



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

Appeal Number: PA/00222/2018

THE IMMIGRATION ACTS

Heard at Birmingham CJC

On 1 May 2019

**Decision & Reasons
Promulgated
On 15 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**MR S S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jaferji, counsel instructed by Pambrook Solicitors
For the Respondent: Ms H. Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Pakistan born on 8 March 1981. He arrived in the UK unlawfully on 26 January 2016 and claimed asylum on 18 February 2016. The basis of his claim is that he is from the Bajaur Region

of the Federal Administered Tribal Area, known as FATA, in Pakistan. He stated that on finishing his education he began working at a chemist's in Khar in 2001 and subsequently completed a diploma in medical technology from 2008 to 2009. Following this he began working with a GP as part of his paramedic staff. His duties included dispensing medication to patients, prepare the operation trolley, ensure pain killers and anaesthetics were available. He stated that the area where he comes from is not developed, there is only one government hospital and pharmacies are unregulated.

2. The Appellant stated that on a date after 10 July 2015 he was kidnapped by the Taliban, taken to an unknown location and required to treat over 60 injured Taliban members. After three days he was released but was told by the Taliban that they would come for him if he was ever needed again. The Appellant on his return told his family what had taken place and went to stay in Peshawar for four weeks during which period the Taliban came twice looking for him. Upon his return to his home in Bajaur the Appellant reported what had happened to the political agent in the army but said he was unable to explain where he had been taken because he had been blindfolded. He was told to report daily to the army.
3. Ten to eleven days later the Appellant stated the Taliban came looking for him again. He was this time taken away by three members. He was with his brother and instructed his brother to tell his work that he would not be attending. He was on this occasion asked to treat one injured man. He was then escorted home. He was on the back of a motorbike but there were two Taliban members in a car driving with them. During the journey they encountered some soldiers. The Taliban members in the car opened fire killing two soldiers. The army returned fire killing those two Taliban members. The Appellant and the Taliban member on the motorbike escaped. On his return the political agent and the army were at his house and the army told him that their soldiers had been killed because of him. The Appellant went to Peshawar where stayed with his brother in hiding for two and a half months, during which time he was told the Taliban came looking for him as well as the army and consequently his brother arranged for an agent to take him out of Pakistan to safety.
4. The Appellant stated he feared return to Pakistan both by the army who think he is responsible for the deaths of two of their soldiers and from the Taliban.
5. The Appellant's application for asylum was refused in a decision dated 15th December 2017. The Appellant appealed against this decision and his appeal came before Judge of the First-tier Tribunal Aziz for hearing on 8 May 2018.
6. In a decision and reasons promulgated on 22 May 2018, the judge dismissed the appeal. Whilst he accepted some aspects of the Appellant's case, he did not accept other aspects concluding that the Appellant's account was not plausible. In particular at [85] the judge held as follows

“Documents. In arriving at the above findings I have taken into account all the documentary evidence relied upon by the Appellant (mainly contained at pages 38 to 51 of the Appellant’s bundle). In particular the arrest warrant (contained at pages 43 to 44 of the Appellant’s bundle) even if the Appellant had submitted an original copy of the arrest warrant to the Home Office looking at all the evidence in the round and applying the principles in Tanveer Ahmed IAT [2002] UKIAT 00439 I place little weight upon this evidence.”

7. Permission to appeal was sought in time on a number of grounds but most particularly the third ground of appeal asserted that the judge had erred in law in that firstly the Appellant had adduced evidence comprising the original arrest warrant and also evidence from an advocate in Pakistan confirming that the arrest warrant had been verified by him as being genuine: page 42 of the Appellant’s bundle refers.
8. It was submitted that the judge had erred in failing to consider the letter from the advocate in Pakistan and thus had erred in failing to provide proper reasons for placing little weight on the documents and consequently had erred in failing to apply the Tanveer Ahmed principles.
9. Permission to appeal was granted by Upper Tribunal Judge Blum in the decision dated 1 August 2018 in which he held at [3] as follows:

