



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

Appeal Number: PA/09040/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 30 May 2019**

**Decision & Reasons Promulgated
On 10 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**S A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss P Yong, Counsel instructed by Davies, Blunden & Evans Solicitors

For the Respondent: Ms Cunha, Home Office Presenting Office

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Ross which was promulgated on 7 March 2019.
2. The appellant was born on 6 August 1986 and is a citizen of Pakistan. He was refused asylum by the Secretary of State in a refusal letter dated 3 July 2018. He appealed on asylum, humanitarian protection and human rights grounds. That appeal was dismissed on all three bases.

3. The grounds of appeal were settled by solicitors and are in a somewhat form, but the thrust of the document is the effect that the First-tier Tribunal Judge omitted making material and adequate findings of fact. The judge concluded that the appellant was not a political activist, and that his activities would not cause him to be targeted by the Pakistan Army. It is contended that the judge did so without considering all of the relevant evidence and particular reference is made to paragraph 32 of the decision.

4. In granting permission to appeal on 16 April 2019, First-tier Tribunal Judge Grimmett noted:

“The appellant says the judge failed to take into account the evidence of the appellant relating to his activity with the UKPNP. It is clear from paragraph 30 that the judge was not satisfied the appellant was a member as he found the documents unreliable. However, no mention was made of the evidence of the appellant’s witness and I therefore grant leave to appeal”.

5. This was the principal argument advanced by Miss Yong in her submissions. The appellant’s witness here referred to is an individual by the name of Sardar Amjad Yousaf. For the sake of completeness, I set out in full (and without correcting the grammar) the entirety of Mr Yousaf’s evidence which was to be found at pages 165 to 166 of the appellant’s bundle before the First-tier Tribunal.

“I, Mr Sardar Amjad Yousaf currently residing at [address] make this statement in support of the appellant’s appeal against a decision of the Home Office refusing his. I declare and confirm that; I am a British citizen born on 8 August 1972 in Poonch AJK Pakistan.

1. I am a politically active in the United Kingdom. I belong to UKPNP (United Kashmir People’s National Party) under the leadership of Sardar Shaukat Ali Kashmiri who reside in Switzerland.
2. I am President of UKPNP for Europe zone.
3. I personally know Mr [SA]. I therefore ready to give oral evidence in relation to Mr [SA]’s political activities in the UK”.

The content of this statement are true and correct to the best of my knowledge and belief and nothing has been misstated herein”.

It is then signed and dated 16 December 2018.

6. It is immediately apparent that this witness statement is far from adequate because it has no substantive content. It describes, very briefly, the activities of the deponent (as opposed to the appellant) and evinces a willingness to give oral evidence in relation to the appellant’s political activities in the UK. It does not state what that evidence might be.

7. I asked Miss Yong directly why the statement had been put in the appellant’s bundle and she could give no response. She said it indicated that Mr Yousaf would be called and that oral evidence would be extracted

from him. Self-evidently this was not the proper way to put evidence before the First-tier Tribunal.

8. In her submissions this morning, Miss Yong made representations as to what she said had taken place at the First-tier Tribunal. She found herself professionally embarrassed in having to give oral evidence. This should have anticipated. An agreed note should have been prepared as to what took place at the First-tier Tribunal.
9. Miss Yong also told me that up until this morning she had been expecting Mr Yousaf to be present at the Upper Tribunal today to give oral evidence. No explanation was given as to why she believed a witness would be allowed to give oral evidence on an error of law hearing without any prior notification to the Home Office or to the Tribunal and without producing a witness statement in advance containing the substance of the evidence to be called. I asked her whether she wished to make an application to have the matter adjourned to allow for these irregularities to be addressed and for her to prepare a witness statement, allowing alternative counsel to represent the appellant. She declined my invitation, indicating that she wished to proceed with the appeal. However, in reply, she suggested that I might, at that stage, adjourn the matter. I declined to do so. Miss Yong had been put to her election and I did not consider that the interests of justice would be served by standing the matter out when it had been fully argued. Her very late application was, in my assessment, opportunistic and tactical.
10. The way Miss Yong advanced her case did not sit easily with the grounds of appeal, but there was no application to vary or enlarge those grounds. The thrust of her argument was that when the appellant gave oral evidence to the First-tier Tribunal he was questioned about inconsistencies in the letterheads of certain documents and responded that he was unable to explain those inconsistencies, but that his witness, Mr Yousaf, would do so.
11. Miss Yong's contention is that when Mr Yousaf was called to give evidence in the First-tier Tribunal, he attested to the truth of his witness statement, notwithstanding that it had no substantive content. Miss Yong then sought to put questions to Mr Yousaf. She tells me that she was prevented by the judge from putting those questions.
12. If this allegation is said amount to some form of procedural irregularity, it is not put in that way in the grounds of appeal, albeit they do record by way of narrative that a request to call the witness was denied, something which is not strictly true. Miss Yong's case today is that he was called, but she was not permitted to put to him all the questions she would have wished. Even if I entertain this new (or at least re-framed) ground, I do not consider it compelling because as a general rule it is not open to a party to seek to adduce additional oral evidence-in-chief beyond that contained in a witness statement. With the leave of the court or tribunal a witness might be asked to clarify or amplify certain parts of his or her evidence. Or

a witness may be tendered for cross-examination on the content of his or her witness statement. But this was not the case here.

13. I took Miss Yong to the decision itself and in particular to paragraph 23 which reads as follows:

“Oral evidence was also given by Mr Yousaf who provided a very short witness statement consisting of three short paragraphs. His evidence was that he had seen the appellant at a UKPNP meeting in Leeds on 13 April 2017”.

