



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-000569**  
**First-tier Tribunal No:**  
**PA/53714/2021**  
**IA/10365/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 06 April 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**MUHAMMAD ASIF**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Moksud , Solicitor with IIAS Solicitors.

For the Respondent: Mr McVeety, a Senior Home Office Presenting Officer.

**Heard at Manchester Civil Justice Centre on 10 February 2023**

**DECISION AND REASONS**

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Mather ('the Judge') who, in a decision promulgated following a hearing at Manchester Piccadilly on 4 January 2022, dismissed the appellant's appeal against the refusal of his application for international protection and/or leave to remain in the United Kingdom on any other basis.
2. The appellant is a citizen of Pakistan born on 9 December 1992 who entered the United Kingdom lawfully on 7 April 2011 with a Tier 4 Student Visa, valid to 17 August 2012. The appellant overstayed and was served with Form IS.96 on 7 August 2017. The appellant claimed asylum the following day although the application was withdrawn by the Home Office following non-compliance with an asylum interview request; following which the appellant submitted a Further Submissions Application on 27 November 2019 which was refused on 14 July 2021.
3. In addition to the documentary evidence, the Judge had the benefit of seeing and hearing the appellant gave oral evidence.

4. At [37] the Judge finds it was not accepted the appellant is a credible witness. The Judge notes the appellant did not claim asylum until six years after he arrived in the United Kingdom despite claiming to fear for his life in Pakistan, and only having been served with the notice in August 2017 [38], found the appellant vague and inconsistent in his evidence throughout [39], had been inconsistent in oral evidence in relation to his attendance at Superior College at one point claiming he studied a pre-medical course and then stating it was a pre-engineering course [40]. The appellant claimed in his witness statement of 23 June 2021 to have moved into a hostel in December 2009 where he was constantly targeted by members of PSF, including being attacked at the hostel, yet this was not mentioned in a later witness statement of 10 October 2021 or in his oral evidence [42]. The appellant claimed he was constantly fearful of being attacked and therefore changed College but only to one further up the same road [43]. The appellant claims to have suffered an unprovoked attack by five or six PSF members on 20 October 2010 when he claims he was taken unconscious by the police to hospital. The medical certificate shows the appellant was 18 years of age when he was admitted. The appellant's explanation that he was unconscious and therefore the doctor must have guessed his age was found to be unreliable on the basis that it is written on the certificate that the appellant was conscious, orientated in time, place, and person, shortly after admission, and details of his address had also been included [44]. The appellant claimed to have started receiving threatening telephone calls from his named assailant the second day he was in hospital after he regained consciousness but gave no reason he could simply not take the calls [45]. The appellant's claim that after the incident on 22 October 2010 he joined the APMSO and was selected as General Secretary is not supported by evidence of how that could be accomplished in such a short timescale or what the appellant did in the organisation, and that the card provided as evidence had no date of issue or expiry dates [46]. There is no explanation as to how the appellant was able to avoid what he describes as police raids on his property in the village following the issue of the FIR given he did not leave for the United Kingdom until early April 2011 [47 - 48]. Despite the appellant claiming his family had sold a piece of land to raise the money to pay for his course in the UK, it was not found credible that if the family were prepared to go to such lengths to protect the appellant he would simply not have gone to another college in a different city or claimed asylum on his arrival in the UK [49]. That the appellant's evidence as to how he was able to support himself in the UK was not credible [50]. Despite being in touch with his family in Pakistan the appellant had not provided the originals of documents he relied upon, warranting little weight being attached to those documents [51]. The appellant's claim in oral evidence that his family was still receiving threats on his account is not mentioned in either of his witness statements and the Judge finds evidence would have been put forward to support this aspect of his claim if it were true [53]. The Judge finds failure to claim asylum within a reasonable period of time further undermined his credibility [54]. In conclusion the Judge did not accept the events described by the appellant in Pakistan occurred or that he has faced any persecution for a Convention reasons from members of the PFS, the police/authorities, and will not face any of return. The Judge finds the appellant's claim is manufactured in an attempt to enable him to stay in United Kingdom [55].
5. The Judge goes on to dismiss the appeal under Article 8 ECHR and paragraph 276ADE at [58].
6. The grounds seeking permission to appeal assert, inter-alia, that it appears the Judge's dominant reason for dismissing the appeal was delay in the appellant claiming asylum, secondly attaching too much weight to peripheral matters by reference to failing to mention the facts set out in earlier statement, the fact the appellant should not have answered the calls, and only mentioning one raid by

