



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/07188/2018

**THE IMMIGRATION ACTS**

Heard at Field House

Decision & Reasons Promulgated

On 11 September 2019

On 19 September 2019

Before:

UPPER TRIBUNAL JUDGE GILL

Between

X Y  
(ANONYMITY ORDER MADE)  
And

Appellant

The Secretary of State for the Home Department

Respondent

**Anonymity**

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. No report of these proceedings shall directly or indirectly identify him. This direction applies to both the appellant and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings.

I make this order because this is a protection claim. The parties at liberty to apply to vary or discharge the anonymity order at any time.

**Representation:**

For the appellant: Mr A Mahmood, of Counsel (Direct Access)

For the respondent: Mr T Tarlow, Senior Presenting Officer.

**DECISION AND REASONS**

**A. Introduction**

1. The appellant is a national of Pakistan, born in 1994. He was granted permission to appeal the decision of Judge of the First-tier Tribunal V A Cox (hereafter the "judge") who dismissed his appeal against the respondent's decision of 1 June 2018 to refuse his asylum claim.
2. Following a hearing before me on 9 May 2019 (when Mr Mahmood appeared for the appellant and Mr D Clarke, Senior Presenting Officer, for the respondent), I

concluded that the judge had materially erred in law in her assessment of the future risk of persecution and set aside her assessment. My reasons are given in a "*Decision and Directions*" promulgated on 22 May 2019 (the "*Error of law decision*").

3. In the Error of law decision, I directed that the re-making of the decision on the appellant's appeal be limited to the future risk of persecution and the appellant's related Article 3 claim. At para 46, I stated that the judge's assessment of the future risk at paras 81 and 82, which had been found to be in error, could not stand. However, there were aspects of her risk assessment which either had not been challenged or had not been found to be in error and in respect of which I said, at para 47 of the Error of law decision, that it was open to me to adopt or reject her assessment depending on the submissions I hear at the resumed hearing.
4. At para 47 of the Error of law decision, I directed that the judge's findings of fact should stand. These were set out in bold at para 48 of the Error of law decision. At para 49, I stated that the judge's very detailed summary of the oral evidence she heard, at paras 18-50, stands.
5. The resumed hearing was listed before me on 11 September 2019.
6. At the resumed hearing, I heard further oral evidence from the appellant concerning, inter alia, events that had occurred in the period between the hearing that took place before the judge on 31 August 2018 and the resumed hearing.
7. When I wrote the Error of law decision, I took the view that it would be inappropriate to detail the appellant's immigration history. Accordingly, at para 2 of the Error of law decision, I cross-referred to the immigration history described at paras 22-29 of the decision letter.

## **B. The judge's decision**

### **(i) Summary of the appellant's case before the judge**

8. Before the judge, the appellant's asylum claim was based on his strong views, expressed on social media and in articles he has written which have been published on the internet, against the blasphemy laws in Pakistan, amongst other issues. The appellant said that he had developed these views during his studies in the United Kingdom in 2016. He first started writing such articles in 2016, after he commenced his university studies in the United Kingdom in 2016. Since then, he has returned to Pakistan as follows: (i) on 1 May 2016 for two days, in order to attend a family event; (ii) on 14 July 2016 for two months for his summer holiday during which time he did not socialise and spent time with his family; and (iii) on 14 July 2017 for three days in order to attend a family event in July 2017 (the "*2017 family event*").
9. The appellant received a threatening telephone call when he returned to Pakistan to attend the 2017 family event. Following his return to the United Kingdom, his brother received a threatening letter on 18 November 2017. As a result, his father and brother filed a "*First Information Report*" (FIR) which was dated 4 December 2017 but registered with the police on 5 March 2018. The threats were from an unknown person or persons although the appellant suspected the Tehreek-e-Labaik ("TLP"). On 5 March 2018, his brother received a second threatening letter. If he returned to Pakistan, he would continue to express his views about Pakistan's blasphemy laws.

