



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

Appeal Number: PA/04349/2016

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On 9 August 2017**

**Decision & Reasons  
Promulgated  
On 5 October 2017**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**AJ  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Z Jafferji, Counsel instructed by ASR Legal Solicitors  
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan born in 1984. He arrived in the UK as a student on 22 August 2010. After a series of applications for further leave to remain as a student, leave to remain outside the Immigration

Rules, and on human rights grounds, he made an asylum claim on 30 November 2015.

2. The respondent refused the application in a decision dated 19 April 2016. The appellant appealed against that decision and his appeal came before First-tier Tribunal Judge Mathews ("the Ftj") at a hearing on 9 March 2017 following which the appeal was dismissed on all grounds.
3. The appellant's protection claim, in summary, is made on the following basis. To pursue studies in the UK he borrowed large sums of money from moneylenders in Pakistan, to the tune of 25 lakh rupees. He provided the moneylenders with post-dated cheques and initial payments were to be made by cash. Whilst in the UK the appellant found that his college said that they had not received any sums for his tuition fees which were to be paid in advance by the agent that he used. The appellant therefore found himself in debt, with no place to study, and unable to repay those that lent him the money.
4. The moneylenders visited the appellant's family home seeking their money. Police also attended and the appellant believes that he has been reported to the authorities for issuing a cheque that has not been honoured. Threats have been made that he would be killed on return to Pakistan. The appellant's family have suffered as a result of these events, with his brother having undergone a divorce. If returned, the appellant fears that he would be harmed or killed by the moneylenders. He also fears that he would be arrested and that corrupt police would support the moneylenders.

#### *The Ftj's decision*

5. The Ftj made a number of adverse credibility findings. The credibility of the appellant's claim was found to be adversely affected by the delay in making his claim, the appellant having accepted that in 2011 he realised he could not repay the moneylenders. The Ftj said at [17] that despite having legal advice and representation in the UK, and seeking to remain here, he made no claim for protection after the initial threats. He found that the appellant had made no protection claim until November 2015 when other applications had been exhausted. He further found that in previous applications, when giving his reasons for wishing to remain in the UK, the appellant had made no mention of any need for protection, a fact which was found to be at odds with his claimed fears.
6. At [18] the Ftj said that he found it "utterly incredible" that the appellant would never have checked to see if the post-dated cheques had been presented to his bank. He also found that it was inconceivable that the lenders would not have presented the cheques for payment since that was the intended method of repayment. He concluded that presentation and 'bouncing' of the cheques would have been reported to the appellant since they were cheques that he had written against his own account. He further found that it defied credibility that he would not be aware that his

cheques had been dishonoured or that they would not have been presented for payment.

7. At [19] he said this:

“I note the copy of the claimed loan agreement, and observe that it is a document presented with translation dated 7<sup>th</sup> March 2017, the eleventh hour in this case. I note that I have no original of the loan agreement. I apply the principles set out in **Tanveer Ahmed** and attach very limited weight to a translation of copy document provided in the circumstances set out above.”

8. I have quoted [19] in full in the light of the argument advanced in relation to the Ftj’s conclusions in that respect.

9. The Ftj went on to find that the fact that his family have reported no recent contact or threats from the lenders was at odds with the assertion that the lenders act with impunity, and the apparent support, or at least indifference, of the police. He noted that there was no need for corroborative evidence in a protection claim, but found that he could take into account a lack of any evidence that is reasonably available to the appellant and could support his claim. In that respect he noted that there was no evidence from any of his family supporting the account of the visits they had received, and the alleged shame reflected upon them. He noted also that although the appellant said he is no longer in contact with them, he was in the past. Hence, communication about such events had taken place and his family were helping him by warning him, although “not so much as a letter or email is available in support”.

10. The Ftj said that he viewed all the evidence and the issues of credibility in the round, but there were a number of concerns which he had referred to. He said that whilst individually some of the concerns may not entirely undermine the appellant’s account, when taken together they drove him to conclude that his account was lacking in credibility, notwithstanding the low standard of proof. He found that the appellant had not established that he had taken out any loan or that he was at risk in Pakistan for the reasons that he gave.