14. I asked Miss Yong whether paragraph 23 represented a fair summary of Mr Yousaf’s oral evidence. Her immediate reply was that it did. Shortly afterwards she changed her stance somewhat and said that Mr Yousaf had in fact said rather more than that. Seemingly referring to her own notebook, she said that Mr Yousaf had also said that he had spoken to the President (presumably of UKPNP) and the President had apparently confirmed matters dealing with Mr Yousaf’s attendance at various UKPNP events.

15. I hesitate to take into account evidence given by Counsel. Miss Yong properly acknowledged if such evidence were to be produced it should be in the form of a witness statement and she should have recused herself and allowed other Counsel to represent the appellant today. She had chosen not take that course. However, I am anxious to avoid perpetuating an injustice in consequence of a mistake or error of judgment on the part of a party’s representative.

16. Miss Yong also referred me to her backsheet which she prepared at the conclusion of the hearing in the First-tier Tribunal, a document expressly referred to in the grounds of appeal. Paragraph 6 of that backsheet reads:

“The respondent challenged the reliability of the documentary evidence. They related to the official letterheads and the varying spellings of the address of the UKPNP office in Pakistan. The appellant maintained in cross-examination that UKPNP would be able to comment on that. When the appellant sought to adduce evidence from the President of the UKPNP who was present in relation to that, the First-tier Tribunal Judge prevented it”.

17. Notwithstanding the absence of a distinct ground of appeal alleging procedural irregularity, I do not consider there to be any substance in this complaint as advanced tenaciously by Miss Yong. In particular, I bear in mind that even today no witness statement has been produced to inform the Upper Tribunal of what Mr Yousaf would have said had the First-tier Tribunal Judge not declined to allow certain questions to be put. Taking Miss Yong’s submission at its very highest, all that could be said is that the First-tier Tribunal denied itself the benefit of a very limited amount of second-hand hearsay evidence. I do not consider an error of law to be revealed in this contention, and even if there were one, it was not material to the ultimate disposal of the appeal.

18. Miss Yong made further submissions under the broad head of the judge's omission to make material and adequate findings of fact (to borrow from the terminology of the third paragraph of the first page of the grounds of appeal). She contends that the judge failed to take into account two letters in the appellant's bundle. The first is at page 140 on UKPNP notepaper dated 16 November 2017 and signed by Sadar Shafique Khan. It reads:

"I also confirm that Mr [SA] has been participating in party activities and peaceful political demonstrations, due to his political commitments he was elected secretary information of UKPNP Crawley/Worthing unit from January 2011 to July 2014 and again appointed as organiser UKPNP West Sussex unit on 20 March 2017. He has been playing an effective role for the cause of civil society, constitutional, political, democratic, educational rights and the independence of the State of Kashmir on non-religious bases. He received life rights due to his political activities. He subscribes the same political ideology with the party".

19. The second is at C4 and C5 of the respondent's bundle. This is a letter from the UKPNP signed by Raja Usman Kayani and dated 15 October 2017 which asserts that the appellant was an active member of the UKPNP from 2006 and gives certain details relating thereto.

20. In paragraph 32 of the decision, the judge says:

"I accept that there is some independent evidence that the appellant has attended a party meeting in Leeds in 2017. However, I find that the appellant is not a political activist nor that his activities would cause him to be targeted by the Pakistan Army".

21. The judge had stated previously at paragraph 30:

"It is unclear from the appellant's evidence whether his detention and torture was as a result of his land dispute or whether it was because of his membership of the UKPNP. I find the UKPNP documents produced by the appellant in support of this claim are unreliable. The undated letter regarding the appellant has a different address for the Central Secretariat from the membership card. The word 'Secretariat' is spelt with an 'e' at the end of the Secretariat on the letter and without an 'e' at the end of Secretariat on the membership card, which also does not have any logo, although the letter does have a logo. Further, in relation to the two photographs produced by the appellant, he accepted in his oral evidence that the two different dates on the photographs were a mistake and that they were actually taken at the same event and having been pointed out by the respondent in the refusal letter".

22. In my assessment, it was perfectly open to the judge to come to the conclusion which he did, namely that the appellant is not a political activist and that his activities would not cause him to be targeted by the Pakistan Army. That conclusion might perhaps have been expressed more fully but in essence it summarises the conclusion to which the judge came and his reasoning. The judge had the advantage of hearing the evidence, and

assessing the credibility of witnesses. He was also entitled to take a view on the documentary evidence, which he did, providing supportable reasons for his conclusions.

23. A number of additional points were raised by Miss Yong, not alluded to in the grounds of appeal, but which she sought to subsume within the umbrella rubric of “without considering all of the relevant evidence” at paragraph 3 of the first page of the grounds. These were very much in the nature of make-weight submissions, suggestive of the judge misunderstanding or misinterpreting the evidence overall. They concerned inconsistencies over dates and the extent to which dental records corroborated one or more of the versions of events as related by the appellant. However, none of these matters is mentioned in the grounds of appeal, nor do they form any part of the reasoning in the grant of permission.
24. In any event, I was not persuaded by Miss Yong’s submissions. The judge properly recorded that there was a series of inconsistencies in the appellant’s evidence and, again quite properly, drew conclusions as to the overall reliability of that evidence. That was a proper exercise of the judicial function and cannot be regarded as an error of law. The submissions amount to no more than a disagreement with the judge’s findings on the facts.

Notice of Decision

- (1) The appeal is dismissed and the decision of the First-tier Tribunal is affirmed.
- (2) An anonymity direction is made in the following terms.

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 *Mark Hill*

Date 5 June 2019

Deputy Upper Tribunal Judge Hill QC