(ii) Summary of the judge's findings

10. The judge had before her two experts reports, one dated 26 June 2018 from Mr Shah Khawar Law Associates and one dated 2 July 2018 from Mr Aziz A Munshi who was the Attorney-General of Pakistan for four separate terms and ex-Chairman of the Pakistan Bar Council.
11. In relation to credibility, the judge accepted the core aspects of the appellant's account but she also made some adverse credibility comments, for example at para 99 of her decision.
12. The judge accepted that the appellant comes from a well-known and well-to-do family and that his father had held various important posts in the civil service in Pakistan under varying governments. She found, inter alia, that the appellant had publicised the views he said he had publicised and that, if the appellant returned to Pakistan, he would continue to publicise his views against the blasphemy laws of Pakistan.
13. The judge accepted that the appellant had received a threatening call at the 2017 family event and that his brother had received two threatening letters. She did not accept that his views were as widely known as he had claimed and she found that he was one amongst many who had expressed such views in what she described was the "*obvious atmosphere in political debate and discussion*" (para 95). She accepted that he was a supporter of a former Prime Minister but found that many millions of people in Pakistan were as well.
14. The judge drew an adverse credibility inference from the fact that the appellant had not produced witness statements from his parents.

C. The resumed hearing

15. The bundle before me contained, inter alia, a further report dated 8 July 2019 from Mr Khawar and a report dated 10 July 2019 from Mr Munshi. It also contained witness statements from the appellant's parents, further articles and social media posts published by the appellant and social media conversations about his published articles and his views.
16. There was also a copy of a third threatening letter which the appellant said his brother had received. He (the appellant) was told about this letter on 17 December 2018.

(i) Summary of oral evidence

17. The appellant said that the third threatening letter was addressed to his brother and received by post at his father's house. His father sent the original to him in the United Kingdom. The original of the third threatening letter and the envelope in which it was received at his father's house were shown to me at the hearing.
18. The appellant said that the conversations at pages 133-139 of the bundle show that a Major in the Pakistani army was throwing venom at him by saying that he (the appellant) was trying to please his Indian friends by criticising the Pakistani military on a public platform.

19. The appellant said that he has written articles that have been published on public platforms which are critical of the blasphemy laws of Pakistan, the military in Pakistan and the current Prime Minister and which support the human rights of minority groups like the Ahmadis. For example, in the articles at pages 91-98 of the bundle, he had said that the Pakistani military establishment has a connection with terrorist groups. They harbour terrorist groups on Pakistani soil and use them as proxies against other countries, specifically India. The current Prime Minister has promised a new Pakistan which the appellant has referred to as a 'mirage' because the military is still running the country. Members of the Pakistani military live luxurious lives at the expense of Pakistani tax payers. In the article at page 93, he had said that the Pakistani military has 'promoted' terrorist groups to become political organisations and that the military is linked to the groups that punish those who are accused of breaching the blasphemy laws.
20. The appellant said that, if he returns to Pakistan, he would continue to write such articles because it is right to do so. He could not just sit back and watch what happens. It possesses his life. He thinks about it. He writes about it. He would continue to publish his works and voice his opinions. He would voice his opinions on any available platforms. The platforms available in Pakistan are Facebook, Wordpress, Youtube and Twitter. He has set up accounts on these networks which are active and which can be accessed from Pakistan.
21. The appellant said that he would take his articles to the mainstream news channels and mainstream newspapers and try to have them published although there is censorship of the press in Pakistan. He would do so even if this placed him at risk. He would counter the ignorance in Pakistan and voice his opinions at gatherings and whatever social platforms that were available.
22. Whilst studying at university in the United Kingdom, he confronted a Major in the Pakistani army who was a student at the university for one year. He has placed photographs of himself on the internet with an Indian General. Whilst this may be considered normal behaviour, it is not normal in Pakistan because of the military tension between Pakistan and India. He had agreed with the Indian General that 'the real pesticides' in Pakistani were the Generals in the Pakistani army who not only stifle freedom of speech but harbour terrorist groups on Pakistani soil, which has become a safe haven for terrorist groups. The economic wealth of an Indian General going into retirement does not depend upon whether or not there is a war between India and Pakistan whereas Pakistani Generals accumulate wealth by having a war with India. That is the reason why Pakistani Generals want war with India because they benefit economically from it.
23. I asked the appellant how he would behave if he returned to Pakistan and heard about individuals in Pakistan being falsely accused of blasphemy. He said that, if the person was in jail, he would go and see him and offer him every assistance to save him even if this risked his own safety.
24. Mr Mahmood asked the appellant why he would place himself at risk given that he has had a privileged upbringing and that he could return to Pakistan and enjoy a very good standard of living. The appellant said that *"I would have to keep my head low and ignore all these grotesque things"*. He said that he found it difficult to live away from his home and that he misses his family but it was a sacrifice he was willing to

make. He was willing to sacrifice all the comforts that life has to offer him. He feels he has to stay alive and safe in order to fight these injustices.

