



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

Appeal Number: PA/05355/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3 December 2019**

**Decision & Reasons Promulgated  
On 17 December 2019**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**N S  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr G Dolan, Counsel instructed by Shawstone Associates

For the Respondent: Mr D Clarke, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Pakistan. His date of birth is 1 October 1990. His appeal against the decision of the Secretary of State of 24 May 2019 to refuse to grant him asylum was dismissed by Judge of the First-tier Tribunal M A Khan in a decision promulgated on 3 September 2019 following a hearing on 15 August 2019. The Appellant was granted permission to appeal by Judge of the First-tier Tribunal Bristow on 22 October 2019. The matter came before me to determine whether Judge Khan had made an error of law.

2. The judge heard the Appellant give oral evidence. His case was that his family in Pakistan had disowned him because he married a Romanian woman here in the UK. As a result of this he had been threatened by his maternal uncle. The Appellant's mother was also attacked. The Appellant claims to be at risk from his uncle, his uncle's sons and his own brother should he return to Pakistan.
3. There was before the judge a psychiatric report prepared by Dr K Balasubramaniam. Dr Balasubramaniam examined the Appellant on 23 July 2019. He concluded that the Appellant was suffering from a depressive episode as evidenced by persistent low mood, poor concentration, disturbed sleep, feelings of hopelessness, helplessness and transient suicidal thoughts. He concluded that the causation of his depressive episode was his family having disowned him, having received death threats from his uncle and brother, his relationship with his partner having ended and difficulties relating to his asylum claim. The Appellant was being treated with anti-depressant medication. He had attended counselling sessions. The expert's evidence was that it is known that people suffering from depression have memory difficulties and poor concentration which affects their recollection of events. The expert concluded that he was suffering from a severe degree of depression and that removal would have a negative impact on his mental state because he has an intense fear of returning to Pakistan. The Appellant, according to the expert, was not showing signs of suicidal ideation when he was examined, however he has self-harmed in the past (on two occasions) and the risk of suicide will be increased if he is forced to leave the UK. As far as I am aware, there was no challenge by the Respondent to the medical evidence.
4. The Appellant was interviewed about his asylum claim (B, Respondent's bundle). The following is an extract from the interview.

"86. Q. Why can't you return to PAK and obtain protection from the police?

A. No, they are not going to do anything because there is murder and killing very easily. They are not going to do anything so.

87. Q. How do you know that?

A. Because I just know that my is country and watch the news as well.

88. Q. Could you not move to another city far away from Gujrat, such as Hyderabad or Karachi?

A. No, Karachi and Hyderabad all that side they are very dangerous. Every single day politicians are killed and there are bomb and this and that, you know.

89. Q. What about cities such as Multan or Islamabad?
- A. Islamabad is located very near to my city and in all of Pakistan they can find me very easy.
90. Q. Can you explain how your family would have the knowledge and means to find you if you moved to another city?
- A. You can say somebody can tell them very easily.
91. Q. How would somebody tell them?
- A. My friend or something like that.
92. Q. You could return and not tell them that you
- A. One day they will know everything.
93. Q. How will they?
- A. I dont have much I idea, but maybe social media and that.
94. Q. You can restrict who views your social media?
- A. My friends here are from the same city so I cant force them to not tell them like that.
95. Q. Do you friends in the UK have contact with your family in PAK?
- A. No.
96. Q. So how would you friends in the UK inform your family?
- A. Sometimes they go for holidays.
97. Q. Do your family political connections?
- A. Yes.
98. Q. Who has political connections?
- A. My brother.
99. Q. What political connections does your brother have?
- A. I don't know much that but I know he has.
100. Q. How do you know he has
- A. A couple of MNA and MP's are in same city near to my house. Now they are in government as government changed last year. They are my brother friends.

101. Q. Do you know their names and position?

A. I know the name is Chowdhury Pervaiz. He is member of parliament.

102. Q. Can you explain what influence your brother with this individual?

A. Because they are in government and they have a very big approach so they can do anything, they are basically very dangerous and gangster type peoples.

...

108. Q. You said your brother's friend is in government, do you know what positions he has?

A. No, I saw in the news he is in parliament. He is speaker of parliament.

109. Q. Is that at local or national level?

A. National level.

110. Q. How does your brother have friendship with him?

A. I don't know much but you know once I lived in Pakistan, like 10 years before so I know him that time.

...

