



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

Case No: UI-2024-000920

First-tier Tribunal No: PA/52416/2023
LP/03079/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 3 December 2024**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**QK
(ANONYMITY DIRECTION MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellant: Mr A Alam, instructed by Peral Velley Solicitors
For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 9 July 2024

DECISION AND REASONS

As the underlying claim to this appeal concerns a claim for international protection, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

INTRODUCTION

1. The appellant's appeal against the respondent's decision of 12 April 2023 to refuse his international protection claim was dismissed by First-tier Tribunal ("FtT") Judge Freer ("the judge") for reasons set out in a decision dated 27 December 2023. The appellant claims the decision of the judge is vitiated by errors of law. Permission to Appeal to the Upper Tribunal was granted on limited grounds by First-tier Tribunal Judge Seelhoff on 6 March 2024.

THE BACKGROUND

2. The appellant is a national of Pakistan. He arrived in the UK as a Tier 4 student migrant on 2 April 2012. His immigration history is a matter of record and I do not recite it in this decision. On 15 April 2015, the appellant made a claim for asylum. That claim was refused by the respondent in December 2015 and an appeal was dismissed by FtT Judge Phull on 7 September 2016. The appellant was refused permission to appeal to the Upper Tribunal and he had exhausted his rights of appeal on 30 November 2016.
3. In summary, the appellant claimed that he had become a member of the United Kashmir People's National Party ("UKPNP") in 2007 and that he had been General Secretary of Pallandir between 2012 and 2014. He claimed to have written an article that was published on 2 January 2012 leading to his arrest and detention by ISI from 4 to 11 January 2012. He claimed to have been tortured and threatened that he would be killed whilst detained. He was left on the side of a road, 'half conscious', and warned that he should stop his activities. He regained consciousness in hospital having suffered a number of injuries to his body. The appellant claims that following his discharge from hospital he arranged a rally that took place on 11 February 2012. The police attacked the crowd and tried to disperse the rally. The appellant claims that on the same evening, the police lodged a FIR against the appellant and his fellow party workers on "law and order charges". He moved to his uncle's house and remained there in hiding in Rawalpindi before securing a student visa and leaving Pakistan.
4. The appellant claimed asylum after his parents stopped supporting his studies in the UK. The appellant claimed that although his family had not experienced any problems personally, they had overheard people saying he was an Indian agent. The appellant claimed to be a prominent member of the UKPNP in the UK and that in March 2015, he was appointed the General Secretary and Organiser of the Birmingham branch. He claimed there is an extant arrest warrant because of his involvement with the UKPNP in Pakistan and here in the UK. He said that he is active on social media such as Facebook and Twitter and that he uses that to share his political views. Judge Phull found that the appellant has not established that he is of adverse interest to the authorities in Pakistan because of his political activities. Judge Phull found the witness called by the appellant, Mr Yousuf, to be credible, but attached little weight to his evidence because he did not know the appellant when he was in Pakistan.

5. Having considered the evidence before the Tribunal including letters, two FIR's and the arrest warrant relied upon by the appellant, FtT Judge Phull found that the appellant was not a member of the UKPNP in Pakistan. She rejected the appellant's claim that he had been arrested, tortured and detained in Pakistan and that an FIR was issued against him, as he claimed. Judge Phull found the arrest warrant relied upon by the appellant was not genuine. Having rejected the appellant's account of events in Pakistan, Judge Phull turned to the appellant's activities in the UK. Judge Phull said:

"34. Because I found that the arrest warrants are not genuine I also find that the authorities would have no interest in arresting the appellant on return for any alleged activity or membership of the UKPNP whilst he was in Pakistan.

35. It is not disputed that the appellant is a member of the UKPNP in the UK. He relies on photographs and various Facebook page entries as evidence of his involvement with the party. The respondent confirms that Internet searches of his name using Google bring up a number of web pages referencing his activity with the UKPNP and therefore it is accepted that he became a member of the UKPNP whilst in the UK.

