should have been placed on her expertise as a country expert, and no consideration had been given to other aspects of the report which dealt with plausibility, sur place activity and risk on return.
5. In respect of Ground 4, it was submitted that the judge had not given anxious scrutiny to the probative value of the video footage or other evidence with regard to the Appellant's broadcasting activities including evidence that demonstrated that the programmes which he broadcasted had over 5 million viewers. It was submitted that again the expert had dealt with the potential risk on return in respect of those matters which had not been considered sufficiently if at all by the judge.
6. Reference was also made to a particular FIR which was one of three that had been submitted by the Appellant. It was said that the Respondent accepted that two out of those three had been verified as genuine. Although this one had not been verified, little weight had been given to the expert view on that matter or the fact that there

had been other FIRs presented which had been accepted as genuine by the Home Office.

### **Submissions on Behalf of the Respondent**

7. Mr Howells stated that the FIR in dispute dated 2012 had not been submitted in advance by the Appellant but had simply appeared in the appeal bundle with no explanation as to why it had not been submitted for verification alongside the other two. It was further said that the contents of this particular FIR were very different to those which had been found to be genuine. It was further submitted that the judge's findings on risk and credibility demonstrated that any failure to deal with the expert report fully was not a material error and that in respect of any sur place activities matters had been focused on other evidence not simply that contained within the expert report. We were referred to paragraphs 59 to 62 of the decision where the judge had reached findings. In respect of the video footage, it was said that the reasons provided by the judge at paragraph 48 were adequate. It was said that there was no translation of what the Appellant was saying on the video and that any audience figure provided was subjective evidence from someone who had not attended the hearing to give evidence.
8. At the conclusion we reserved our decision to consider the submissions and evidence presented. We now provide that decision with our reasons.

### **Decision and Reasons**

9. The judge had before her an expert report from Mrs Moeen at pages 1 to 48 of the Appellant's supplemental bundle. She described herself both as an experienced lawyer in Pakistan but also an experienced country expert. The judge dealt with her report briefly at paragraphs 55 and 56 and essentially took the view that as Mrs Moeen was not a document expert she took no regard of her views and conclusions upon the FIR dated 2012 contained at paragraphs 11 to 40 of her report. There was in our judgement, an inadequate consideration of her evidence and the extent of her expertise when considering this particular FIR that played some significance in the Appellant's case. Further the judge did not take any account of the expert's findings and views on other matters such as the plausibility of the Appellant's account generally, state protection and internal relocation which her expertise as a country expert may have to some extent required. Whilst the judge was of course not bound to agree with the report, she needed to consider the totality of that report in the found in her assessment of the Appellant's case and that was not done.
10. The judge had been presented with video footage and dealt with this matter at paragraph 48 of the decision. The Appellant had claimed to be the manager of a mosque and in part is claimed to be at risk related to his claimed high profile. The judge had accepted that the video footage showed the Appellant speaking to a large crowd, and potentially introducing speakers to the crowd. Whilst the judge was not incorrect to say that this did not necessarily mean the Appellant was the manager of the mosque as claimed, she failed to consider the fact that the Appellant clearly had some profile not inconsistent with either being the manager of the mosque and

perhaps more importantly the fact that it was his potential profile that he held within the Shia community that produced the alleged risk. Within the same category of the Appellant's profile evidence, there had been provided evidence that the Appellant presented a TV programme and had developed a significant international profile. At paragraph 59 the judge had found "there was nothing before me to say how widely this channel is watched or broadcast and I do not find that presenting the programme has heightened the risk to the Appellant on return". That was not the case as the judge had before her the witness statement of the Appellant's co-presenter, Mr Zaidi, who had said the channel had more than 5 million viewers. That was not insignificant evidence concerning the Appellant's raised profile but needed to be considered by the judge.

11. The 2012 FIR, the evidence of the Appellant's profile and potential job within the mosque and his raised profile from his TV work were significant features in the Appellant's claim to fear persecution because of his religion and known profile within that religion in Pakistan.
12. The judge's failure to adequately deal with the expert report and consider the proper inferences that could be drawn from the video evidence and a failure to take account of the evidence of Mr Zaidi taken together produced an error of law. That is because due consideration had been given to those significant pieces of evidence it may well have led to a different conclusion in respect of the Appellant's profile and therefore his claimed risk on return. It was therefore a material error.

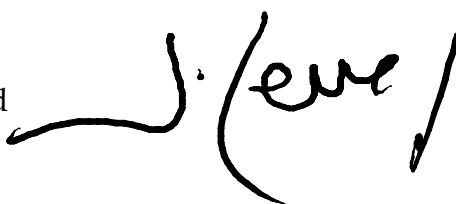
### Decision

13. We find that a material error of law was made by the judge in this case and set aside the decision of the First-tier Tribunal. The appeal is remitted to the First Tier Tribunal for a de novo hearing before a judge other than Judge Suffield-Thompson.

### 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



Deputy Upper Tribunal Judge Lever

Date

