IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No.: UI-2024-000042

First-tier Tribunal No:
PA/50806/2023
LP/01756/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 11 September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

KK (PAKISTAN)
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Sellwood, Counsel instructed by ATA & Co Solicitors
For the Respondent: Ms C Newton, Senior Home Office Presenting Officer

Heard at Field House on 20 August 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant has been granted permission to appeal against the decision of First-tier Tribunal Judge Lester promulgated on 28 November 2023 ("the Decision"). By the Decision, Judge Lester dismissed the appellant's appeal against the decision of the respondent to refuse to recognise him as a political refugee.

Relevant Background

2. As summarised in the refusal decision dated 8 December 2022, the appellant's claim was that he was a supporter of the Baloch National Movement ("BNM"), and that he protested regularly in his home town in Pakistan on behalf of this movement between 2002 and 2010. He had been arrested and detained in 2003 and 2004, but had carried on regularly protesting regardless. Eventually, he had been arrested and detained for a third time in 2010. He was released from his third detention after his family paid a bribe, but the army wanted to arrest him again. He left Pakistan in late 2010 by bus, and had resided in Afghanistan until 2016. He then travelled to Europe, where he claimed asylum in France in December 2016. After his asylum claim in France had been rejected, he had entered the UK on 9 October 2020 by a small boat. Since arriving in the UK, he had engaged in *sur place* political activities in support of the BNM, both in the real world and online, taking part in protests, congregations and meetings, and posting pro-BNM material on social media.

3. In the refusal decision, the respondent accepted that the appellant had been a supporter of the BNM in Pakistan, but his claim to have been arrested and detained on three occasions - particularly in 2010 after an interval of six years despite regularly attending protests in the interim - was neither internally nor externally consistent. On the issue of future risk, the respondent did not accept that the appellant was of interest to the authorities because of his political affiliation to the BNM, as (according to him) the authorities had not visited his house since 2020; his wife and children had returned to live in his home area and had done so for over five years; on his account, after his release from imprisonment the former Chairman of the BNM had become a member of the BNM again; and the relevant CPIN stated that, in general, low-level members and activists of opposition political parties were unlikely to be of interest to the authorities or subject to treatment sufficiently serious to amount to persecution. As to his claimed *sur place* activities, he had not provided any documentary evidence of this, despite having reasonable opportunity to do so, so he had not shown that he had now (or that he had ever had) a significant political standing in the BNM.

4. His case on appeal was set out in an asylum skeleton argument (ASA) dated 27 April 2023. The issues to be determined included: (a) whether the client participated in regular protests as claimed; (b) whether the client had taken part in *sur place* activities in the UK; (c) whether there was a real

likelihood of future persecution and/or serious harm were the appellant to return to Pakistan on the basis of (i) his account of past persecution; (ii) his *sur place* activities; (iii) his accepted (sic) membership of BNM and BNM UK Zone.

5. Since it was accepted by the respondent that the appellant was a supporter of the BNM in Pakistan, and that he was from Nushki in Balochistan, his claimed attendance at protests was entirely credible. It was not understood how or why his account of being arrested on three occasions between 2002 and 2010 was inconsistent or lacking in credibility. It was clear from the objective evidence and the respondent's own CPIN that political protests in Balochistan were targeted by the authorities; and the appellant clearly stated that only approximately a fifth of people were picked up, so it was not inconsistent that on some occasions he was able to escape detention.

6. In his final detention in 2010, he was detained for nearly two months, during which period he was subjected to interrogation and torture. Dr Kane had diagnosed that he was suffering from PTSD, with his symptoms starting after this period in detention.

7. External corroboration of the appellant's activities in Pakistan was provided by the President of the BNM UK Zone, and by the Baloch Human Rights Council. The same council confirmed that a large number of activists had been forcibly disappeared and judicially killed in Pakistan. It was estimated that between 2002 and 2005 alone, some 4,000 people were detained. As to the appellant's *sur place* activities, the President of the BNM UK Zone confirmed that he was a member, and as part of his activities for the BNM UK Zone it was wholly credible and consistent that the appellant would attend demonstrations as well as party meetings.