11. At [23] he said that even if he accepted the appellant’s account of defaulting on a loan, notwithstanding that copies of some Pakistani legislation had been provided, there was no sufficient evidence from a qualified practitioner or expert to confirm that the failure to repay would be a criminal matter. He referred in the next paragraph to having read the background material with care, noting the shortcomings of the police and judicial system in Pakistan. However, he found that the material does not suggest that any person being pursued for debt would face oppression and mistreatment such as to require protection. He also found that there was no sufficient evidence to suggest that it would be impossible to find any assistance from a police officer in Pakistan when faced with an over-zealous debt recovery officer who makes threats of harm.

12. He repeated in [26] his view of the appellant's failure to pursue an asylum claim in a timely fashion in the UK.
13. He also referred to "the claimed medical difficulties in the UK", stating that no medical evidence had been put before him that allows any relevant findings of health issues that would prevent a proper return to Pakistan.
14. In relation to the respondent's case that there had been fraudulent use by the appellant of an ETS language certificate, the FtJ resolved that issue in the appellant's favour. He concluded that there was no adequate evidential basis upon which he could find that the appellant was a party to an ETS fraud as alleged.
15. The FtJ then went on to dismiss the Article 8 aspect of the appeal, and about which no complaint has been made in the grounds of the appeal against the FtJ's decision.

*The grounds and submissions*

16. I summarise the grounds and submissions. The grounds assert that the FtJ was wrong to conclude that the appellant had made no mention of any need for protection in the UK until his asylum claim in November 2015. In fact, he had referred to the issue of risk from the moneylenders in a leave application made in September 2015. Furthermore, the lateness of the claim was not an issue that was raised with the appellant during the course of the hearing and he therefore did not have a fair opportunity to explain the matter.
17. Issue is taken in the grounds with the FtJ's assessment of the banking system in Pakistan in terms of whether the appellant would have been provided with information as to the cheques not having been honoured.
18. It is also asserted that the FtJ was wrong in his adverse credibility finding in terms of no original loan agreement having been provided and in relation to a translation having been presented at the eleventh hour. It is asserted that the appellant would not have been able to provide an original because that would have been kept by the lender not the creditor. Accordingly, the FtJ's conclusions in this respect were based on speculation and presumptions.
19. Furthermore, in the respondent's refusal letter, it is apparent that there was a translation of the loan agreement put before the respondent. Accordingly, it could not be said that no translation was provided until two days before the hearing.
20. Objection is taken to the FtJ's having said that there was no requirement for corroborative evidence, but yet having required the appellant to provide evidence from his family in relation to police visits and their feelings of shame in relation to the situation.

21. The grounds also contend that the Ftj failed to consider the appellant's medical conditions, including PTSD, which it is asserted corroborated the claimed fear of persecution.
22. Lastly, it is argued that the Ftj had not properly considered the background evidence in terms of Pakistani legislation that supported the appellant's claimed fear of persecution.
23. In submissions, Mr Jafferji relied on the grounds. He further submitted that in terms of the lateness of the claim, the Ftj had applied the wrong test by stating at [12] that s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 'required' him to conclude that the appellant's late claim adversely affected his credibility, whereas the true position is that it only potentially affects that assessment. Furthermore, the respondent's decision letter did not raise s.8 in that context, but only in the context of the ETS fraud allegation.
24. In the appellant's interview (page 51) he had been asked why he waited to make his asylum claim and the appellant had referred to having mentioned it in a previous application and had given a further explanation. None of that was taken into account by the Ftj.
25. It was submitted that this aspect of the Ftj's decision is sufficient to set the decision aside.
26. It was submitted that at [19] it was not clear as to whether or not the Ftj was saying that the copy of the loan agreement was only produced for the first time on 7 March 2017 (two days before the hearing), or just the translation.
27. In terms of whether the appellant ought to have known that the cheques had bounced, it was true that the appellant could have made enquiries but the Ftj was not entitled to conclude that the appellant's account in this respect was "utterly incredible" in terms of his not having checked. The appellant in any event knew that there were no funds in the bank so no check would have made any difference. Furthermore, the family had said that the police had been to his house.
28. As to the lack of any supporting or corroborative evidence from his family, the appellant's account was that he had had no current contact with his family, and the last contact was some time in 2014. There was no basis from which the Ftj could conclude that the appellant would have any e-mail or letter referring to the problems that they had experienced in Pakistan and the threats or visits. It was further not clear that that point was put to the appellant at the hearing.
29. The Ftj had failed to take into account the consistency of the appellant's claim. It was not suggested that there was any inconsistency in it, and none is referred to.

