Upper Tribunal
(Immigration and Asylum Chamber)

Case No: UI-2023-002509
First-tier Tribunal No: PA/53993/2022

THE IMMIGRATION ACTS

Heard at Bradford
On the 5th February 2024

Decision and Reasons Promulgated
14th February 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

BK
(ANONYMITY ORDERED)

Appellant

and

THE SECRETARY OF STATE AGAINST THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Representation:

For the Appellant: No attendance
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Introduction

1. This is the second stage of an appeal by BK (with permission) against the decision of First-tier Tribunal Judge Atkinson to dismiss his appeal against the respondent's refusal of his protection claim.

The appellant's claim

2. The appellant's protection claim can be summarised by saying that he has a well-founded fear of harm on return to Pakistan from family members of one 'WN' to whom he was engaged to be married in 2014 at a time when they were both residing in the United Kingdom. However, that relationship broke down because WN's family in Pakistan discovered that he had previously fathered a child with a woman in the UK who was not a Muslim. The further consequences of this information coming to light were that (a) the appellant's father, who also resides in Pakistan, disowned him, and (b) the elders of the appellant's home village in Pakistan declared his actions 'un-Islamic' and sanctioned his punishment by family members of WN as they saw fit.

The decision of the First-tier Tribunal

3. The judge found that the appellant was not a credible witness of truth [47]. He nevertheless found that the essential facts of his claim, as summarised above, had been substantiated by other evidence. He therefore concluded that the appellant would be at risk of harm from family members of WN were he to return to his home area [54, 55]. He nevertheless found that it would not be unduly harsh for the appellant to relocate to other areas of Pakistan where he would not be at such risk [56 to 64].

The grounds of appeal

4. The three grounds of appeal against the decision of the First-tier Tribunal were unsurprisingly concerned with the judge's findings that the appellant could relocate to an area of Pakistan outside his home area where he would not be at risk of harm from WN's family members. Those grounds can be conveniently summarised as follows:

(i) The judge failed to take account of the fact that the appellant spoke the Pashto language whereas the main spoken language in Pakistan is Urdu.

(ii) Given that the judge had accepted the core of the appellant's claim, he ought also to have accepted his assertion that WN's family were "powerful and had resources to find the [him]".

(iii) In finding that there was no evidence to substantiate the appellant's claim that WN's family would be able to access the National Database and Registration Authority (NADRA) in order to trace his whereabouts were he to relocate within Pakistan, the judge failed to have regard to background country before him to the effect that (a) the appellant

would need to register his personal information with NADRA in order to access essential services in Pakistan, and (b) there is significant corruption amongst Pakistani state officials.

The Error of Law Hearing

5. The error of law hearing was conducted by Deputy Upper Tribunal Judge Jarvis at which the appellant was represented by Mr A Hussain of Legal Justice Solicitors. In relation to each of the respective grounds of appeal (above), Judge Jarvis held as follows:

(i) There was no merit in the first ground because there was no evidence that it had been argued at the hearing in the First-tier Tribunal.

(ii) The FtT judge had failed to make a "direct finding" concerning the evidence of the appellant's witness (HUR) whose witness statement was to the effect that WN's family are very powerful, would be able to trace the appellant on return to Pakistan "through the NADRA system or even put an article in the post offering a ransom", and that "people get to find out that a person has returned from the UK" (paragraph 5 of HUR's witness statement) [9].

(iii) The FtT judge had also failed to take account of the evidence contained in the 'CPIN Pakistan: Documentation (January 2020)', which is to the effect that (a) possession of a National Identity Card, issued by NADRA, is necessary for an individual to be able to access essential services in Pakistan, and (b) there is "significant corruption and some misuse of NADRA" in Pakistan [12].

6. Judge Jarvis thus concluded that the FtT judge had made insufficient findings in respect of internal relocation and that he had been, "required to assess whether the Appellant's evidence about WN's family connection to the Taliban (and their ability to access the NADRA system) and/or the evidence of HUR about the WN family's own influence was credible, and then to consider whether it was sufficient to establish their potential influence and access to the NADRA system" [12].

7. In the course of giving directions, Judge Jarvis indicated that only the First-tier Tribunal judge's findings in respect of internal relocation were to be re-determined, and that, "the other findings made by the Judge in respect of the Appellant's relationship (and child) with IB and the enmity with WN's family are preserved".

The Hearing

8. There was no attendance by or on behalf of the appellant at the hearing that was listed before me. I noted that during the course email correspondence with 'Legal Justice Solicitors', conducted between the 15th and 31st days of January 2024, the Tribunal had sought to clarify whether they continued to act for the appellant. In a response made on the 25th January 2024, the solicitors stated that, "due to cost issues the Appellant will attend the hearing himself", and would be, "unrepresented". Following the Tribunal

seeking further clarification as whether they remained 'on the record', the solicitors responded by saying that, "the Appellant wants to keep us on the record but wishes to represent himself as he cannot afford the fees for the representation at court".

