



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

Appeal Number: PA/04962/2018

THE IMMIGRATION ACTS

Heard at Field House

On 9th January 2019

Decision & Reasons

Promulgated

On 29th January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

IMAM [A]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T D H Hodson, instructed by Elder Rahimi Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Pakistan, appealed to the First-tier Tribunal against a decision of the Secretary of State to refuse his application for asylum and humanitarian protection in the UK. First-tier Tribunal Judge Nicholls dismissed the appeal in a decision promulgated on 4th June 2018. The Appellant now appeals to this Tribunal, with permission granted by Deputy Upper Tribunal Judge Chapman on 12th November 2018.

2. There are four Grounds of Appeal which are somewhat interconnected. I deal firstly with Ground 3 as I find that it is that ground which has been made out in the appeal before me.
3. It is contended in the third ground that the judge failed to take into account significant documentary evidence on core material matters. I do not accept that the judge failed to take account of all relevant documents in relation to allegations as to the shooting of the Appellant's brother in pages 47 to 69 of the Appellant's bundle as contended in the grounds.
4. However, I do accept that, reading the decision as a whole, it is clear that the judge failed to take account of documentary evidence at pages 77, 78 and 79 of the Appellant's bundle. These relate to the Appellant's claim that the authorities had been looking for him. The judge set out the Appellant's claim and evidence at paragraph 7 of the decision. This included the Appellant's claim made in his asylum interview (7.a), in his witness statement (7.i), and in oral evidence (7.k) that the authorities visited his family home just after his visits in 2012 and 2013 and that he obtained this information from his brother and from neighbours.
5. The judge considered this matter at paragraph 23 and 26. At paragraph 23 the judge said:

"He maintains that when he did go back to Pakistan for two family reasons, arising from the shooting of his brother and, year later, from the death of his mother, the security forces went to his home address to ask about him. He has not produced any confirmation of these visits, particularly from the family members to whom they are said to have spoken. That evidence should be readily available to the Appellant and yet he has not put it forward".
6. At paragraph 26 the judge said *"Firstly, he has produced no evidence to confirm his claim that there have been continuing enquiries about him in Pakistan, particularly since he left the country now more than eight years ago"*. However, the three letters at pages 77, 78 and 79 purport to come from neighbours of the Appellant in Pakistan and each of the authors claim that police came looking for the Appellant on a number of occasions since 2011. It may be of course that the judge did not accept the evidence contained in these letters. However, the judge made a clear finding that no evidence on this issue had been provided when some evidence had in fact been provided. In my view the failure to take into account this evidence impacts directly on the judge's findings that the authorities in Pakistan have no interest in the Appellant. This is important given the judge's findings that the Appellant was involved in activities in Pakistan before he came to the UK [28]. In my view the failure to take into account this documentary evidence undermines the safety of the credibility findings.
7. The first Ground of Appeal goes to the assessment of risk on return on the basis of the Appellant's claimed involvement with the Balochistan movement as does the fourth ground which relates to the Appellant's

claimed *sur place* activities. In my view these findings flow from the credibility findings. The second ground alleges that the judge made a fundamental error in relation to the Appellant's ethnicity. I do not consider that this has been made out given that there was no direct evidence from the Appellant in relation to this matter. In any event, this is not necessarily material to any of the other findings.

8. I indicated to the parties at the hearing that, should I agree that the third ground was made out, I considered that as this error would undermine the credibility findings it would be appropriate in these circumstances to remit the appeal to the First-tier Tribunal to be determined afresh. The parties agreed with my proposal in relation to this matter.
9. In these circumstances as material matters have not been taken into account in the assessment of credibility, in light of the Presidential Practice Statements the nature or extent of the judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008, it is appropriate to remit the asylum appeal to the First-tier Tribunal.

10. **Notice of Decision**

The decision of the First-tier Tribunal contains a material error of law and I set it aside. No findings are preserved.

I remit the decision to the First-tier Tribunal.

No anonymity direction is made.

Signed

Date: 28th January 2019

A Grimes

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

No fee is payable, therefore there can be no fee award.

Signed

Date: 28th January 2019

A Grimes

Deputy Upper Tribunal Judge Grimes