



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

Appeal Number: PA/11441/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28 September 2020**

**Decision & Reasons Promulgated  
On 26 November 2020**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**M Z Q  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr K Mukherjee, Counsel instructed by Caveat Solicitors  
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order because the appellant is an asylum seeker and so is entitled to anonymity.
2. This is an appeal by a citizen of Pakistan against the decision of the First-tier Tribunal dismissing his appeal against the decision of the Secretary of State refusing him international protection and/or leave to remain on human rights grounds.

3. Permission to appeal was granted by the First-tier Tribunal. The grant of permission described the decision as “otherwise careful and concise” but found it arguable that the First-tier Tribunal had erred because it had:

“Failed to consider the expert report on scarring; Dr Arjiwala was wrongly found not to be an expert particularly in the context of the respondent’s acceptance of his expertise; perversely found that the appellant would not be persecuted upon return contrary to established country guidance authority.”
4. It is necessary to consider in some detail what the First-tier Tribunal decided.
5. The judge noted that the appellant arrived in the United Kingdom in May 2011 with a Tier 4 Student visa that was valid until the end of November in 2013. He claimed asylum on 27 February 2019 and the decision complained of was made on 9 November 2019. The judge summarised the evidence setting out the basis of the appellant’s case. I do not find it necessary to set it out in detail. The following is intended as an overview to indicate the gist of the case.
6. The appellant said that he started to work at the Pakistan Air Force Academy at Risalpur Cantt in about 2007. He worshipped at a nearby mosque and began to know the imam and another worshipper there, one Ameer Shaib, who encouraged him to undertake voluntary work helping those in need. The time came when the imam asked him to arrange for friends of Shaib to gain access to the air base. The appellant could not do that and said as much and the imam became angry because he thought he had been shamed in front of his guests.
7. The appellant said that about two or three months after that in December 2009 he was kidnapped by the Taliban. He was tied up and blindfolded and tortured and beaten and recognised that one of the attackers was the same Ameer Shaib. He asked him for help but was told he was being punished for wasting their time.
8. The appellant was asked to provide details of an inside map of the air base and times of operation and he was warned that if the information was inaccurate “his family will be finished”.
9. He said he was stabbed in his right arm and lost consciousness due to severe bleeding.
10. He awoke in hospital to find his brother waiting for him. He said his family had been told by people in the hospital. He was kept in hospital for seven or eight days before being discharged.
11. Initially the appellant did not tell his family what had gone on because Ameer Shaib had told him that he should not. Whilst he was convalescing he was visited by the imam who took advantage of the time they spent alone together to tell him not to tell his family what had happened.
12. After about two months he was fit to return to work. He was approached by the imam who told him that Ameer Shaib would be arriving and the appellant should take visitors on a tour of the air base. Two visitors arrived the next day and the appellant did get permission for them to enter the base. They were given passes as his visitors. He showed them what they wanted to see and signed them out.

13. In March 2010 he was again required to assist Ameer Shaib. He was asked to provide passes for a parade to take place on 23 March 2010. He was told that if he did not co-operate the authorities would be told that he was involved in the organisation and the intelligence agency would deal with him. The next day he was approached at work by an intelligence officer at the air base and asked about the visitors' passes he had obtained previously.
14. He was worried and could not hide his worry from his family and his brother insisted that they spoke. He told his story and the brother told another family member. The appellant felt his position was impossible. If he did not co-operate with Ameer Shaib he feared he would be killed and his family hurt. He also feared the authorities would kill him for being associated with an illegal group and he saw the attraction of his brother's suggestion that he left the area.
15. He took himself to somewhere some seven or eight hours drive away and got a job in the name of "Ali". He spent a year there keeping a low profile. He was then told by his brother and brother-in-law that the imam was looking for him. The family home had been visited and his brother thought the home was being watched. The family decided he should leave the country and arrangements were made to help him.
16. He was told he would be or could be on an Exit Control List. He travelled from Peshawar Airport having paid a substantial bribe.
17. He then travelled from Doha into Heathrow and made his way to east London where he claimed to have had no connections.
18. He said he had had limited contact with his family but understood intelligence services had gone to his house and tortured members of his family; the house was searched and documents taken and his older brother continued to have problems with harassment by the intelligence services. His wife said that she believed that the telephone was being tapped.
19. When his asylum claim failed he contacted a relative in Lahore who contacted his wife who caused documents to be passed on supporting his case.
20. He said that he had serious mental health issues following his treatment at the hands of the Taliban and suffered from flashbacks and depression. He could not obtain supporting medical documents from Pakistan. He feared for his life in the event of his return. He made it plain that he feared the authorities who he thought would be interested in him but he also feared the Taliban because he had not assisted them.
21. The account was supported by affidavit evidence from Pakistan including an affidavit from the appellant's mother. I find it significant that his mother referred to his poor health after he claimed to have been tortured and although I cannot find any details of the torture to which he claims to have been subjected the affidavit says that the appellant "could not even walk properly". Plainly this is consistent with his claim that his foot was injured.
22. There is also a police report dated 2 October 2019 which relates to the kidnapping of the appellant's brother allegedly as some kind of reprisal for the appellant's disappearance.