9. In deciding how to proceed in the above circumstances, I noted that the appellant had been represented by Legal Justice Solicitors at the 'error of law hearing', and that both they and the appellant had been notified in writing of the time, date, and place of the hearing before me, both by email and by post. I also considered it reasonable to assume that, in the above circumstances, Legal Justice Solicitors would have emphasised to their client the importance of his personal attendance at the hearing. Finally, I was informed by my clerk that the Tribunal had attempted to contact the appellant directly by mobile telephone on the morning of the hearing, but that this had been to no avail. I considered in these circumstances that the Tribunal had done all that could reasonably be expected of it to draw the time and venue of the hearing to the appellant's attention and, absent him notifying the Tribunal of any difficulty he may have had in attending the hearing on this occasion, he was content that I should proceed in his absence.

10. Having heard brief submissions from Mr Diwnicz, I reserved my decision.

Analysis of the evidence concerning internal relocation

11. Whilst I have noted that Judge Jarvis dismissed the first ground of appeal (that the First-tier Tribunal judge failed to have regard to the appellant being a Pushto speaker in a predominantly Urdu-speaking country) I have nevertheless revisited it for the purpose of remaking the decision concerning the issue of internal relocation. However, whilst acknowledging the potential relevance of this factor to the feasibility of relocation within Pakistan, I note that there is no evidence that the appellant is unable to speak Urdu other than (perhaps) that which is an implied (but not expressed) in the ground itself. Moreover, as Mr Diwynicz pointed out at the hearing, the ruling of the Council of Elders authorising the punishment of the appellant by the family of WN as they saw fit, was itself translated from Urdu (rather than Pashto) into English. Overall, I am not therefore satisfied that this is a significant factor in an assessment of the reasonableness of the appellant relocating within Pakistan.

12. I note from the background country information provided by the appellant in relation to Pakistan, that (a) possession of an identity card issued by NADRA is an essential pre-requisite to an ability to access essential services in Pakistan, (b) the information held by NADRA in their records includes the current address of the individual concerned, (c) that there have been data leaks from the NADRA system, (d) honour killings are not infrequent in Pakistan and they sometimes occur many years after the event that prompted them. Given that there has been no challenge to the First-tier Tribunal's finding that the appellant has the necessary qualifications and resources of character to re-establish himself outside his

home area of Pakistan - notwithstanding his father disowning him and the consequent unlikelihood of material support from that quarter - the remaining question is whether there is evidence to substantiate the appellant's claim that he is at individual risk of becoming the victim of an honour killing wheresoever he may relocate within the country of Pakistan. The answer to this question is necessarily fact-sensitive. I therefore turn to consider the specific evidence as it relates to this appellant.

13. Central to both the appellant's complaint about the First-tier Tribunal's assessment of the feasibility of internal relocation and the reasons for setting it aside, was its failure to make "a direct finding" (in the words of Judge Jarvis) concerning the evidence of the witness, HUR. The relevant part of his evidence is contained at paragraph 5 of his witness statement. This reads as follows –

> The Appellant states that he cannot return to another part of the country as he fears he will be traced. I confirm that the Appellant's fears are genuine. WN's family are very powerful. They will use their resources to find him. They could trace him through the NADRA system or even put an article in the post offering a ransom. People get to find out that a person has returned from the UK.

14. There are several problems with this evidence. Firstly, the principle issue for the Tribunal was not whether the appellant's fears were "genuine", but, rather, whether they were well-founded. It is upon this issue that HUR's evidence is especially vague, amounting to little more than speculation and unsubstantiated assertion. He does not for example explain the basis for his assertion that WN's family are "very powerful". It may of course be that the witness had in mind the appellant's claim that at least one of its male members belongs to the Taleban. If so, he does not explain how or why this would assist the family in 'tracing' the appellant to an area of Pakistan where the Taleban do not hold sway. The "resources" that it is said will be used to find the appellant are not specified. It is further said that the family could trace the appellant, "though the NADRA system", although how they would be able to do so is not explained either. Whilst it is true that the Pakistani authorities have admitted to a specific data leak from NADRA, they later clarified that it was only NADRA's biometric system – used for SIM verification, among other things – that had been compromised, rather than its entire data record [page 28 of the appellant's bundle]. The consequent risk would thus appear to be one of identity fraud, rather than an ability to trace an individual's whereabouts. Moreover, and in any event, HUR's statement that, "people get to find out that a person has returned the UK", amounts to nothing more than a bare assertion by unsupported by evidence or examples. Specifically, there is no evidence to suggest that WN's family would have access to the manifests of the daily incoming flights at each and every international airport in Pakistan, or that the family would in any event have the ability to check the dozens of such daily flights to see whether the appellant was one of its passengers. I therefore attach negligible weight to the evidence of HUR.

15. Having considered the various aspects of the evidence concerning the issue of internal relocation in some detail, I have stood back and considered it in the round. I have thereby concluded that the appellant has failed to substantiate his claim that there would be a real risk of him being harmed by WN's family in any area of Pakistan to which he could reasonably be expected to relocate.

Notice of Decision

The appellant's appeal against the respondent's refusal of his protection claim is dismissed.

Signed: David Kelly Date: 12th February 2023
Deputy Judge of the Upper Tribunal