36. I find that involvement in the UKPNP does not of itself result in the appellant being of adverse interest to the Pakistani authorities on return.

...

41. I find that the evidence is that the appellant is an active social media user. His name is easily available on Google. He comments on the position of UKPNP. I find that he may be 'considered to have a high profile because of his social media activity. I find that despite this profile, like Mr Yousaf the appellant would not be of adverse interest to the authorities on return to Pakistan and that even if he was of interest in his own area he could relocate to other parts of the country. I find that he does not satisfy' to the required standard that he is of adverse interest to the authorities in Pakistan on return for his political opinions. For these reasons I find that his asylum claim fails and he is not a refugee."

6. The appellant then made further submissions to the respondent on 14 February 2020, 8 March 2020 and 7 October 2020. Each of those further submissions were refused by the respondent with no right of appeal. On 22 June 2022 the appellant again made further submissions to the respondent. Although the respondent again refused the claim for international protection on 12 April 2023, the respondent accepted the further submissions amount to a fresh claim giving rise to a right of appeal before the FtT. It is the decision of FtT Judge Freer to dismiss the appeal that is the subject of the appeal before me.

THE GROUNDS OF APPEAL

7. Permission to Appeal to the Upper Tribunal was granted on limited grounds by First-tier Tribunal Judge Seelhoff on 6 March 2024. At the outset of the hearing before me Mr Alam confirmed the three grounds upon which permission has been granted can be summarised as follows:

“Ground 1: FtT Judge Freer failed to have regard to the expert evidence of Dr Farhan Wali when considering whether the previous findings of Judge Phull regarding the 2 FIR’s previously upon by the appellant are undermined. (Para 4 of the Grounds of Appeal)

Ground 2: FtT Judge Freer attached little weight to the evidence of Professor Graham without adequate explanation. The expert evidence of Professor Graham concluded that the injuries suffered by the appellant are diagnostic of torture.

Ground 3: There is a finding that the appellant has a high profile in the UK. The judge failed to consider whether the appellant will be at risk upon return if he expresses his views in Pakistan. The Judge failed to consider the objective evidence that highlighted that those involved in the UKPNP have been detained and tortured.

DECISION

8. For the reasons I have set out below I am satisfied that the decision of First-tier Tribunal Judge Freer must be set aside.

Ground 1; failure to have regard to the expert evidence of Dr Farhan Wali

9. Mr Alam submits the FIR’s relied upon by the appellant were given little weight by Judge Phull. However since that decision, the appellant has obtained a report prepared by Dr Farhan Wali, who had been provided with copies of the FIR’s and arrest warrant relied upon by the appellant. Dr Wali addressed the FIR’s and the arrest warrant at paragraphs [116] to [126] of his report. He said:

“119. ... I confirm that the FIR document I have been presented with is genuine and consistent with country standards. In sum, I can confirm the FIR document provided by [the appellant] is reliable since it conforms to official Pakistani legal and administrative standards insofar as the language, typefaces, structure, official stamps, and other bureaucratic and legal conventions included within it are credible and consistent with my personal observations and, as such, is likely to be genuine.

...

126. I have been given one legal documents to verify: (1) Arrest warrant issued by Court of Civil Judge Magistrate (1st Class). I can confirm that the above listed document is reliable since it conform to official Pakistani legal and administrative standards insofar as the language, typefaces, structure, official stamps, and other bureaucratic and legal conventions included within it are credible and consistent with my personal observations and, as such, are likely to be genuine. Added to this, I can confirm that the document style, in terms of content and stamps, all conform to the official standards. Therefore, I confirm the arrest warrant that I have been presented with is genuine and consistent with country standards.”

