



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

Appeal Number: PA/09674/2019

THE IMMIGRATION ACTS

**Heard at Bradford IAC
On 18 September 2020**

**Decision & Reasons
Promulgated
On 23 September 2020**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**I K
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R. Ahmed, Counsel on behalf of the appellant
For the Respondent: Mr. Diwnycz, Senior Presenting Officer

DECISION AND DIRECTIONS

1. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the appeal concerns a protection claim. Unless and until a court directs otherwise the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly refer to him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

2. The appellant with permission, appeals against the decision of the First-tier Tribunal panel (Judge Kelly and Lodato) (hereinafter referred to as the "FtT panel") who, in a determination promulgated on the 17 February 2020, dismissed his protection and human rights claim.

The factual background:

3. The background to the appellant's protection claim is set out in the determination of the FtT panel at paragraphs 3-15 and in the decision letter of the Secretary of State issued on 8 August 2019.
4. The appellant is a national of Pakistan. He entered the United Kingdom on 14 February 2006, having applied to enter as a Tier 4 student. He attended University and graduated in 2011. His leave to remain as a student ended upon his graduation and he then made an application for leave to remain as a Tier 1 (Post study work) migrant which was refused in 2012, his appeal was dismissed in May 2013. It is recorded that between November 2016 and April 2018, he made three further applications for leave to remain which were refused. On 31 August 2018 in reply to a one-stop notice, the appellant made a protection claim (asylum).
5. The factual basis of his claim related to a property dispute. He believed his paternal uncles had poisoned his father in 1984 and their motive for doing so was to secure ownership of his father's estate. His father had bequeathed most of his estate to his wife and their two sons (including the appellant) leaving only 1/3 to the paternal uncles. They therefore evicted the appellant and his mother from the family home and contested the bequest in the courts. Following the litigation, which was resolved in 2004, the court found in favour of the appellant and his family relatives. The appellant then sold his share to a third party in 2005 as did his mother. It was claimed that the paternal uncles held the appellant responsible for them losing the court case and that in 1999, at a stage in the proceedings where judgement had been recently delivered in his favour, his maternal uncles attempted to run him over. This led to the lodging of a FIR. In 2005, the appellant and his mother, after succeeding in regaining possession of the property for the courts, the police took him from his home whereupon it is said his two uncles committed a serious assault upon him. The appellant did not report the incident to the police. In 2006, the two uncles attended at his house and began firing. A FIR was made in relation to this incident and he left for the UK the following month.
6. On 8 August 2019 the respondent refused the appellant's asylum and protection claim under paragraphs 336 & 339F of the Immigration Rules and also reached the decision that the appellant did not qualify for leave on the basis of his family or private life in the UK (hereinafter referred to as " the decision letter").
7. The FtT panel summarised the decision letter at paragraphs 16-25 as follows. The respondent accepted the appellant's identity and that he was a Pakistani national. However, the respondent did not accept the

appellant's account of a land dispute or subsequent problems with his father's family. Little weight was attached to the police and court documentation because it could not be independently verified, and this included the FIR dated 12 October 1999. It was considered unreasonable for the appellant not have reported his supposed abduction and torture by his uncles to the police and that in interview, the appellant named an individual as purchasing the property for seven or eight Lakh rupees whereas another individual had been identified as the purchaser in the he sale agreement and another document listed the sale price as 4 lakh rupees. The respondent also took into account that his failure to claim asylum promptly upon entry to the UK and for several years thereafter, undermined his general credibility and also on the basis that his student visa application was rejected in 2011 on the grounds that a false bank statement had been submitted in support of it. It was further considered that there was sufficiency of protection (paragraphs 86 - 91) and in the alternative the appellant could internally relocate to a different part of Pakistan (paragraphs 124 - 126). The respondent considered that the appellant had failed to demonstrate a reasonable degree of likelihood that he would be persecuted on return to Pakistan and concluded that the appellant would not be in need of international protection.

