



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

Appeal Number: PA/05453/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
on 29 April 2019**

**Decision & Reasons Promulgated  
on 14 May 2019**

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**WS  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms P Solanki, Counsel, instructed by Morden Solicitors LLP  
For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of Judge of the First-tier Tribunal Skehen (the judge), promulgated on 27 June 2018, dismissing the appellant's appeal against the respondent's decision dated 18 April 2018 refusing his protection and human rights claim.

## Background

2. The appellant, a national of Pakistan, was born in 1993. He entered the UK on 19 June 2012 pursuant to a grant of entry clearance as a Tier 4 (General) Student. He was granted further leave in the same capacity, but this was eventually curtailed. He made an in-time application on 18 December 2015 for leave to remain based on an Article 8 spousal relationship, but this was refused on 16 February 2016. The applicant's leave then expired. He made an asylum claim on 19 October 2017 based on his actual or perceived political opinion as a member of Muttahida Qaumi Movement (MQM).
3. I summarise the basis of the appellant's asylum claim. He joined the MQM at the age of 16 in September 2009. He was a general member of the party and undertook administrative work in the local office in Hyderabad. He was responsible for informing local members of upcoming events and would go to houses in his area requesting attendance at meetings and conventions. He encountered no difficulties in Pakistan as a result of his political association.
4. Following his entry to the UK the appellant joined the MQM London faction (also known as the MQM (Altaf group), which is split from MQM-Pakistan. According to his statement dated 9 May 2018 the appellant highlighted MQM events on his Facebook page and, since 2014, attended MQM events. His personal Facebook is in the name "Vick Shapman." The appellant claimed it was commonly known to his colleagues "and even opponents" that the account belonged to him. There was however no independent evidence to support this assertion. The appellant attended MQM events in the UK either held in the Secretariat or in halls hired by the party. He additionally claimed to have attended four demonstrations between August 2017 and January 2018, 3 outside Downing Street and one outside the Pakistani High Commission. He claimed to have distributed leaflets during these demonstrations and would decide who was to hold banners and where people would stand.
5. The appellant started to receive information from colleagues in Pakistan and also from those in MQM-London that the Pakistan authorities were targeting supporters and activists of MQM and monitoring the activities of people abroad, especially London. As a result, the appellant claimed asylum. On 12 January 2018 four people who claimed to be agents of Pakistan intelligence came to his family home in Hyderabad, showed the appellant's father photographs of the appellant participating in demonstrations which they claimed were obtained from social media, and threatened that unless the appellant stopped his activities and returned to Pakistan there would be problems for the family. After the appellant's father said that his family had no contact with the appellant the offices forced him into a car, took him to an unknown location and punched and kicked him.

The appellant's father attempted to report this incident the following day at the police station but was told that the police could not register any report against officials of an intelligence agency and threatened the appellant's father that he would be arrested if he ever attempted to make such a report again. The appellant stated, "since then my family abstains from attending my phone calls and the only person who I can sometimes talk to is my sister." In his substantive asylum interview (question 187) the appellant described how his father phoned him two days after he was beaten to inform the appellant not to return to Pakistan and to ask the appellant to make no further contact with the family because he was told this would cause a "big problem" for him.

6. The respondent accepted that the appellant was a general member of the MQM party as his answers in his asylum interview were "highly consistent" with the background evidence available to the Home Office. The respondent accepted that the appellant participated in four open-air demonstrations, but it was not accepted that such attendance would bring the appellant to the adverse attention of the Pakistani authorities. The respondent considered that the appellant provided "a detailed and plausible account of [his] membership of the MQM party", and it was accepted that he was a member of the MQM party and had some involvement with MQM activities in the UK. The respondent noted however that the appellant's Facebook account was not in his name and that he had only submitted evidence of 14 political links covering a five-year period. Given the general nature of his membership of the MQM party and his attendance at only four small-scale protests in the UK the respondent was not satisfied that the appellant would come to the attention of the Pakistan authorities if he was returned. The application for asylum was refused.
7. The appellant appealed the respondent's decision to the First-tier Tribunal pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act).

