



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-

2024-002168

First-tier Tribunal No: PA/52490/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 04 November 2024**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

**SS
(ANONYMITY ORDER MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr P Saini, counsel instructed by GSA Solicitors

For the Respondent: Ms A Ahmed Senior Home Office Presenting Officer

Heard at Field House on 1 November 2024

Order Regarding Anonymity

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.

DECISION AND REASONS

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Chinweze who dismissed his appeal following a hearing which took place on 28 February 2024.

2. Permission to appeal was granted by Deputy Upper Tribunal Judge Sills on 4 July 2024.

Anonymity

3. An anonymity direction was made previously and is maintained because this appeal concerns a protection claim.

Factual Background

4. The appellant is a national of Pakistan now aged fifty-two. He was issued with a visit visa and entered the United Kingdom on 24 June 2009. The appellant overstayed his leave and next came to light in the United Kingdom during a police stop in December 2013 when he falsely claimed to be a national of Spain and presented a Spanish driving licence. Upon being notified of his liability to removal, the appellant made an asylum claim, which was refused on 5 September 2017. That claim was based on the appellant's claimed imputed political opinion and being of Pashtun ethnicity. In short, the appellant claimed that members of the MQM were demanding funds from him and became violent when he refused to pay them. Thereafter his brother in law was shot and there was an attempt on the appellant's life. When the appellant reported matters to the police, he was detained and ill-treated.
5. The appellant's appeal against the aforementioned decision was dismissed and he became appeal rights exhausted during December 2017.
6. The appellant made further human rights submissions based on his deteriorating mental health (Article 3) and inability to be able to reintegrate in Pakistan (Article 8), which were refused in a decision dated 9 June 2022, which is the subject of this appeal.

The decision of the First-tier Tribunal

7. At the hearing before the First-tier Tribunal, the judge was not persuaded to depart from the findings of the previous judge in respect of the asylum claim. Otherwise, the judge found that the appellant's removal to Pakistan would not involve a breach of his rights under Article 3 or 8 and that the public interest factors outweighed the circumstances of the appellant.

The appeal to the Upper Tribunal

8. The grounds of appeal upon which permission was granted are five-fold:
 - I. There had been a flawed consideration of the appellant's vulnerability, the previous decision and the new evidence.
 - II. The judge had made a material mistake of fact which impacted his assessment of credibility.
 - III. The assessment of the protection claim was procedurally flawed
 - IV. There had been a flawed assessment of the appellant's supporting evidence.

- V. The assessment of the Article 3 and 8 mental health case had been flawed.
9. In the grounds, there was a request to hear the recording of the proceedings before the First-tier Tribunal, a request which was not linked to any of the five grounds. Furthermore, it was asserted that counsel before the First-tier Tribunal was directly instructed and as such could not arrange for alternative counsel to attend the hearing, this being an apparent reference to the decision in *BW (witness statements by advocates) Afghanistan* [2014] UKUT 00568 (IAC).
10. Permission to appeal was granted on the basis sought, with the judge granting permission expressing the view that only grounds one and three contained arguable merit. In his listing instructions, Judge Sills considered the appellant's request to have access to a recording of the hearing but deemed it unnecessary given the content of the grounds.
11. The respondent filed a Rule 24 response dated 19 July 2024. In it, the appeal was opposed, with detailed commentary on all of the grounds.

The error of law hearing

12. The matter comes before the Upper Tribunal to determine whether the decision contains an error of law and, if it is so concluded, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so. The hearing was attended by representatives for both parties as above. Both representatives made submissions and the conclusions below reflect those arguments and submissions where necessary. A bundle was submitted by the appellant containing, inter alia, the core documents in the appeal, including the appellant's and respondent's bundles before the First-tier Tribunal. At the end of the hearing, the decision on error of law was reserved and is given below, with reasons.

Discussion

13. There are no errors of law in the careful and thorough decision of the First-tier Tribunal judge.
14. In the first ground it is contended that the judge had failed to accord 'any benefit' to the appellant from being a vulnerable witness in assessing his credibility.
15. The findings in *SB (vulnerable adult: credibility) Ghana* [2019] UKUT 00398 (IAC) are of assistance
- (1) The fact that a judicial fact-finder decides to treat an appellant or witness as a vulnerable adult does not mean that any adverse credibility finding in respect of that person is thereby to be regarded as inherently problematic and thus open to challenge on appeal.
 - (2) By applying the Joint Presidential Guidance Note No 2 of 2010, two aims are achieved. First, the judicial fact-finder will ensure the best practicable conditions for the person concerned to give their evidence. Secondly, the vulnerability will also be taken into account when assessing the credibility of that evidence.
16. Mr Saini's submissions did not go beyond an expression of disagreement with the fact that the judge found the appellant's claim to lack credibility

notwithstanding treating the appellant as a vulnerable witness [20]. Furthermore, the judge outlined, in detail, the conditions for the appellant to be enabled to give his evidence, however this does not necessarily lead to a blanket acceptance of all aspects of the appellant's claim.

17. First-tier Tribunal Judge Farmer, who heard the appellant's previous appeal, reached the following conclusion as to the credibility of the appellant's claim;

I have found the appellant not to be credible and I find that his documents do not support his core account that his brother-in-law was murdered due to standing up for the appellant and then he was later attacked and then detained and tortured which prompted his departure from Pakistan.

18. The judge was obliged to take the findings of the previous judge as the starting point and to assess the documentary evidence adduced by the appellant since that earlier decision. This the judge did at [52-55] of the decision, concluding that all the newly produced documents were deserving of little weight for a variety of reasons. There is either no or no effective challenge to any of those findings. Therefore the question of the credibility of the appellant's oral evidence at the hearing was very much secondary to the findings on the new evidence adduced.