113. Q. How would your family be alerted to you arrival in Pakistan?

A. I told you, maybe my friend is going to tell them. Something like that."

5. The judge did not accept that the Appellant was credible. He took into account the inconsistencies raised by the Secretary of State in the Reasons for Refusal Letter. He said that the Appellant had not provided an explanation for these and instead he had made further inconsistent statements throughout his oral evidence. The judge said as follows:

"42. In his written statement dated 04/12/2017, at paragraph 5 (sic). The appellant states that when he called his mother in April 2016 and informed her that he was planning marrying Andrea (the Romanian lady), his mother told him that he was already engaged to marry her brother's daughter (the appellant's maternal uncle's daughter); however, in his oral evidence he was adamant that the arrangements were for him to be married to his paternal (his father's brother's daughter) and not his maternal uncle's daughter. I do not find the appellant's evidence credible or consistent.

43. In his December 2017 statement at paragraph at paragraph 14 (sic), he states that his mother told him that her brother's four sons are 'thirsty' for his blood; they will kill him on his return to Pakistan. This is totally inconsistent with his oral evidence at the hearing.
44. At paragraph 15 of the same statement, the appellant states that relations with his mother were gradually improving. (It must be remembered that he signed this statement on 04/12/2017). However in his oral evidence, he stated that he last spoke to his mother in January 2017 and has had no contact with her thereafter. I find that the appellant must have been in contact with his mother after January 2017 for him to know that his relations were improving with her. I find that the appellant's evidence before the Tribunal is wholly inconsistent with his previous statement.
45. The appellant in reply to question 25 in his interview stated that he could not remember when he last contacted his family in Pakistan but in his statement and oral evidence he was clear that he last contacted his mother in January 2017. The appellant did not explain how he came to know that it was in January 2017 that he spoke to his mother. I find that the appellant makes up his evidence about certain times and events to fit in with his claimed events.
46. In his evidence before me at the hearing, the appellant stated that he did not speak to his uncle at all but in reply to question 61 in the interview and his statement, he states that his uncle rung him the morning after he had spoken to his mother and that his uncle had threatened him, saying that he had bought shame on his family by refusing to marry his daughter. I find that the appellant simply made up his evidence in interview and in his statement and this is the reason he could not remember that he had been threatened by his uncle morning after he had spoken to his mother in April. I find that the appellant has made up all of his evidence in order to support his asylum claim.
47. The appellant in reply to question 64 in his interview stated that he did not reconcile with his family because he did not have their telephone numbers. He said that he occasionally speaks to his friend in Pakistan and he did not aske (sic) his friend to speak to his family because he knows that his family would not listen to his friend. I do not accept the appellant's evidence as genuine or sincere. I find that the appellant did not really want to settle issues with his family and reconcile with them, he would ask his friend to at least obtain his families telephone numbers to re-establish contact with them (sic). The fact that he made no effort whatsoever, I find that the appellant is neither genuine nor sincere about settling issues with his family because this would not his (sic) true purpose of staying in the UK.
48. The appellant in reply to question 77 in the interview stated that his uncle lived in the same city as his mother and was aware that he was responsible for the attack on his mother; clearly the appellant is here talking about his maternal uncle and not paternal uncle who he claims to be living in the same household

as his brother. Once again, I find that because the appellant has made up his evidence that he could remember what he has previously stated in his asylum interview.

49. In his asylum interview, he said that he could not live in cities like Karachi and Hyderabad because these are dangerous places; bombs are going off in these places. However, in his evidence before me he said that if he returned to another part of Pakistan such as Karachi he his (sic) brother's political masters would find him.
50. On the evidence before me, I find that the appellant is not credible or consistent as to the events described by him and that his evidence about his fear on his return to Pakistan is not genuine or credible. I find that the appellant has simply made up and fabricated his evidence in order to support his asylum claim. There is nothing genuine or truthful about his fear on his return to Pakistan."

6. The judge went on to consider risk on return and he said as follows at paragraphs 53 and 54:

"53. On the lower standard of proof, I find that the appellant will not be of interest to his family and that he has protection of the law enforcement authorities in Pakistan. I find that he also has an option of internal flight; he could return to and live in another part of Pakistan, which is a very large country with over 180 million people.

54. The appellant suffers from anxiety and depression, and he has provided a Psychiatric report by Dr Krishina Balasubramaniam dated 24/07/2019. The appellant provided most of the information to assist the Psychiatrist in the preparation of the report. The report states that the appellant would benefit from further counselling session. However, a letter from a letter (sic) from Hounslow IAPT dated 11/06/2019, states that the appellant has been discharged from his counselling sessions. The two letters GPs (sic) dated 06/08/2019 and 14/08/2019 state that the appellant suffers from anxiety and depression but he said in evidence that if it were not for his fear of persecution he could access treatment for his anxiety and depression in Pakistan."