23. Importantly there is some medical evidence including evidence showing that the appellant has taken some assistance from Berkshire Healthcare relating to his mental health and also a report dated 28 February 2019 about the assessment at the Colnbrook Immigration Removal Centre by a Dr Arjiwala. This has become important and I consider it below.
24. The medical report can be found at page 161 in the appellant's bundle. It is dated 28 February 2019 and identifies as indicative of torture scars to the right and left foot, right thumb, left knee and right upper eyebrow and also an injury described as "right foot nails - pulled out". This is not an entirely satisfactory document. I can only assume that the nails were missing at the time of the examination but there was nothing to indicate if the nails appeared to have been removed traumatically and if there was any chance of regrowth or what state they were in. This may be because it is not important to the medical practitioner but it would have helped the Tribunal although I appreciate it was not written with the intention of being relied on in litigation.
25. Dr Q Arjiwala stated that the appellant claimed to have been tortured by the Taliban and continued:

"His narrative appears consistent with his injuries in my opinion as a GP. He has no acute physical disability in the detention centre that I am aware of which impacts him being in the centre. However, he does have significant mental distress from this episode and he will be referred to the Mental Health Team as per protocol to be assessed by them."
26. The First-tier Tribunal Judge was unimpressed too. She referred in her decision to the "lack of medical evidence". At paragraph 18 the judge said:

"I have an indication from the GP that scarring is consistent with the appellant's account of torture and evidence to conclude that the appellant has availed of talking therapy. This is a case where I would expect to see expert evidence, both in relation to any scarring and psychiatric diagnosis at impact, to assist me to assess the credibility of the appellant's evidence in relation to his experience of torture in Pakistan. It is difficult to assess this evidence in the absence of such expert evidence."
27. The judge went on to conclude that she was not persuaded that the appellant had shown a reasonable degree of likelihood that had suffered the ill treatment and torture he claimed to have suffered from the Taliban.
28. The judge made other findings before reaching this conclusion. She accepted that the appellant had worked at the air base as claimed and decided that an "internal recommendation letter" was just that, rather than a testimonial given at the end of employment (see paragraph 16 of the Decision and Reasons). The judge noted it was the appellant's case that in February 2011, that is *after* there had been an attack by the Taliban at the air base, the appellant was able to obtain a passport without apparent difficulty having provided photographs and fingerprints, notwithstanding that the appellant claimed that a security officer had had a word with him. She also noted with obvious disbelief his explanation for being able to leave Pakistan openly on his own passport by choosing a quieter airport and paying a bribe.
29. I do record that the appellant supported his case with a statement dated 11 April 2019 and at paragraph 8 he gave details of how he was tortured. That

included hot water being poured onto his leg so he felt his skin burn and being beaten with a small bamboo stick and his nails being removed as well as other matters leading to cuts and the cuts being treated by stitching.