25. I asked the appellant why he was happy to keep his head down during his two-month holiday in Pakistan in 2016 but says that he would continue with his activities if he is returned to Pakistan now. The appellant said that he began to study human rights law and Islamic law in the 2015/2016 academic year. When he returned to Pakistan in 2016, he had not yet been appointed the President of the Pakistani Society at the university in the United Kingdom. This was the position that gave him the platform from which to voice his opinions. He said that, after being appointed President of the Pakistani Society at the university, "*it took me some time to find my voice*". 2016 was the year in which he was studying and researching about human rights. It took him time to do his research and form his opinions. His quiet behaviour during the two-month holiday in Pakistan in 2016 was normal for the person he was at that time. He laughs now when he recalls how little he knew then.
26. The appellant said that the judge was incorrect in stating that he first published an article in 2016. His first article was published in 2018, after he had returned from Pakistan in 2017. Before this article was published, he had voiced his opinion in 2016. The reason why he was quiet when he returned to Pakistan in 2016 was that it took him some time to get the confidence and courage to voice his opinions. At that time, he had voiced his opinion "*here and there but I was not 100% courageous. It was still very new to me.*"
27. The appellant confirmed that he has not been critical of Islam or the Prophet Mohammed but he believes in the rights of people to express their opinions if they wish to do so.
28. The appellant said that, if returned to Pakistan, he fears the following:
  - (i) The persons/group responsible for the threatening call he received in 2017 and the three threatening letters. This is because they have explicitly threatened him as an infidel.
  - (ii) The Pakistani military establishment and the intelligence services. This is because he has criticised them and he is pro-India when it comes to the military tensions between India and Pakistan.
  - (iii) Every person in Pakistan who is of an extremist mindset; for example, those who are against the Ahmadis or who support the blasphemy laws. They would torture or kill him because of his views about Pakistan's blasphemy laws, the rights of minorities and freedom of speech and religion.
29. The appellant said that he does not fear the government because the government is acting completely on the instructions of the military. The government itself does not exist.

(ii) Submissions

30. I have the benefit of a skeleton argument from Mr Mahmood.
31. I heard submissions in brief from Mr Mahmood and Mr Tarlow. It is unnecessary for me to set out the submissions in any great detail save to say the following:

32. It became evident that it would be necessary for me to assess the credibility of the appellant's evidence concerning his behaviour on return to Pakistan, in view not only of the fact that the judge did not accept that his evidence was entirely credible but also because it appears to be inconsistent with the fact that he kept a low profile when he returned to Pakistan in 2016 for a two-month holiday. I asked Mr Tarlow what his position would be in the event that I found that the appellant's evidence about his behaviour on return to Pakistan to be credible.
33. Mr Tarlow accepted that, if I found the appellant's evidence in this respect credible, then he is entitled to protection under the Refugee Convention. He agreed that it would then be unnecessary for me to engage with the background material in order to assess whether it shows that the appellant would be at real risk of persecution.
34. However, Mr Tarlow submitted that the appellant's evidence about what he would do on return to Pakistan was not credible because it was self-serving. When I said that I may need a little more in reasoning, Mr Tarlow said that he would leave the matter in my hands.
35. Mr Mahmood submitted that the headings under which the appellant's asylum claim falls are as follows:
- (i) Political opinion, on account of the opinions he had expressed against the Pakistani government.
  - (ii) Political opinion, on account of the opinions he had expressed against the Pakistani military.
  - (ii) Religion, in the sense that, although he is a Muslim, he has religion imputed to him because he is seeking to help Ahmadis and other minority groups and he is against the blasphemy laws. He is therefore regarded to be against Islam.
  - (iv) His minority ethnic origin.
36. I asked Mr Mahmood how (iv) could assist the appellant, given his evidence to the effect that he is from a privileged and wealthy background and that his father had worked at a high level within the civil service under various governments in Pakistan. Mr Mahmood said that (iv) was a minor point.
37. I reserved my decision.

#### **D. Assessment of the evidence and re-making the decision on the appeal**

38. It is for the appellant to establish that he has a well-founded fear of treatment amounting to persecution in Pakistan. This is a low standard of proof and is the same as "*a serious possibility*" or "*a reasonable likelihood*".
39. In the particular circumstances of this case, if the appellant succeeds in his asylum claim, his Article 3 claim would also succeed but he would not be entitled to humanitarian protection. If he fails to establish his asylum claim, he would also fail to establish his humanitarian protection claim and his Article 3 claim. For these reasons, I limited the re-making of the decision on his appeal to his asylum claim and his Article 3 claim.