19. Contrary to what is said in the grounds, at [56] the judge indeed refers to the appellant's explanation for giving conflicting accounts about one of these documents, the police report. That explanation being that he was confused owing to mental health issues. The judge considers that explanation, rejects it and gives adequate reasons for doing so. Those reasons being that the appellant had been able to give very detailed answers when questioned about his asylum claim and when making his witness statement. The judge also noted that the appellant had denied suffering from any physical or mental health issues in a human rights application made in 2015, two years after he lodged his asylum claim in 2013. It follows that the grounds are wrong to state that the judge did not factor in the appellant's mental health when considering credibility.

20. Mr Saini made much of the fact that the previous judge refused an adjournment application for the appellant to obtain medical evidence. However, this submission does not take into account that the Home Office had awaited such evidence from the appellant for many months prior to making the previous decision to refuse his protection claim and that evidence was not forthcoming. Furthermore, there remains no medical reports dating from the time of the previous hearing to support the appellant's claim that he was suffering from mental ill-health such that he was unable to provide a consistent account at the time of the previous hearing.

21. Mr Saini argued that the judge did not take into account what the psychiatrist had said about the appellant having 'significant memory disturbance' at paragraph 7.17 of the neuropsychiatric report dated 11 December 2023. In short, the appellant had told the psychiatrist that he often forgets what he is shopping for, that he set off a smoke alarm at his previous residence and on 'one occasion' he forgot his biological details. This Tribunal should be slow to conclude that the First-tier Tribunal did not take the medical evidence into account. Indeed at [52] of the decision, the judge states that he has considered all the additional material and at [60-76] he discusses that evidence in depth in connection with his findings under Articles 3 and 8 ECHR.

22. The second ground is that the judge made material mistakes of fact. The first matter raised relates to the appellant's complaint about his former representatives failure to provide the Home Office with evidence to support his claim that he had mental health problems. All this was a matter of record and is set out in the decision of the previous judge. There was no question that this was taken into consideration in the round by Judge Chinweze.
23. The other complaint made is that the judge records that the appellant paid to obtain a 'fake' Spanish identity document whereas this document was said to be genuine. There is no merit to this ground. It is common ground that the appellant is not a Spanish national and therefore regardless of whether the document was counterfeit or genuine, it did not belong to the appellant nor establish his nationality. In any event, in relation to the appellant's oral evidence before Judge Chinweze, the appellant has not adduced counsel's note of the hearing nor a signed statement of truth, applying *BW*.
24. The final complaint in this ground, that the judge entered the arena, is without any basis, given that the judge asked a handful of questions for clarification once cross-examination was complete, following which counsel representing the appellant was afforded the opportunity to re-examine him based on the judge's questions [30]. No unfairness to the appellant nor bias has been shown, applying *Hossain* [2024] EWCA Civ 608.
25. It is argued in the third ground that the assessment of the appellant's protection claim was procedurally flawed because the judge 'ignored' the objective country evidence contained in a CPIN in coming to his decision on the credibility of the appellant's claim. It is contended in the grounds that the background evidence could be 'potentially corroborative' of the appellant's account. There is no merit in this ground. The judge did not consider the facts of the appellant's case to be implausible and Mr Saini did not make good his argument that any aspect of the appellant's claim was corroborated by the country material. Ultimately, the appellant has already been found to have put forward a false asylum claim and his case turned on the reliability of the evidence he has adduced since the previous hearing. The background evidence had little to do with it. Therefore the judge did not err at [58] when after noting the submissions on the country material, he concluded
- 'However, as I have found the appellant's account to lack credibility and placed little weight on the additional documents supplied, the country information relied on does not support his claim.'
26. The fourth complaint is that the judge erred in dismissing the appellant's protection claim on the basis of new points not relied upon by the respondent in the decision and which were not raised by the judge in the hearing. The judge was entitled to make the observations he did on the evidence. It was obvious that there had been a 5-year gap in the claimed attendance by MQM members at the appellant's house and that the affidavit in relation to an alleged murder was only made two years later. Neither of those observations were instrumental in the decision to dismiss the appeal. Lastly, there can be no criticism of the fact that the judge placed no weight on the documents emanating from Pakistan, by itself, given that the judge was obliged to assess this evidence, with caution, in the course of deciding whether to depart from the adverse credibility findings of the previous judge.

27. Lastly, it is said that the judge's assessment of the appellant's Article 3 and 8 mental health case had been flawed. Firstly, the judge rejected the appellant's account of events in Pakistan. Secondly, there was support in the medical evidence for the judge's finding that any mental health symptoms experienced by the appellant were owing to his immigration status and a desire to avoid returning to Pakistan. Thirdly, the appellant's oral evidence was that he had stopped therapy and counselling in the United Kingdom [67] and therefore the reference to differentials in treatment are misplaced. In any event, the judge noted the CPIN which confirmed the availability of mental health treatment and medication in Pakistan.

28. The grounds further argue that the judge overlooked the safety aspect of the appellant's claim in that he is said to have 'almost' burnt down his residence owing to dissociative symptoms. There is no merit in this argument, given the judge's findings that the appellant will have support from his brother and close friend on return to Pakistan [69]. I heard no argument to suggest that the high threshold in Article 3 health cases was met. Furthermore, for similar reasons the judge's reasons for finding that there were no very significant obstacles to the appellant's reintegration in Pakistan [74-76] are unassailable.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal is shall stand.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 November 2024

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent” is that appearing on the covering letter or covering email.