7. I heard oral submissions from both representatives at the hearing before me. Mr Clarke resiled from the Rule 24 response. He conceded that the judge made errors of law as asserted in grounds 1 and 2 of the grounds of appeal. It was conceded that the judge had erred in failing to take into account the Appellant's vulnerability and the Joint Presidential Guidance Note 2 of 2010. The judge did not properly take into account the expert evidence, namely that the Appellant was suffering from depression and memory loss and that he was treated with anti-depressant. However, Mr Clarke said that the errors were not material because the judge went on to consider relocation at paragraph 53, concluding that the Appellant could live in another part of Pakistan which is a very large country with over 180 million people. He said that the findings about relocation was not challenged in the grounds of appeal and the assessment at paragraph 53

of the decision was made on hypothetical basis that the Appellant is at risk on return to his home area.

8. Mr Dolan addressed me in relation to materiality. He disagreed with Mr Clarke. In submissions Mr Dolan submitted that the credibility assessment of the judge is flawed. It cannot be said with certainty that the judge considered relocation on the hypothetical basis of the Appellant's claim having been accepted. There is no certainty that had the judge properly considered the Appellant's vulnerability and the medical evidence, he would have reached the same conclusions in respect of relocation.
9. Mr Dolan argued that the errors go to the heart of the credibility findings and the basis of the judge's decision in respect of relocation is not clear. It is not clear that the assessment of relocation was based on the Appellant being at risk in his home area. There are no findings made about the Appellant's family's ability to reach him should he relocate to another part of Pakistan. The judge did not engage with the evidence on this issue.
10. He referred me to the Appellant's witness statement of 18 July 2019, specifically at paragraphs 8, 9 and 10 where the Appellant's evidence is as follows:
  - "8. My paternal uncle is now against my mother and brother because of me and my refusal to marry my paternal uncles (sic) daughter. My uncle has connection with politicians. They belong to the PMLQ party. He has threatened that if I don't marry his daughter he will kill me, I am against this marriage and will not marry against my will.
  9. I fear my uncle and my brother. Mt (sic) brother is a supporter of the PMLQ party. He is very dangerous and has a lot of friends in the party. He has been part of this party since 2002. I believe their threats to be real and believe if I am returned he and my uncle will kill me. I fear that I will be not get protection as this party is in power. I also enclose photos of m (sic) brother which show that he is dangerous, he is holding a gun and his demeanor shows that he is a dangerous person. He has always been like this and I believe he will kill me.
  10. I also submit that I am suffering from very bad memory problems. I sometimes don't even remember what I ate the previous night or did the day before. I am also suffering from depression, due to my fear of being killed. I am scared all the time and in my mind I believe I will be killed if I am returned. I have been for counselling and was discharged last month. I on anti depressant (sic) and taking sleeping tablets given to me by the GP."

*Error of law*

11. I note that there was before the First-tier Tribunal a skeleton argument on behalf of the Appellant and in relation to internal relocation the following was submitted:

“It is submitted that if it is accepted that the Appellant is a member of particular social group, and at risk on return it is submitted that the Appellant cannot inter relocate in Pakistan. The Appellant fears his family who have links with the PMLQ party and fears he will be located no matter where he goes.”
12. Further, in the skeleton argument under the heading “Actors of Persecution” the following is stated:

“...It is submitted that the actors of persecution in this case are the non state (sic) agents his family, and also the state as his family has links with politicians who are state sponsored and operate without impunity and the state is in collusion with and cannot provide the Appellant with any effective control.”
13. The credibility findings about the Appellant’s evidence generally and specifically relating to risk on return are flawed because as accepted by the Respondent, the judge did not take into account the Appellant’s vulnerability and the medical evidence. I cannot be certain that when assessing whether the Appellant could safely relocate, the judge did so on the basis that the Appellant would be at risk on return to his home area. The decision is not sustainable. The judge did not engage with the Appellant’s evidence why he could not safely relocate. The observation in the final sentence of paragraph 54 does not establish that he engaged with the Appellant’s evidence about his family’s connections and their potential reach, rather it suggests that he considered relocation on the basis that the Appellant’s account had been rejected.

### **Notice of Decision**

14. The errors made by the judge are such that the decision is not sustainable. I set aside the decision of the First-tier Tribunal to dismiss the Appellant’s appeal. The appeal should be heard *de novo* in the First-tier Tribunal. I remit the matter to be reheard in 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 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 Joanna McWilliam  
2019

Date 10 December

Upper Tribunal Judge McWilliam