the police, and thirdly a challenge by reference to case law in relation to the finding that the appellant's testimony been vague and inconsistent. The grounds also challenge the Judge's assessment of the human rights appeal claiming the appellant had been in the United Kingdom for at least 11 years, had established a private life here, and that the Judge failed to properly analyse why there were no very significant obstacles to the appellant returning to Pakistan, failed to mention paragraph 276ADE or determine the same, third in dealing with Article 8 first then the private life under the Rules contrary to the two-stage process in which the rule should be considered first.

7. Permission to appeal was granted by another judge the First-tier Tribunal the operatives of part of the grant being in the following terms:
  3. In relation to Ground 4, it is arguable that, at [58], the Judge erred in failing to consider the requirements of paragraph 276ADE(1)(vi) and/or carry out a proportionality assessment under Article 8. Whilst less persuasive, the other grounds are also arguable. Permission to appeal is granted on all grounds.

## **Discussion**

8. I find no merit in the claim the Judge predominantly dismissed the appeal on the basis of the appellant having made a late claim. The Judge gives over 10 reasons for why the appellant was not found to be credible of which the late claim was only one such issue.
9. Section 8 of the 2004 Act has recently been considered by the Court of Appeal in KG (Turkey) [2022] EWCA Civ 1578 and is clear the Judge factored this into the holistic assessment together with all the other aspects of the evidence before concluding that the appellant lacked credibility and that his protection claim must fail.
10. In relation to the Article 8 ECHR issue, Mr Moksud does challenge the format in which the Judge deals with this issue and the challenge is, in some respect, a challenge of form over substance.
11. The decision of the Judge being challenged is the decision to dismiss the appeal. An examination of the evidence clearly shows that notwithstanding the time the appellant has been in the United Kingdom his status has either been precarious or unlawful. The Judge was entitled to attach little weight to the appellant's private life that he has formed in the UK accordingly.
12. Mr Moksud was asked to identify anything in the evidence that would support his contention that the Judge's decision to dismiss this aspect of the appeal, both under the Immigration Rules and Article 8 ECHR is infected by arguable legal error. He could not. As Mr McVeety indicated in his submissions, the skeleton argument before the Judge based the claim for insurmountable obstacles to return upon the risk to the appellant that the Judge found was not credible and length of time in the UK. I find no legal error in the Judge's assessment of the protection appeal and reasons for dismissing that, which are clearly within the range of findings reasonably open to the Judge on the evidence.
13. As the main aspect of the appellant's claim relevant to paragraph 276 ADE therefore falls away as his claim he could not return to Pakistan has been shown not to be credible, the appellant is only left with time in the UK. I have commented upon the weight to be given to that evidence. It is settled law, in any event, that time in isolation is not sufficient. It is whether that time creates a protected right. The appellant's private life is a right protected by Article 8 ECHR, but the UK government has a margin of appreciation in relation to the assessment of the proportionality aspect set out in Article 8 (2). The manner in which the Secretary of State operates such is set out in section 117 of the Nationality, Immigration and Asylum Act 2002. That contains a provision for little

weight to be attached to a private life formed by a person whose status is precarious. That is a position fully in accordance with European Law.

14. Even if the Judge should have considered paragraph 276ADE first and then Article 8 ECHR the overall conclusion set out in the decision is a sustainable finding, i.e. the decision will have been the same.
15. Mr Moksud properly accepted that the appellant's challenge was, in effect, disagreement with the Judge's findings made on the evidence, based upon a suggestion of other findings the Judge should have made more favourable to the appellant, and a disagreement with the weight the Judge gave to the evidence.
16. The grounds fail to show the Judge's findings are outside the range of those reasonably available to the Judge. The grounds fail to establish legal error material to the decision to dismiss the appeal. There is, accordingly, no basis for the Upper Tribunal to interfere any further in this matter.

### **Notice of Decision**

17. There is no material legal error in the decision of the First-tier Tribunal. The Judge's determination shall stand.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**10 February 2023**