### **The decision of the First-tier Tribunal**

8. The judge heard oral evidence from the appellant and considered several documents including, inter alia, a statement from the appellant signed and dated 9 May 2018, an expert report from Dr Antonio Giustozzi dated 20 May 2018, a letter from the convener of the MQM in London dated 26 March 2018, several Internet screenshots and photographs showing the appellant's attendance at one or more demonstration and one or more meetings.
9. The judge set out the appellant's immigration history and summarised his claim and the evidence given orally by the appellant at the hearing. The judge summarised an MQM letter dated 22 May 2018 which stated that the appellant was an active member in social media promoting the welfare of MQM and highlighting abuses faced by MQM

workers in Pakistan. The letter said the appellant was very active in organising MQM events and demonstrations and “this is the place where state-sponsored agencies identify who is actively assisting in various activities which place a certain risk to their life”. The judge summarised the expert report prepared by Dr Giustozzi, including the expert’s view that the fact that the appellant spent a long time in the UK would be interpreted as a sign of his closeness to the MQM leadership and was likely to compound his predicament, and that even ordinary members of the party were caught in repression.

10. The judge summarised the submissions from both representatives and then, under the heading ‘Findings and Decision’, considered the appellant’s credibility. The judge noted that the appellant only applied for asylum in October 2017, 5 years after his arrival in the UK. The judge found it difficult to identify any real change in circumstances relating to the appellant’s political activities that may have triggered his asylum application. Although the appellant claimed to have received information from colleagues that intelligence agencies in Pakistan were targeting supporters and activists of the MQM and monitoring activity of people abroad, the appellant provided no details of the information he received and failed to identify those who passed information to him. Having regard to the US State Department report covering the period 2016 the judge found there was little material difference in the situation in Pakistan. The judge consequently made an adverse credibility finding based on the appellant’s delay in claiming asylum. This finding has not been challenged in the appeal grounds.
11. The judge then noted the absence of any evidence to substantiate the links between the appellant’s social media account in the name Vick Shapman and his actual identity. The judge then noted the absence of any corroborating evidence in respect of the incident involving the appellant’s father. The judge stated,

“I was not provided with any witness statement from the appellant’s father. Nor was I provided with copies of medical records, medical report or evidence of any injuries from the appellant’s father. It is noted that this attack is said to have happened at a time when the appellant’s asylum application was already under-way and it would be obvious to the appellant that evidence of this attack is relevant to the immigration appeal. The appellant describes his family as ‘well off’ and there is no obvious reason for this evidence to be absent.”
12. The judge additionally noted that since the alleged incident involving his father the appellant had participated in further protests and had not returned to Pakistan, as requested by the men who abducted his father. The appellant’s father and family had not however experienced any further contact from the Pakistan authorities. The judge found that the failure to produce any supporting evidence surrounding this alleged attack damaged his credibility. The judge

found that the attack was not likely to have occurred even to the lower standard of proof.

13. The judge observed that she had not been provided with any country background information specifically relating to MQM-London members other than that set out by Dr Giustozzi. The judge accepted the express reference to kidnappings and extrajudicial killings of MQM members in Pakistan. The judge then noted (at [15]) the appellant's evidence that he would continue to be a supporter of MQM Pakistan should he return to Pakistan. In the same paragraph the judge stated,

"The appellant's claim seems to be based on the likely perception of the Pakistani authorities of the appellant being more highly integrated with MQM London and that particular ideology than he actually is. This point is made by Dr Giustozzi in that he comments that the fact that the appellant has spent a long time in the UK would be interpreted as a sign of his closeness to the MQM leadership. The appellant's representative confirmed that there was no further background country evidence available on risk posed to MQM London members or MQM members who have spent time in London."