“at [85] the judge placed no weight on the arrest warrant finding it unreliable (by applying the principle established in Tanveer Ahmed [2002] Imm AR 318). The judge did so having considered the evidence “in the round”. In light of the judge’s other credibility findings including the delay in issuing the arrest warrant he was rationally entitled to attach little weight to the arrest warrant. I am however troubled by the failure of the judge to engage with the letter from Arif Ullah Khan at page 2 of the Appellant’s bundle. Although the letter was not supported by any independent evidence confirming the author’s qualifications and profession it was nevertheless incumbent on the judge to explain why he did not find this letter reliable. Albeit with some hesitation I am satisfied that the absence of any engagement with this evidence establishes an arguable material legal error.’

Hearing

10. At the hearing before the Upper Tribunal, Mr Jaferji on behalf of the Appellant sought to rely on the terms of the grant of permission. He submitted that it was a short but important point. The Appellant had given an account of events in Pakistan which was consistent. There was no concern about inconsistencies in the account or with the background evidence. Moreover the judge made findings in the Appellant’s favour in relation to his educational and work history at [66]. The judge followed the Respondent in rejecting the Appellant’s claim on the basis of implausibility.

11. However Mr Jaferji submitted it was very clear from the decision and reasons as a whole that there was no consideration of the evidence relied upon by the Appellant in establishing that the arrest warrant was a genuine document. The letter from the lawyer, Mr Arif Ullah Khan, dated 22 January 2018 at page 42 of the Appellant's bundle states that Mr Khan attended the office of political Tehsildar in Khaar Bajaur Agency on 16 January 2017 and inspected the record stating *"I can confirm that the warrant issued on 21 October 2015 bearing number 21/10Z0QPT(K) is genuine."*
12. Mr Jaferji pointed out there was no evidence from the Respondent countering this evidence or challenging the validity of the warrant. Whilst he accepted that the judge could have rejected this evidence, in order to do so properly he had to have first considered it. He submitted that this was a clear error in that the judge had failed to take into consideration this key element of the evidence and the judge was required to look at all the evidence in the round. This clearly impacted on his assessment of credibility.
13. I sought clarification from Mr Jaferji as to how the lawyer's letter came to be in the United Kingdom whereupon having sought instructions from the Appellant he produced two envelopes which appear to emanate from Pakistan and are envelopes from courier services.
14. In her submissions, Ms Aboni submitted that the First-tier Tribunal Judge directed himself appropriately, reached conclusions that were open to him on the evidence. Whilst the judge had made some positive findings regarding the Appellant's employment he had given adequate reasons for finding the Appellant's account to be implausible. She submitted he had considered all the evidence in the round and has given adequate reasons for finding that the arrest warrant could not be relied upon. She submitted that the grounds of appeal were nothing more than a disagreement with the judge's findings of fact which were open to him on the evidence.
15. In reply Mr Jaferji submitted that this was not a case where the Appellant was simply disagreeing with the judge's findings of fact but rather the judge had erred in failing to take into account the key aspect of the evidence.

Decision and Reasons

16. I find that First-tier Tribunal Judge Aziz made a material error of law and that is his failure when considering the genuineness of the arrest warrant to either refer to or make any findings in respect of a letter from a Pakistani advocate, Mr Arif Ullah Khan, in which he states that he inspected the requisite record and confirmed that the warrant is genuine. I find this error does go to the heart of the credibility of the Appellant's case, as a result of which the hearing would need to be remitted for a further hearing *de novo* before the First-tier Tribunal. I make the following directions:

- 16.1. the judge's findings in respect of the Appellant's educational and work history at [66] are preserved;
- 16.2. the Appellant's representatives are to submit further evidence as to how the lawyer's letter came to be in the United Kingdom along with a witness statement from the Appellant explaining this. The First tier Tribunal would further be assisted by evidence of the qualifications of the Pakistani advocate.
- 16.3. The hearing is to be listed for two hours in the First-tier Tribunal Birmingham not before Judge Aziz;
- 16.4. A Pashto interpreter will be required.

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 Rebecca Chapman

Date 13 May 2019

Deputy Upper Tribunal Judge Chapman