



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

Appeal Number: PA/13947/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4 June 2019**

**Decision & Reasons Promulgated  
On 30 July 2019**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**MR ABDUL JABAR  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Malik, Counsel

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan born in 1992. He arrived in the UK on 25 September 2016, ostensibly as a student. He claimed asylum on 29 January 2018.
2. The respondent refused his asylum claim in a decision dated 30 November 2018. The appellant appealed against that decision and his appeal came before First-tier Tribunal Judge M P W Harris (“the FtJ”) at a hearing on 17 January 2019 following which the appeal was dismissed. The appellant appealed against that decision and his appeal thus comes before me.

*The basis of claim*

3. The appellant's claim, as put before the respondent and the First-tier Tribunal, is that he was born and raised in the Federally Administered Tribal Area ("FATA") of Pakistan. His father was what is known as a Malakzada; a person who belongs to the family of chiefs of the tribe. His family was prominent in his home area and they were active in supporting the Awami National Party ("ANP"). Political opponents often made threats against the family, particularly at election times.
4. In 2008 a leader of the Lashkar e Islam militant group, Mengal Bagh, assembled a group of 1,000 men outside the appellant's family home in order to pressure one of the appellant's uncles to withdraw his candidacy for the ANP but his uncle refused.
5. The appellant's father was active against Islamic militants and participated in the Government closure of a mosque run by a mullah with links to Tehrik I Taliban Pakistan ("TTP"), an organisation containing many armed jihadist groups. The TTP are hostile to the ANP. The appellant's father was also a commander in the Khyber Khassander Force ("KKF") which is a militia group backed by the Pakistani Government.
6. On 14 February 2011 the appellant's father was on patrol with three of his men when they were ambushed by armed men. His father was killed. Several days later the jihadist group Abdullah Azam Brigade Group claimed responsibility. The appellant and his family began to pressure the Government into taking action, with the appellant sending a letter to the Government. He also knocked at the doors of the Political Administration, Governor and Member of the National Assembly ("MNA") of Khyber to persuade them to act. This resulted in militants sending threatening letters, and sometimes people, to the appellant's family to dissuade them from continuing.
7. Two of the appellant's uncles were targeted by bombs, in 2012 and in 2013. His uncles were injured but survived. However that had the effect of making them stop trying to make the Government take action against the militants although the appellant was determined to continue.
8. On 2 July 2013 he was kidnapped by members of Lashkar e Islam and held for 10 days. He was tortured by being beaten, starved, locked in the toilet, kept alone and threatened with death. He was accused of conspiring against the group and providing information to the Government that had led to Government forces killing three group members at a checkpoint.
9. Through the tribal council, or Jirga, the appellant's family secured his release on condition that he no longer conspire against the jihadist groups. At the suggestion of his family he moved to live with his sister in Peshawar where he studied engineering at university.

10. However, when he was at one of the local shops a shopkeeper told him that an unknown person was making enquiries as to his whereabouts. Out of fear the appellant moved from his sister's address and changed his accommodation every three or four months. However, he continued his studies and became a student leader.
11. Every five or six months he returned home, remaining active in and helping the ANP. He was a political adviser and used to introduce speakers, such as his uncle, at rallies. He made discreet visits to locals to persuade them to vote for the ANP.
12. After his graduation and at the suggestion of his mother, he decided to come to the UK to pursue his studies. Whilst here he hoped that the situation in his home area would improve so that he could return to Pakistan. He remained in contact with his family who told him that the situation with the militants remained bad.
13. On 6 January 2018 in the UK the appellant was contacted by phone and text by someone who said he was speaking on behalf of the TTP and Al Qaida. He was threatened that as soon as he came back to Pakistan from the UK he would be killed or he would have to work for them. The appellant reported the incident to the police in Coventry. He then claimed asylum.
14. His fear is that if he returns to Pakistan he would be at risk from the TTP, Lashkar e Islam, the Abdullah Azam Brigade group and Al Qaida.