30. At paragraph 18 of the Decision and Reasons the judge referred to the medical evidence as:

“an indication from the GP that scarring is consistent with the appellant’s account of torture and evidence to conclude that the appellant had availed of talking therapy.”
31. However the judge went on to conclude again at paragraph 18 that:

“Taking the evidence as a whole I do not consider that the appellant has shown a reasonable degree of likelihood that he was subject to the treatment of torture that he has claimed by the Taliban.”
32. The judge made it clear that she did accept that the appellant is scarred and has mental health problems.
33. At paragraph 18 again the judge said how she would expect to see expert evidence and this is a phrase that has been criticised.
34. As will be well understood by people familiar with assessing the reliability of an account of torture, chapter 5 of the United Nations document known as the Istanbul Protocol under heading D sets out the five possible categories of consistency. The degree of consistency between an injury and the attribution can be:
  - (a) not consistent,
  - (b) consistent with but also with other causes,
  - (c) highly consistent which means there are few other possible causes,
  - (d) typical which means could have been caused in another way but it is of the kind usually found, and
  - (e) diagnostic which means it could not have been caused in any other way.
35. The presentation of signs on the body does not always indicate how an injury was caused so the absence of evidence from a medical practitioner confirming the alleged cause is not evidence that the injury was not cause as alleged. However the judge did not suggest otherwise. At paragraph 18 of the Decision and Reasons she described the medical evidence as “limited”.
36. I do not accept the criticism that she demeaned the expertise of the general medical practitioner. There is no insult in describing him as a “GP” as indicated above that is how he described himself and that is what he is. General medical practitioners have considerable expertise in a wide range of medicine but they do not, usually, have the additional qualifications of someone with real expertise in particular areas. The nature of their work is to be a good generalist. There is absolutely no reason to doubt the doctor’s competence to say that the signs on the body were consistent with the explanation given but it is a matter of record that the degree of consistency was not amplified or explained in any way. The judge was entitled to say, as she did, that she would have expected expert evidence about the injuries. It is quite plain that she did

not overlook or discount the evidence that the scars, and the poor mental health, were consistent with the appellant's account.

37. It is the injuries to the foot that bother me most. Signs of burning and scarring on the feet can result from a variety of cause some of which are entirely benign but if, as appears to be the case, the doctor is not entirely specific, all of the nails have gone from the right foot, I find it difficult to think of an innocent explanation.
38. The First-tier Tribunal Judge was perfectly aware of these things but balanced them against the late claim and the appellant's ability to get a passport and leave the country at a time when on the appellant's own account he was of interest to the security forces.
39. The judge was obliged by Section 8 of the 2004 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 to regard this as discreditable behaviour and it was not explained in any way that she found at all satisfactory.
40. Mr Melvin submitted that the judge was entitled to treat the medical evidence in the way that she did and although I listened very respectfully to Mr Mukherjee's helpful submissions, I find that Mr Melvin on this occasion is right. Medical evidence was not demeaned or under-valued unlawfully. It was actually seen for what it is which is supportive evidence from a general medical practitioner but not supportive in a way that is particularly compelling or persuasive. The judge weighed that against other aspects of the case that she found unacceptable and although she had resolved some contentious matters in the appellant's favour, she decided he had not been tortured as claimed.
41. The rest of the decision follows from that finding.
42. I do not see any merit in ground 2. I think I would have been concerned if the judge had offered as an alternative explanation that the appellant would be safe anyway because of the time that had lapsed. It is the appellant's case that the authorities are interested in him and it is trite law that a good reason needs to be given for thinking that a person who has been tortured once by the Taliban, or anyone else, will be safe in the future but I do not have to go along that route. The judge's finding is that he has not been injured as claimed.
43. I have come to the conclusion that the First-tier Tribunal did not err in law. It reached a conclusion that was open to it on the evidence that it had got and when it is read carefully the explanation is sound in law.
44. I understand that the appellant has an appointment with the organisation "Freedom from Torture". I do not make this a matter of any kind of direction or ruling but the Secretary of State might not want to take steps to remove the appellant until that report had been considered very carefully. The appellant says it will be available before the end of November.
45. Nevertheless for the reasons given I am not persuaded there is an error of law in this case and I dismiss the appellant's appeal.

Jonathan Perkins

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

Dated 23 November 2020