8. As to the appellant's human rights claim, the respondent noted that the appellant had not lived continuously in the UK for at least twenty years and did not accept that there were insurmountable obstacles to his integration into Pakistan. As such the respondent was satisfied that the appellant did not meet the requirements of paragraph 276ADE of the Immigration Rules.
9. Finally, the Respondent concluded that the appellant had not raised any exceptional circumstances, which might justify a grant of leave to remain in the UK outside the requirements of the immigration rules.
10. The appellant lodged grounds of appeal against that decision.
11. The appeal came before the First-tier Tribunal panel on the 11 February 2020. In a decision promulgated on 17 February 2020, the FtT panel dismissed his appeal. Having considered the evidence, the panel attached "very substantial adverse weight" to his failure to seek protection in the UK until 12 years after he had arrived and after having made failed applications for leave to remain on other grounds. The panel rejected his explanation for the delay as "exceedingly vague". The panel also attached "significant adverse weight" to the fact that he was found to have submitted a false bank statement. As to the documents, the panel attached little weight to them as they had been provided 12 years after the events and identified in one document inconsistent evidence had been given by the appellant (at [37]). The panel did not accept that there were specific incidents of threats to the appellant from his maternal uncles exhibited in the affidavits of support (paragraph [38]) and reached the

conclusion at [39] that he had failed to substantiate the factual basis of his claim and this was a “recently invented” factual account.

12. Permission to appeal that decision was sought and was refused by FtJ Foudy but on renewal to the Upper Tribunal and on different grounds, permission was granted by UTJ Finch on 20 June 2020.
13. Following that grant of permission, it was considered by an Upper Tribunal Judge that a face to face hearing should take place. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties.
14. The appeal was therefore listed as a face to face hearing with his Counsel and solicitor and the Senior Presenting Officer, Mr Diwnycz present at court. The appellant was not present.
15. I am grateful for their assistance and their clear oral representations.
16. I heard submissions from each of the advocates. Mr Ahmed relied upon the grounds. In relation to paragraph 6 of the grounds, Mr Ahmed submitted that at paragraphs 10 and 25 of the decision the panel noted the appellant’s factual account that he had been tortured and abused in 2005 (paragraph 10) and that he had suffered from depression (paragraph 25). He submitted that it was apparent from the evidence before the panel that the appellant had raised that he had been the subject of a serious sexual assault and that he had underlying mental health problems. It was submitted that the panel erred in law by not treating the appellant as a vulnerable witness and that in the case of AM (Afghanistan) v SSHD [2017] EWCA Civ 1123, it was held that such an error will most likely be a material error of law.
17. In his oral submissions, Mr Ahmed stated that it had not been disputed that he suffered from depression, but no findings of fact were made relating to his torture. He accepted that neither of the parties directed the panel to issues of vulnerability but as it was accepted that he suffered from depression and had made an allegation of a severe attack upon him, there were no clear findings made by the panel as to whether or not that was accepted. He therefore submitted that if someone made such an allegation they would be a “vulnerable witness” but the panel did not treat him as such and therefore the adverse credible findings made by the FtT panel were unsound.
18. As to paragraphs 13 – 14 of the grounds, Mr Ahmed submitted that the judge accepted the expert evidence at paragraph [34] but it was unclear whether the panel accepted that he had been ill treated as a result of the family land dispute. He submitted that the panel erred in law in their approach to the documentary evidence provided by the appellant at [37] given that the documents had said to be genuine by WA whose report the panel found to be credible at [34]. Mr Ahmed relied upon section 4 of the report. In the alternative it was submitted that the panel failed to address

this aspect of the evidence upon which it was necessary to make clear findings.