40. The appellant's claim based on his ethnic origin simply cannot succeed. I am aware of his ethnic origin although I have not mentioned it in my decision in case this taken together with other circumstances mentioned in my decision helps to identify him or his family. Whatever the situation of other persons belonging to his ethnic group, the fact is that he has not given any evidence at all that shows that he has encountered any difficulties or discrimination on account of his ethnic origin and/or that it is reasonably likely that he will be persecuted on that account. To the contrary, his evidence is that he comes from a privileged and well-to-do family. His father has held important positions in the civil service in Pakistan. The family live in a well-known area with security guards. His brother, who lives in a different town, has a good job and is doing well. His entire family have done well in life. On his own evidence, if he were to return to Pakistan, he would be able to enjoy a very good standard of living if he could keep his head down and avoid the activities he is engaged in (para 24 above). My attention was not drawn to anything in the social media conversations that shows that any of the adverse responses he has received to his published views were motivated, even in part, by the fact that he belongs to a particular ethnic group.
41. In these circumstances, I have no hesitation in finding not only that there is no reasonable likelihood of the appellant being subjected to any ill-treatment in Pakistan on account of his ethnic origin but also that, if he does experience any ill-treatment for any reason, there is no reasonable likelihood of such ill-treatment being motivated in any way by his ethnic origin.
42. I turn to assess the credibility of the oral evidence I heard.
43. The appellant said at the hearing that the judge was incorrect in stating that he had first published an article in 2016 and that his first article was in fact published in 2017. However, the only ground that contended that the judge had misapprehended the evidence was ground 1 (summarised at para 18(i) of the Error of law decision) which I concluded had not been established (paras 23-28 of the Error of law decision). Furthermore, it is clear from the judge's decision, as I explained at paras 24-25 of the Error of law decision, that she was relying upon the fact that the appellant had *expressed his views* about the blasphemy laws of Pakistan from 2016 onwards which is not the same as saying that he had published his first article in 2016.
44. The judge found that, if the appellant returns, he would continue to publicise his views. That finding stands, as I said at the Error of law decision. His evidence before me went further when he said, in response to my question, that, if he returned to Pakistan and heard about individuals who have been falsely accused of blasphemy, he would offer the person every assistance and go and see the person in jail, if he/she was in jail, even if he risked his own safety.
45. This evidence may be seen to raise a credibility issue for two reasons. Firstly, it appears to be inconsistent with the fact that he plainly kept a low profile when he returned to Pakistan for a two-month summer holiday in 2016. Secondly, he portrays a deep desire to draw attention to the injustices in Pakistan which he says he would continue to do even if he risks his own safety if he were living in Pakistan but at the same time he is plainly not willing in fact to place himself at risk by returning to Pakistan. He wishes instead to continue to carry out his activities from the safety of the United Kingdom.
46. I take into account that the judge found the core aspects of the appellant's evidence credible, although she made some adverse credibility comments. She accepted that

he had written the articles she had read and that he said he had written. She accepted that, if he returned to Pakistan, he would continue to publicise his views against the blasphemy laws of Pakistan. I draw the inference that she accepted not only that he held a genuine belief that the blasphemy laws of Pakistan were wrong but also that he was motivated by a genuine desire to bring about change in Pakistan in that regard.

