Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02978/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6 March 2018	**On 23 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

RAMZAN [S]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms R Kotak, Counsel instructed by Rahman & Company Solicitors
For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant in this case is a citizen of Pakistan born on [ ] 1944 who appeals the decision of the respondent dated 14 March 2017 to refuse his application for asylum. In a decision promulgated on 27 November 2017, Judge of the First-tier Tribunal Chapman dismissed the appellant's appeal on all grounds.

2. The appellant appeals to the Upper Tribunal with permission on the following grounds:

(a) the appellant had been diagnosed with Alzheimer's disease and arguably the judge should have applied the Joint Presidential Guidance Note No. 2 of 2010, paragraph 15 and should have recorded whether the appellant was vulnerable;

(b) there was procedural irregularity in failing to grant an adjournment for the purpose of obtaining medical evidence as to the appellant's fitness to give evidence;

(c) there was procedural irregularity in the concerns expressed about an expert's report which were not ventilated at the hearing;

(d) the Tribunal's approach to Article 8 amounted to an error of law in light of the above arguments.

Error of Law Discussion

3. For the reasons set out below I am not satisfied that any error of law is disclosed.

Grounds 1 and 2

4. Ms Kotak submitted that the Tribunal ought to have reached a finding whether or not the appellant was vulnerable. Although she accepted that the absence of a specific finding did not mean that the guidance was not applied, she submitted there was nothing to suggest that the judge had considered the issue. She submitted that the Tribunal's findings at [70] were inconsistent. On the one hand the Tribunal found that the conclusion was reached on the basis of the evidence before the judge and that no adverse inferences were made from the appellant's failure to give evidence. On the other hand, the Tribunal made alternative findings that if it had been necessary for the Tribunal to do so the Tribunal would have concluded that the appellant's failure to give evidence was not necessitated by his mental health condition, bearing in mind the medical evidence before the Tribunal. That did not suggest that the appellant had such a significant mental health problem to prevent him giving evidence.

5. I take into account that the Tribunal went on to confirm that this finding would only have been reached had it been necessary to do so, which the Tribunal did not so find. The Tribunal had before it a patient care plan for the appellant from the Memory Clinic of the NHS Foundation dated 6 September 2017. This document confirmed that the appellant presented with a five year history of cognitive problems and that he spoke lucidly and with insight about his cognitive functioning and that there were anecdotal examples of short-term memory loss and some repetition of conversation, but that there were no obvious changes in his personality, behaviour or social awareness and that his long-term memory seemed well-preserved. The report went on to state that the appellant had a mild cognitive impairment with a score of 22 out of 30 in one of the relevant

tests which indicated that he was likely to be suffering from a degenerative condition and that his presentation was consistent with Alzheimer's pathology. The report concluded that whilst there were tangible problems with cognitive impairment and some consequential difficulties with daily routines there was no evidence of significantly increased risk and that the appellant's memory and executive functioning were not reduced to the point of compromising safety. The report considered that he was suffering from Alzheimer's disease and that they were commencing a trial of memory enhancing medication.

6. The First-tier Tribunal specifically directed itself in relation to the appellant's mental health issues as follows:

> "31. Before the hearing, because of the mental health issues of the Appellant raised in the patient's care plan prepared by his clinical nurse specialist, I reminded myself of the principles set out in the recent case of **AM (Afghanistan) v SSHD [2017] EWCA Civ 1123**, concerning child and vulnerable appellants, the Practice Direction 'First-tier and Upper Tribunal Child, Vulnerable Adult and Sensitive Witnesses', issued on 30 October 2008, and the joint Presidential Guidance Note No 2 of 2010."

7. The Tribunal therefore had in mind the relevant guidance and it is evident from the totality of the decision that the Tribunal treated the appellant as a vulnerable witness, which the Tribunal would have been aware extends beyond the consideration of oral evidence. This included that the Tribunal, when the appellant's representative indicated that the appellant would not be giving evidence because of loss of memory, highlighted that this in his view was not supported by the medical report given that long-term memory was preserved. The First-tier Tribunal also allowed time for instructions on this issue. The fact that the Tribunal ultimately refused the adjournment request for a medico-legal report on the appellant's medical condition which the appellant's representative thought was relevant to the issue of whether or not he should give evidence and to rebut any suggestion that his failure to do so would adversely impact on his credibility, did not mean that the judge failed to apply the correct guidance.