The Hearing before, and the Decision, of the First-tier Tribunal

8. The appellant's appeal came before Judge Lester sitting at Columbus House, Newport, on 6 November 2023. Both parties were legally represented. In addition to the evidence cited in the ASA, the appellant relied upon a Country Expert Report from Dr Bennett-Jones, dated 23 July 2023, and the oral evidence of a supporting witness, Mr MH, whose witness statement was dated 25 October 2023.

9. In the statement, Mr MH said that he was a Baloch national, who had arrived in the UK in March 2017 and claimed asylum. His application was successful, and he was granted refugee status in July 2018. His home town was Nushki. He and Kamran had lived in the same neighbourhood. He knew him from Balochistan, where they were both members of the BNM. In October 2003 he was elected to the central organising body of the BNM, and in May 2004 he became the Central Labour and Kashtkar Secretary of the BNM. He was hiding in Balochistan from 2005 until he escaped to Afghanistan in 2010. He knew that many ordinary members of the BNM had gone missing or had been killed by the Pakistani authorities. He met

Kamran in Afghanistan, and Kamran told him that he had been arrested and mistreated by the Faji of Pakistan, and that he had managed to secure his release by paying a bribe. In his view, the Home Office was incorrect in its assessment that ordinary members of the BNM were not at risk of persecution.

10. In the Decision, the Judge began his discussion of the issues in dispute with a finding that the appellant and Mr MH had given inconsistent evidence about when they met in Afghanistan. He went on to consider the photographs that were relied upon as supporting the claim. He gave detailed reasons as to why he could only give the photographs limited weight.

11. At paras [17] to [25], the Judge addressed the question of when the appellant had first mentioned being detained for two months in 2010 and subjected to torture. He observed, at the end of para [17], that he found it significant that he had the awareness to tell the Immigration Officer in the screening interview that he had been detained in Bulgaria for 15 days, but it did not occur to him to mention that he had been detained for two months and tortured in Pakistan.

12. At para [25] he found it unusual that even when suitable questions were asked, where it would be reasonable for the appellant to provide the answer that he had been detained for two months and tortured, he had not done so - and that it had taken until approximately half way through the interview for him to describe it.

13. At paras [26] to [30] the Judge addressed the letters of support from the BNM and BHRC dated 17 February 2021 and 13 March 2021 respectively. The letter from the BNM stated that KK and his close family members were abducted at the hands of the Pakistan Army. The Judge observed that at no point in the evidence had the appellant at any stage made such an assertion.

14. At para [31] the Judge held that there was no evidence from the appellant, BNM or BHRC or elsewhere, of the activities of the appellant while he was in Pakistan. There was also no evidence from his wife, or anyone else who might be able to confirm the activities of the appellant and the alleged actions of the Pakistan authorities.

15. At para [32] the Judge noted that the appellant, in his witness statement, said that he attended online political meetings. However, no evidence of this had been provided, such as screen shots for example. At para [36] the Judge noted that in his witness statement and in his full asylum interview the appellant had said he was active on social media and made posts. However, no evidence of this had been provided.

16. At paras [37] to [40] the Judge addressed the medical report of Dr Kane in which reference was made in the refusal decision.

17. At para [41] the Judge said that he had considered the Expert Country Report of Dr Bennett-Jones dated 23 July 2023. He said that he provided a good report on the situation, history and issues in Balochistan and Pakistan: *"However, the report becomes more relevant only once the appellant is able to establish his core claim."*

18. At para [42] the Judge found that the failure to claim asylum in Croatia, Slovenia or Italy (countries through which the appellant had passed before he unsuccessfully claimed asylum in France) meant that section 8 of the Asylum & Immigration (Treatment of claimants etc) Act 2004 applied.

19. At para [43] the Judge said as follows:

> I draw all of these matters together (including s.8) and consider the matters in the round. I find that the appellant is not credible. I find that he has not established to the lower standard any of the three issues raised by the parties.

The Grounds of Appeal to the Upper Tribunal

20. The grounds of appeal to the Upper Tribunal were settled by Mr Colin Yeo, Counsel who had appeared for the appellant in the First-tier Tribunal. He advanced three grounds of appeal: lack of reasons; failure to make findings; and flawed reasons.