10. Dr Wali considered the DVR relied upon by the respondent. He noted, at [128] that Human Rights Watch have documented that the Pakistani police use extensive powers of registration of cases, arrest and detention at the behest of powerful individuals (e.g. the intelligence services, military’,

wealthy individuals, politicians and so on) to bring false charges against opponents. Therefore, the reliance upon evidence allegedly extracted from the police officer that recorded the FIR is problematic. If ISI officers are responsible for registering the false FIR against the appellant, then the individuals that may be involved are not credible sources of evidence. Dr Wali states that authentication of the FIR requires analytical expertise and comparative skills, which he has obtained from his academic training and fieldwork. Thus, the FIR that he has studied appear genuine. He claims the alleged number discrepancy should be given minimal attention due to the flawed methodology used to determine authenticity (e.g. the FIR document should be the focus of study to determine authenticity). At paragraph [130] he states police stations are prone to making errors, especially related to correctly registering and recording information for FIRs. He states it is possible that the FIR number was incorrectly inputted or recorded incorrectly, which is extremely common in Pakistan. He states the discrepancy related to non-matching FIR numbers can be attributed to input and clerical errors. He acknowledges that may seem speculative but states the FIRs that he studied displayed an array of clerical mistakes and errors.

11. Mr Alam accepts Dr Wali does not make any specific reference to his experience and qualifications to establish his expertise in providing an expert opinion as to the authenticity of judicial documents. His qualifications and expertise are set out at paragraphs [5] and [6] of his report:

“5. I have gained extensive academic qualifications and experience, which I deem could offer considerable assistance to your assessment of [the appellant’s] claim. Thus, I consider my academic knowledge and experience suitable to act as an expert in respect to this case.

6. I provide the present independent report as a peer-reviewed member of the academic community. I hold a Doctorate from Royal Holloway, University of London. I have published extensive works in the area of Islam, Religion and Sociology. I have received higher level training in Islamic law, philosophy and theology. I am also an expert in the Islamic world and South Asia, an expert in theoretical and ethnographic approaches to society and culture, and the study of migration and diaspora in the contemporary world. I have taught undergraduate and postgraduate courses in a range of theoretical and ethnographic courses for over ten years at higher learning institutions. I am currently continuing qualitative field research among Muslim communities in Pakistan and Britain on the issue of religious identity.”

12. Mr Alam submits the judge does not deal with the expert evidence at all. That is material because if the judge had accepted the opinion expressed by Dr Wali, that undermines the view previously taken by Judge Phull who attached greater weight to the DVR relied upon by the respondent to cast doubt on the authenticity of the documents. In turn, that impacts upon the adverse credibility findings previously made by Judge Phull regarding the appellant’s account of events in Pakistan. Mr Alam submits the judge refers to the FIR’s at paragraph [65] to [68] of the decision but fails to

engage with the opinion expressed by Dr Wali regarding the reliability of the DVR relied upon by the respondent previously.

13. Mr Lawson submits the judge considered the FIR's and gave adequate reasons for finding that the appellant was not of interest to the authorities as he claims, when he left Pakistan. He submits Judge Phull had previously considered the FIR's and made clear findings regarding the documents that the appellant simply disagrees with. Dr Wali seeks to undermine the respondent's DVR and to provide an expert opinion as to the authenticity of the FIR's but he has no qualifications or experience disclosed in his report that suggest he is in any way qualified to give an expert opinion as to the authenticity or reliability of the FIR's. Although the judge did not refer expressly to Dr Wali's report at paragraphs [65] the judge noted the appellant's case that the respondent's DVR is unreliable and gave adequate reasons the conclusion that the FIR's are not reliable documents.
14. At paragraph [65] of the decision the judge said:

“The Appellant now says the respondent's DVR is unreliable, so the FIR should be accepted. However, as a matter of logic, that does not prove the FIR is reliable, if the point is accepted. The Appellant has dated the FIR to 2012, on a date before he left his country. I find that the Appellant came to the UK as a student and not as an activist. He was allowed to leave on a flight through normal channels with a student visa. It is not explained why he did not leave illegally to be undetected. It is therefore not likely that he was already an activist in Pakistan and it strongly contradicts his claim that he was already a person of adverse interest or he had already been kidnapped or faced a FIR or arrest warrant.”
15. The thrust of the appellant's claim before the FtT was that the previous findings made by Judge Phull regarding the FIR's are now undermined by the evidence set out in the report of Dr Wali. Dr Wali's evidence was that the FIR's and arrest warrant relied upon by the appellant are genuine documents for the reasons set out in paragraphs [117] to [126] of his report. He sought to discredit the DVR previously relied upon by the respondent before Judge Phull as unreliable for reasons set out in paragraphs [127] to [131] of his report.
16. I accept, as Mr Alam submits that the judge failed to have regard to the evidence of Dr Wali when considering whether the expert evidence now before the Tribunal is capable of undermining the findings previously made. At paragraphs [58] to [60] of the decision the judge referred to the expert evidence of Dr Wali. At paragraph [60], the judge said:

“I admit [the report] into the evidence and give it considerable weight in the round, because the author is very experienced as an expert witness and it refers to numerous relevant documents, many of which post date the decision of IJ Phull. However I do not find it supports the credibility of the appellant, due to numerous apparent inconsistencies.”
17. Dr Wali may well be 'very experienced as an expert witness', but there is considerable force in the submissions made by Mr Lawson that Dr Wali

does not appear to demonstrate that he has the necessary experience and qualifications to provide expert evidence as to the authenticity of the FIR's and arrest warrant. The difficulty however is that the judge fails to refer to the expert evidence that the FIR's and arrest warrant are genuine documents at all in paragraphs [65] to [68] of the decision or in the 'factual conclusions' section of the decision at paragraphs [81] to [84] of the decision. I accept, as Mr Lawson submits, that at paragraph [65] of his decision, the judge begins by stating that the appellant now says the respondent's DVR is unreliable, and that is certainly a clear indication that the judge had in mind the evidence of Dr Wali. However, beyond the reference at paragraph [65] to the appellant's claim that the respondent's DVR is unreliable, the judge fails to engage with or address what is said by Dr Wali at paragraphs [127] to [131] of his report.

18. I have carefully considered whether the failure to have regard to the evidence of Dr Walia at paragraphs [65] to [68] is material. In *Tanveer Ahmed v SSHD* [2002] UKIAT 00439 the IAT confirmed that in asylum and human rights cases it is for an individual to show that a document on which he or she seeks to rely can be relied on and the decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round. Relevant to that assessment is any expert evidence.
19. It may well have been open to the Judge to conclude that only very limited weight could be attached to the evidence of Dr Wali because he does not have the necessary expertise to provide an opinion as to the authenticity of the documents, or that the opinion he provides as to the DVR is based upon speculation as to how accepted errors on the face of the documents might occur. The judge however said that he gave the evidence of Dr Wali considerable weight in the round. If the judge did not accept the opinions expressed by the expert it was incumbent on the judge to engage with that evidence and explain, even if only in brief terms, why that evidence was rejected.
20. Looking at the evidence in the round, it may well have been open to the judge to conclude that as a matter of logic, the FIR is unreliable because the appellant had been able to leave the country without incident after the FIR had been issued. The difficulty for me is that the judge simply does not engage with the expert report and I cannot be satisfied that the judge would inevitably have reached the same conclusion had the opinions expressed by the expert been considered.
21. The extent to which, if at all, the expert evidence is capable of undermining the previous adverse findings made by Judge Phull, lies at the heart of the appeal before the First-tier Tribunal. It impacts, as Mr Alam submits, upon the findings and assessment of the international protection claim as a whole, and it follows that the decision of the First-tier Tribunal must be set aside.
22. In the circumstances I do not need to address the remaining grounds of appeal at any length.