8. Ms Kotak accepted that the appellant did not give evidence and was not intending to give evidence. It was not suggested that a further report would not have changed that decision. Given that the Tribunal reached the decisions it did on the basis of the documentary evidence before it as set out in considerable detail from [54] to [70] and specifically concluded that these conclusions were reached and no adverse inferences were made from the appellant's failure to give evidence, any error in failing to adjourn for a further report as to why there was no oral evidence could not be material, notwithstanding the Tribunal's findings in the alternative at [70] setting out the Tribunal's views as to why the appellant had not given evidence.

9. I take into consideration that the judge had before him a medical report in relation to the appellant's condition and there was no suggestion, prior to the hearing, that the appellant would not be giving evidence. The appellant and his representatives would have been aware that the report indicated that his long-term memory seemed well-preserved and therefore the judge raising this at the hearing ought not to have, been a surprise. In considering the issue of an adjournment it is well-established, including in the case of **Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC)** taking into consideration **SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284,** that the question is not whether an adjournment is reasonable but whether it is fair and whether there is any deprivation of the affected parties right to a fair hearing. The Tribunal properly directed itself to these issues including at [36] and took into account that the hearing had already been adjourned for expert reports and any further investigations into the appellant's condition ought to have been conducted before the hearing in question. I am not satisfied that any unfairness was disclosed in the Tribunal's approach in failing to adjourn the hearing.

10. It was Ms Kotak's submission, and she took the Upper Tribunal through the Joint Presidential Guidance Note No2 of 2010 (the Guidance) on vulnerable witnesses, that the judge did not follow the correct approach including at paragraph 14 of the Guidance that consideration should be given for varying degrees of understanding and when considering the evidence must consider 'the extent to which age, vulnerability or sensitivity of the witness is an element of that discrepancy or lack of clarity' and that the decision should record whether the Tribunal had concluded that the appellant is a vulnerable witness and therefore aware of that vulnerability in assessing the evidence. In addition, at paragraph 15 the Guidance indicates that in asylum appeals weight should be given to objective indications of risk rather than necessarily to a state of mind (relying on paragraph 351 of the Immigration Rules).

11. I am satisfied that the Tribunal followed the correct approach, including in assessing in considerable detail the objective evidence before it in reaching the conclusions it did, both in relation to the appellant's credibility and with regard to sufficiency of protection and the availability of internal relocation.

12. Ms Kotak further submitted that the Tribunal erred in relation to the appellant's son's evidence which the Tribunal considered and recorded the evidence in summary at [37] and [38]. The Tribunal noted at [71] that the appellant's son "accepted, however, that the events described by the appellant were not within his personal knowledge, and therefore I can attach little weight to his evidence about the events in Pakistan".

13. Although Ms Kotak took me to the appellant's son's witness statement where there was reference on a number of occasions to the appellant's son being told about events in Pakistan, it is difficult to see how there can be any error in the judge's conclusion, including that the appellant's son

had accepted that none of the events were in his personal knowledge. Although normal evidence rules do not apply in this Tribunal weight is a matter for the judge and there was nothing irrational in the judge's approach in attaching little weight to the evidence of the appellant's son who was recounting what had been told to him and did not witness the claimed events in Pakistan (and I accept that his evidence includes recording that his father received a phone call in the UK in relation to claimed events).

