



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

Appeal Numbers: PA/07336/2018  
& PA/04663/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27 November 2019**

**Decision & Reasons Promulgated  
On 29 November 2019**

Before:

UPPER TRIBUNAL JUDGE GILL

Between

The Secretary of State for the Home Department

**Appellant**

And

Mr X Y

**(ANONYMITY ORDER MADE)**

**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 original appellant. No report of these proceedings shall directly or indirectly identify him. I make this order because this is a protection claim. 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.

The parties at liberty to apply to discharge this order, with reasons.

**Representation:**

For the Appellant: Mr L Tarlow, Senior Presenting Officer.

For the Respondent: Mr B Haseldine, of Counsel, instructed by Howe & Co Solicitors

**DECISION AND REASONS**

1. Pursuant to a decision dated 16 October 2019, served on the parties on 23 October 2019, Designated Judge of the First-tier Tribunal McClure granted the Secretary of State permission to appeal to the Upper Tribunal in these two appeals. By a 'decision' dated 17 October 2019, sent to the parties on 12 November 2019, Judge of the First-tier Tribunal Saffer purported to grant the Secretary of State permission to appeal to the Upper Tribunal in these two appeals. Both Judge McClure and Judge Saffer granted permission on the respondent's (sole) ground which was that Judge of the First-tier Tribunal K. R. Moore had erred in allowing the appeals on asylum grounds by failing to identify a Geneva Convention reason. The Secretary of State did not challenge the decision of Judge Moore to allow the appeals on human rights grounds (Article 3 of the ECHR), nor did the Secretary of State challenge Judge Moore's finding that Mr X Y (hereafter the "claimant") was a credible witness or his decision to accept the claimant's account as the factual basis of his determination (para 35 of Judge Moore's decision).
2. Given that Judge McClure had already granted the Secretary of State's application for permission to appeal, the 'decision' of Judge Saffer had no legal effect as the First-tier Tribunal was "*functus officio*" by the grant of permission by Judge McClure.
3. The appeal reference PA/07336/2018 was the claimant's appeal against the Secretary of State's decision of 21 May 2018 to refuse his asylum claim of 9 September 2014. The appeal reference PA/04683/2019 was the claimant's appeal against the Secretary of State's decision of 1 May 2019 to refuse his asylum claim of 3 April 2019. Both decisions stated that there was no applicable Geneva Convention reason in the claimant's claim (para 28 of the decision letter dated 21 May 2018 and para 1 of the decision letter dated 1 May 2019). Judge Moore determined the two appeals in one decision, allowing the appeals on asylum grounds and on human rights grounds (Article 3).
4. Accordingly, the sole issue before me is whether Judge Moore materially erred in law by failing to identify a Geneva Convention reason.
5. I considered whether to provide a summary of the basis of the claimant's asylum claim. In view of the fact that there is an outstanding case in Pakistan (referred to, for example, at paras 18 and 28 of the decision of Judge Moore), the unusual nature of the case and the fact that my decision will be published on the Upper Tribunal's website, I decided that any summary of the case risks revealing the identity of the claimant notwithstanding the fact that I have given him the acronym "X Y" which I chose at random. I have therefore decided not to summarise his case at all. This is set out in sufficient detail in the decision of Judge Moore which is not published on the Tribunal's website.

### Submissions

6. As Judge Moore's credibility assessment had not been challenged by the Secretary of State, I indicated to the parties at the commencement of the hearing my provisional view that it would be permissible for me to consider the claimant's accounts of the basis of his asylum claim and decide whether they establish an applicable Geneva Convention reason. Mr Tarlow did not object to my adopting this approach, nor do I see how he could have done so in the absence of any challenge to the positive credibility assessment by Judge Moore.

7. I therefore asked Mr Haseldine to take me to relevant parts of the claimant's accounts in support of his submissions as the applicable Geneva Convention reason(s).
8. Having been given an opportunity to consider the evidence in the various bundles that had been submitted to the First-tier Tribunal, Mr Haseldine submitted that the applicable Geneva Convention reasons were as follows:
  - (i) The claimant is a member of a particular social group, the social group in question being his family. He is at real risk from the Taliban on account of his relationship with his father, his brother and his mother.
  - (ii) The claimant is at real risk of persecution on account of his religion. At para 4 of his witness statement dated 23 August 2019, he had said that his family belong to a particular sect of the Sunni Muslims, that his father was the head of his tribe and that the Taliban, who are mainly Sunni Dubandi, had stated that it was not a crime and a good thing to kill members of the claimant's tribe.
  - (iii) The claimant was at real risk of persecution on account of his actual or perceived political opinion. Question 5.5 of his screening interview (page B15 of the Secretary of State's bundle) and the claimant's answer to question 5.5 read:

Qn: Have you ever said or written anything which: Praises or justifies terrorism; or tries to make others commit terrorist/serious criminal acts; or encourages hatred between communities?

Ans: speaking in public places against the Taliban

Mr Haseldine invited me to draw the inference, from the claimant's answer to question 5.5 and his entire course of conduct in relation to the ongoing case in Pakistan including the reason why the case remained pending in Pakistan as well as the observation of Judge Moore in the second sentence of para 33 of his decision, that he has established that he has an ongoing opposition to the Taliban and that he is at real risk of persecution on account of his actual or perceived political opinion.
9. Mr Tarlow did not advance any submissions in response, stating that he was "*in my hands*".

### Assessment

10. I am satisfied that Judge Moore did err in law by failing to identify a Geneva Convention reason. He was obliged to do so, especially given that this issue was specifically raised in the two decision letters. I am satisfied that this error was material because he was not entitled to allow the appeals on asylum grounds in the absence of a clearly identified Geneva Convention reason.
11. I therefore set aside the decisions of Judge Moore to allow both appeals on asylum grounds. His decisions to allow the appeals on human rights (Article 3) stand.
12. I proceed to re-make the decisions on asylum grounds. I accept Mr Haseldine's submission that the claimant is at real risk of persecution on account of his actual or perceived political opinion, for the reasons he gave, summarised at my para 8.(iii) which I adopt as my own. I make my decision that there is an applicable Geneva

Convention reason principally on this ground. However, in addition, I am satisfied that the Geneva Convention reasons described at paras 8(i) and 8(ii) also apply.

13. I re-make the decisions on the appeals by allowing the appeals on asylum grounds.
14. Following the purported grant of permission by Judge Saffer, the Upper Tribunal listed appeal number PA/04663/2019 for hearing on 11 December 2019. Mr Haseldine agreed that I should make one decision dealing with both appeals. Mr Tarlow did not object. I have dealt with both appeals.
15. Accordingly, it is now necessary to vacate the hearing of appeal number PA/04663/2019 on 11 December 2019. Mr Haseldine agreed. Mr Tarlow did not object.

### **Decision**

The decisions of the First-tier Tribunal on the two appeals involved the making of an error of law sufficient to require the decisions on both appeals to be set aside.

I re-make the decisions in the appeals by allowing the appeals on asylum grounds. The decisions of Judge Moore to allow the appeals on human rights grounds (Article 3) stand.



Signed  
Upper Tribunal Judge Gill

Date: 27 November 2019