23. The appellant claims the judge erroneously attached little weight to the evidence of Professor Graham. On its own, there is little merit to this ground. The judge, at [57], refers to the Rule 35 Report relied upon, and the opinion expressed by Professor Graham that appellant's injuries are diagnostic of torture. The Rule 35 report completed by Dr Qasai Arslwala on 28 February 2020 describes the appellant's narrative to be 'consistent with' his injuries. Professor Graham expresses the opinion that the same injuries as 'diagnostic' of torture.
24. I accept, as Mr Lawson submits that the judge noted that Judge Phull had previously rejected the appellant's claim that he was kidnapped and tortured. The judge considered the report of Dr Graham and gave adequate reasons for concluding that only limited weight could be attached to the opinions expressed. In reaching the decision, the judge said that the hospital evidence is not strong enough to raise the level of weight attachable to it. As Mr Lawson submits, at paragraph [132.1] of his report Dr Wali stated that he cannot conclusively confirm that the hospital discharge certificate issued by Tehsil Headquarter Hospital (THH) is genuine.
25. There was a Rule 35 report, which as the judge noted at [57] records that the appellant's injuries are 'consistent' with his account of events. The judge referred to the report of Dr Graham at paragraph [57] and noted the overall opinion expressed by Dr Graham that the numerous scars are 'diagnostic' of torture in Pakistan. The judge gave adequate reasons for attaching limited weight to the evidence of Dr Graham noting the report was prepared in June 2020, many years after the injuries are said to have been inflicted. In fact the report of Dr Graham refers to the appellant's injuries at paragraphs [6.1] to [6.7]. Dr Graham considered, at [8.3] to [8.7] each of the injuries, and said that on balance, each injury was 'consistent' with the narrative given by the appellant. At paragraph [8.8] he said that each of the scars are varied and corroborate the history of the appellant being a victim of torture. He said that on the balance of probabilities, the injuries the appellant has sustained are diverse and atypical, so that they could only have been caused by external infliction by a third person or persons. He then concludes, at [8.9] that the combination of physical injuries are 'diagnostic' of the alleged report of torture. In the absence of any explanation as to how Dr Graham, having said that each of the injuries were consistent with the appellant's account, could conclude that those injuries could be reliably dated back to the account of events in 2012 so that they are 'diagnostic' of the account of torture, it was in my judgement open to the judge to attach little weight to the evidence of Dr Graham for the reasons given.
26. I have considered whether this finding can be preserved. The difficulty here is that the appellant's injuries are said to have been inflicted when he was detained and tortured. The FIR's and the arrest warrant are capable of having an impact upon the appellant's account of events in Pakistan, and as the injuries form part of the appellant's narrative much is likely to depend upon whether the adverse findings previously made by Judge Phull are undermined by the evidence before the Tribunal.

27. As far as the third ground of appeal is concerned, the assessment of the risk upon return will inevitably be informed by the findings made by the Tribunal regarding the evidence now before the Tribunal. As Mr Alam submits, both Judge Phull and Judge Freer accept the appellant has been involved in UKPNP activities in the UK. It appears to be uncontroversial that the appellant is a party member in the UK and his *sur place* activities in the UK are not disputed. There is nothing to be gained by my addressing the third ground of appeal when it is clear that for the reasons that I have set out the decision of the FtT must be set aside.

DISPOSAL

28. As to disposal, I am conscious of the Court of Appeal's decision in *AEB v SSHD* [2022] EWCA Civ 1512, *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC) and §7.2 of the Senior President's Practice Statements. Sub-paragraph (a) deals with where the effect of the error has been to deprive a party before the Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the FtT, whereas sub-paragraph (b) directs me to consider whether I am satisfied that the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.
29. Although this is a matter that has a lengthy history, having regard to the nature of the error of law, I accept the appellant was deprived of a fair opportunity to have his appeal considered by the FtT and the appropriate course, in fairness to the appellant, is for the appeal to be remitted for rehearing before the FtT.

NOTICE OF DECISION

30. The appeal to the Upper Tribunal is allowed.
31. The decision of First-tier Tribunal Judge Freer dated 27 December 2023 is set aside.
32. The appeal is remitted to the First-tier Tribunal for hearing afresh with no findings made by Judge Freer preserved. The parties will be advised of a hearing date in due course.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 November 2024