*The Ftj's decision*

15. At [2]-[3] the Ftj identified the documentary evidence he had before him. He set out in detail the basis of the appellant's claim and summarised the respondent's reasons for rejecting that claim.
16. At [38] he summarised the expert evidence of Dr Antonio Giustozzi contained in his report dated 31 December 2018.
17. At [40] he referred to a statement from Mr Shah Shinwari, said to be the President of the ANP in the appellant's local area. At [41] he referred to that statement not limiting itself to giving details of the appellant's party membership, but going on to say that the appellant belonged to a well-known political family and that his uncle was an ANP candidate during the 2008 and 2013 elections. It states that the appellant played a vital role in spreading awareness and educating the youth in his area against terrorism and radicalism. Mr Shinwari further mentions the appellant's father being killed by militants whilst on duty with the KKF on 14 February 2011. The Ftj referred to the statement concluding by asserting that the appellant faces "a lot of hardship chasing his father's case and being a member of ANP".
18. At [42] the Ftj said that although Mr Shinwari presented himself as knowing about the circumstances of the appellant and that of his family,

and bothers to talk about the appellant facing hardship, it was noticeable that he made no mention of the appellant suffering kidnap and torture in 2013. The Ftj said that that was, after all, the severest form of hardship which the appellant claims to have suffered in Pakistan and thus it was “very odd” that Mr Shinwari does not refer to that event.

19. He went on to state that it was noticeable also that Mr Shinwari makes no mention of the conditions imposed by Lashkar e Islam in relation to the appellant’s release secured through the Jirga, in particular that the appellant be required not to conspire against the jihadi groups. He pointed out that it was nevertheless the appellant’s case that in defiance of that condition he continued to pursue his father’s case to make the authorities act against the jihadis and was also active in anti-jihadi ANP and student politics. The Ftj said that he found it odd that Mr Shinwari does not refer to this claimed significant ongoing active defiance on the part of the appellant. He concluded at [44] that those matters represented inconsistencies between the evidence of Mr Shinwari and central parts of the appellant’s account.
20. He referred to evidence in the respondent’s bundle, being Pakistani newspaper reports with some English translations in relation to the killing of the appellant’s father, as well as a written statement from a journalist. The Ftj accepted that that was evidence capable of supporting the claim made by the appellant about the circumstances of his father’s death.
21. At [46] he referred to F17-18 of the respondent’s bundle which is said to be the release agreement issued by Lashkar e Islam on 12 July 2013 ending the appellant’s abduction after the central committee of the militant group held a tribal council. He quoted from that document and what it says about the conditions of the appellant’s release, including that he be disowned by his family or having to pay a penalty of Rs5,000,000 if he did not desist in participating in activity against Lashkar e Islam and the Abdullah Azam Brigade group.
22. At [47] he noted that Dr Giustozzi sought to emphasise the improvements in organisation made by Lashkar e Islam, and thus in their capabilities yet it was conspicuous in the appellant’s account that despite his claimed ongoing anti-jihadist activities there is no mention of any demand by Lashkar e Islam that the appellant and his family pay the penalty of Rs5,000,000 or that the appellant’s family disown him. He noted that Rs5,000,000 was a considerable sum that would be of financial benefit to the group. He also noted that there was nothing in the appellant’s account of any militants seeking to damage the appellant’s property after his release in 2013, that being a further condition of his release.
23. Referring at [48] to the ruthlessness and violence of Lashkar e Islam, and what is said about the group by Dr Giustozzi in terms of their desire to demonstrate their power and authority, he said that the lack of enforcement of the conditions by the militants raised serious doubts about the reliability of the (release) agreement document. He found that it also

raised significant doubts about the appellant's account of the kidnapping that led to the claimed terms of release, as well as the claim made by the appellant about being a target of the militants after his release because of ongoing anti-jihadi activity.