30. At [23]-[24] there is a very brief consideration of the background material but the Ftj had failed to assess it. I was referred to aspects of the background evidence in terms of the punishment for issuing a cheque that was dishonoured. Although this was potentially a case of prosecution, it may still amount to persecution. The persecution would be in terms of making a false case that the appellant was dishonest, for which he could be prosecuted. There was no assessment of the extent to which a criminal offence might apply to the appellant.
31. Mr Mills accepted that the Ftj had not set out the test in terms of s.8 entirely correctly, leaving out the fact that delay, for example, only potentially adversely affects credibility. Nevertheless, the Ftj was entitled to conclude that the appellant's claim lacked credibility for it not having been made sooner.
32. With characteristic fairness however, Mr Mills referred to a copy of an application for leave to remain made by the appellant in September 2014 in which he mentioned that he had a fear of persecution by private actors from whom he borrowed money for his education, further stating that his family said they would not help him unless he agreed to marry a girl of their choice. It was accepted therefore, that the appellant had raised the protection issue earlier than the claim for asylum in November 2015.
33. However, it was submitted that the issue (of fear of return) actually arose in 2011 and the appellant had made several applications before his claim for asylum in November 2015. Even by September 2014 the appellant had been here for a long time. It was clear from [17] that the Ftj did assess the delay in claiming asylum on the correct basis.
34. As to the copy loan agreement and the translation, the key point was that the appellant had not produced the original document.
35. It could not be said that there was any 'cultural context' in terms of the Ftj's assessment of whether or not the appellant would have known that the cheques had not been honoured. The Ftj was not saying that Pakistani banks work in the same way as UK banks. He was simply saying that there was no attempt by the appellant to find out what had happened in relation to his bank account or if an attempt had been made to cash the cheques, or even if his account had been closed.
36. The Ftj was entitled to find that where evidence could reasonably be expected from his family, that it could have been provided. In the years since these events, no evidence had been provided from his family in support of the appellant's claim. Furthermore, there was no apparent effort by the appellant to contact his family to provide any supporting evidence.
37. As to consistency, that could be a signpost to credibility but it does not necessarily mean that a person is telling the truth. In this case, the Ftj had

given other reasons for concluding that the appellant's account was not credible.

38. Furthermore, even if the appellant's arguments are sustainable, the FtJ was entitled to conclude that the appellant would not in any event be at risk on return for the reasons given at [23]-[24]. His reasoning is brief but adequate. *AW (sufficiency of protection) Pakistan* [2011] UKUT 31(IAC) indicates that there is a sufficiency of protection in Pakistan. The appellant would have to demonstrate that the people he fears are influential enough to be able to harm him. There was simply no evidence of that before the FtJ.
39. The question also arises as to whether the appellant's claim amounts to anything more than prosecution, which he ought to face for issuing cheques that could not be honoured. The issues may turn on the influence of the people the appellant claims to fear and to sufficiency of protection, including by the courts.
40. In reply, the only additional point made on behalf of the appellant was in terms of a reference to page 39 of the appellant's asylum interview where he was asked about why he had not made enquiries of his bank, and his explanation in that respect. It was submitted that this was not referred to by the FtJ.

### *Conclusions*

41. I do not consider that there is merit in every facet of the grounds of appeal against the FtJ's decision and the submissions in support of it. Nevertheless, I am satisfied that in material respects the FtJ did err in law, such as to require the decision to be set aside. I can set out my reasons briefly.
42. The FtJ categorically stated that the appellant had not raised the issue of his need for protection in the UK until making his asylum claim in November 2015. It is apparent that that conclusion is demonstrably false. Mr Mills was able to locate the application of 16 September 2014 (which appears to have been a human rights application, in which the appellant raised the issue of his claimed fear of return, in the way that I have summarised above). The lateness of the claim was a significant matter that weighed in the FtJ's conclusions in relation to the appellant's credibility. So much is clear from [17] of his decision.
43. Although the point that the appellant did not claim asylum much earlier remains potentially a good one in terms of adverse credibility, the further issue arises in terms of the fact that the appellant was asked about the late claim in his asylum interview, as is clear from page 51. He was asked why he did not claim asylum when his fear first arose. He said that he was worried most of the time but was not sure what he could do. He was asked about the fact that he had solicitors who could advise him, and he

gave an explanation (albeit brief and vague) of some action that had been taken by his previous solicitors.