Ground 3

14. Ms Kotak referred to a supplementary report provided with the grounds of appeal to the Upper Tribunal from the country expert which she indicated addressed a number of the issues which the Tribunal had raised with the expert's evidence. It was argued that the judge had attached little weight to the expert's report but did not raise the points set out at sub-paragraphs (1) to (6) of [58] at the hearing and it was submitted that procedural fairness required the First-tier Tribunal to raise these points and give the expert an opportunity to respond. That cannot be the case. The appellant's representative provided the report from Mrs Moeen and the Tribunal set out a number of concerns with that report in some detail at sub-paragraphs (1) to (6) of [56] and further concluded that the expert's conclusions were little more than a conclusion that the appellant's account was plausible, which the Tribunal accepted was the case. If, as identified by the First-tier Tribunal, the report raised questions including as to the role and experience of the expert, the Tribunal cannot be criticised for drawing an inference in relation to those issues. The report ought to have stood on its own and there is no issue of unfairness in the Tribunal not giving an expert an additional opportunity to further address the adequately reasoned conclusions that the Tribunal made on that report.

15. In any event, even if the First-tier Tribunal erred in its approach to either the evidence from the appellant's son and/or the expert evidence, which I am not satisfied has been established to be the case, the Tribunal finds that although the appellant's account was plausible it was not credible, and in the alternative, even if the appellant were at risk the Tribunal was satisfied from the objective evidence and from the case of **AW (sufficiency of protection) Pakistan [2011] UKUT 31 (IAC)** (26 January 2011) that there was a sufficiency of protection in Pakistan and that in general access to effective state protection remains possible which in this case must be considered on its facts.

16. The First-tier Tribunal summarised the objective evidence at [58] sub-paragraphs (1) to (6) and no challenge was made to those findings. Neither was there any challenge to the judge's conclusions that there was a sufficiency of protection and the option of internal relocation at [69]. Although Ms Kotak submitted that this was not the case given the challenge to the judge's findings on Mrs Moeen's expert report which she

stated challenged the background information, that challenge is misconceived; the Tribunal reached alternative findings, at [57], which were not challenged, that Mrs Moeen's report, even if accepted, was little more than a conclusion that the appellant's account was plausible (which the Tribunal accepted). The Tribunal went on to find at [57] that where the expert's conclusions appeared to contradict the respondent's country and information guidance the judge preferred the latter. Ms Kotak did not point to any information that might suggest that the Tribunal ought to have disregarded the country guidance in **AW** and for the reasons the Tribunal gave the Tribunal was satisfied that firstly the appellant was not credible, but even if he were, that he could safely relocate and/or would have a sufficiency of protection available to him in Pakistan.

17. Ms Kotak did not pursue any grounds under Article 8 before me and I am not satisfied that these are made out. The Tribunal's carefully reasoned conclusions at [73 to [80], under Article 8 were findings properly open to the Tribunal.

18. In addition Ms Kotak sought to argue two further grounds which were not in the application for permission. These related to [64] of the Decision and Reasons, where it was alleged the judge missed evidence and did not take into account that the appellant had said that he was going to appeal the court case decision in Pakistan, whereas the judge found it not credible that those he had accused threatened him or attempted to kill him at a time when they had been successful in having the case against them discharged. Ms Kotak's argument, that he stated he was going to appeal, does not take that case any further and the findings were open to the Tribunal if such grounds were before me, which I am not satisfied it was.

19. A further additional ground in relation to the Tribunal's conclusions at [66] that the appellant had not satisfactorily explained why, having already threatened to kill him and having attempted to do so, his opponents would be willing to finally compromise a dispute between them by offering to pay the money said to be owed by them. Ms Kotak stated that it was a misunderstanding because they had offered to pay half the money. However, it is unclear how that changes the judge's conclusions that they offered to pay any money at all was not credible, given the claim that these individuals had threatened to kill the appellant and attempted to do so, including enlisting the help of an extremist organisation but then went on to offer to pay money to the appellant. The fact that it was only half again does not take the appellant's argument any further. In any event I am not satisfied those grounds were properly before me.

Notice of Decision

20. The decision of the First-tier Tribunal does not disclose an error of law and shall stand.

No anonymity direction was sought or is required in this case.

Signed Date: 22 March 2018

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

No fee was paid or payable and the appeal is dismissed. No fee award is made.

Signed Date: 22 March 2018

Deputy Upper Tribunal Judge Hutchinson