



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

Appeal Number: AA/02704/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9<sup>th</sup> November 2018**

**Decision & Reasons  
Promulgated  
On 21<sup>st</sup> November 2018**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**I Y B**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Ms L Kenny (Senior Home Office Presenting Officer)

For the Respondent: Ms M Butler (instructed by Duncan Lewis & Co Solicitors)

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Secretary of State with permission granted by the Upper Tribunal on 4<sup>th</sup> October 2018. The appeal relates to a man from Pakistan born in 1976. He had arrived in the UK with a visit visa and overstayed. It was only when he was encountered working in the UK and detained for the purposes of removal that he claimed asylum. His asylum claim was based on the fact that he had worked for the police in Pakistan in the anti-terrorist section, as a result of

which he was targeted and attacked by the LEJ. He reported threats by them that if he did not leave the police they would kill him. He came to the UK as a result of those threats and has lost contact, he said, with his family. He has also been diagnosed with PTSD and has quite severe symptoms.

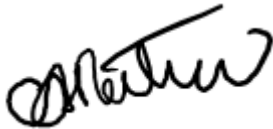
2. Before the First-tier Tribunal there were medical reports concerning his mental health and his scars. There was also an expert report on the situation in Pakistan. The Judge who heard the appeal on 24<sup>th</sup> May 2018 at Harmondsworth wrote a very detailed judgment. The Judge went through the evidence and submissions and balanced the adverse and positive credibility findings. It is true to say that the Judge did find that it detracted from the Appellant's credibility that he had delayed so long in claiming asylum. There were one or two other adverse factors which he took into account but then, bearing in mind what the expert evidence said; the Appellant's mental state; the fact that the Secretary of State had received confirmation from the police in Pakistan that the Appellant did in fact work as claimed and bearing in mind the low standard of proof found that the balance came down in the Appellant's favour. He accepted the Appellant credible in all respects. However, the Judge did not find that he would be at risk on account of that and so was not entitled to either refugee status or humanitarian protection because the risk arose from the fact that he was employed by the police. He is no longer employed by the police and has not been for many years.
3. The Judge went on to consider human rights and in particular Article 3. It was the Appellant's case that, although he had written a resignation letter and handed in his gun to the police, he had not followed the appropriate procedures for resignation. The Secretary of State's own evidence contained in the bundle and email from Pakistan confirmed that he was absent without leave. The Appellant claimed that that would put him at risk of prosecution and imprisonment and that was confirmed in the expert evidence. The Judge was aware of the guidance and country information that although prison conditions in Pakistan are poor they are not so systematically inhuman and life threatening as to meet the threshold of Article 3. The Judge quoted that at paragraph 142 of the judgment.
4. The Judge then went on to note that whilst that was generally the case, certain people, through their own personal circumstances, may nevertheless suffer treatment which did breach Article 3. The Judge found the Appellant, suffering as he did from severe mental health difficulties and without family support in Pakistan would cross that threshold and be at real risk of suffering inhuman and degrading treatment. He was not a person who would be able to cope with imprisonment. The Secretary of State's grounds, on which permission was granted, argue that the Judge failed to properly take into account that the Appellant was not absent without leave from the police but rather had resigned. However, that ignores the Secretary of State's own evidence that confirmed he is deemed to be absent without leave. Accordingly, the Judge did not make

an error of law in making that finding which was based in no small part on the Secretary of State's own evidence.

5. Secondly, the Secretary of State argued that the prison conditions do not meet or breach Article 3, but that the Judge has dealt with in considerable detail and explained why, for this particular Appellant, those conditions would breach Article 3.
6. Accordingly, I find that in allowing the appeal on human rights grounds the Judge did not make an error of law and therefore the Secretary of State's appeal to the Upper Tribunal is dismissed.
7. I will continue the anonymity direction that was made before the First-tier Tribunal.

**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 their 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.

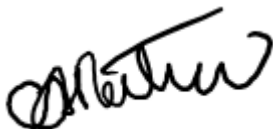


Signed  
2018

Date 15<sup>th</sup> November

Upper Tribunal Judge Martin

No fee is paid or payable and therefore there can be no fee award.



Signed  
2018

Date 15<sup>th</sup> November

Upper Tribunal Judge Martin