



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/05933/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 5 September 2018

Decision & Reasons Promulgated  
On 11 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

[A K]  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr D Coleman, Counsel instructed by Nasim & Co Solicitors

For the Respondent: Ms A Everett, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal from the decision of First-tier Tribunal Judge Courtney which was promulgated on 13 June 2018. I continue the anonymity direction made in the First-tier Tribunal.
2. The appellant, whose date of birth is 1 January 1965, is a citizen of Pakistan who arrived in the United Kingdom on 7 December 2016. He made a claim for asylum which was refused on 6 June 2017 from which he appealed. The matter was duly

heard in the First-tier Tribunal and the claim for asylum, humanitarian protection and under human rights grounds were all rejected by the judge.

3. Permission to appeal was granted on the basis of detailed written grounds prepared by Mr Paul Richardson of Counsel. Before me the appellant has had the benefit of representation from Mr Coleman of Counsel who has argued the appellant's case with tenacity, expanding on the written grounds.
4. The thrust of Mr Coleman's submissions has been directed primarily at what are said to be errors on the judge's part in making findings of credibility. It is contended that these matters, whether taken individually or cumulatively, amount to errors of law because they infect and undermine the conclusions to which the judge came on the issues of effective protection and re-location.
5. Dealing with the credibility issues in the order in which Mr Coleman took them, the first is under section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, and the failure on the appellant's part to make any claim for asylum or other state protection during his passage through Germany and France prior to arriving in the United Kingdom.
6. Mr Coleman relies on the judge's express finding that the appellant was descended from Lieutenant Dast Khan, his great-grandfather, who had been a distinguished soldier in the British Army during the First World War gaining the Victoria Cross. His conspicuous bravery causes him to be held in high regard amongst the Afridi tribe. This ancestry was disputed by the Secretary of State but found to be proved by the judge. Mr Coleman submits that it amounts to a credible explanation as to why the appellant would have travelled through Germany and France without making a claim for asylum.
7. The judge addressed this matter in her decision at paragraphs 37 and 38 where she recounts the appellant's evidence in this regard, not least the fact that he regarded England as his second home because of the sacrifices of his great-grandfather. Hence he anticipated that he would be welcomed with open arms.
8. The judge also made reference to the appellant's own evidence that he was apparently told by the French authorities that he should seek asylum there would be granted leave to remain. The judge's conclusions on this matter are at paragraph 39.

"I do not consider that the appellant has given a satisfactory explanation for his failure to seek asylum in France. I have taken account of this behaviour as damaging to his credibility, as part of a global assessment".
9. The judge's approach in this regard is entirely consistent with the statutory provision in section 8 as amplified by judicial comment in subsequent cases. Matters on credibility are essentially for the judge to determine. The judge in this instance was troubled by the fact that notwithstanding an almost open invitation

from the French authorities to claim asylum, the appellant proceeded instead to the United Kingdom. The mere fact that he may have regarded the United Kingdom as his spiritual home is not a probable or sufficient reason why he would reject the apparent offer of asylum in France and then, should he wish, seek to move to the United Kingdom at a later date.

10. There is nothing wrong with the judge's finding, which was open to her on the evidence she heard. Indeed, it could be said that it was the only legitimate finding based on the evidence. It is also plain from paragraph 39 that the judge did not regard this issue alone as being determinative but simply one matter that was damaging to credibility as part of a global assessment. The judge self-evidently took into account other factors in reaching her overall conclusions.
11. The second issue on credibility relates to matters raised at paragraphs 40 and 42 of the determination where inconsistencies in the appellant's evidence are discussed by the judge. Mr Coleman made particular criticism of the judge's apparent reading of one of the answers given in the interview which took place on 30 May 2013. To take that in context, I quote paragraph 42 of the decision in full:

