



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/13813/2017

THE IMMIGRATION ACTS

**Heard at Bradford
On 29 March 2019**

**Decision and Reasons Promulgated
On 23 April 2019**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

Raja Muhammad Mumtaz Khan

(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr T Hussain (Counsel)

For the Respondent:

Mrs R Pettersen (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal brought with the permission of a judge of the Upper Tribunal, from a decision of the First-tier Tribunal (the tribunal) which it made on 21 November 2018, following a hearing of 18 October 2018, and which it sent to the parties on 27 November 2018. The tribunal decided to dismiss the claimant's appeal against the Secretary of State's decision of 14 December 2017, refusing to grant him international protection.

2. The claimant is a national of Pakistan. He was born on 2 June 1977. The account underpinning his claim to be entitled to international protection may, shorn of everything but essential details, be summarised as follows: He became a member of the United Kashmir People's National Party (UKPNP) in 2009. In April of that year he was arrested at a political demonstration and was beaten by members of the Pakistani police force before being released on the same day. On 1 May 2009 he was kidnapped by persons unknown and was, once again, beaten. His injuries necessitated hospital treatment. He was appointed as the deputy General Secretary for the UKPNP in the Muzzassarabad district. His uncle wanted him to marry his cousin. But the claimant did not want to do that and could not do so anyway because he had secretly married another in 2003. In May of 2011 the claimant left Pakistan and came to the UK having kept his marriage secret from his family for all of that time. He was granted leave to enter as a student and obtained an extension of his original grant of leave but his leave was subsequently curtailed and so expired on 3 May 2013. A subsequent application for further leave as a student was refused. In 2015 there were threats of violence involving his family and his uncle's family which were linked to his reluctance and inability to marry the person his uncle believed he should marry. On 2 January 2016 the authorities in Pakistan issued an arrest warrant with respect to him. On 5 May 2017 a fatwa was issued in respect of him because of involvement he had had with a branch of the UKPNP in the UK. As a result of all of the above the claimant asserted that if he were to be returned to Pakistan he would be persecuted or subjected to serious harm by the authorities in Pakistan and by his uncle and his uncle's associates.

3. The tribunal accepted certain aspects of the claimant's account whilst rejecting others. It was accepted that he had been assaulted in 2009 and had sustained injuries. It was not accepted that he had been secretly married as claimed. It was not accepted that there was an ongoing significant family dispute in consequence of which his uncle had a genuine intention to harm him. It was not accepted that a fatwa had been issued in respect of him or that he would face any difficulties as a result of his previous or current political activities at the hands of the authorities in Pakistan.

4. The claimant's appeal having been dismissed, permission to appeal to the Upper Tribunal was sought. The grounds, in summary, contended that the tribunal had failed to adequately consider risk the claimant would face as a consequence of his political activities if returned to Pakistan; had improperly relied upon its perception of a lack of plausibility in the account when rejecting his credibility (or perhaps more correctly in part rejecting it); had not properly enquired into the circumstances surrounding the issue of the arrest warrant before concluding it was not indicative of intended persecution; and had wrongly concluded that if he was at risk he would be able to take advantage of an internal flight alternative bearing in mind that no such contention had been raised by the Secretary of State.

5. The granting judge thought it arguable that the tribunal had erred through failing to be clear as to what it made of the issuing of two FIR's with respect to the alleged family disagreement. But that

judge, whilst not limiting the grant of permission, did not think anything else in the grounds was seriously arguable.

6. Permission to appeal having been granted the matter was listed for a hearing before the Upper Tribunal (before me) so that consideration could be given as to whether or not the tribunal had erred in law, and if it had, what should flow from that. Representation was as indicated above and I am grateful to each representative. Mr Hussain, whilst not conceding anything with respect to the other grounds, focussed primarily on the basis upon which permission had been granted and the way in which the tribunal had addressed the question of the FIR's at paragraph 37 of its written reasons. The tribunal had failed to grapple with the existence of the FIR's and what they might tell it about risk the claimant might face if he was to be returned. Mrs Pettersen contended that the tribunal had made appropriate findings on all matters.

