



IAC-AH-KRL-V2

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

Appeal Number: PA/05670/2019 (P)

THE IMMIGRATION ACTS

**Decided under Rule 34 of the
Tribunal Procedure (Upper Tribunal) Rules 2008**
On 15 May 2020

Decision & Reasons Promulgated
On 21 May 2020

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

A R G
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS (P)

1. The Appellant is a citizen of Pakistan. His date of birth is 2 December 1992. I make a direction pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 to anonymise the Appellant because this is a protection claim (see Guidance note 2013 No 1: Anonymity Orders).
2. The Appellant's claim for protection was refused by the Secretary of State on 4 June 2019. The Appellant appealed against that decision. His appeal was dismissed by Judge of the First-tier Tribunal Moffatt in a decision of 30 November 2019 following a hearing at Hatton Cross on 17 October 2019.
3. Upper Tribunal Judge Jackson granted permission to the Appellant on 21 February 2020 on all grounds. The matter was listed for 14 April 2020 for an oral hearing. The

matter was adjourned in the light of the COVID-19 pandemic. Mr Justice Lane, President of the UTIAC, made directions. These were issued by the Upper Tribunal on 8 April 2020. In response to those directions the Appellant's solicitors, Pasha Law Chambers Solicitors sent an e-mail to the Upper Tribunal on 20 April. They also made an application under Rule 15(2A) of the 2008 Procedure Rules. The Secretary of State responded in an e-mail of 27 April 2020. There is a reply to the Secretary of State's response from Mr Sowerby of Counsel representing the Appellant, which was sent to the Upper Tribunal on 1 May. The application under Rule 15 (2A) was not served in accordance with the directions issued by the Upper Tribunal on 24 February 2020 that any such application should be made at the latest 10 days before the hearing which was listed on 14 April. However, in the light of the unusual circumstances, I have considered all the documents submitted by the parties and I do not take issue with the timing of the application.

Decision under Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008

4. Having had full regard to the Pilot Practice Direction: Contingency arrangements in the First -Tier Tribunal and Upper Tribunal, the Presidential Guidance Note No 1 2020 and all documents submitted by the parties, I conclude that this appeal decision should be made without a hearing. The Appellant contends that an oral hearing is necessary, in light of complex issues in the case; however, these are not identified. It is also said by the Appellant that a hearing is necessary in order to allow the Upper Tribunal to raise issues or concerns that it may have with either party and to allow either party to properly respond to such issues or concerns. There is no complexity which necessitates an oral hearing to ensure fairness. The parties have been given full opportunity to advance their respective submissions and to fully participate in the decision-making process. There are no issues or concerns to which fairness demands the parties be given a further opportunity to respond or a hearing. The Appellant has been given a full opportunity to engage in the proceedings and to advance his case. Any lack of detail in the grounds or Rule 15 application or lack of clarity in the Appellant's evidence is not a reason to list the matter for an oral hearing. The matter can be fairly and justly determined without a hearing.

The Appellant's case

5. The Appellant's claim is summarised by the judge at paragraphs 13 to 16. His case is that he would be at risk should he return to Pakistan on the grounds of his involvement with Muttahida Quami Movement (MQM). His uncle is a chairman in the council of the MQM. Pressure was put on the Appellant by his uncle on behalf of the MQM to carry out criminal activities. He refused and as a result of this he was tortured on a number of occasions. He had engaged in sur place activities whilst here in the UK. He has been politically active supporting the PAK Sarzameen Party (PSP).

The Appellant's immigration history

6. The Appellant's immigration history can be summarised. He arrived here in the UK on a Tier 4 Student visa on 27 January 2013. On 21 April 2014 he was served with an IS.151A and released on reporting conditions. On 3 September 2014 he made an application under Article 8. This application was refused on 8 January 2015. The Appellant became an absconder on 14 May 2015. He was encountered during an enforcement visit on 10 January 2019. On 14 January 2019 he made an application for asylum.

The findings of the First-tier Tribunal ("FtT")

7. Before the FtT there was the Appellant's bundle, a supplementary bundle and Mr Sowerby's skeleton argument. Judge Moffatt heard oral evidence from the Appellant and a witness Mr Mohammed Norman. She recorded, at paragraph 57, that the case turned on the Appellant's credibility and observed that "there is very little documentary evidence which has been filed to corroborate the Appellant's evidence". The judge found, at paragraph 58, that the Appellant had been "consistent throughout his account that he worked for MQM, a political organisation with which his paternal uncle was involved, from 2010 until he left the UK in 2013". The judge said that she accepted the Appellant's evidence on this point. The judge found that "his role was non-political, working as a data operator earning 5,000 rupees per month. I find that he was also working as a CCTV installer as his primary employment". The judge found, at paragraph 59, that there were inconsistencies in the evidence relating to the dates on which the Appellant says that he was tortured. The judge had before her a Rule 35 report prepared by Dr Ahmad. She commented that there was nothing to suggest that Mr Ahmad has training in the assessment of torture and there was no evidence provided that the Appellant is receiving medication or treatment to alleviate any psychological symptoms. The judge found that the Appellant's account that he was assaulted and tortured on many occasions and yet remained working for the MQM until he left for the UK in 2013 lacked credibility. The judge found, at paragraph 64, that the Appellant had no need to remain with the MQM and found that there are answers in the Appellant's interview which suggest that his uncle was a "protective factor" in his treatment. The judge said, "I cannot see that he would have had any difficulty in ceasing to work for the MQM if he really was subjected to such requests and such treatment".
8. The judge considered the delay in the Appellant making a claim for asylum, at paragraph 65, of the decision and concluded that his credibility was damaged having rejected the Appellant's explanation.
9. The judge, at paragraph 67, stated "having considered all the evidence in the round, I find that the Appellant was not subjected to repeated requests to carry out criminal activities whilst a member of MQM and was not beaten as a result of his involvement with the MQM".

