



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

Appeal Number: PA/08811/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 12 July 2019**

**Decision & Reasons Promulgated
On 25 July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

**A I
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Mustafa, of Counsel, instructed by Prime Solicitors Ltd

For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against a decision of Judge of the First-tier Tribunal Blake who, in a determination promulgated on 7 May 2019, dismissed his appeal against a decision of the Secretary of State to refuse him asylum.
2. The appellant is a citizen of Pakistan born on 5 April 1971. He entered Britain as a student in May 2011 and started working in a chicken shop with a number of other men of Pakistani origin. In August 2011 one of those men took his passport and told him that they would be applying for

an extension of his visa. In October 2011 the appellant asked for his passport but was told that an extension was still awaited.

3. The appellant had complained about a smell in the second floor of the property where he was working and was told by one of the four men that he should not go up there. On 21 July 2012 whilst playing cricket he was taken by the four men to the shop and assaulted. They tied him up and threatened him by saying that if he told anyone what they were doing he would be killed. The following day he escaped from the property and reported the incident to West Midlands Police who investigated the case but in October 2012 discontinued the case for lack of evidence.
4. The appellant asserts that in October 2012, July 2014, January 2015 and October 2015 threats were made to his family by unknown men in Pakistan about him and he claimed that on that basis he would be ill-treated or persecuted if he returned to Pakistan. However, it was not until February 2016 that the appellant applied for asylum.
5. His claim was refused, detailed reasons being set out in a letter dated 5 August 2016. The Secretary of State having noted the crime report from West Midlands Police in which it had been asserted that he was a victim of kidnapping considered that he had been a victim of a crime committed by the four men and therefore accepted that part of his claim. However, the Secretary of State then went on to consider the visits to his family home in Pakistan by unknown men and noted that his brother had stated to the men that he had not returned to Pakistan. His brother had also claimed that he had received two telephone calls in either 2014 or 2015 enquiring about the appellant and calling the appellant's brother names.
6. The appellant's brother had made a First Information Report to a police station in Pakistan after the first visit by the unnamed men and indeed three further First Information Reports after three further claimed visits. These were considered by the Secretary of State who had sent them for verification to the Pakistani authorities. The numbers on the reports had been checked and found to not be genuine, and taking that factor into account, together with the fact that the appellant had stated that he had not seen the four men with whom he had worked since July 2012 and had not received any threats from any of those men and did not know where they lived, the Secretary of State concluded that the appellant did not have a well-founded fear of persecution. The Secretary of State also took into account when considering the veracity of the appellant's claim the fact that he had entered as a student and that he had not studied here.
7. The appellant appealed. The appeal first came before the First-tier Tribunal in March 2017. Directions were set out and the appeal listed for a hearing at which the allegation of trafficking was raised and the Tribunal was informed that an application to the National Referral Mechanism was to be pursued. There was a joint application by the appellant's representative and the Presenting Officer for an adjournment in order to

pursue the NRM procedure. Judge Norton-Taylor who adjourned the appeal ordering that there should be an oral Case Management Review on 6 June 2017 when both parties were to inform him regarding the progress in the NRM procedure. On 6 June it appeared that the respondent was to invoke the NRM procedure and the matter was further adjourned. Again, on 4 July 2017 the appeal was adjourned to 14 December 2017, but then adjourned further until May 2018. Again the appeal was adjourned but it was eventually listed for 12 October 2018 and then further a judge adjourned to 2 April 2019. On that day the appeal came before Judge Blake who considered an application for a further adjournment. He had before him a letter from the Respondent dated 18 October 2018 which stated that the Competent Authority had concluded that there were reasonable grounds to:-

“... believe that you have been a victim of modern slavery (human Trafficking).

You now have a period of 45 days from 30 October 2018 to 14 December 2018 to recover and consider your options. This recovery and reflection period is provided for under the terms of the Council of Europe Convention, ratified by the United Kingdom on 17 December 2008.

AT THE END OF THE 45 DAY PERIOD

At the end of the recovery and reflection period the Competent Authority will make a conclusive grounds decision as to whether you are a victim of modern slavery, (human trafficking or slavery, servitude or forced / compulsory labour).

in order to be able to make your conclusive grounds decision in as timely a manner as possible. It would greatly assist if you could provide the documents which apply to your case as per the list below by 14 December 2018

- any personal/ witness statements
- third-party reports/ supporting statements
- medical information/ reports/ anything else deemed relevant to your claim.

It is important that you contact us on the detail above if for any reason you cannot provide information by this deadline. If you have not yet been interviewed regarding your claim, then the above documents be brought to the interview with you will be available as soon as possible following it, you should advise the interviewing officer if you have any problems with doing so.

Individuals with a positive conclusive grounds decision under the NRM may be granted discretionary leave. If you have applied for asylum in the UK, then you will automatically be considered for discretionary leave so you do not need to confirm this. If you have not applied for asylum and would like to be considered for discretionary leave please could you confirm this by contacting the NRM hub at the above address.”

8. Judge Blake considered the application for the further adjournment on the basis that there had not been a conclusive grounds decision but stated he considered it inappropriate to adjourn the appeal as the decision to refuse asylum had been made as long before as 5 August 2016 and there had

been a number of previous adjournments to obtain that decision. He referred to the case law of **ES (Section 82 NIA 2002; negative NRM) Albania [2018] UKUT 00335**. He stated that he noted from the head note that this recorded that:-

- “1. ... a previous decision made by the Competent Authority within the National Referral Mechanism (made on the balance of probabilities) is not of primary relevance to the determination of an asylum appeal, despite the decisions of the Court of Appeal in **AS (Afghanistan) v SSHD [2013] EWCA Civ 1469** and **SSHD v MS (Pakistan) [2018] EWCA Civ 594**.
2. The correct approach to determining whether a person claiming to be a victim of trafficking is entitled to asylum is to consider all the evidence in the round as at the date of hearing, applying the lower standard of proof”.