19. It is further submitted that the panel erred in law by applying a higher burden of proof at [29].
20. In respect of the article 8 assessment (paragraph 16 – 18 of the grounds), Mr Ahmed in his oral submissions submitted that the appellant had been resident in the United Kingdom in excess of 14 years and the panel should have made a finding about his ability to reintegrate Pakistan in the light of having been subjected to torture. Mr Ahmed therefore invited the Tribunal to set aside the decision of the FtT.
21. There was no Rule 24 response on behalf of the respondent. Mr Diwnycz submitted that the issue of vulnerability was not advanced before the FtT panel and the record of the presenting officer present supported that submission and the appellant's vulnerability was not put forward as an issue before the panel. There was no reference to it in the reply to the IAC as an issue either.
22. He submitted that whilst it had been had raised on behalf of the appellant that the evidence of WA was accepted, paragraph [34] of the decision referred to the plausibility of family disputes involving landownership in the general sense and it was not a finding that the panel accepted the entirety of the appellant's account. He submitted that the panel went on to substantially reject the appellant's claim.
23. He submitted that contrary to the grounds, the panel could not be criticised for reaching their conclusions in any particular order. As to the section 8 issues, the delay here was not an insignificant delay and as an educated man he had not provided a reasonable explanation for the delay. He therefore submitted that the decision should stand.
24. The conclusion of the hearing I reserved my decision

Discussion:

25. I remind myself that I can only interfere with the decision of a FtTJ if it is demonstrated that the FtTJ made a decision which involved the making of an error on a point of law.
26. Mr Ahmed relied principally upon the matters set out in the renewed grounds before the Upper Tribunal.
27. I have considered with care the grounds advanced on behalf of the appellant and the competing submissions made by Mr Diwnycz on behalf of the respondent.
28. It is submitted on behalf of the appellant that the panel erred in law by not treating the appellant as a "vulnerable witness" and thus failing to follow the relevant practice direction. Mr Ahmed submitted that it had been

accepted in the decision letter that the appellant suffered from depression and it had been the appellant's factual account that he had been subjected to torture and sexual violence and therefore it was apparent that he was a vulnerable witness (see written grounds).

29. In his oral submissions, Mr Ahmed submitted that at paragraph 25 of the panel decision, reference had been made to the appellant's depression but no findings made by the panel as to whether the appellant had been tortured or had been subjected to sexual violence. He conceded that none of the parties present before the panel sought to make any submissions concerning the appellant's vulnerability but that as it was accepted that the appellant had depression, the panel erred in law as they failed to make it clear finding as to whether he had been a victim of any abuse. He submitted that if someone made such an allegation of abuse they would be a "vulnerable witness" and as the panel did not treat him as such, the adverse credibility findings were not sound.
30. In his response to the submission Mr Diwnycz properly brought to the Tribunal's attention that the reply to the IAC failed to make any reference to any vulnerability on the part of the appellant. He submitted that no arguments were advanced in this respect and thus there was no material error of law.
31. Having considered the submissions of the parties, and in the context of AM (Afghanistan [2017] EWCA Civ 1123 I am satisfied that the panel did not err in law in the way either the grounds assert or on the basis of the oral submissions advanced by Mr Ahmed.
32. As set out in that decision (and the guidance) there is no dispute that the Tribunal and the parties are required to ensure that an appellant is able to participate fully in the proceedings (see paragraph 27 of AM (Afghanistan)) and the decision makes reference to the Tribunal's case management powers at paragraph 28. The practice of waiting for the substantive hearing and the failure to identify case management directions leading to adjournment is deprecated (see paragraph 29).
33. At para [31], the Senior President set out, in agreement with submissions made on behalf of the Lord Chancellor in that case, five key features of the joint Presidential Guidance Note and the Practice Direction of the Senior President, "First-tier and Upper Tribunal: Child, Vulnerable Adult and Sensitive Witnesses (30 October 2008) as follows:

"31. The PD and the Guidance Note [Guidance] provide detailed guidance on the approach to be adopted by the Tribunal to an incapacitated or vulnerable person. I agree with the Lord Chancellor's submission that there are five key features:

- a. the early identification of issues of vulnerability is encouraged, if at all possible, before any substantive hearing through the use of a CMRH or pre-hearing review (Guidance [4] and [5]);