7. I have decided that the tribunal did not err in law. It follows that its decision must stand. I shall now explain my reasoning.

8. Although Mr Hussain (entirely realistically in my view) primarily focussed upon the specific basis in respect of which permission had been granted, it is right that I should address all of the written grounds of appeal.

9. As to ground 1, the tribunal was perfectly entitled not to attach weight to the assertion that a fatwa had been issued in respect of the claimant. Whilst certain other documents had been assessed and verified by an expert witness, there had been no such attempt at verification with respect to the fatwa. In considering the genuineness of that document and the weight to be attached to it, it was open to the tribunal, as it did, to remind itself of the aspects of the claim which it had found to be false. Given the damage to the credibility of the person producing the fatwa (the claimant) and given the lack of any verification as to its authenticity in circumstances where such could have been attempted, it was open to it to conclude that weight should not be attached to it. Its reasoning as to all of that as set out from paragraph 34 to 37 of the written reasons, is cogent and persuasive. Further, given the lack of evidence of the claimant's political activity in the UK prior to 2017, it was entitled to conclude that such, when it did take place in 2017, did not amount to serious or genuine political involvement. As to the risk on return because of political activities more generally, it was entitled to take account of the fact that there had been no relevant incidents since 2009 and that, since the claimant had left Pakistan in 2011, that meant there had been a period of some two years during which he had been active without further adverse consequences to him. Putting all of that together it was properly open to the tribunal to conclude that the claimant had failed to demonstrate that he would be at risk in consequence of political activities undertaken either in Pakistan or the UK upon return. In truth, it seems to me that this ground, in large measure, if not wholly, amounts to mere disagreement with the tribunal's findings and conclusions.

10. As to ground 2, the attack here is focused upon the tribunal's rejection of the aspect of the account relating to the claimant's claimed secret marriage. The tribunal did not accept the account because it did not find it plausible that the claimant would keep and would be able to keep his marriage secret from his entire family for a period of eight years until he left Pakistan (the tribunal said twelve years but it meant to say eight). In this context the tribunal noted that on the claimant's own account his village and the village his secret wife was said to be residing in were not very distant from each other. The tribunal also found itself unable to accept the claim that the uncle was adamant that a marriage should take place with his cousin because it thought, if that was so, the uncle would have pushed for that marriage at an earlier stage bearing in mind that the claimant had been of a marriageable age for a number of years.

11. The criticism of the tribunal's reasoning is to the effect that it impermissibly relied upon matters of plausibility. It is suggested, with reference to the judgment of the Court of Appeal in *HK v SSHD* [2006] EWCA Civ 1037 that tribunals should not overly rely upon plausibility considerations. But there is nothing in that judgement which prevents a tribunal exercising straightforward common sense. There have been a number of other judgments which have commented upon plausibility but as was made clear in *MM (DRC - plausibility)* [2005] UKIAT 00019 it is perfectly permissible for an assessment as to credibility to involve an assessment of the plausibility or apparent truthfulness of what has been said. The tribunal's reasons for being concerned about this aspect of the account were, in my judgment, substantial and it was entitled to so treat them. Mr Hussain did not make any serious attempt to persuade me that there was merit in this ground and, in any event, I conclude that there is not.

12. As to ground 3, it is said here that the tribunal, if it had doubts about the significance of the arrest warrant, should have raised those doubts at the hearing. As to that, the tribunal had noted that the arrest warrant did not show what offence it was alleged that the claimant had committed. The tribunal reasoned from that, that it could not be satisfied that the arrest warrant related to any matter linked to the claimant's political activity or his claimed fear of his uncle. That was obviously open to it. As to whether the tribunal had a duty to enquire, it has to be borne in mind that the claimant was represented before it. It has to be borne in mind that it was the claimant who had sought to introduce the warrant (despite its not indicating the offence or alleged offence to which it was said to relate) and it was for him to demonstrate that it was a document which furthered his case. Against that background there was no need for the tribunal to enquire further. The tribunal's task was to assess the evidence before it, including the warrant, and to draw conclusions from that evidence and from any submissions which had been made to it about the evidence. That is what it did. If the claimant did not take steps to fill the gaps in information being presented to the tribunal the fault for that does not lie with the tribunal.

