



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

Appeal Number: AA/09338/2012

THE IMMIGRATION ACTS

**Heard at Bradford
On 24 July 2013**

Determination Sent

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

MUHAMMAD JUNAID KAYANI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Marshall, Barry Clark, Solicitors

For the Respondent: Mr S Spence, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Muhammad Junaid Kayani, was born on 8 January 1978 and is a male citizen of Pakistan. The appellant appealed to the First-tier Tribunal against the decision of the Secretary of State dated 28 September 2012 to remove him from the United Kingdom. The First-tier Tribunal (Judge Kelly) in a determination promulgated on 23 November 2012,

dismissed the appeal on all grounds. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant's case is set out at paragraphs 6 - 10 of Judge Kelly's determination. At [18], Judge Kelly found that there was "cogent evidence to substantiate [the appellant's] claim that he was not only a UKPNP member but also that he held the position of local party president whilst residing in Pakistan." However, at [19 - 20], the judge went on to attach little weight to documentary evidence adduced by the appellant regarding specific problems which the appellant claims to have suffered whilst in Pakistan on account of his political views. Likewise, a medical report which the judge discusses at [21] was given little weight "as independent verification of either the injuries the appellant claims to have sustained or how he came by them." The judge also attached little weight to a First Incident Report (FIR) of November 2011 and he gave detailed reasons for so doing. At [23], the judge discusses a document purporting to be from Laskar-e-Taibah warning "a person of the appellant's name" to refrain from un-Islamic activities. The judge found that this document seemed "to have no connection to any of the matters raised by the appellant in his claim for asylum or in his appeal from its refusal and the purpose of its inclusion in the appellant's evidence thus remains obscure." At [24] the judge gave detailed reasons for rejecting evidence contained in newspaper reports concerning the appellant's alleged activities in Pakistan. He found some of the evidence to be "wholly inconsistent with [the appellant's] case" and considered that the evidence was "fateful to the credibility of the account as a whole."
3. Permission was granted in respect of all grounds of appeal. First, the grounds assert that the judge had failed to consider the evidence "holistically" and should not have attached little weight to the evidence of the appellant's political activities simply because "it did not independently verify the appellant's account". The grounds contend that the judge gave contradictory findings attaching at [18] weight to a letter from the secretary general of the organisation of which the appellant was a member in Kashmir "because the author has personal knowledge of the appellant and access to party records" but at [22] rejecting evidence in that letter of the appellant's arrest and ill-treatment.
4. I do not consider this ground has merit. I find there is no inconsistency in the judge's finding that the documentary evidence indicated that the appellant was a UKPNP member but, for the very reasons which he gives in the determination, rejecting the documentary evidence as corroborating the appellant's claim to have been arrested and tortured. The judge stated at [15] that he had taken "all matters into account in arriving at my conclusion". I have no reason to doubt that statement. The submission that the judge has not dealt with the evidence holistically simply cannot survive a thorough reading of the determination. It was open to the judge to find that the contents of the letter from the president of the Kashmir Human Rights Movement was "nebulous" and also open to him to attach little weight to that letter because of its lack of detail. I do not find that

the judge erred in law at [20] by attaching little weight to documentary evidence which failed to identify the source of the information contained within it. The judge was not bound to accept Mr Marshall's submission that the authors of the documents "must have made local enquiries in order to verify the appellant's account". Likewise, the reasons given by the judge for attaching little weight to the medical report, FIR and the letter of Laskar-e-Taibah are, in my opinion, entirely clear and cogent. The submission made in the grounds that the judge should not have rejected evidence which was consistent with the background material is misguided; just because an appellant's evidence may be consistent with such background material it does not excuse the judge for making an assessment of the evidence in the round nor does it oblige the judge to accept the evidence as true. I also have no reason at all to suppose that the judge has not considered all of the appellant's oral and written evidence in reaching his findings. The judge is not obliged to deal with each and every explanation which the appellant may have given for apparent inconsistencies in his evidence. It is clear from the contents of the determination that the judge has considered all the evidence (including the explanations) and has reached findings which were open to him which included the implicit rejection of the appellant's explanations.

5. The grounds assert that the judge failed to consider a significant part of the appellant's case [8]. The appellant claimed that he was scared of Islamic militants. The only reference to this part of the appellant's case appears at [23] of the determination. The grounds assert that the evidence before the judge confirmed the hostility of Islamic groups to Kashmiri separatists. That assertion appears to be at odds with the judge's statement at [23] that "my attention was not drawn to any background country information to suggest that the Kashmir separatist movement has attracted a religious antipathy." The grounds at [11] state that country material referred to by the judge confirmed that "a coalition of Kashmiri separatist parties have found themselves in the 'crosshairs' of militant gunmen".
6. What Judge Kelly says regarding the appellant's fear of Islamic militants is not entirely accurate. At question 173 of the asylum interview, the appellant had stated that he was afraid of Islamic extremists who "think we are against Jihad. They think we are against the religion and against Jihad. We are not against the religion we are against extremism we want to negotiate and solve the problem peacefully." However, I find that the judge was right to find that little evidence had been put before him which would indicate that this appellant would be at risk from Islamic extremists because of his political opinion. Once again, I find that the judge has dealt with all the evidence as he claims to have done in reaching his finding at [25] that "the appellant was a member of the UKPNP and that he held the position of president of one of its local branches whilst he was residing in Pakistan. I find that nothing else of his account is true." It is also clear to me that very little, if anything, is made of the appellant's claimed fear of Islamic militants in the hearing before Judge Kelly. Reading the determination as a whole, considering the evidence which was before the

First-tier Tribunal, I do not consider it likely that, had he been referred to that passage of the asylum interview which I have quoted above or to the brief reference in the country material, the judge would have concluded that this appellant faced a real risk from Islamic militants in his home area of Pakistan. Best practice might indicate that the judge should have dealt with that aspect of the appellant's claim in greater detail but, insofar as he may have erred in law, I do not consider it necessary to set aside the determination in consequence.

7. In conclusion, the judge has reached findings following a detailed and careful consideration of all the evidence. The findings were open to him. He has not taken account of evidence which he should have ignored nor has he failed to take account of evidence which was of relevance. His handling of that part of the appellant's claim relating to a fear of Islamic militants is arguably inadequate but, as I have stated above, I decline to set aside the determination for error of law.

DECISION

This appeal is dismissed.

Signed

Date 10 October 2013

Upper Tribunal Judge Clive Lane