9. The judge also considered the head note in the Upper Tribunal decision of **AUJ (Trafficking - No conclusive grounds of decision) [2018] UKUT 200**. He noted that the head note stated:-

- “(i) If a person (‘P’) claims that the fact of being trafficked in the past or a victim of modern slavery gives rise to a real risk of persecution in the home country and/or being re-trafficked or subjected to modern slavery in the home country and/or that it has had such an impact upon P that removal would be in breach of protected human rights, it will be for P to establish the relevant facts to the appropriate (lower) standard of proof and the judge should make findings of fact on such evidence.
- (ii) If P does not advance any such claim in the statutory appeal but adduces evidence of being trafficked or subjected to modern slavery in the past, it will be a question of fact in each case (the burden being on P to the lower standard of proof) whether the Secretary of State’s duty to provide reparation, renders P’s removal in breach of the protected human rights.

...”

10. He noted that the letter from the Home Office NRM dated 29 October 2018 had stated that individuals with a positive conclusion grounds decision under the NRM may be granted discretionary leave where it is necessary because they are supporting a police investigation, pursuing compensation or due to compelling personal circumstances. He stated that on the basis that there was a reasonable grounds finding on the file he concluded that a fair hearing would be possible without the need for a further adjournment and did not consider it to be necessary in the interest of a fair hearing that a conclusive grounds decision had to be made. He found that the conclusive grounds decision would not be binding on him in light of the authority of **ES** and the other authorities. He therefore refused the adjournment application.
11. The judge then heard evidence from the appellant noted the evidence in the bundle before him which included a number of witness statements as well as the evidence relating to the police report and a medical report of

injuries the appellant had received here. He had before him the FIRs from Pakistan which had been before the respondent.

12. Having heard evidence from the appellant in paragraphs 64 onwards he set out his findings of credibility and fact. It is clear from paragraph 64 onwards of the determination that he did take into account all relevant correspondence and the evidence including the reasonable grounds finding of trafficking. He considered the FIRs in detail and the fact that the document verification report indicated that these were not genuine. Indeed he analysed these reports in detail pointing out clear inconsistencies in each one. He noted that the appellant had put in no evidence to address the discrepancies which had been highlighted in the document verification report.
13. He went on to take into account the appellant's immigration history in that he had entered as a student but had been dismissed by his college and that he had overstayed and was working illegally. He found that the appellant's family had not been visited in Pakistan and also the fact that the appellant had been assaulted in Britain would not place him at risk on return to Pakistan. He did not accept that he had been pursued by armed men there and stated that he noted the appellant was living in the United Kingdom and that his alleged assailants were aware that he was in Britain as a result of a complaint he had made against them, but despite the case against them being discontinued there had been no repercussions on the appellant despite his being present in Britain. He therefore did not find the appellant's account of being pursued was credible. He found that the appellant therefore would not suffer persecution on return to Pakistan but, in any event, pointed out that should the appellant not wish to return to his home area he would be able to internally relocate there. He considered there were no factors which would mean that the appellant's rights under Articles 2, 3 and 8 of the ECHR would be engaged.
14. The grounds of appeal argued that the judge had erred in law by not adjourning the appeal and that he should not have taken into account that there had been previous adjournments. It was argued that because the appeal had not been adjourned he had been deprived of a possible period of discretionary leave as a victim of trafficking which might have been the final recommendation at the end of the conclusive grounds procedure. It was stated that the judge should have been aware that the low standard of proof which was required in asylum claims was lower than the standard of proof in the NRM procedure.
15. It was on the basis that there might be potential unfairness against the appellant that permission to appeal was granted. Mr Mustafa in his submissions before me pointed out the fact that there had been a joint application for an adjournment and referred to the decision in **ES** which pointed out the relevant standards of proof. He argued that this case was different from that of the appellant in **AUJ** who had consented to the withdrawal of the procedures against the traffickers and argued that the

appellant had been deprived of the possibility of discretionary leave. In reply Ms Jones stated that the judge had acted correctly. There was limited evidence that the appellant had been a victim of modern slavery, but in any event the judge was entitled to go ahead and determine the decision before him.

Discussion

16. I consider there is no material error of law in the determination. It is important in this case to bear in mind the chronology of the appellant's claim and the long period before he claimed asylum the application to be treated as a victim of trafficking was made. The judge did take into account the decision that the appellant had been a victim of trafficking and considered all relevant factors. The issue before the judge was whether or not the appellant would face persecution on return. The fact that the judge did not accept that the FIRs were genuine - and the judge gave very clear reasons for that conclusion - the fact that the appellant who had remained in Britain and since 2012 had not suffered at the hands of those whom he feared wished to harm him, and indeed the fact that the appellant would be able should he not wish to return to his home area internally relocate in Pakistan mean that the judge's decision that the appellant did not have a well-founded fear of persecution is unassailable.
17. The conclusion that it was inappropriate to adjourn the appeal was not procedurally unfair, particularly given the long history of adjournments. The judge properly applied relevant case law. The issue before the judge was whether or not the appellant would face persecution on return the issue of entitlement to discretionary leave was not made out and indeed the judge properly considered. It is of humanitarian protection and human rights, under articles 2, 3 and 8 of the ECHR. There is nothing unfair in the decision. I find that there is no material error of law in the determination and therefore the decision of the judge should stand.

Notice of Decision

This appeal is dismissed.

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 his 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: 17 July 2019

Deputy Upper Tribunal Judge McGeachy