14. Then at [16] the judge stated,

"I have carefully considered the available evidence in relation to the likely risk the appellant would face on return to Pakistan. The inadequacies of the Pakistani police force and state protections highlighted in the background information set out above are accepted. However, the appellant must show on the lower standard of proof that he has a well-founded fear of being persecuted by reason of MQM support or perceived MQM support on the part of the Pakistani authorities. I do not accept that membership of MQM alone provides a well-founded fear of being persecuted for reasons of political opinion. There is no country guidance that supports this conclusion. I consider that this case must be considered on its individual facts and the factors that would increase the risk faced by the appellant would include being a recognisable or high-profile senior member of MQM in London or potentially speaking in support of the more controversial views expressed by MQM London since 2016. I accept that the appellant is a current member of MQM and is likely to continue to be a supporter of MQM should he return to Pakistan. I accept that the appellant should not be expected to lie or conceal his political opinion in order to exclude persecution. The appellant does not claim to be a senior member of MQM. I have seen no evidence to suggest that the appellant has a significant online presence that can be is [sic] readily linked to him. His online persona is one step removed from the appellant being in the name of Vick Shapman. There is no reason to expect the appellant to become more involved or increase his profile in the event he returned to Pakistan. It is the appellant's evidence that he was an active member of MQM from 2009, going house to house in support of their causes and MQM London from 2012 until 2017 without any fear of persecution."

15. And at [17] the judge stated,

“In my opinion, it is difficult to see any substantial change in the appellant circumstances between [sic] he left Pakistan in 2012, without any fear due to his potential beliefs and the current time. I have not been provided with any background evidence that would support the claim that the appellant’s time in the UK would increase the intelligence agencies interest in the appellant. In reviewing the evidence as a whole I am unable to identify any objective well-founded fear on the part of the appellant. In reviewing the evidence as a whole I conclude that the appellant has not shown a reasonable degree of likelihood that he faces persecution from the Pakistani state and return to Pakistan due to his support or his perceived support for MQM London and-or MQM Pakistan. For the reasons set out above I conclude that the appellant’s application for asylum fails and is dismissed.”

16. The judge dismissed the appeal.

### **The challenge to the First-tier Tribunal’s decision**

17. The grounds of challenge are twofold. The first ground contends that the Ftj failed to resolve a material issue raised by Dr Giustozzi’s evidence relating to whether the appellant would be perceived as being close to the MQM if returned to Pakistan. Whilst the judge set out the salient parts of Dr Giustozzi’s report, it is argued that she focused solely on the issue whether the applicant was in fact a senior member of the MQM rather than someone who may be so perceived. The judge’s reference at [17] to not being provided with any background evidence supporting a claim that the appellant’s time in the UK would increase the intelligence service’s interest in him was said to be at odds with her summary of Dr Giustozzi’s evidence.
18. The second ground contends that the judge failed to consider the appellant’s explanation for the absence of evidence relating to the attack on his father, contained in paragraph 27 of his statement, where he said that his family do not reply to his phone calls and that the only person he has occasional contact with is his sister.
19. In her oral submissions Ms Solanki relied on the grounds, drawing my attention to the relevant parts of Dr Giustozzi’s report and the letter from the MQM at page 40 of the applicant’s bundle, and press releases issued by the MQM relating to the targeting of members in Pakistan. She submitted that the activities of the MQM in London were likely to be monitored by the security services in Pakistan as it was an illegal organisation. In respect of the second ground she relied on the appellant’s statement and his answer in his interview relating to contact with his family. it was not clear that the appellant’s father needed to visit a doctor as a result of his injuries, and he may be in fear of contacting the appellant.

20. Ms Jones invited me to find that the judge was entitled to his conclusions, that he gave adequate reasons and that he took account of all relevant circumstances.
21. I reserved by decision.

