



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/13738/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 12 July 2018

Decision & Reasons Promulgated  
On 2 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

M H B  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms N Ahmad, Buckingham Legal Associates

For the Respondent: Ms K Pal, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Pakistan born in 1988. He first came to the United Kingdom in 2009 as a Tier 4 student and that leave was then further extended. The Appellant claims he returned to Pakistan on 23 June 2016 and he was attacked, as a result of which he returned to the United Kingdom and made an asylum claim, that claim being made on 21 June 2017. His application was rejected and his appeal came before First-tier Tribunal Judge A A Wilson for hearing on 29 January 2018. In a Decision and Reasons promulgated on 2 February 2018, the judge dismissed the

appeal, essentially on the basis that he was not satisfied that the Appellant's case was credible or that he would be at risk on return to Pakistan.

2. Permission to appeal was sought in time on the basis of very lengthy grounds which Ms Ahmad helpfully summarised under three heads:-
  - (1) that the judge had made factual inaccuracies and also had misunderstood material facts;
  - (2) he failed to provide adequate reasons for rejecting the expert report and the medical evidence; and
  - (3) he failed to consider the evidence in the round in reaching his decision.
3. Permission to appeal was granted by Upper Tribunal Judge Allen in a decision dated 8 April 2018 on the basis that:-

*"There is an arguable lack of clarity in the judge's decision in the material aspects as identified in the grounds, and as a consequence it is appropriate to grant permission on all grounds."*

#### *Hearing*

4. At the hearing before me Ms Ahmad focused first on the errors and misunderstandings by the judge. At [1] the judge noted the Appellant was a Tier 2 dependant but that is erroneous. The Appellant has always been the Sponsor not a dependant. It was his wife who was the Tier 2 dependant and the judge further got the dates of the Appellant's leave wrong. The judge erred in recording the date the Appellant was attacked in Pakistan, which was 22 June 2016 rather than 23 June 2016. The judge erred at [12] in respect of the Appellant's evidence in his witness statement that he has two aunts but has no relationship with them and is not in contact with them. The judge erred at [11] to [12] in confusing the name of the land agent Shakil and the Appellant's friend Shahid and those names were verified by the Appellant at [69] and [72] of his witness statement. Also at [11] and [12] the judge has confused the issue of the property concerned. The reason the Appellant returned to Pakistan was to sell his family property because his father and brother were no longer living there. This was a separate property from the property, or rather the land, that was in dispute (see [70] of the Appellant's witness statement). It has been the Appellant's consistent contention that he has never laid claim to the contested property, so clearly he would not be going to Pakistan to sell it. Thus the judge's finding at [12] that the Appellant is concocting a case of going back to Pakistan to make a claim is based on a factual misapprehension of the facts which has led to an unsustainable adverse finding.
5. Ms Ahmad further submitted that at [14] the judge erred in finding there was no corroboration of the attack on the Appellant in 2016 when there was both evidence in the form of medical evidence from the hospital in Pakistan where he was treated on 22 June 2016 which was apparently accepted by the Respondent in the refusal decision, and the affidavit from the Appellant's friend Shahid confirming that he took the

Appellant to a hospital following the attack. The judge has failed at [14] to give any reasons why he does not accept or engage with this evidence. At [17] the judge refers to the expert's report but finds:-

*"I confirm I have considered carefully given the acceptance of some matters that I have set out to by the respondent and the view of the expert whether it is appropriate on the lower standard of proof to give general credence to the appellant's case. However I and (sic) satisfied that is not appropriate to do so."*

6. The expert, who is a Pakistani lawyer, was of the opinion that the Appellant would suffer serious harm over the land dispute if returned to Pakistan. He could easily be targeted and tracked down through NADRA or CICD systems and that the Pakistani authorities would not be of any meaningful assistance in terms of risks to his personal safety, thus there will be no sufficiency of protection. Also material is the fact the Appellant's partner is an Indian Sikh and thus the marriage would not be treated as lawful under Islamic Pakistani law and which would make it difficult for them to live together as a married couple: [91] to [96] of the expert report. Ms Ahmad submitted that the judge has not given any reasons as to why he has rejected the expert report, and at [16] he gave no reason for disregarding the medical evidence, finding as follows:-

*"In assessing the merits of this appellant's appeal I have noted clearly the evidence that he suffered from depression and receiving appropriate medication. At times his demeanour generally in court giving evidence was flat and un-emotional, but I have completely disregarded that view of the medical evidence."*

It was submitted that this finding is in fact not at all clear.