24. As regards the appellant's evidence, he acknowledged that there was "coherence" in the appellant's account of events up to the targeted bombings against his uncles. He also found it plausible that the 2008 incident in relation to the family home was primarily about a display of power by Lashkar e Islam, rather than actual violence against political opponents. He noted, however, that the focus of display was in fact against the appellant's politician uncle in particular and the appellant's family in general rather than specifically against the appellant. He found that the violent targeting in the FATA by Islamic militants of political opponents, with reference to the killing of the appellant's father and the bomb attacks on his uncles, was not at odds with the country background evidence.
25. The FtJ rejected criticism made by the respondent in his decision in terms of the appellant's involvement with the ANP.
26. However, he also concluded that there were difficulties about accepting the appellant's claim of being personally targeted by militants from 2013 onwards. He referred again to the lack of action taken by Lashkar e Islam as specified in the written agreement. He went on to say at [54] that although the appellant's case was that he was continually under threat between 2013 after his kidnapping and up to 2016, during this period people said to be his enemies never perpetrated any further serious harm on him. He referred to paragraph 12 of Dr Giustozzi's report where it states that in much of Pakistan the presence of the TTP and similar groups was not so thick that they would immediately realise that the appellant was amongst them, and thus it was possible for him to spend short periods in Pakistan without being detected by the militants.
27. However, the FtJ said that he was not persuaded to attach much weight to that opinion because it ignored that the appellant was in Pakistan continuously for over three years following his release from the abduction. That, he said, was more than short periods of time and Dr Giustozzi's analysis did not engage with the appellant's claim that during that period he was primarily spending his time studying in Peshawar or returning to spend time with his family in his home area. Those were locations where Islamic militant groups had a strong presence.
28. At [56] the FtJ also referred to the appellant's claim that throughout that period he was openly participating in ANP rallies and events. Although the appellant had emphasised that those events had security, the FtJ considered it significant that his open attendance was an opportunity for him to be monitored, traced and targeted, away from the security of such events. In addition, at that time the appellant was openly attending university. Although he claimed he was moving accommodation every few

months, his regular attendance at the university and his mingling with other students as student leader presented the opportunity for him to be traced and targeted, even if he moved accommodation. On the appellant's account the closest his enemies seemed to have come to in confronting him physically in three years was when a stranger made enquiries about him at some local shops. Thus, the FtJ said that he found the claim of persistent enmity from the militants lacked credibility.

29. Furthermore, he referred to the appellant's account that his militant enemies managed to trace him through his phone even though he was thousands of miles outside Pakistan, in the UK. That, the FtJ said, raised significant doubt about the appellant's account that on the one hand his enemies were able to track him down in the UK, but on the other hand failed to target him whilst he resided for three years in the areas of Pakistan where the militants have a presence.
30. He concluded that it weighed against the appellant that he remained in Pakistan for so long if he was at real risk of serious harm and that he would have expected someone claiming to be in such constant great danger to have left Pakistan much earlier. He noted that his family currently had the resources to send him abroad to study.
31. Referring to the note said to have been made by the police officer at Coventry Central police station in relation to the threats the appellant said he received in January 2018 (the FtJ gave the date as January 2019), he said that the document did not state what the details of the complaint were or indeed that the complainant was the appellant. He said that in the end it was the appellant's word that this note related to a complaint he made about threats he received from militants. He decided that that evidence did not add significant weight to that part of the appellant's claim.
32. At [60] the FtJ said that weighing up matters in the round, there was sufficient reliable evidence to accept that the appellant belongs to a prominent family in his home area involved in ANP politics and that his father was killed whilst on duty with the KKF in 2011. He also accepted that until warned off by the bomb attacks of 2012 and 2013, members of the appellant's family sought to make the authorities take action against the jihadists because of the death of the appellant's father.
33. However, he concluded that there were such strong doubts arising about the credibility of the appellant's claim as to what happened after the bomb attack in 2013 that he did not accept that he was kidnapped or continued to be at real risk from the militants whilst he remained in Pakistan between 2013 and 2016. He further rejected the claim that the appellant received threats in the UK in January 2018, noting that that was the month in which his leave was due to expire.
34. He then went on at [62] to conclude that with reference to s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 the

adverse credibility findings were reinforced by the appellant's delay in making his claim for asylum "until 2019", having arrived in the UK in 2016. He further concluded at [63] that the appellant had not demonstrated that he has been perceived by the militants to be active in pursuing his father's case and thus being perceived as an opponent to be targeted.

35. He concluded that the appellant had not demonstrated that any political or student activity in Pakistan resulted in hostility from militant groups such as to put him at risk. He found that even in relation to the events which he accepts as having occurred, the appellant would not be at risk on return. He concluded that the appellant's position was little different from that of his brothers in Pakistan who since 2013 had remained living openly in Pakistan without being targeted in the manner which the appellant says he has been targeted. He noted that the appellant had not sought to argue that those relatives at present face a real risk of serious harm because of any links to the appellant's father and family or any involvement in ANP politics opposing the militants.
36. In those circumstances, he concluded that there was no need for a consideration of the issues of sufficiency of protection or internal relocation. He went on to reject the Article 8 aspect of the claim.