21. Under Ground 1, he submitted that the Judge had raised very minor issues about some of the evidence, but at no point in the determination had he stated reasons for rejecting it - instead repeatedly suggesting that little weight could be attached to each piece of evidence taken in isolation. The Judge had then gone on to find - in a logical jump that was not rationally open to him - that the appellant was not credible. No real reason was stated to justify this conclusion.

22. Under Ground 2, he submitted that the Judge fell into error at para [12] by collapsing the three agreed key issues into one and then ignoring all three of them for the rest of the determination. He made no findings at all about whether the appellant's witness, Mr MH, was telling the truth or not. The Judge's assertion at para [31] - that there was no evidence as to the appellant's activities in Pakistan - was bizarre, given that there was evidence from the appellant and his witness, and from the BNM and BHRC, which recorded that he was an active member. Further, the appellant presented photographs but the Judge had decided to attach little weight to them. The Judge's approach was perverse. The appellant's quite considerable evidence was seemingly rejected, or little weight was attached to it, and the Judge then flatly asserted that there was no evidence at all.

23. Under Ground 3, Mr Yeo submitted that, if the Judge's finding that the appellant should have mentioned his detention and torture sooner was logically sufficient to justify rejecting his evidence overall, it was a fundamentally flawed piece of reasoning. The Judge had gone to bizarre lengths to suggest that the appellant should have mentioned his detention and torture in his screening interview. But, as the Judge noted, the

appellant was not asked for the substance of the asylum claim, because the appellant arrived during the pandemic, and those questions were deliberately omitted, as recorded in the screening interview itself at 4.1. At 5.3, the appellant had mentioned that the Police and Army came to his house in 2010. The Judge was bizarrely critical of the appellant for not mentioning the detention in his interview at Question 50, but immediately accepted that he discussed it at Questions 51 and 52. The Judge nowhere acknowledged that the appellant had already by this time given a full account, including of his detention, in his witness statement dated 5 November 2020.

The Reasons for the Grant of Permission to Appeal

24. On 3 January 2024, First-tier Tribunal Judge Gumsley granted permission to appeal, as it was arguable that whilst the FTT Judge was perfectly entitled to set out the weight to be attached to the evidence before him, the Judge did not provide adequate reasons as to his final credibility conclusions: he failed to make clear findings on important aspects of evidence and the matters in issue, including the credibility of the appellant's witness and documentation; and failed to have adequate regard to all the evidence presented, including the Expert Report, in reaching his conclusions.

The Hearing in the Upper Tribunal

25. The hearing before me to determine whether an error of law was made out was a hybrid one, whereby both representatives appeared remotely on CVP, whereas I was present in the Court Room at Field House. Mr Sellwood developed the grounds of appeal, and although there was no Rule 24 response opposing the appeal, Ms Newton mounted a robust defence of the Decision, pointing out (among other things) that in the screening interview the appellant had specifically represented at para 5.3 that when the army came to his home in 2010 to arrest him, he was not there. Thus, she submitted, it was open to the Judge to treat the appellant's subsequent allegation of arrest, detention and torture as being inconsistent with what he said in the screening interview. She also raised the fact that, contrary to what was stated in the grounds, the witness statement referred to had not been served on the Home Office prior to the refusal decision. In reply, Mr Sellwood insisted that the witness statement had been served on the Home Office during the "Dublin process".

Discussion and Conclusions

26. In view of the grounds of appeal in their totality, I consider that it is helpful to bear in mind the observations of Lord Brown in *South Bucks County Council -v- Porter* [2004] UKHL 33; 2004 1 WLR 1953. The guidance is cited with approval by the Presidential Panel in *TC (PS compliance - "Issues-based reasoning") Zimbabwe* [2023] UKUT 00164 (IAC). Lord Brown's observations were as follows:

> "36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was

> and what conclusions were reached on the "principal controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in dispute, not to every material consideration…Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

27. If this appeal turned only on Ground 3, I would not be persuaded that a material error of law was made out. The witness statement referred to in the grounds of appeal was not included in the Home Office bundle, and no reference is made to it in the refusal decision. Accordingly, the Judge did not err in not taking account of its contents when exploring the question of how and when the allegation of detention and torture in 2010 had first emerged. It was also open to the Judge to attach adverse weight to the fact that the appellant had not claimed in the screening interview that he had been detained for two months in 2010.