"The appellant says that he remained in Peshawar for three or four years after the alleged incident in 1998. At interview he said that 'people came in the shop and asked for me but the problem for me is it is hard to recognise who is from the Taliban and who is not' (AIR Q43). In his witness statement the appellant says that members of the Taliban would come into the shop and ask about him; 'They would ask me question such as 'where is [AK]?' I said that I am a mere labourer working in this shop and [AK] has gone to Lahore. I knew they were gathering information from me and my whereabouts and I was very suspicious' (WS paragraph 15). It does not strike me as credible that the Taliban would make repeated visits to the shop, apparently over a period of two or three years, and meekly allow themselves to be fobbed off. At interview he was asked why these men did not simply shoot him and he said it was 'because I wasn't there' (AIR Q69), since he had gone to Lahore (AIR Q70). That does not chime with his evidence that the Taliban would come to his shop and he would dissemble, pretending he was merely a shop worker. Taxed with this discrepancy he is recorded as saying merely 'Where they didn't see me' (AIR Q71)".

Mr Coleman regards this as a misreading of the interview on the part of the judge. He says that in common with other of the recorded answers, what was actually said by the appellant was a question seeking clarification and, as again appears elsewhere, there is no question mark recorded.

12. Although much was made of this point by Mr Coleman, in reality the judge did not misconstrue this evidence. She stated what was recorded in the interview, namely the absence of any more extensive explanation. I can see no reason for criticising the judge for recording the evidence as she did.

13. Further criticism relates to paragraph 43 where the judge indicates that in making an application for entry clearance responses were given which were untrue. What is said in the written grounds of appeal, as amplified by Mr Coleman, is that it is perhaps unsurprising that an appellant would wish to exaggerate the extent of his connections with Pakistan (accepting there is probably a typographical error in the written grounds) in order to improve the prospects of a successful outcome to the entry clearance application. I can see no substance in that criticism. The evidence reveals, as the judge correctly pointed out, that the appellant was content to lie on his application. The judge heard the witness and assessed all the evidence. It is not for the Upper Tribunal to revisit findings of credibility and of fact which were self-evidently open to the judge to make.
14. The judge's conclusions at paragraph 44 are as follows:

"I am not persuaded that there is a serious possibility that the appellant was shot by the Taliban in 1998, nor that he fought against them in 2010 and was the object of continuing adverse interest on their part".
15. In reaching that conclusion, the judge made reference at paragraph 41 to the fact that there was a scar just above the appellant's right hip, but, as the judge entirely properly points out, there is no medical or other evidence to link that scar with an alleged gunshot attack in 1998.
16. Looking at the decision holistically, the view taken by the judge on credibility cannot be impugned. It is a careful and a detailed assessment. Full and sustainable reasons are given in respect of the evidence which is accepted and that which is rejected. There is no question of the judge roundly rejecting all of the appellant's evidence without giving proper reasons. This is a detailed fact-specific and unimpeachable assessment.
17. In the light of my rejection of the criticisms of the judge's findings, it is arguably unnecessary to deal with the remaining grounds which relate to effective protection and whether or not relocation is possible. But, in deference to the submissions which I heard and the fact that the judge determined these matter in the alternative were she to be wrong on the credibility issues, I have considered the written grounds and the Country Policy and Information Note for Pakistan.
18. The judge made full reference to all relevant country material and concluded that there was nothing to suggest any insufficiency of protection in that regard. The particular criticism made in this case is that it was not evident that the judge had given careful regard to an enhanced risk which might be faced by this appellant by dint of his relationship with his great-grandfather and his position with the Afridi tribe. Evidently the judge did take this factor into account. She did not ascribe to it the significance for which the appellant now contends. She was perfectly entitled

to do as she did. That the appellant does not agree with her findings does not give rise to an error of law.

19. Similarly, in paragraphs 49 and following the judge addresses the case law very fully and the question of relocation in relation to Lahore. She states “in my judgment there is a viable relocation option for the appellant in Lahore” and for the reasons she has carefully given, this was an entirely proper conclusion to reach.
20. So for each and all of these reasons, this appeal is dismissed.

### **Notice of Decision**

Appeal 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: *Mark Hill*

Date: 7 September 2018

Deputy Upper Tribunal Judge Hill QC