44. The Ftj would have been entitled to make an adverse credibility finding on the basis of the appellant's late claim for asylum, or at least delay in mentioning his claimed fear, but it is a finding that would need to have been made on the correct footing. If the appellant's explanation for the late claim is to be held against him, there does at least need to be some indication that the matter was put to the appellant, and that his reasons as given in the asylum interview are assessed. There is also then, the factual error about when it was that the appellant first raised this issue with the Home Office, albeit that that was still some years after the claimed events first arose.
45. Likewise, in his interview, at page 39, the appellant was asked why he had not checked his bank account, and he gave an explanation, albeit again a brief one. There is no reference in the Ftj's decision to that explanation and accordingly no assessment of it. Whilst again, on a proper footing, the Ftj may have been entitled to make the criticisms of the appellant's account that he did, the conclusion that it was "utterly incredible" that the appellant would not have checked his bank account and that it 'defied credibility' that he would not have been aware that his cheques had been dishonoured or that they would not have been presented for payment, is a conclusion that must be based on an assessment of the appellant's account as given in interview, or as given in oral evidence. There is no indication that that assessment has taken place, and no indication that the appellant was asked about that matter during his oral evidence.
46. I have set out in full what the Ftj said at [19] of his decision in terms of the provision of a copy of the loan agreement and a translation of it. It is not clear from that paragraph whether the Ftj concluded that it was both the translation and the copy loan agreement that were provided at the "eleventh hour". It is clear from the refusal letter at [28] that the appellant had provided a copy of the loan agreement in support of the claim for asylum, in November 2015 therefore. He had also provided a translation, although that translation was found to be inadequate. If the Ftj was asserting that the appellant had provided no copy of the agreement prior to 7 March 2017, that is plainly wrong. If it is asserted that the appellant had not provided any translation prior to that date, that is also wrong. Whilst it does appear to be the case that the further translation was provided two days before the hearing, I cannot see in the circumstances why that could have led to the Ftj's conclusion that very limited weight should be attached to it. Furthermore, although the Ftj *may* have been entitled to take into account that no original of the loan agreement had been provided, again, it does not appear that this is a matter that was put to the appellant for his explanation.
47. I do not consider it necessary to deal with the other arguments advanced in the grounds and submissions in relation to the Ftj's decision, given that I



am satisfied that the matters I have already referred to reveal that the Ftj's credibility assessment is vitiated by error of law.

48. I have considered whether such errors of law are material, given what the Ftj said at [23]-[24] about his assessment of the Pakistani legislation and background material. However, I am not satisfied that those paragraphs indicate a satisfactory assessment of the materials that were before the Ftj in terms of the risk of prosecution of the appellant, which arguably could be said to amount to persecution, on account of his having issued cheques that were dishonoured. The background material to which I was referred in submissions required assessment and analysis by the Ftj. The Ftj's decision does not refer in any detail at all to the material that he considered, or explain why he found that the appellant would not, even on the basis of that material, be at risk of persecution on return. It is furthermore, at least implicit from [24] that the Ftj considered that there was material which suggested that a person being pursued for debt might be subject to "oppression and mistreatment".
49. In all these circumstances, I am satisfied that the decision of the Ftj must be set aside. Given that the errors of law relate to the Ftj's assessment of credibility, it is appropriate, having regard to the Senior President's Practice Statement at paragraph 7.2, for the matter to be remitted to the First-tier Tribunal for a hearing *de novo*, given the nature and extent of the fact-finding exercise required.
50. With one exception, none of the findings of fact are to be preserved. That exception relates to the Ftj's conclusions at [28] in terms of the ETS fraud allegation. That finding is self-contained and is not infected by the error of law. It is a finding that is to be preserved.

#### *Decision*

51. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside, and the appeal is remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Judge Mathews. Except as indicated in the preceding paragraph, no findings of fact are to be preserved.

#### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Given that this is an appeal in relation to a protection claim, 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 his 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.

Upper Tribunal Judge Kopieczek

5/10/17