Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/00638/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 16 January 2018	**On 14 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

MR Z A K
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Benfield, Counsel, instructed by Wimbledon Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Pakistan who travelled to the UK as a visitor, using his own passport, on 7 March 2005. He does not appear to have returned thereafter, and thus claimed protection as an overstayer on 9 July 2016. That protection claim was refused on 6 January 2017. His appeal against that refusal came before the First-tier Tribunal at Taylor House on 26 July 2017, when it was heard by First-tier Tribunal Judge Moore. He dismissed the appeal on all grounds in a decision promulgated on 8 August 2017. The Appellant sought to challenge that decision, and his application for permission to appeal to the Upper Tribunal was granted by First-tier

Tribunal Judge Saffer on 31 October 2017 on both the grounds advanced. Thus the matter comes before me.

2. I propose to take the two grounds in reverse order as it strikes me that the second ground has the most merit, so I will look at the first ground in the light of my conclusion in relation to the first.

3. The second ground complains that the Judge failed to consider the relevant country evidence that was placed before him concerning the United Kashmir People's National Party, in relation to the risk the Appellant would face upon return to Pakistan as a supporter of that party. The Judge accepted that the Appellant was the subject of an attack in 1994 when he was singled out for physical attack by a group of men, who appear to have been religiously motivated because the Judge had accepted that they were led by local mullahs. The occasion was a public speech attended by the Appellant and others as supporters of the UKPNP, who were accused of being anti-Islamic, and physically beaten up. The Judge further accepted that in 2003 the Appellant was at a shop owned by his brother in Hajira, when he was singled out for attack by members of a religious group from the local mosque. I use the term singled out, because the evidence did not suggest that any other customer or member of staff was attacked, or, that any other shop was attacked.

4. The Judge did not accept that the Appellant had been targeted and attacked in 2004 in addition to the 1994 and 2003 attacks, although it is difficult to discern sound reasons for that distinction in the decision. However even if the Judge was right to reject the evidence concerning the 2004 attack, his starting point for an assessment of the risk of harm that the Appellant faced upon return to Pakistan should have been the two positive findings that he had made in relation to the 1994 and 2003 attacks, coupled with the evidence of the Appellant's ongoing political beliefs and activities which the Judge had also accepted. That evidence would need to be considered in the context of the relevant country materials. The evidence which the Judge had accepted in relation to the Appellant's political activities was that he had been a supporter of the UKPNP from 1989 to date. He had continued his activities in relation to that party in the UK, his claim in this respect having been supported by credible evidence from senior officers within the party.

5. On any view these findings should have led the Judge to question in accordance with the guidance set out in HJ (Iran) [2010] UKSC 31 whether the Appellant would be minded to continue with his political beliefs and political activities in the event of his return to Pakistan, or, whether he would be likely to abandon those beliefs and activities for fear of harm. There is no suggestion in the decision that the Judge followed that line of enquiry, or, applied that guidance.

6. There is an additional problem in relation to the consideration of harm upon return which is put quite simply by Ms Benfield as an inadequate consideration of the available country material that the Judge was taken through at the hearing concerning human rights violations in Azad

Kashmir, and the attitude of those who favour an Islamic state towards those who would favour a secular state either in that particular region or more generally across Pakistan. The totality of the judge's consideration of all of that material is to be found within paragraphs 22 and 23 of the decision. Thus the existence of the material is acknowledged, but its content is not analysed, or applied to the findings of primary fact the Judge made. As Ms Benfield argues the Judge's approach amounts to no more than a simple reference to the existence of the Country Policy and Information Note, June 2017, and the Human Rights Watch Pakistan "With Friends Like These…" report. Thus she argues that the Judge has failed to engage adequately or at all with the content of those reports. I am satisfied that there is merit in that argument because a proper consideration of the evidence would have required the Judge to consider whether an Appellant with the political links and activities that he had accepted would fall foul of the secular/religious divide in the area that he called home, and in that event whether internal relocation would be a sufficient answer to that risk. There is no consideration of the possibility of internal relocation in this decision. In my judgment therefore Ground 2 is well made out and the decision will have to be set aside on that basis alone.

7. I turn then back to Ground 1. This is a challenge to the fairness of the appeal process as a result of the Judge's decision to refuse to admit evidence that had been served late. It is not disputed before me that the evidence had been served late. Equally it was not suggested on behalf of the Home Office before the Judge that the admission of this evidence would in truth have caused any prejudice to the Presenting Officer's preparation of the appeal, or his ability to make submissions upon it. The evidence in question consists in its material aspect of a witness statement from an individual said to be the Appellant's brother. That statement confirmed not only incidents which the Judge accepted had occurred but also confirmed, albeit without any real detail, the incident in 2004 which the Judge had rejected. The statement also suggested that there was an ongoing risk to the Appellant because those who had sought to attack him in the past were still making enquiries into his location and indeed had threatened the maker of the statement, said to be his brother, as recently as October 2016. Given the way in which the appeal was presented, that was, in my judgment, material and relevant evidence, albeit it lacked any great detail. The real question for the Judge was in reality not whether to admit it, but what weight to give it. Notwithstanding that it had indeed been served late I can see no good reason why that evidence should not simply have been admitted at the hearing and then given such weight as the Judge saw fit in the context of the rest of the evidence before him.

8. So on that basis I would also find that there is merit in Ground 1. It is a matter of concern that the late evidence was said to have sat in the hands of the Appellant's solicitors for over three months prior to the hearing without it having been served on the Respondent, or filed with the Tribunal. It appears to have been accepted before the Judge that this was the result of human error for which the Appellant could not be held directly responsible. Ultimately the question for the Judge was one of fairness but,

as conceded before me it is difficult to see that there could have been any real prejudice to the Respondent in its admission, whereas there was obviously real prejudice to the Appellant in the event of its exclusion.

9. I turn then to the question of whether or not the appeal should be remitted or whether the decision is capable of being remade before me today. Both parties urge me to remit. In circumstances where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the Appellant of the opportunity for his case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 13 November 2014. Moreover the extent of the judicial fact finding exercise is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 13 November 2014. To that end I must remit the appeal for a fresh hearing by a judge other than Judge Moore at the Taylor House Hearing Centre.

Notice of decision

10. The decision promulgated on 8 August 2017 did involve the making of an error of law sufficient to require the decision to be set aside and reheard. Accordingly the appeal is remitted to the First Tier Tribunal for rehearing de novo with the directions set out above.

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 Date 16 January 2018
Deputy Upper Tribunal Judge J M Holmes

To the Respondent
Fee award

No fee is paid or payable and therefore there can be no fee award.

Signed Date 16 January 2018
Deputy Upper Tribunal Judge J M Holmes