28. I am, however, persuaded that an error of law is made out as advanced in Grounds 1 and 2. I consider that the Judge fell into the error of considering individual bits of evidence in isolation, rather than identifying the principal controversial issues between the parties, and then focusing his attention on the various sources of evidence relied upon by the appellant as supporting his case on that particular issue, and making clear findings as to what was established to the lower standard of proof and what was not.

29. For example, while it was open to the Judge to draw an adverse credibility inference from the fact that the appellant and Mr MH had in his view given inconsistent evidence about when they met in Afghanistan, the Judge still needed to engage with the core elements of Mr MH's evidence which were (a) that he confirmed that the appellant was an ordinary member of BNM in the period up to 2005 (whereas he was an office holder) and (b) that he understood from what the appellant had told him in 2010 that he had carried on being an active ordinary member between 2005 and 2010, and that as a result he had been detained by the authorities in 2010 and had only managed to escape by the payment of a bribe. It was incumbent on the Judge to state whether he accepted Mr MH's evidence on these matters in whole or in part, and if not, why not.

30. The Judge was not assisted by the fact that the ASA did not incorporate reference to the Country Expert Report or to the witness statement of Mr MH. Also, the issues in dispute could have been more clearly formulated by the parties, given that, on analysis, the respondent's position on past persecution was nuanced.

31. The respondent conceded that the appellant had been a supporter of the BNM in Pakistan. What was in dispute was that he had attended BNM protests with such regularity that he had become a person of interest to the authorities, such that he had been arrested and detained for two months in 2010 during which he was interrogated about the activities of the BNM and about other members, and that he had remained of ongoing adverse interest to the authorities despite his release on payment of a bribe. The respondent's case was that the appellant was too low-level to have been targeted by the authorities in the first place, and also that it was not credible that there was a gap of six years between his second detention in 2004 and his claimed third detention in 2010, when he claimed to have been carrying on regularly attending protests in the interim. The appellant's case in rebuttal was supported by the Country Expert of Dr Bennett-Jones.

32. The Judge failed to engage with either the respondent's case on past persecution or with the contents of the Country Expert Report for the purposes of deciding whether the appellant was credible in his claim of past persecution and of ongoing adverse interest in him on account of his activities between 2002 and 2010 The Judge was clearly wrong to discount the evidence of the country expert on the basis that the appellant's core claim had not been established, when the expert's evidence was relied upon as establishing that the appellant's account of past persecution was plausible and consistent with the relevant background evidence.

33. The Judge's line of reasoning was sufficient to sustain his conclusion that the appellant was not credible in his claim to have been active for the BNM in the UK, and arguably his finding on this issue was sufficient to dispose of the third strand of the appellant's case on future risk, which was that he would be at risk on return merely as a low-level member of the BNM. I do not consider that the respondent has conceded that the appellant was a member of the BNM in Pakistan, still less that he is an active member of the BNM UK Zone in the UK. It is only conceded that he has been a supporter in the past, and it is disputed that the appellant has a continuing commitment to the BNM cause as it is asserted that he has not produced satisfactory evidence of his claimed activities for the BNM in the UK. As the Judge made a sustainable finding in the respondent's favour on this dispute, I am not persuaded that the Judge materially erred in not expressly resolving issue (iii).

34. Nonetheless, the Judge's failure to give adequate reasons for finding against the appellant on the issue of past persecution (and the asserted ongoing adverse interest in him on account of his historic BNM profile) means that the Decision is unsafe and it must be set aside in its entirety.

35. I have carefully considered the venue of any rehearing, taking into account the submissions of the representatives. Applying *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), I have considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statement.

36. I consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and I therefore remit the appeal to the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal contains an error of law, and accordingly the decision is set aside in its entirety, with none of the findings of fact being preserved.

This appeal is remitted to the First-tier Tribunal at Newport for a fresh hearing before any Judge apart from Judge Lester

Anonymity

The First-tier Tribunal made an anonymity order in favour of the appellant, and I consider that it is appropriate that the appellant continues to be protected by anonymity for the purposes of these proceedings in the Upper Tribunal.

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
1 September 2024