



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

**Appeal Number: PA/51484/2020
UI-2022-002276; IA/01070/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On the 9 September 2022**

**Decision & Reasons Promulgated
On the 17 October 2022**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**R A M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Loughran, instructed by Legal Rights Partnership
For the Respondent: Ms A Nolan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born in 1983. He appeals against the decision of First-tier Tribunal Judge Juss ('the judge') dated 10 February 2022 dismissing his appeal against deportation on asylum, humanitarian protection and human rights grounds.
2. Permission to appeal was granted by First-Tribunal Judge Beach on 10 May 2022 on the grounds that the judge failed to take into account material evidence, or alternatively failed to give adequate reasons for rejecting it, when assessing credibility and very compelling circumstances.

Appellant's immigration history

3. The appellant first came to the UK in 1990 with his mother and siblings. They returned to Pakistan and re-entered the UK in September 1991. The appellant and his family were granted indefinite leave to remain in 1998.
4. Between 2000 and 2007, the appellant received 15 convictions for 36 offences. His application for naturalisation was refused in 2003 because of his criminal convictions and in October 2007 he was served with a decision to make a deportation order. The appellant's appeal against deportation was dismissed and the deportation order was signed on 27 July 2008. It was served on the appellant on 27 May 2010 and in June 2010, he applied for revocation of the deportation order.
5. In March 2012, the appellant was convicted of conspiracy and dishonesty offences and sentenced to 12 months' imprisonment. In November 2012, the appellant's appeal against revocation of the deportation order was allowed and in April 2013 the deportation order was revoked. The appellant was issued with a warning letter.
6. In January 2018, the appellant was convicted of fraud and motoring offences and sentenced to six years' imprisonment. Between November 2009 and 3 January 2019, the appellant has been convicted on 18 separate occasions for a total of 48 separate offences including fraud, threats, a drug offence and a firearms offence. There is no dispute the appellant is a foreign criminal and the automatic deportation provisions of the UK Borders Act 2007 apply.
7. On 23 January 2019, the appellant made a protection claim. He was served with a decision to make a deportation order on 29 January 2019 and he subsequently made a human rights claim on 11 February 2019. His protection and human rights claims were refused on 8 September 2020 and the respondent certified the presumptions under section 72 of Nationality, Immigration and Asylum Act 2002 ('NIAA 2002') applied.
8. It is the appellant's case that he is at risk in Pakistan because of a long-standing land dispute with his cousin who is a member of the PLM party. The appellant's father has been the victim of violence and shooting on return to Pakistan, most recently in 2008, 2016 and 2020. The appellant is at risk from another family member and a former government minister with links to organised crime. The appellant was shot at in Lahore in 2017.
9. The appellant's father died in December 2020. The appellant's mother and his five siblings are British citizens. He has three children born in 2009, 2010 and 2013 with his ex-wife, twins born in 2014 with his ex-partner and a son born in 2016 with another ex-partner. He met his current wife 18 years ago and they started a relationship when he was in prison.

The judge's findings

10. At [24] the judge, stated he had given careful consideration to all the documentary evidence and oral evidence. He then went on to give six reasons why he found appellant's evidence was not coherent and plausible. In summary the judge made the following findings:
- (1) The section 72 certificate was upheld because the appellant had committed serious crimes and failed to rebut the presumption. The appellant had shown a blatant disregard for the laws and regulations in the UK [25].
 - (2) The judge did not accept there had been a long standing danger to the appellant in Pakistan because the appellant had returned there and stayed for a lengthy period when he learned of the police investigation in the UK [26].
 - (3) The appellant's fear of ill-treatment did not engage the Refugee convention and the appellant could internally relocate to avoid threats from non-state agents. The judge rejected the expert report of Dr Bennett-Jones because he did not find the appellant's account to be true. The appellant and his family had been returning back to Pakistan. They were not at risk in Pakistan [27].
 - (4) The further evidence did not assist the appellant. He could seek protection from the authorities in Pakistan as he had in the UK [28].
 - (5) The exceptions to deportation do not apply and there were no exceptional circumstances. The appellant's deportation would not be unduly harsh on his children (who would remain with their mothers) or his current wife [29]. Reference was made to the expert report of Dr Heke and the judge found the appellant's medical condition did not reach the high threshold of Article 3 [30]. The appellant's wife was not a credible witness and his mother could be cared for by his sister and other siblings [31].
 - (6) The judge considered sections 117A-D of the NIAA 2002 and relevant case law at [32] to [39] and stated at [40] "I have already found that there are insufficient reasons to outweigh the public interest in deportation. At [42], the judge found there were no very compelling circumstances.