47. I am able to go further in my findings. The appellant's views are not limited to the blasphemy laws of Pakistan but extend to the situation of ethnic minorities in Pakistan and also the role of the Pakistani military in Pakistan's long-running dispute with India.
48. I had the benefit of seeing and hearing this young man, who impressed me, give oral evidence. He was able to explain his reasoning for his views about the military in Pakistan. It was plain to me that they were genuinely held views; he was not merely repeating what he had read about on the internet. I have read his articles which I found detailed and coherent albeit at times emotive. I have taken the precaution of not describing his articles in any detail. Although it is obvious that his name is in the public domain and that the articles have been published in his name, the fact that he has claimed asylum is not in the public domain, as far as I am aware, notwithstanding that some of the adverse comments he has received on social media accuse him of having claimed asylum. There may be security or other implications for his family if it were to become known that he has claimed asylum.
49. Having had the benefit of reading the articles and social media conversations and having had the benefit of seeing and hearing him give oral evidence, I entirely accept that, after the appellant began his university studies and started learning about human rights law and Islam, he began an intellectual journey and that, when he returned to Pakistan for his two-month summer holiday in 2016, he did not have the same courage and confidence that he now has. Indeed, it is reasonably likely that he did not have the same level of conviction either. I accept his explanation for adopting a low profile during that visit. I do not therefore draw any adverse credibility inference from the fact that the evidence he gives of his intentions if he were to return to Pakistan now is not consistent with his behaviour during his two-month summer holiday in 2016.
50. Importantly, I also accept that the appellant is entirely sincere in his belief that he needs to fight from a place of safety against what he perceives to be injustices in Pakistan. Having listened to him, I have no hesitation in finding that such is his nature that, if he were to be in Pakistan, he would be unable to stop himself from being actively involved in fighting those perceived injustices even if he thereby places himself at risk. Having listened to him and read his articles, I accept that his work in this regard consumes him; in his words, "*it possesses him*". I accept that he genuinely sees it as a sacrifice that he is unable to return to Pakistan to be with his family without placing himself at risk.
51. I do not accept that the three threatening letters and the threatening calls during the 2017 family event demonstrate that the appellant is at real risk of persecution. Like the judge, I find that the appellant's evidence that the threats were from the TLP is speculative. I have no hesitation in accepting the remainder of the appellant's evidence and I make my findings of fact accordingly.



52. I find that, if the appellant is returned, the risk to him arises: (i) from non-state actors in relation to his behaviour in Pakistan when he is confronted with or comes to know about what he perceives to be injustices in Pakistan against those he perceives to have been falsely accused of blasphemy or against ethnic minorities; (ii) from state actors in relation to the views he has expressed and will continue to express against the Pakistani military. As a consequence of (ii), he would be unable to look to the Pakistani authorities for sufficient protection in relation to (i).
53. Mr Tarlow accepted that, in the event that I were to accept the appellant's evidence that, if he were to return to Pakistan, he would continue to express his views and behave in the way that he said he would behave, he would be entitled to protection under the Refugee Convention. He agreed that it would then be unnecessary for me to engage with the background material. Mr Tarlow did take any issue with the fact that the appellant's family have not experienced any problems. In view of the fact that this was something the judge relied upon in assessing whether there was a reasonable likelihood of persecution in the future, it is appropriate that I should deal with this issue notwithstanding that Mr Tarlow did not take the point.
54. The appellant's father has had a long history of public service. He is able to provide for the security of his family by having security guards. He and the rest of his family in Pakistan have not brought themselves to the adverse attention of the authorities or any factions of society. In all of these circumstances and having given such weight as I consider appropriate to the four expert reports, the fact that the appellant's family have not experienced any problems is neutral in assessing the risk of persecution if the appellant were to return to Pakistan, in my view. Having said that, his father's position in society is very unlikely to shield him when non-state actors and state actors are confronted by an articulate, well-read and strong-minded person in their midst pronouncing his adverse in no uncertain terms.
55. In all of the circumstances and for the reasons given above, I find that, if the appellant were to return to Pakistan, there is a reasonable likelihood that he would be subjected to treatment that amounts to persecution or treatment that amounts to inhuman or degrading treatment. I stress that this decision is very case-specific. Not only was there a wealth of evidence that demonstrated the appellant's publicly expressed views, he was able to explain his thinking. This is not someone who has merely researched these topics for the sole purpose of bolstering his asylum claim.
56. The applicable Refugee Convention reason is political opinion, by reason of the political opinions he has expressed against the Pakistani military. I agree with Mr Mahmood that religion is also applicable. He will have religion imputed to him because he is seeking to help those accused of breaching the blasphemy laws in Pakistan.
57. I therefore re-make the decision on the appellant's appeal by allowing it on asylum grounds and on human rights grounds (Article 3). As his asylum claim has succeeded, he is not entitled to humanitarian protection.
58. I am grateful to Mr Tarlow who made my task easier than the task the judge had by conceding that the background material established a real risk if I accepted the appellant's evidence of his behaviour on return to Pakistan.

**Decision**

The decision of Judge of the First-tier Tribunal V A Cox involved the making of errors of law sufficient to require it to be set aside. Accordingly, the decision was set aside. I re-make the decision on the appellant's appeal against the Secretary of State's decision by allowing it on asylum grounds and on human rights grounds (Article 3). I dismiss the appeal on humanitarian protection grounds.



Upper Tribunal Judge Gill

Date: 18 September 2019