



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/10978/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 28 February 2019

Decision & Reasons Promulgated  
On 22 March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

M H A  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms Short, Counsel instructed by Elder Rahimi Solicitors

For the Respondent: Ms Pal, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan born on 12 February 1988 whose application for asylum was refused by the respondent on 16 August 2018. The appellant appealed to the First-tier Tribunal where his appeal was heard by Judge of the First-tier Tribunal Meah. In a decision promulgated on 25 October 2018 the judge dismissed the appeal. The appellant is now appealing against that decision.
2. The appellant claims to be from a strict fundamentalist Muslim family. He claims that after entering the UK in 2012 (as a foreign student) he became disillusioned with

Islam and developed an interest in atheism and communism, after being introduced to these ideas by his landlord. He claims that his family were informed by his friend (who showed them a photograph of him in prostration to a statue of Karl Marx) that he has turned away from Islam. He says that he is at risk from his family, the police and Jamaat-e-Islami in Pakistan.

3. The appellant claims that his maternal grandfather's and sister's home was raided in Pakistan when the authorities searched for him in 2013 after his apostasy was revealed.

### **Decision of the First-tier Tribunal**

4. The judge did not accept the appellant's claim to have embraced atheism and communism and to be at risk on return as a consequence.
5. The judge gave several reasons for not finding the appellant's claim credible. These include:
  - (a) The judge did not accept that in 2013 the authorities searched for the appellant as there was no arrest warrant or other corroborating evidence to support that it occurred. The judge stated at paragraph 16 that:-

"Whilst I am fully aware that I do not require such corroborative evidence, I have severe doubts about the overall credibility of this appellant hence I cannot afford him the benefit of doubt in this regard."
  - (b) The judge found the appellant's claim that he remains in regular contact with his sister despite her having threatened to kill him as lacking plausibility. The judge noted that the appellant claimed to speak frequently to his sister about general welfare and wellbeing. The judge stated that this indicates that he has a relationship with his sister that is inconsistent with the claim that she has threatened to kill him.
  - (c) The judge found damaging to the appellant's credibility that there was no witness statement from his sister confirming his claim about the 2013 raid on her home, given that they appear to have a 'perfectly normal sibling relationship'.
  - (d) The judge found damaging to the appellant's credibility his claim that his sister tries to persuade him to return to Islam when, if she genuinely believed he was an apostate from Islam, she would have shunned him.
  - (e) The judge found that the appellant had been inconsistent about the photographs of him in prostration to a statue of Karl Marx. The judge stated that the appellant had originally claimed that his friend had taken the pictures but later stated that his friend downloaded them from his Facebook profile.
  - (f) The judge also found damaging to the appellant's credibility that no evidence was adduced to support his claim to have a Facebook profile with pictures and posts that show his atheism. The judge considered it unlikely that the appellant would have posted pictures on Facebook which would have been highly

offensive to his family members, given the likelihood that they would have seen it.

- (g) The judge considered the provocative picture of him in prostration before a statue of Karl Marx to be "a very strong indication that he has made all of this up and that it is nothing more than a fabrication to secure regularised status in the UK". The judge also found that the photographs of the appellant in prostration before a statue of Karl Marx do not show his face and therefore could be of any person.
- (h) The judge also found damaging to the appellant's credibility that he entered the UK as a student but did not in fact engage in any studies and instead worked; and that he sought to project the image that he was a student when this was not in fact the case.
- (i) The judge found the appellant's claim to have attended two communist meetings whilst in the UK to be contradicted by the evidence of his friend, Dr Tariq, who stated that he had attended four or five meetings.
- (j) The judge described the evidence of the appellant's friend, Dr Tariq, as problematic. The judge stated that Dr Tariq claimed to be a medical doctor when in fact he is a secretary at a GP practice.

6. At the hearing the appellant sought to rely on tweets from his Twitter accounts which were said to be critical of Islam and offensive to the authorities in Pakistan. The judge directed that the appellant should provide evidence of the tweets within 24 hours of the hearing if he wished to rely upon them. In respect of the tweets the judge stated at paragraph 33:-

"There is no evidence of the appellant's tweets (evidence of which was not provided within 24 hours of the hearing despite my stating that I would allow for this to be submitted in this time immediately after the hearing) have been seen or exposed to anyone in Pakistan, hence I do not find that this creates a risk for the appellant. Furthermore, the overall evidence presented to me is highly suggestive that the appellant is in fact still a Muslim who is feigning transition to atheism/communism hence I do not find that the tweets in themselves, if they do exist, will create any risk for him upon return."

