



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

Appeal Numbers: PA/10593/2018

THE IMMIGRATION ACTS

**Field House
On 26th June 2019**

**Determination Promulgated
On 28th June 2019**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

**MH
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms V Easty, of Counsel, instructed by Elder Rahimi Solicitors

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

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Pakistan born in September 1982. He claimed asylum on 19th February 2018 and was refused in a decision dated 31st July 2018. His appeal against the decision was dismissed by First-tier Tribunal Judge NMK Lawrence in a determination promulgated on the 14th November 2018.

2. Permission to appeal was granted by Upper Tribunal Judge Davey on 21st March 2019 on the basis that it was arguable that the First-tier judge had erred in law and that all grounds may be argued. It was directed that Mr Hodson, who had represented before the First-tier Tribunal would need to make a statement and could not represent the applicant at the permission hearing. That direction was repeated in directions of Upper Tribunal Judge Finch, with a time direction of 14 days of notice of this decision, and she also directed that the record of proceedings of Judge Lawrence be served on the parties within 7 days; that the Home Office Presenting Officer present at the hearing in the First-tier Tribunal, Mr Bassi, should file and serve a copy of his record of the hearing within 7 days; and the matter was transferred to Field House to be listed in coordination with Mr Hodson.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions – Error of Law

4. The grounds of appeal contend in short summary as follows.
5. Firstly, that at paragraph 14 of the decision the First-tier Tribunal Judge misrepresents what was said in the appeal statement to make it appear to say the appellant left Pakistan for Dubai in April 2008 fearing persecution when in fact, consistently with past statements he said he felt he would have better work opportunities and avoid the general insecurity in Pakistan by moving. There is also a misrepresentation by the First-tier Tribunal Judge at paragraphs 16 and 17 that in this statement the appellant says he feared persecution in Pakistan when he visited there after moving to Dubai.
6. Secondly, it is contended that the First-tier Tribunal Judge failed to have regard to the email evidence that the previous representative, the Migrant Support Centre, took a poor statement through an unsatisfactory method.
7. Thirdly, it is argued that the First-tier Tribunal Judge wrongly states that the appellant contradicted his legal representative, Mr Hodson at paragraph 31 of the decision, as can be seen by the contemporaneous record of proceedings attached to the grounds with a statement of truth. It is also said that the First-tier Tribunal Judge very significantly and material misrepresented the content of the oral evidence of both of the appellant's witnesses: Mrs SH his wife was not asked by Mr Hodson when her husband had attended a demonstration, and Mr MB only said members of the Baloch Republican Party have a membership card and replied yes, so he did not initially say a card was always carried and then say sometimes.
8. Fourthly, it is argued that First-tier Tribunal Judge took a procedurally unfair approach to documents at paragraph 25 of the decision, as he

refused to let the representative ask the appellant about his membership card because it was in English. It was also unfair to place weight on the absence of documentary evidence that the appellant had changed his return flight to Dubai in November 2017 when he was not asked any questions on this issue and no point was raised about it in the refusal letter, see paragraphs 19 and 23 of the decision.

9. Fifthly, it is argued that the First-tier Tribunal Judge made mistakes about material aspects of the case and evidence. Mention of the Baloch Club in Bahrain was simply a small amount of background evidence of something the appellant did as a child, and could not be seen as embellishing his account as is said at paragraph 29 of the decision. There was also excessive reliance upon the Exit Control List, which is a Wikipedia source of information, in an inaccurate way at paragraphs 40 and 41 of the decision.
10. Sixthly, it is argued that there is a failure to deal with the appellant's sur place activities in the UK. Illogically it was found that the appellant could travel back as his witness was able to do so in 2011 without consideration of the fact that the witness was travelling on a British passport, see paragraph 37 of the decision. It was also inaccurately stated that Mr Hodson had said that the appellant would be unlikely to be stopped at Karachi airport if he were returned when that was not the case, see paragraph 43 of the decision. It could not be logically assumed that the appellant would not be seen as a failed asylum seeker given his period of residence in the UK and his Baloch ethnicity. Further consideration should have been given to the fact that the appellant could not be required to lie about his internet activities and to the background evidence regarding the violent position that the Pakistani authorities take to those who support Balochistan independence.

Conclusions - Error of law

11. At the hearing Ms Cunha conceded that the First-tier Tribunal had erred in law making it appropriate that the decision be set aside, and for the matter to be remitted to the First-tier Tribunal for rehearing de novo. In these circumstances it is not necessary to give full reasons for my decision, as it was agreed by consent, but the following are identified as being seen by all as errors of law in the decision of the First-tier Tribunal:
 - That there was no inconsistency, as was relied upon as evidence of the appellant's lack of credibility in the decision of the First-tier Tribunal, between the appellant's appeal statement and his asylum interview record on his move to Dubai being primarily for work purposes with the added benefit of avoiding the general instability in Pakistan and that his visits prior to the one in November 2017 having been safe.
 - The First-tier Tribunal objected to the appellant's representative questioning the appellant about documents in English and then

used conclusions about those documents as one reason to find him not credible, in a way which was not procedurally fair.

- It was inaccurately recorded in the decision of the First-tier Tribunal that putting the difference between the appellant's wife's witness statement and her oral evidence to her was the appellant's representative, Mr Hodson, leading evidence on the point.
- It was also inaccurately recorded in the decision that the appellant contradicted Mr Hodson, his representative when asked about the subject of some photos: the appellant was asked if they were taken on 19th November 2017 at the Nawaz Atta rally and said they were not and said that there were no photographs of that rally. This is not a contradiction as Mr Hodson was not giving evidence but asking questions.
- It was not lawful to give less weight to witness evidence in part on the basis that it was "self-serving" as this is meaningless.
- There was insufficient reasoning for the conclusion that the appellant's sur place did not place him at real risk of serious harm on return to Pakistan.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal with no findings preserved.
3. I remit the remaking to the First-tier Tribunal as I find that the remaking will be extensive and there was procedural unfairness in the approach of the First-tier Tribunal.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 26th June 2019