## **Discussion**

22. It is appropriate to deal with the second ground first. It is apparent from [13] that the judge was concerned that a serious event that was said to have occurred after the appellant claimed asylum was unsupported by any evidence. There is no requirement for corroborative evidence in this jurisdiction, but a judge is entitled to take into account the absence of evidence that one would reasonably expect to be available. Whilst I accept that the appellant did not mention whether his father sought medical treatment after the attack, his account was that his father was beaten, punched and kicked by intelligence agents. Given that the father contacted the appellant two days after this event, at a time when the appellant has already claimed asylum, it is surprising that no request or offer was made to provide any medical evidence. There was no reason why such evidence could not have been sent by post without the authorities being alerted. Whilst I also accept that the judge did not refer to the appellant's statement at paragraph 27 (where the appellant stated that his father abstains from receiving the appellant's phone calls) or his answer in his interview where he stated that his father told him not to contact him as this would cause "big trouble" for his father, these explanations could not reasonably explain the lack of any contact. It was not the appellant's evidence that he and his father had any falling out, and it is very difficult to discern any basis for the father not wishing to have contact with his son. There was no suggestion in the appellant's evidence that the authorities would tap his family's phones, and there would be nothing preventing the appellant's father from contacting his son by using other people's mobile phones or by writing letters or by using an Internet based service. In these circumstances the judge was unarguably entitled to draw an adverse inference based on the absence of any evidence, even a statement or letter from the appellant's father, supporting the alleged attack. I find no error of law in relation to this finding.
23. I now consider the first ground. The issue before the First-tier Tribunal was whether there was a real risk that the appellant would be perceived as having an association with MQM-London sufficient to put him at risk of harm. The judge was well aware of this (see [15] and [17]). It was not in dispute that the appellant was not a prominent member of the MQM-London (see Dr Giustozzi's report at [8] of page 36 of the appellant's bundle). The various screenshots from a Facebook account and from the MQM.org website contained in the appellant's bundle show the appellant's presence at demonstrations

and meetings in the UK, but he is not named and the screenshots do not indicate that the appellant has any prominent role. There is no evidence that the various photographs contained in the appellant's bundle showing him handing out leaflets to members of the public and his attendance at meetings had been published online. The appellant's Facebook account was not in his name and there was simply no independent evidence identifying him with the name 'Vick Shapman' (determination, at [12]). Given that the judge was entitled to reject the appellant's claim that his father was targeted by the intelligence services, there was very little other evidence capable of arousing the suspicions of the Pakistani authorities that the appellant might be more highly integrated into the MQM-London.

24. Whilst I accept that the judge's reference in [17] (to not being provided with any background evidence that would support a claim that the appellant's time in London would increase the intelligence agencies interest in him) does not sit comfortably with her reference to Dr Giustozzi's report, it is apparent from [15] that the judge did consider this aspect of Dr Giustozzi's report but that she also noted (at [15]) that there was no 'further' background country evidence available on the risk posed to MQM-London members who had spent time in London. It is highly likely therefore that the judge was referring the absence of this 'further' evidence in [17].
25. Having referred at various paragraphs of her decision ([15], [16], [17]) to the question whether the appellant would be 'perceived' as an MQM supporter, and having noted that the appellant failed to provide any details of the information he allegedly received about the targeting of MQM members in London or the identities of those who passed him this information [11], and having rejected his account of the attack on his family and noting the absence of any evidence to substantiate his identity with the social media accounts of Vick Shapman [12], the judge was entitled to find that the mere length of the appellant's residence in the UK would not put him at risk of coming to the adverse attention of the Pakistani authorities. I consequently find there was no error of law by the judge requiring her decision to be set aside.

### **Notice of Decision**

**The decision of the First-tier Tribunal did not involve with the making of an error on a point of law.**

**The appeal is 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 in this appeal 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.



10 May 2019

Signed  
Upper Tribunal Judge Blum

Date