### **Grounds of Appeal and Submissions**

7. The grounds of appeal argue that the judge failed to provide sufficient or sustainable reasons for the adverse credibility findings. It is argued that the judge erred by:
- (a) Failing to give reasons for rejecting the appellant's claim that the family home in Pakistan was raided in 2013.
  - (b) Placing undue weight on the absence of corroboration of the 2013 raid on the family home.
  - (c) Failing to recognise that it is plausible that the appellant has a complicated relationship with his sister where they would maintain regular contact despite her threatening to kill him on account of his apostasy.

- (d) Failing to recognise that the absence of a statement from the appellant's sister can be explained by the ambivalence of their relationship.
8. The grounds also argue that the judge erred by holding against the appellant that there was no evidence of the photographs of him in prostration before the grave of Karl Marx being posted on Facebook when that issue was not raised by either the judge or the respondent.
  9. The grounds also contend that the judge failed to recognise that the appellant is easily identifiable from the photographs of him in prostration before the statue of Karl Marx.
  10. It is also contended in the grounds that the judge erred by failing to consider the evidence of the appellant engaging in personal study in the UK and being a member of the Marx Memorial Library & Workers' School.
  11. The grounds also submit that the claimed discrepancy between the appellant and his witness, Dr Tariq, as to attendance at Socialist Worker & Community Party meetings was a result of them having a different interpretation of what constitutes a meeting. The grounds also contend that the discrepancy is only slight and is not sufficient to justify dismissal of the claim.
  12. A further submission made in the grounds is that the judge erred by failing to have regard to the tweets by the appellant concerning atheism and Islam which, according to the grounds, would be considered blasphemous by the regime in Pakistan. The grounds contend that the 'tweets' were sent by courier to Taylor House on 17 October 2018, arriving within the 24 hour time limit imposed by the judge and that they constitute compelling corroborative evidence.
  13. At the start of the error of law hearing Ms Short provided me with a copy of a fax to Field House dated the day of the hearing (28 February 2019). The fax enclosed an e-mail from a receptionist dated 17 October 2018 to a solicitor at Elder Rahimi Solicitors, saying that a bundle for the appellant has been ordered to be sent by courier, as well as eleven pages of what appear to be tweets either written by or forwarded to others by the appellant. I asked Ms Short to highlight the tweets which would, in her view, result in the appellant being at risk in Pakistan. She identified a tweet which is offensive, inflammatory and would no doubt be considered blasphemous. This tweet was sent shortly after the First-tier Tribunal hearing. However, there are no tweets from before the date of the First-tier Tribunal in which criticism of Mohammad was made or in which inflammatory language was used. Ms Short identified a tweet on 27 May 2018 stating that "Lighthouses are more useful than churches, mosques and temples" and a tweet on 20 May stating that "Science will admit when its wrong, while religion will kill to prove its right". There is also a tweet showing a picture of a t-shirt with a list of religions and atheism on the front where a box next to "Atheist" has been ticked.

14. In her submissions, Ms Short argued that the judge repeatedly erred in the assessment of the appellant's credibility and failed to take into account tweets are plainly blasphemous.
15. She also argued that the only reason the judge did not accept the appellant's evidence as to the raid on his family home in 2013 was a lack of corroboration, which was not a sufficient reason.
16. She also maintained that the appellant's relationship with his sister is not implausible as siblings can love each other despite significant differences and a strained relationship. She also argued that the judge's analysis of the relationship between the appellant and his sister contained pure speculation that was never put to the appellant and it is simply not the case that their relationship is intrinsically implausible.
17. A further point made by Ms Short was that the appellant's sister sent an e-mail on 8 October 2018 in support of the appellant that was not considered by the judge. I could not locate this email in the bundle that was before the First-tier Tribunal (which is dated 11 October 2018) or in the Tribunal's file; and Ms Short did not have a copy, other than an electronic version on her phone. As this email was not before the First-tier Tribunal, an application would need to be made for it to be admitted. No such application was, or has been, made. In any event, as the email was not before the First-tier Tribunal, I do not see how any error can arise from the failure to consider it.
18. Ms Short argued that the judge was incorrect to state that the appellant's face could not be seen in the photograph of him prostrating before Karl Mark's grave. She argued that the respondent had accepted that it was the appellant in that photo and submitted that he was easily identifiable.
19. As to the absence of evidence concerning the appellant's presence on Facebook, Ms Short contended that this had not been put to the appellant at the hearing. She also argued that there was no meaningful discrepancy between the witnesses as to attendances at Socialist Worker and Communist Party meetings, given that the appellant's witness took a wider view of what a meeting involved.
20. Ms Pal's response was that the judge's credibility findings were supported by sufficient reasoning and the judge was entitled, for the reasons he gave, to reject the appellant's account as not credible.
21. With respect to the tweets, Ms Pal did not accept that there was evidence that these had been submitted to the Tribunal within 24 hours as required by the judge as there was no record from a courier company. As to their substance, Ms Pal thought that they were self-serving and argued that any risk could be obviated by deleting them. She also noted that the only tweet that mocked Islam was sent after the hearing.
22. Ms Short maintained that the appellant's tweets were relevant for three reasons. Firstly, they affect the appellant's risk profile, as even those that may appear benign