- b. a person who is incapacitated or vulnerable will only need to attend as a witness to give oral evidence where the Tribunal determines that 'the evidence is necessary to enable the fair hearing of the case and their welfare would not be prejudiced by doing so' (PD [2] and Guidance [8] and [9]);
- c. where an incapacitated or vulnerable person does give oral evidence, detailed provision is to be made to ensure their welfare is protected before and during the hearing (PD [6] and [7] and Guidance [10]);
- d. it is necessary to give special consideration to all of the personal circumstances of an incapacitated or vulnerable person in assessing their evidence (Guidance [10.2] to [15]); and
- e. relevant additional sources of guidance are identified in the Guidance including from international bodies (Guidance Annex A [22] to [27])."

34. The PD and guidance refer to the early identification of issues of vulnerability before any substantive hearing (see the guidance at paragraphs 4 and 5). Furthermore, at paragraph 32 it was stated that the primary responsibility for identifying vulnerabilities must rest with the appellant's representatives because they are better placed than the Secretary of State to have access to medical and personal information. The appellant's representatives should draw the Tribunal's attention to the PD and the guidance, making submissions about the appropriate directions and any measures that may be necessary.
35. On the facts of this appeal, there were two opportunities for the issue of vulnerability to be raised. The purpose of the "Reply to the IAC Notice " is to "provide the Tribunal with the information needed to properly manage the appeal." In the reply document, there is a specific section (section 9) intended to identify those who are likely to be vulnerable witnesses and therefore may require the Tribunal to take certain measures in relation to their evidence. In the reply submitted on behalf of the appellant on 14 October, there was no reference in that section nor was there any reference in the second reply submitted shortly for the hearing on 24 January 2020.
36. Whilst best practice is set out in AM (Afghanistan) for such issues be raised at the case management hearing to ensure that the procedures adopted meet the needs of any individual appellant, Mr Ahmed concedes that no such submissions were made to the Tribunal on behalf of the appellant at the substantive hearing either.
37. At paragraph [25] the panel were summarising the decision letter in which it was noted by the respondent that the appellant had stated that he suffered from depression when he was interviewed. There was no supporting medical evidence produced the Tribunal to assist them in determining the extent of any mental health problems that he may have or determining how any past history had affected him so that the guidance

could properly take effect. As the decision in SB(vulnerable adult; credibility) [2019] UKUT 398 makes plain, even if a judicial factfinder decides to treat an appellant or a witness as a vulnerable adult, that does not mean that any adverse credibility finding in respect of that person is thereby to be regarded as inherently problematic and thus open to challenge on appeal. The grounds do not identify any particular findings or particularise any evidence given in which it is said was affected by any vulnerability of the appellant.

38. Consequently, it has not been demonstrated that there was any material error of law on the basis advanced above.
39. That said, I am satisfied that the issues raised at paragraph 13-14 of the grounds are made out.
40. The grounds challenge the assessment of the documentary evidence that was before the Tribunal and in particular that which the appellant had provided in support of his claim. The material in the appellant's bundle consisted of two FIR's, a number of court documents relevant to the property dispute between the appellant's family members and those whom he claimed had caused him harm and whom he claimed to be in fear of. There was also a report from WA (an advocate of the High Court in Pakistan) which made reference to a number of issues relevant to the claim.
41. As Mr Ahmed pointed out, the panel appears to have accepted WA's expertise at paragraph [34] where they stated that they accepted his evidence that family disputes concerning ownership of land are common in Pakistan and that they often lead to violence causing serious injury and death. The panel stated "we accept the evidence not only because Mr A has undoubtedly experience and expertise in the field but also because he has appended numerous media reports of such incidents. We therefore find that the appellant's account of his involvement in such a dispute is plausible at a general level, and we have taken this into account in his favour when assessing his credibility as a witness of truth."
42. However, when considering the documents provided by the appellant (including the court documents), the panel stated, "we approach the documents upon which the appellant now relies with a great deal of circumspection." This was based on their findings at [35] where they attached "very substantial adverse weight" to the appellant's failure to claim asylum for a very lengthy period and at [36] attaching "significant adverse weight" to having submitted a false bank statement. At [37] the panel went on to consider the documents in the context of the delay in making his protection claim and that they were surprised that he was able to provide a "wealth of documentary evidence" 12 years after the events. They therefore concluded that "we attach little weight to the fact the details of his account and the asylum interview accord with those contained within these documents. This is because he had an opportunity

to study the detail of those documents in advance of that interview.” It is right to observe that the panel went on to identify an inconsistency in one of the documents (at page 212) with his evidence in interview.