#### *The Grounds and Submissions*

37. The grounds contend that in various respects the FtJ failed to make a proper assessment of the evidence adduced in support of the appeal. Thus, it is argued in the grounds that the statement from Mr Shinwari was not, and was never intended to be, a statement of all the facts of the appellant's case. The FtJ was wrong to read too much into lack of details in that letter. The FtJ was also wrong, it is said, to think that the Pakistani Taliban do not come to agreements with locals because the Taliban are only concerned in "killing and harshness". Because the TTP has to attract followers primarily from the FATA region, they do need the support of locals. That explains to some extent the Jirga system.
38. In relation to the appellant leaving Pakistan, he was at risk from 2015 and left in 2016. However, during all that time he was taking "precautionary measures". He applied for a UK visa which took time.
39. As regards the threatening phone call he received in the UK, the details were provided to Coventry police and are copied at F11 of the respondent's bundle. The appellant was told by the police that the Home Office should contact him and they would disclose all the information to the Home Office. During the screening interview the appellant provided those details, being the contact name and number for the police, as well as the reference number. The Immigration Officer kept the original piece of paper on which the information was written and said that they would "look at this". Because the respondent had not doubted the phone call received by the appellant it was not open to the FtJ to do so.

40. As regards the timing of the appellant's asylum claim in the UK, he was hoping that things would improve in Pakistan but they did not. He applied for asylum about a week after receiving the threatening phone call on 6 January 2018.
41. The grounds also contend that the FtJ failed to consider the issues of sufficiency of protection and internal flight. There was expert evidence on the issue of internal flight which the FtJ had failed to consider.
42. In his submissions, Mr Malik relied on the grounds. In support of his submissions I was referred to various aspects of the FtJ's decision. It was submitted that the FtJ had failed to give adequate consideration to the release agreement dated 2013.
43. In the asylum interview at question 139 the appellant explained that he was trying to escape and living at different accommodations. It was submitted that that explained how he was able to stay in Pakistan for three years until he left. Reference was also made to the appellant's witness statement in this respect which states that the law in Pakistan requires a person to show identification to a landlord who then has a duty to notify the authorities. However, because the appellant was able to live with his sister he did not need to provide identification and so the militias were not able to trace him. Similarly, he did not reside in his home town.
44. In relation to the 'section 8' point, dealt with by the FtJ at [62], the FtJ was wrong to say that the appellant delayed making his claim for asylum until 2019. It was in January 2018 that he made the claim.
45. As regards the details of the threatening phone call, this was not a matter that the respondent had challenged in the decision letter (in terms of a report to the police).
46. Mr Malik also relied on the grounds which criticise the FtJ for failing to consider internal flight.
47. It was also suggested on behalf of the appellant that in relation to Article 8 the FtJ had failed to consider the appellant's medical condition. However, it was accepted on the appellant's behalf that the grounds of appeal in relation to the FtJ's decision do not refer to Article 8 and no application had been made to amend the grounds.
48. Mr Bramble argued that, in essence, the complaints about the FtJ's decision amount only to a disagreement rather than pointing to any error of law in the decision. It was submitted that he had identified the key points from the expert evidence of Dr Giustozzi, and had made findings on all relevant facts.
49. As regards the statement from Mr Shinwari, as the FtJ had said, this was not simply a basic statement but was a detailed one setting out what were said to be the appellant's circumstances.



50. In terms of the content of the release agreement, the build up to the Ftj's conclusions starts at [53] and the expert's evidence was factored into the assessment. Although it was claimed by the appellant that he was moving around and therefore was able to escape being targeted, as the Ftj had pointed out he was openly participating in various events and the Ftj was entitled to find that those activities could have led to his being traced and monitored.
51. It was submitted that the Ftj had come to reasoned conclusions in terms of the delay in leaving Pakistan in circumstances where the appellant claimed that he was at such risk. As regards the delay in claiming asylum, even if the Ftj did make an error in saying that he made his claim in 2019, the appellant had still failed to claim asylum at the earliest opportunity. His case was that he left Pakistan because of the threats but he could have applied for asylum at the outset on his arrival in the UK.