7. Ms Ahmad submitted that in terms of consideration of the case in the round that this is a case where there were five FIRs, three lodged against Mr K and one that related to the Appellant's brother and one in relation to the Appellant's father, all of which had been subjected to verification reports by the Respondent and had been found to be genuine, yet they are not referred to in the decision at all, despite their presence in the Respondent's bundle. She further submitted that the Respondent had accepted a number of salient aspects of the case, in particular the fact there was a land dispute, the Appellant's brother and father had been arrested (the latter being released on one year's probation) and all of which corroborates what the Appellant has stated as to the timeline of the land dispute. There were also a number of newspaper articles submitted and verified as genuine and one of these newspaper articles at RB 103 refers to Mr K going to his maternal uncle, i.e. the Appellant's father, and pursuing him to attack him.
8. It was also notable that in the decision by Judge Kinnell in respect of the Appellant's wife dated 2015 there is specific reference by the Appellant's wife to the land dispute her husband was involved in.
9. In her submissions Ms Pal stated she appreciated that there are some errors in the presentation of the Decision and Reasons, but it was possible to get the gist as to what

the judge has found. She submitted that the judge has done just enough in considering the Appellant's appeal and the findings in terms of the decision and credibility findings and the expert evidence. She appreciated there were errors in respect of individual names but submitted that these were not material and did not have a negative impact on the credibility findings. The judge sets out the general backdrop of the claim from [5] onwards. At [7] the Judge makes reference to the expert report and ultimately concludes at [17] that he was not prepared to attach significant weight to the report. She submitted that what the judge was trying to say at [16] in respect of the medical evidence was that it did not take matters any further, similarly in respect of the affidavit from the Appellant's friend. She submitted that the judge acknowledged there may have been a genuine property dispute, but this was being elaborated and built upon by the Appellant in order to seek international protection. She acknowledged that if the judge at [14] was suggesting that the Appellant attempt reconciliation with the person from whom he was seeking international protection, this would not be appropriate, however this was not the only adverse credibility finding. She submitted that the judge properly attached the weight he thought the documents deserved and was entitled to come to the conclusions that he did.

10. In her reply Ms Ahmad submitted that Ms Pal had acknowledged that there were errors of fact and that these were capable of amounting to an error of law.

#### *Findings*

11. I found errors of law in the decision of First-tier Tribunal Judge Wilson and announced my decision at the hearing. I now give my reasons.
12. Turning first to the basis upon which permission was granted, i.e. the arguable lack of clarity in the decision in material respects, this is clearly the case in that a number of sentences and words in the decision do not actually make sense, which is concerning in terms of the fact that it should be clear to the losing party why he or she has lost. For example, at [14] the judge said:-

*"There is no corroboration of the attack; his wife gave evidence but she was any relay matters told to her by her husband. In any event I did not find her evidence particularly convincing. It is clearly distressed about the absence of her daughter from the UK and speaks to the appellant's mother and thus her young daughter in the 1 to 2 weeks the appellant appeased which this can be achieved is at some marked variants the appellant's assertion that his mother and daughter are always on the move no settlement address in any theatre speak to them every month or so. The overall manner of her evidence as to matters that occurred in Pakistan also that any coherence. I note Judge Kimnell also reached a similar conclusion of the quality of her oral evidence before him. The affidavit from his friend does not take matters any further orders and medical evidence."*

This lack of clarity is confusing and casts doubt on the safety of the findings given that it is not entirely possible to work out what it is that the judge is, in fact, finding.

13. Turning to the specific and numerous points raised by Ms Ahmad, whilst some of the factual errors may not be particularly material, i.e. whether or not the Appellant was

a Sponsor or dependant, the exact date when he was attacked and the confusion about the names of his land agent versus his friend, when they are looked at in the round along with some more fundamental errors, i.e. the confusion between the property owned by the Appellant's family and the property in dispute, and the finding at [12] that the Appellant was concocting a case of going back to Pakistan based on the factual misapprehension of the facts, taken together does amount to a material error of law in my finding.

14. In addition, I find that the judge did fail to give proper or adequate reasons for essentially disregarding the expert's report at [17]; in failing to engage with the corroborative evidence of the attack on the Appellant in the form of a report from a hospital and the affidavit from his friend Shahid and in failing to address or make any findings in respect of the FIRs, which had been verified by the Respondent I further find that the finding at [16] as to the medical evidence is so unclear as essentially to be unreliable.

*Notice of Decision*

15. In light of the above I find that the decision of the First-tier Tribunal simply cannot stand. I set it aside and remit the appeal for a hearing *de novo* before the First-tier Tribunal.

**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 his 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 *Rebecca Chapman*

Date 29 July 2018

Deputy Upper Tribunal Judge Chapman