43. However in the assessment of the documentary evidence, the panel did not engage with the report of WA (whom they had earlier considered had at least some expertise) who had set out in the report his description as to the verification of the documents. At section 4, WA interviewed the appellant’s mother and obtained information from her. He also set out the visit he made to the respective courts on 16 November (see paragraphs 4.2 – 4.3) to verify the documents, his visit to the lawyer for the family (at 4.4) and on 18 November his visit to the Peshawar High Court to verify the documents.
44. Whilst the panel did assess the evidence in the affidavits provided by the appellant’s mother and the public prosecutor (at paragraph 38) there was no reference or any assessment made of the other documents in the light of the report of WA and the steps taken to verify the documents. This was a relevant consideration when undertaking a holistic assessment of the evidence (as set out in the decision of Tanveer Ahmed) and when the failure of any verification had been raised as an issue in the decision letter.
45. In his submissions Mr Diwnycz referred to the adverse credibility findings made by the panel and in particular his failure to claim asylum for such a lengthy period in the light of the explanation for that delay. Whilst it is right they did make adverse credibility findings which were open to them, and whilst an assessment of personal credibility might be a critical aspect of some claims, it is not an end in itself or a substitute for a holistic assessment of the evidence, which includes in this case the documentary evidence in the context of the report of WA.
46. Consequently, I am satisfied that the error of law was material and undermines the overall conclusions reached as to the appellant’s account and his credibility.
47. Whilst there were other issues raised in the grounds, it is not necessary for me to deal with them in the light of my assessment of the error of law set out above which has the effect of undermining the overall conclusion reached. I therefore set aside the decision of the FtT panel.
48. I have therefore considered whether it should be remade in the Upper Tribunal or remitted to the FtT for a further hearing. In reaching that decision I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal.

"[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier

Tribunal, unless the Upper Tribunal is satisfied that:-

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

49. Both advocates submit that the venue for hearing the appeal should be the FtT. I have considered their submissions in the light of the practice statement recited above. As it will be necessary for the appellant to give evidence and to deal with the evidential issues, further fact-finding will be necessary alongside the analysis of risk on return in the light of the relevant documentary evidence and in my judgement the best course and consistent with the overriding objective is for it to be remitted to the FtT for a further hearing. The Tribunal will be seized of the task of undertaking a credibility assessment and will be required to do so on the basis of the evidence as at the date of the hearing.
50. In his submissions Mr Ahmed stated that the conclusions of the panel at [34] should be preserved. I have considered that submission with care but in the light of my assessment of the error of law in which the conclusions as to credibility have been undermined as a result of the evidence not having been considered holistically, in my judgement no findings should be preserved. It will be a matter for the FtT on remittal to consider the evidence before it and reach a factual assessment of that evidence.
51. There appears to be a factual dispute as to what evidence there was before the Tribunal to support the claim made of the use of a false document by the appellant. This should be clarified by the provision of evidence, if available.
52. In the light of the issues raised in respect of the appellant it will be necessary for the appellant's solicitors to consider what, if any, evidence concerning the appellant's mental health is to be adduced and, if appropriate, to agree any ground rules for the conduct of the hearing with the Tribunal and the Respondent.

Notice of Decision:

53. For those reasons, I am satisfied that it has been demonstrated that the decision of the FtT panel did involve the making of an error on a point of law. I therefore set aside the decision of the FtT Panel. It shall be remitted to the FtT for a further hearing.

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. 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
9/2020
Upper Tribunal Judge Reeds

Date 20/