*Assessment and conclusions*

52. I deal with the grounds in the order in which they are pleaded. In relation to the statement from Mr Shinwari, although the grounds assert that the letter was not, and was never intended to be, a full statement of the appellant's circumstances, the Ftj made a full assessment of that evidence between [40] and [44]. He pointed out, referring to the detail of the statement, that Mr Shinwari did not limit himself to giving details of the appellant's party membership. The Ftj refers to what is said in the statement about the appellant facing "a lot of hardship chasing his father's case and being a member of ANP". In those circumstances, the Ftj was entitled to conclude that given that Mr Shinwari presents himself as knowing about the circumstances of the appellant along with his family and refers to the appellant facing hardship, it was significant that he made no mention of the claimed kidnap and torture in 2013. As the Ftj said, that was the severest form of hardship that the appellant claimed to have suffered in Pakistan.
53. Furthermore, the Ftj was also entitled to consider it adverse to the appellant's credibility that Mr Shinwari makes no mention of the conditions imposed by Lashkar e Islam on the appellant's release secured through the Jirga. Particularly so given that it was the appellant's case that he defied the conditions of his release and continued to pursue his father's case.
54. What is said in the grounds about [48] of the Ftj's decision, to the effect that the Ftj was wrong to think that the Pakistani Taliban do not seek to be on good terms with locals, makes no sense in the context of the Ftj's decision, in particular at [48]. The Ftj did not in any way raise doubt about militants engaging with the local community. His point was that the appellant's account in relation to the release agreement was not credible, for the reasons he gave.

55. The complaint about what the FtJ said at [58] in terms of the length of time it took the appellant to leave Pakistan simply amounts to a disagreement with the FtJ's decision. The FtJ clearly explained why he considered that the appellant would have left much sooner than he did in the light of his claimed fear. What the FtJ said about the appellant's family having had the resources to send him abroad to study is also pertinent.
56. As regards the details apparently recorded by Coventry police of what is said to have been a threatening phone call to the appellant, the FtJ made an assessment of that evidence in the context of the evidence overall. He was right to point out that the bare details recorded (copied at F11 of the respondent's bundle) do not state what the details of the complaint were, or indeed that the complainant was the appellant. He was similarly entitled to point out that it was the appellant's word that the note related to a complaint he made about threats he received from militants. The conclusion that that evidence did not add significant weight to the appellant's claim was a conclusion that the FtJ was entitled to come to. The point made in the grounds about the respondent not having doubted the phone call does not advance the appellant's argument in this respect. Even if the appellant did receive such a phone call, the issue as to its content referred to by the FtJ still holds good.
57. As regards the 'section 8' issue, it is true that the FtJ made a mistake at [62] in stating that the appellant delayed making his claim until 2019, whereas in fact he made his claim in 2018. However, that is clearly simply a slip of the pen. At [7] the FtJ correctly stated that the appellant claimed asylum on 29 January 2018. Furthermore, it is implicit from [61] that the FtJ was well-aware of the fact that the appellant claimed asylum in January 2018, and that was the basis upon which he assessed the claim. Again, at [62] he referred to a delay of "a couple of years" in claiming, from 2016. In any event, the FtJ would have been entitled to make the point about delay in claiming asylum on the basis of delay between 2016 and 2018; two years after his arrival.
58. Lastly on this point, it is to be noted that the FtJ said at [62] that his adverse credibility findings were "reinforced" by the section 8 point. It was plainly not the only basis upon which he rejected the appellant's claim, or indeed the main basis. He referred at [62] to the appellant's explanation to the effect that he wanted to wait a couple of years to see if matters improved. He was clearly not impressed with that explanation.
59. As regards what is said in the grounds about the FtJ's failure to consider the issues of sufficiency of protection and internal relocation, as the FtJ expressly pointed out at [66], there was no need for him to make an assessment of those issues given that he was not satisfied that the appellant had established to the required standard that he would be at risk in his home area.

60. Neither the grounds nor the submissions on behalf of the appellant persuade me that there is any error of law in the Ftj's detailed and thorough assessment of the appellant's claim.

*Decision*

61. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to dismiss the appeal therefore stands.

Upper Tribunal Judge Kopieczek

24/07/19