Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/12780/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 24 April 2018	**On 1 May 2018**

Before

UPPER TRIBUNAL JUDGE WARR

Between

AU
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Nasim, Solicitor
For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 12 May 1991. He arrived in the UK on 9 April 2012 with a student visa valid from 16 March 2012 to 12 July 2017. He applied for asylum on 13 July 2017 claiming that he would be at risk on return in Pakistan due to his membership of Muthida Quami Movement (MQM).

2. The application was refused on 21 November 2017. While noting the evidence provided by the appellant, the respondent rejected his claim to be a MQM member and the claimed problems that had flowed from that. The appellant had not claimed asylum on arrival and the respondent

considered that this behaviour fell within the scope of Section 8(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

3. The appellant appealed and his appeal came before a First-tier Judge on 16 January 2018. The appellant was represented by Ms S Nasim who appears before me. He gave oral evidence. Ms Nasim referred the judge to various parts of the appellant's account which she submitted had been accepted by the Secretary of State and explained the circumstances which had led the appellant to delay making his claim for asylum.

4. The decision of the First-tier Judge is criticised for its brevity and want of reasoning. and it is convenient in the circumstances to set out his conclusions which are as follows:

> "27. The appellant is a citizen of Pakistan who came to the UK in April 2012 with a valid student visa running from 16 March 2017. He was intending to study at Waltham Forest College on a Level 3 course in business management – but according to his oral evidence he ceased his studies after 1-2 months because he was not able to pay the balance of the fees. He has not carried out any studies since that time, nor could he provide any documentation regarding his studies.
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> 28. The background to his claim for asylum is set out in his screening and asylum interviews and his witness statement. He and his family came from an ethnic group within Pakistan called Mohajir, who are immigrants who migrated to the Sindh area of Pakistan following partition in 1947. The group has struggled for representation in local and national government and the MQM party was set up to promote their cause. The discrimination has extended to jobs and education.
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> 29. The appellant stated that his father, uncles, cousins and his entire family had always been involved with the party, either as supporters or as member workers. He stated that he followed his father to events and meetings from a young age and by the time he was 16-17 he was an activist. He never received any membership card as everyone in the area was a member and in any event there was an element of anonymity about the membership. His duties involved office duties and campaigning at rallies.
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> 30. The appellant states that workers were routinely captured and tortured or killed by opponent parties. He himself claims to have been arrested by law enforcement agencies, but was held and tortured until he agreed to leave the party. He was injured and thereafter his family was concerned that he would be killed. This took place in December 2011.
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> 31. The appellant then moved to another part of the country, namely Interior Sindh, but he stuck out due to his language and looks

and was soon picked up again by law enforcement agencies and identified as Mohajir.

32. His family then paid for him to come to the UK in order to study in 2012. He stated in oral evidence that the funding for this came from a loan from his uncle and funding from his father. He was unable to continue those studies because he was not able to afford the balance of the fees. He also stated in evidence that the family monies were used to pay for his father's medical treatment, as he suffered from health problems. His father died on 14 May 2014 of natural causes but the appellant stated that his father had also been under stress from the government forces.

33. The appellant states that after he came to the UK, further visits to his family home took place over 2013-14. He also states that he was made head of the department when the leader of MQM, Altaf Hussain, founded a youth wing. From 2016 he has been in charge of social media. He also says that his cousin, Z., was killed by law enforcement agencies in 2016 and there is an FIR against all the workers within MQM although neither he nor other workers have been identified.

34. He has been a member of MQM in the UK since 2012 and this is set out in MQM's letter of 19 February 2017. The writer of that letter, N, states that the appellant had been actively associated with the party since 2012. The letter states that since September 2013, paramilitary rangers have launched an operation against MQM and thousands of MQM workers have been arrested. Since August 2016 the atrocities of paramilitary rangers against MQM have intensified and the persecution of Mohajir communities in Pakistan has reached a high level.

35. More recently I was referred to the news items confirming the death of the deputy leader of MQM, Professor Dr Hassan Arif, on 14 January 2018. Reports conflict as to whether Dr Arif was tortured or shot depending on the source of the news item. No post mortem has yet been carried out, so the cause of death is not yet known.

36. For many reasons I have found the appellant's reasons to be wholly lacking in credibility. It is accepted by the respondent that he has been a member of MQM, but it is also clear that he has been an extremely low level member. I do not accept that the authorities were responsible for his father's death as the death certificate makes it clear that he died of natural causes. The appellant was unable to provide any documentary evidence regarding the FIR which was said to be issued against him and other workers, nor did he provide any evidence regarding the studies which he had commenced in the UK and then ceased. The respondent accepted that he had been involved in political

activities and accepted that some threats had been made to MQM workers generally.

37. However, for the reasons set out in the refusal letter, the appellant's account has not been consistent, nor has he provided sufficient detail of his alleged risk on return. Above all, he did not claim asylum until June 2017, over five years after he came to the UK. If he had been at risk in Pakistan before he came to the UK, and he refers to an incident in 2011, there is no reason why he should not have claimed asylum immediately on arrival in the UK or at least at the earliest possible opportunity. He failed to do so and this goes to his credibility under s.8 of the Asylum and Immigration (Treatment of Claimants Etc) Act 2004.

38. Above all the appellant has been an extremely low level worker, and is not well known to the authorities – and I do not accept that he is at risk on return to Pakistan. His claim for asylum therefore fails along with the claim under Articles 2 and 3 ECHR.

