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Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: AA/04247/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 January 2016	**On 6 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

RA
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Bahja, counsel
For the Respondent: Mr Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan who appealed against the decision of the respondent on 10 March 2015 to refuse his asylum claim. His appeal against that refusal was dismissed by Designated Judge of the First-tier Tribunal Manuell ("the DFTTJ") in a decision promulgated on 15 September 2015 following a hearing on 8 September 2015.

2. No anonymity direction was made in the First-tier Tribunal but given that the appellant will be returned to Pakistan as a failed asylum seeker, I consider that he is entitled to anonymity in these proceedings. I make a direction accordingly.

3. Permission to appeal was granted by First-tier Tribunal Judge Zucker on 6 October 2015 as follows:

> "1. ...
>
> 2. The grounds submit that the judge erred in not granting an adjournment and also implicitly, that the judge erred in his approach to the evidence relating to substantive matters given the available medical evidence.
>
> 3. The grounds are right to point to the determining factor being fairness, although the judge has a wide discretion. However if there was medical evidence pointing to the Appellant being unfit to give evidence it is arguable that the judge ought either to have adjourned or had regard to the Joint Presidential Guidance Note No 2 of 2010 and the guidance in the UNHCR Handbook at paragraphs 206-212."

4. Thus the appeal came before me today.

5. Mr Bahja, for the appellant, relied on his skeleton argument which states that the sole issue for me to decide is whether the "decision dated 15th September to refuse to grant the appellant an adjournment constitutes a material error of law". Mr Bahja identified the guidance in **Nwaigwe (adjournment: fairness) [2014] UKUT 418 (IAC)**. He noted that the appellant had asserted on the day of the hearing that he was unwell and unable to take part in the proceedings or to answer questions in cross-examination. He was said to be struggling with various medical difficulties, unable to concentrate and unable to follow the proceedings. He submitted that the appellant had been deprived of his right to a fair hearing as a result of his inability to participate in it. He submitted that the appellant ought to have been given the benefit of the doubt. He asserted that, had the appellant "taken the stand and given evidence in support of his case, the outcome, at least in theory, could have been different." It was submitted that the appellant's credibility was crucial and that the Judge's findings, following the failure to grant an adjournment, were open to challenge. Mr Bahja referred me in particular to page 6 of his skeleton argument prepared in the First-tier Tribunal to the effect that the claimed risk on return was supported by the background material but accepted that the grounds of appeal to this tribunal were limited to the issue of whether or not there had been procedural unfairness arising from the failure to adjourn.

6. Mr Walker, for the Secretary of State relied on the R24 reply and asserted that the DFTTJ had made a fair decision to refuse the application to

adjourn. He had considered all aspects of the appellant's claim that he could not give evidence due to illness, had noted the vagueness of the request and the appellant's reluctance to take part in the asylum process. He submitted that, even if there were an error of law, it was not material, the DFTTJ having made a decision on the evidence of the appellant at its highest.

Discussion

7. The appellant's grounds of appeal and his counsel's skeleton argument prepared for the hearing before me, make it clear (notwithstanding the comments of the FTTJ who granted permission to appeal) that the sole basis for this appeal is the claim that the decision by the DFTTJ to refuse an adjournment was procedurally unfair and therefore a material error of law. Whilst Mr Bahja submitted that, the DFTTJ having unfairly failed to adjourn the hearing, the subsequent findings were open to challenge, he did accept that there was no challenge to the findings of the DFTTJ in his paragraphs 27 and 28 with regard to sufficiency of protection and the reasonableness of relocation within Pakistan.

8. I made it clear to the parties at the hearing that my principal concern was the materiality of any potential error of law. This is because the DFTTJ, notwithstanding his adverse findings on the issue of credibility, had made clear and unchallenged findings on the risk on return on the basis of the appellant's claims.

9. Mr Bahja told me that the sole basis for the claimed risk on return was the appellant's conversion from Sunni to Shia. In his decision at paragraph 28 the DFTTJ states with regard to the appellant's claimed conversion (albeit he found it lacked credibility):

> "The objective evidence nevertheless shows that there are estimated to be between 16 and 34 million Shia Muslims in Pakistan. There are no discriminatory laws against Shia Muslims. Even if the tribunal were mistaken not to accept the Appellant's conversion, the tribunal finds that the Appellant is able to relocate to a majority Shia district of a large town or city in Pakistan and that as a single man without ties it is reasonable to expect him to do so. This will at the same time deal with any additional risk he might face as a convert."

10. The appellant refers in his witness statement (prepared the day before the hearing) to having been a supporter of the Muttahida Quami Movement (MQM) resulting in his being beaten and tortured by supporters of the Pakistan Peoples' Party (PPP) on 4 occasions in 2010. The DFTTJ addresses this claim in his paragraph 27 where he notes that "the PPP is not currently in power in Pakistan and so is not in a position of relative strength. The tribunal finds that there is a sufficiency of protection available to supporters of the main lawful political parties, according to the Horvath [2000[UKHL 37 principles". Mr Bahja confirmed to me that the findings in this paragraph were not challenged before me.

11. The DFTTJ also addressed the risk on return arising from the appellant's medical condition, as set out in the medical evidence. He notes that the appellant's "condition of depression can be controlled by standard issue medicines. There was no evidence that such medicines or their equivalents would not be available in Pakistan. The Appellant has managed without counselling for some three years. There was no evidence that he would not be able to access suitable treatment in Pakistan if it were needed: see **GS (India) and Others [2015] EWCA Civ 40**. He can be monitored during the removal process and he has close family in Pakistan". Again, this finding is not challenged before me.

12. The net effect of the appellant's lack of participation in the hearing is that the DFTTJ took into account the appellant's own evidence, including his witness statement (signed and dated the day before the hearing) and other evidence and background material. The appellant's statement included his response to the reasons for refusal. Thus the appellant was not disadvantaged by his lack of participation in the hearing: there is no suggestion, for example, that he would have given additional evidence in chief had he been able to do so. The only submission is that he was unable to participate in the hearing and to respond to cross-examination. This is despite his being able to instruct his counsel at the hearing. The disadvantage, if any, arising from the lack of an adjournment was to the respondent who was unable to challenge the evidence of the appellant by way of cross-examination.

13. I take into account that the DFTTJ makes no reference to applying the Joint Presidential Guidance Note No 2 of 2010 and the guidance in the UNHCR Handbook at paragraphs 206-212. However, this is immaterial because the DFTTJ made unchallenged findings on risk on return on the basis of the appellant's claims at their highest.

14. The DFTTJ made reasoned decisions on the risk on return (which are not challenged by the appellant) on the appellant's claims at their highest. I conclude therefore that, even if the failure to adjourn were an error of law, it was not material to the outcome of the hearing. The DFTTJ found, on the appellant's evidence, that there was sufficiency of protection for him on return and, alternatively, that he could relocate to a Shia area in Pakistan. The appeal was bound to fail on all issues, on the appellant's own evidence and the background material, even if the hearing had been adjourned to enable the appellant to give oral evidence.

Decision

15. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

16. I do not set aside the decision.

Signed ***A M Black*** Date 5 January 2016

Deputy Upper Tribunal Judge A M Black

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 their 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 ***A M Black*** Date 5 January 2016
Deputy Upper Tribunal Judge A M Black