



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: PA/01141/2020 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC
On 5 July 2021

Decision & Reasons Promulgated
On 20 July 2021

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

SR

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Ms L Butler of Fountains Solicitors

For the Respondent: Mr A McVeety, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. At the conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a Pakistani national with date of birth given as 6.10.85, has appealed with permission to the Upper Tribunal against the decision of the First-

tier Tribunal promulgated 16.12.20, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 27.1.20, to refuse his claim for international protection, made on the basis of being at risk on return as a former police officer who killed two Taliban members.

2. Permission to appeal was refused by the First-tier Tribunal on 25.1.21. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Gill granted permission on 19.2.21, strictly limited to those matters set out at [3-5] and [7-9] of ground A.
3. The Rule 24 Reply, dated 2.3.21, points out that having rejected the credibility of the appellant's claim to have received threatening letters from the Taliban or that he would face a real risk of suffering serious harm on return, the judge rejected the asylum claim and in consequence found that sufficiency of protection and relocation issues did not arise. The respondent submits that the judge considered the appellant's vulnerabilities at [11] and the contents of the medico-legal report at [42] and [45]. It is submitted that given that as the humanitarian protection claim turned on the same factors as those under the Convention, the judge was entitled to conclude at [67] that the appellant was not entitled to humanitarian protection.
4. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal.
5. I find the grant of permission somewhat difficult to follow. The grounds referred to in the reasons for the grant related to and articles 15(b) and 15(c) of the Qualification Directive, which was ground B. Judge Gill considered it arguable that in light of what is set out at [32(vii)] and [33] of the decision the judge may have erred in law by failing to consider humanitarian protection. However, ground A was the article 3 medical condition issue. One of the difficulties is that Judge Gill felt hampered by the absence of the appellant's skeleton argument, referred to in the grounds of application for permission to appeal.
6. Permission was expressly refused on the remaining ground, relating to arguments based on articles 3 and 8 ECHR and the appellant's medical condition and the subjective fear of being persecuted being re-traumatising, the concern expressed by the author of the medico-legal report, summarised by the judge at [29(a)] of the decision. This was ground A.
7. It should first be noted at [33] of the decision that the appellant did not rely on asylum or article 8 ECHR grounds. I also note that the appellant's skeleton argument, drafted by Ms Patel on 11.11.20, clearly set out the schedule of issues as being:
 - a. Is the appellant at risk on return from the Taliban

- b. Is there a sufficiency of protection for him in Pakistan
 - c. Can the appellant internally relocate to Lahore.
8. Whilst the judge accepted that the appellant had been involved in the incident in at the airport which he shot dead two Taliban members in 2012, all three issues identified in the skeleton argument were resolved against the appellant for the cogent reasons set out in the impugned decision. In essence, as set out at [60] of the decision, the judge rejected the appellant's claim that he was ever threatened by the Taliban. Neither did the judge accept that he would face any real risk of suffering serious harm on return to Pakistan. As the judge noted at [42], the appellant made clear in his evidence that it was because of the alleged receipt of threatening letters from the Taliban that he was living in fear of his life in Pakistan to the extent that he and his family moved to different locations in order to avoid detection. Given the findings rejecting that part of the claim there was, therefore, no factual basis for any subjective fear of being persecuted on return.
9. The grounds argue that the appellant's vulnerability must be taken into account in assessing his risk on return, assessed in terms of his personal characteristics. It is argued that the judge did not give due consideration to the "confluence of country conditions and the particular vulnerabilities of the appellant." It is not clear what 'country conditions' are relied on. The judge granting permission pointed out that the CPIN referred to in the grounds post-dates the promulgation of the impugned decision. The CPIN referred to in the skeleton argument related to sufficiency of protection.
10. The judge made a careful summary of Ms Patel's closing submissions, set out at length at [32] of the decision. There was no reliance either in those submissions or the skeleton argument on vulnerability as being relevant to the risk on return, outside of the article 3 claim based on medical grounds.
11. Having asked Ms Butler to explain the grounds, she asserted that the judge failed to recognise the appellant's specific vulnerabilities and submitted that following *Elgafaji* there and *Sufi* there should be a 'sliding scale' in assessing a particular claimant's risk of harm on return taking into account his personal characteristics. However, I am satisfied that was never an argument or issue put before the First-tier Tribunal.
12. It is clear that the judge did take account of the appellant's vulnerability. At [11] of the decision the judge noted from the medico-legal report that the appellant suffered from mental health difficulties as well as cognitive difficulties arising from a traumatic brain injury when he was shot in the head. In consequence, the judge agreed to treat the appellant as a vulnerable witness. At [29(a)] the judge summarised the contents of the medico-legal report. This included that he had symptoms "suggestive" of PTSD and the concern expressed by the expert that were the appellant to be returned to Pakistan, "his subjective fear of being

persecuted would be 're-traumatising' and could exacerbate his depression and trauma related symptoms." However, as stated above, given the rejection of the claim to have been targeted by the Taliban and the finding that the appellant only sought to remain in the UK to be able to access medical treatment, there was no factual basis for the subjective fear of being persecuted. In considering the appellant's medical conditions, at [66] the judge considered that there was a functioning social security system in Pakistan "that would help support the appellant with his medical conditions moving forward, in addition to any support he might receive from his immediately and extended family."

13. As Mr McVeety submitted, given the rejection of the claim to have been threatened by the Taliban and the refusal of permission on the vulnerability point under article 3, it is not clear on what remaining basis the judge could be said to have failed to properly assess the humanitarian protection issue. The issues raised by the appellant's representative were all addressed and adequate reasons provided for the findings made. In the light of those findings, it is not clear what particular circumstances could be said to put the appellant at risk of inhuman or degrading treatment. The judge found that the appellant would have access to treatment and the support of his immediate and extended family in Pakistan. Nothing in the submissions at the First-tier Tribunal, or the skeleton argument, or Ms Butler's submissions to me identify how the appellant's medical conditions or his vulnerability, or other personal circumstances could sustain a finding that his return would or could infringe article 15(b) or put him at such risk of harm as to entitle him to humanitarian protection. In the premises, no error of law is identified.
14. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal so that it must be set aside.

Decision

The appeal of the appellant to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 5 July 2021

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

“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 his family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings.”

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 5 July 2021