39. For the same reasons his claim for humanitarian protection fails because he cannot show that there are substantial grounds for believing that there is a real risk of serious harm on return to Pakistan.

40. The appellant also put forward a claim under Article 8 ECHR in respect of his family or private life. I do not accept that he has a family membership within the MQM. In respect of any private life, it is not disproportionate for him to return to Pakistan where I have concluded he is not at risk. There is no disproportionate breach of any Article 8 ECHR rights by his returning to Pakistan."

5. Accordingly the judge dismissed the appeal on all grounds.

6. Permission to appeal was granted by a First-tier judge on the basis that there was a lack of reasoning in the decision. Ms Nasim took me through her grounds and submitted that the judge had erred in taking all the respondent's reasons for refusal against the appellant and using them as his own. For example he had followed the respondent's reasons for reliance upon the appellant's behaviour in not claiming asylum promptly and had not referred to the appellant's explanation which he had set out in paragraph 26 of the determination – the appellant had said he was young and did not have legal advice.

7. She commented on the paragraphs of the refusal letter which showed, she submitted, that parts of the appellant's account had been accepted. I pointed out that it was difficult to reconcile these submissions with the wording of the decision itself and asked Mr Nath whether there had been any concessions made at the hearing. He referred to the Presenting Officer's note and submitted that there had not been. It appeared that there had been an error in construction of the decision letter. Counsel accepted that paragraph 34 of the decision (the concluding paragraph in

relation to MQM membership) reads, "overall, your statements have been considered to be lacking in detail and internally inconsistent. Therefore, this aspect of your claim is rejected".

8. Mr Nath submitted that there had been no concessions made regarding the MQM point. The judge had found the appellant to be wholly lacking in credibility and did not arguably err in cross-referring to the refusal letter. No documentary evidence about the FIR had been provided. He had made his own findings and had given sufficient reasons to support his decision.

9. Ms Nasim in reply submitted that the judge had not made a proper factual analysis and the determination was flawed.

10. At the conclusion of the submissions I reserved my decision. I can of course only interfere with the decision of the First-tier judge if it was flawed in law.

11. What appears to have led to the difficulty in this case is the way in which the decision itself is set out. The Secretary of State in paragraph 22 refers to the documents submitted in support of the claim which had been considered in the light of the guidance in **Tanveer Ahmed [2002] UKIAT 00439**. The appellant's documents had not been viewed in isolation and had been considered as part of the available evidence that they related to. In this context the Secretary of State considered the appellant's claimed MQM membership and the problems that were said to have flowed from it and the documents adduced in support of the claim. Mr Nath said that this was not an uncommon method of framing refusal decisions.

12. While I accept that confusion appears to have occurred in this case it is clear when the letter is read as a whole that the appellant's claimed membership of the MQM had been rejected – paragraph 35, for example reads:

> "Given that it has been rejected that you were a member of MQM, it falls to be rejected that you have been arrested, detained, threatened and a subsequent FIR has been issued for your arrest. However for the sake of completeness, this material fact will be considered in full."

13. To similar effect is paragraph 50:

> "Your statements are considered to be lacking in detail, implausible and inconsistent. Given that it has been rejected that you are a MQM member, this aspect of your claim is also rejected."

14. Finally, under the heading 'Summary of Findings of Fact' the respondent writes in paragraph 54 as follows:

> "Following facts are rejected:
> - MQM Membership
> - Arrest, threats and FIR."

15. It is clear from the determination that the judge records the respondent's reliance on the refusal letter excluding paragraph 53 of it which is not relevant to this point. It would be inconsistent to rely on the refusal letter and accept the appellant's claimed membership of MQM. It appears that both Counsel and the judge read parts of the refusal decision in isolation and drew the conclusion that the appellant's membership of MQM had been accepted, albeit as an "extremely low-level member".

16. However I am not satisfied that this factual error (which was an error in favour of the appellant) is a reason for disturbing the judge's conclusions. Nor do I find that the judge's reasoning is deficient as claimed. The determination is a brief one but none the worse for that. I accept Mr Nath's submissions that the judge analysed the appellant's evidence properly and came to his own independent conclusion that what the appellant said was wholly lacking in credibility. The judge is criticised for relying slavishly on the refusal decision but as I have pointed out it was in effect misinterpreted in favour of the appellant rather than the reverse.

17. Counsel complains that the judge did not take into account the appellant's reasons for the delay in making an asylum claim but she also refers me to paragraph 26 of the decision where the judge records the explanation the appellant had given. I do not accept that the judge did not take into account what the appellant had said to explain the delay, having set out the matter earlier on in the decision. The delay was a lengthy one and it was open to the judge to find that it went to the appellant's credibility under Section 8 of the 2004 Act. Reliance was also placed in the grounds and a skeleton argument lodged shortly before the hearing on the judge's treatment of Article 8. This point was not developed at the hearing. In paragraph 26 of the decision the judge records that the claim under Article 8 was based on the point that the appellant was effectively "a family member of MQM". In such circumstances it was not in my view a material error of law for the judge to deal with the Article 8 issues in a short compass and to conclude that removal of the appellant would not be disproportionate. It is not apparent that fuller treatment by reference to the Rules and the statutory provisions could or might have led to a different result.

18. For the reasons I have given the judge's determination was not materially flawed in law and I direct that it shall stand.

Notice of Decision

19. The appeal is dismissed on asylum, humanitarian protection and human rights grounds.

20. The judge made an anonymity order which I continue.

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.

Fee Award

The judge made no fee award and I make none.

Signed Date 30 April 2018

G Warr, Judge of the Upper Tribunal