would put him at risk because they show his interest in and adherence to atheism. Secondly, they indicate his atheism is genuine because he has been tweeting about atheism for five months. Thirdly, the tweets would become available to the authorities or vigilantes.

### Analysis

23. The appellant's claim can be summarised as:
  - (a) He would be at risk in Pakistan because he is a genuine atheist and apostate from Islam who should not be expected to hide his beliefs; and
  - (b) Even if his atheism is not genuine, he will be at risk in Pakistan because the authorities may see tweets by him, and images of him, which are blasphemous.
24. The judge gave numerous reasons for rejecting the appellant's claim to have become an atheist. He found parts of the appellant's account inconsistent (such as the discrepancy between saying his friend downloaded photographs of him from Facebook and saying that his friend took the photographs). He found other parts of the appellant's account as lacking in plausibility (for example, the appellant's claim that he had essentially normal relations with his sister despite her threat to kill him). And he found the appellant to be vague and ambivalent in response to cross-examination. The judge also found the evidence of Mr Tariq - a man who, according to the appellant's account, played a critical part in his transition to atheism - to be problematic and unimpressive. Taken together, the judge's reasons are sufficient to explain why he reached the conclusion that the appellant is not a genuine apostate or atheist. The appellant's "reasons" challenge to the decision cannot stand.
25. I accept that the appellant has tweeted a blasphemous tweet about Islam (although this was done after the hearing) and that his identity is discernible in a photograph of him prostrating before a statue of Karl Marx. However, the judge was entitled to find that the appellant would not be at risk because of this. There was no evidence before the First-tier Tribunal to show that there was a reasonable degree of likelihood that the appellant's tweets have been seen (or would in the future be seen) by the authorities in Pakistan. Nor was there evidence to show (to the lower standard of proof) that a Facebook account with photographs offensive to Islam had been (or would in the future be) seen by the authorities in Pakistan.
26. In any event, there is nothing preventing the appellant from deleting the tweets and removing the offensive photographs. Although, no doubt, the technology exists for the authorities in Pakistan to see what the appellant has posted in the past on social media even if it is later deleted, there was no evidence before the First-tier Tribunal to indicate that the authorities would, upon the appellant returning to Pakistan, search his social media accounts, let alone that they would investigate whether he had previously posted offensive material that had since been removed. A genuine atheist cannot be expected to hide (or be discrete about) his atheism, or expected to remove blasphemous tweets and photographs that reflect his beliefs in order to reduce the risk he would face in the country of return. However, in this case the

appellant was found to not be a genuine atheist or apostate and his tweets and photographs were found to not reflect his genuine beliefs. It is therefore reasonable (and not contrary to the Refugee Convention) for the appellant to be expected to remove these tweets and photographs in order to avoid potential risk in Pakistan.

27. I am satisfied, for the reasons set out above, that the judge was entitled to find that (a) the appellant is not a genuine atheist or apostate; and (b) he will not face a risk of persecution because he has posted tweets and images that are offensive to Islam. The appeal is therefore dismissed.

### **Notice of Decision**

The appeal is dismissed and the decision of the First-tier Tribunal stands.

### **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



Deputy Upper Tribunal Judge Sheridan

Dated: 20 March 2019