Appellant's submissions

11. Ms Loughran relied on the grounds of appeal dated 24 February 2022 and submitted the judge had failed to take into account material evidence, namely that listed in [5] of the grounds and [34] of the appellant's skeleton argument which was before the judge:
- (a) FIR from the shooting incident in November 2008;
 - (b) FIR from shooting incident in April 2006;

- (c) FIR relating to shooting in November 2020;
 - (d) Judgment dated 23 October 2019 regarding the land dispute;
 - (e) CCTV footage of the shooting in November 2020; and
 - (f) Witness statement from the appellant's mother.
12. The grounds of appeal also submit the judge failed to take into account evidence in the appellant's supplementary bundle:
- (g) Statement from the caretaker of the family property in Pakistan;
 - (h) Photographs of the caretaker's injuries; and
 - (i) Stills taken from the CCTV of the shooting in November 2020.
13. Ms Loughran submitted there was no reference in the decision to this evidence and the judge made no findings in respect of it. The judge either failed to consider it or failed to give reasons for rejecting it and therefore erred in law.
14. The judge also erred in failing to take into account the unchallenged evidence in the witness statement of the appellant's mother or to make findings on her evidence. She gave detailed evidence of the violence suffered by the appellant's father as a result of the land dispute.
15. Ms Loughran submitted the judge failed to consider what happened when the appellant and his father returned to Pakistan. If the judge found the appellant was not at risk because he had returned to Pakistan, it was imperative he considered the shooting incidents. In addition, the judge had misunderstood other aspects of the appellant's claim. The judge made no clear findings on the country expert report or the incidents in the UK. The judge failed to consider the evidence on in relation to internal relocation.
16. Ms Loughran submitted the judge failed to consider the evidence of Dr Heke in assessing credibility, internal relocation and Article 8. She accepted the appellant did not reach the Article 3 threshold on medical grounds. However, the judge was obliged to consider risk of ill-treatment notwithstanding the section 72 certificate. There was no consideration of the evidence of the appellant's mother or Dr Heke in assessing very compelling circumstances.

Respondent's submissions

17. Ms Nolan submitted the judge considered the evidence of the appellant's mother at [27] and considered the risk on return. The judge took into account the expert country report and concluded that the appellant could internally relocate. The failure to refer to the FIR's and court documents was not material. The judge based his findings on the oral and written evidence in concluding there was no long standing danger to the appellant. The judge considered all the evidence before him and made

adequate findings. His finding that there were no very compelling circumstances was open to him on the evidence.

Conclusions and reasons

18. I am persuaded by Ms Loughran's submissions. There is no reference to the FIR's or the court documents in the judge's decision. These documents were capable of corroborating the appellant's account and it was incumbent on the judge to make specific findings on the weight he attached to these documents. He failed to do so. His statement at [24] was insufficient to show he had considered this evidence. These documents support the appellant's claim that his father experienced violence and was shot at when he returned to Pakistan as a result of a land dispute.
19. The appellant's mother gave evidence supporting the appellant's account of his father being shot. The judge failed to make findings on this evidence in her witness statement and failed to make a finding on her credibility. The judge's finding that the appellant was not at risk in Pakistan because he and his family returned many times is undermined by the documentary evidence and the evidence of the appellant's mother.
20. The judge considered the report of Dr Heke in relation to whether the appellant was a vulnerable witness and whether his medical condition reached the Article 3 threshold. However, it is clear from reading the judge's six reasons that he failed to consider Dr Heke's evidence in assessing credibility or 'very compelling circumstances'.
21. I find the judge erred in law in failing to consider material evidence and/or in failing to make relevant findings. These errors were material because the judge found that the appellant's account was not credible. The judge erred in law in rejecting the expert country evidence because the appellant lacked credibility.
22. The judge erred in law in failing to take into account material evidence in finding the appellant would not be at risk on return to Pakistan which was relevant to the assessment of 'very compelling circumstances'. He compounded this error in finding that the appellant's circumstances could not outweigh the public interest at [40] and then concluding there were no very compelling circumstances at [42]. The judge materially erred in law in his assessment of 'very compelling circumstances'..
23. I find there is a material error of law in the decision of 10 February 2022 and I set it aside. I remit the matter to the First-tier Tribunal for hearing *de novo*. None of the judge's findings are preserved. The appeal is to be listed before a First-tier Tribunal Judge other than Judge Juss.
24. I note that there was no challenge to the judge's finding upholding the section 72 certificate and Ms Loughran accepted the appellant's medical condition did not reach the Article 3 threshold. The First-tier Tribunal may be

assisted by the parties coming to some agreement on the issues to be determined either in writing or at a Case Management Review Hearing.

Notice of Decision

Appeal allowed

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 15 September 2022