13. As to ground 4, it seems to me that the tribunal was only making an alternative finding with respect to internal flight and then only in relation to any claimed fear from the uncle. Clearly internal flight would not have been relevant if the tribunal had concluded that the claimant was at risk at the hands of the authorities. I accept that the Secretary of State did not, in its written decision, assert that the claimant might be able to benefit from internal flight. But I think it was, nevertheless, open to the tribunal to have regard to this as a possibility in the limited context of the claimed risk from the uncle because any such risk was on the face of it a localised matter. However, since I have found the tribunal's reasoning as to risk on return to be sound for the reasons set out above and for the reasons I am about to set out below, this ground is simply incapable of availing the claimant.

14. All of that now leaves me with the concerns regarding the FIRs. As to those, which were verified as being genuine by an agent acting on behalf of the expert relied upon by the claimant, the tribunal noted their existence. It said that one FIR evidenced a complaint by the claimant's uncle that members of the claimant's family had attended upon the uncles home in January 2015 and had attacked the uncle and had shouted words to the effect that the claimant could marry whoever he wanted to. The tribunal noted a second FIR which had related to an incident said to have occurred on the following day when it was claimed the uncle and his sons beat up the claimant's father. It is right to say that, on the face of it, that evidence was capable of affording some corroborative support for the part of the claimant's account relating to his unwillingness to marry the person his uncle wished him to. But the tribunal went on to point out that the FIRs simply reflected complaints having been made to the police and that there was no evidence that such complaints had been taken sufficiently seriously to merit even investigation. Further, there was no evidence of any further such

incidents since early 2015. It was against that background that the tribunal, at paragraph 37 of its written reasons, said this:

“I do not accept the Appellant married in 2003 and without the knowledge of his family. I don’t find this credible for the reasons I have already given above. I find it lacks credibility his family and his uncle have had such a serious dispute and note the content of the FIRs are no more than allegations made by the family members. The lack of evidence these matters were taken beyond an initial investigation by the police and the lack of any suggestion the family members have been involved in any further incident since 2015 does not support his claimed fear from a continuing family feud. In fact it is inconsistent with the evidence the uncle has not taken any further action against his family members who remain in Pakistan. I am unable to accept the Appellant faces a well-founded fear from his uncle or that the uncle is willing to take this matter any further. He has also failed to show his uncle has the ability to locate the Appellant if he re-located to another area of Pakistan. He has failed to adduce any evidence to show even on the lower standard of proof the uncle has the ability to find the Appellant if he did relocate. Once again he failed to make any asylum claim in 2015 and it took another two years before he made such another claim. I find this damages his credibility regarding his claimed fear and undermines his claim he faces a real risk of serious harm if returned”.

15. Now it might be said, as indeed was said in the grant of permission, that that passage did not make it clear whether the tribunal was finding the FIRs had been fabricated or whether it was finding that they had not but that there was no longer a risk from what had been a genuine feud. It may be that the tribunal might have addressed that matter and that, had it done so, its written reasons might have been a little more complete. But in my judgment, it was unnecessary for it to do so because what it said made it clear that, even if it was finding that the FIRs had not been fabricated, it was also finding that the evidence did not support the existence of an ongoing feud which would result in a threat to the claimant upon return. As to that, it had noted that there had been no police investigations and it had noted that the most recent incident had been as long ago as 2015. So, its conclusion that there was no threat to the claimant linked to any family dispute regarding proposed marriage or indeed anything else, was legally sustainable.

16. It is in light of the above that I have concluded that the making of the decision in this case did not involve the making of an error of law. Accordingly, the claimant’s appeal to the Upper Tribunal fails.

17. Finally, as to anonymity, I note that the tribunal did not grant anonymity and it does not appear that it had been invited to do so. I was not invited to do so either. So, I make no such grant or direction.

Decision

The First-tier Tribunal did not err in law when making its decision. Accordingly, that decision shall stand.

I make no anonymity direction.

Signed:

Dated: 18 April 2019

Upper Tribunal Judge Hemingway