10. In relation to the Appellant's sur place activities the judge observed that he had provided documentation in order to demonstrate that he belongs to the PSP. The judge found that the Appellant became a member of the party whilst in the UK. The judge took into account the evidence of his activities with the party at paragraph 69. The judge considered the Appellant's evidence that an indirect threat had been made to the Appellant via his family as a result of his uncle having seen him on television engaging in sur place activity in support of the PSP. The judge, at paragraph 71, concluded that the Appellant was a member of the PSP, but that he had not taken part in any political activities for six to eight months and that his activities (which are set out at paragraph 69 of the decision) were not at a level that would cause concern to political opponents.
11. The judge at paragraph 72 found the Appellant's evidence as to what he fears to be ambiguous.
12. The judge went on to consider humanitarian protection and he concluded that the Appellant is not at risk on return to Pakistan. The judge dismissed the appeal under Article 8.

The Grounds of Appeal

Grounds 1 and 2

13. Ground 1 is a reasons challenge concerning paragraph 72 of the judge's decision in which she recorded her finding that the Appellant's evidence as to what he fears is "ambiguous". I shall consider this along with ground 2 which asserts that the judge did not properly consider the Appellant's evidence in relation to his activities for the MQM. Reference is made to paragraphs 14 to 19 of the Appellant's witness statement and specifically paragraph 58 of the decision of the judge where she found that his role was non-political, although she accepted that the Appellant had been consistent throughout his evidence that he worked for MQM from 2010 until 2013. It is asserted that the judge failed to consider or place any weight on the Appellant's evidence and that she failed to reason her finding that his role was non-political. A challenge under ground 2 is also made to the judge's finding, at paragraph 64, that it was not credible that having been assaulted and tortured on many occasions the Appellant worked for the MQM until he left for the UK in 2013. It is asserted that in so finding the judge failed to consider or place weight on the Appellant's evidence of membership of the MQM and that he was heavily involved in its political activities.
14. In response in respect of grounds 1 and 2, in written submissions, the Secretary of State submits that the decision must be read as a whole. It is submitted that the First-tier Tribunal was entitled to conclude that there was a contradiction between the Appellant's case that he was ill-treated as a result of failure to commit crimes on behalf of the MQM and his claim that he was politically active on the parties' behalf. In Mr Sowerby's reply he asserts that reading the decision as a whole does not cure the error made by the judge in failing to provide adequate reasons why she found the Appellant's evidence to be "ambiguous". In addition, it is asserted that the Secretary of State has not engaged with ground 2.

Grounds 1 and 2 - conclusions

15. Having considered the decision as a whole, I identify four primary reasons why the judge did not accept the Appellant's account that he had a political role in the MQM or that he was ill-treated. The first reason is that the judge found material inconsistencies in the evidence (see paragraphs 59 to 62). Secondly, the judge found that the medical evidence was limited (see paragraph 63). These findings are subject to challenge in grounds 4 and 5, but for the reasons given later in this decision, the judge's findings relating to these issues are lawful.
16. The third reason that can be identified is at paragraph 64 where the judge says that she takes account of the actions that the Appellant took after the incidents he complains about. The judge took into account the Appellant's evidence that he was subject to requests to undertake criminal activities every two or three days until 2012 and that he was assaulted and tortured on many occasions and yet his evidence was that he stayed working for the MQM until he left Pakistan in 2013. The judge did not find this part of the Appellant's account to be credible in light of the fact that he had a full-time job as a CCTV installer and there was in the judge's view no need for him to remain with the MQM. To put the findings in context the final sentence of paragraph 64 indicates that the judge interpreted answers given by the Appellant during the interview to suggest that his uncle was a "protective factor" in his treatment and therefore she reasonably inferred that he would not have difficulty ceasing to work for the MQM. Whilst the judge does not identify the relevant part of the Appellant's interview, there is no challenge to this finding. In the light of the evidence before the judge, I conclude that at paragraph 64 the judge drew a reasonable inference.
17. The Appellant sets out in his witness statement (which is a response to the reasons for refusal decision) at some length his role within the organisation. Specifically, at paragraph 16, he states that when he formally became a member of the MQM he was given an incentive to earn money under the title of data operator so that he would have a financial incentive and would not have to do any part-time work. No error arises from the judge not having set out the Appellant's evidence. Furthermore, there is nothing to support the Appellant's contention that the judge did not take into account the evidence contained in his witness statement. The finding at paragraph 58 must be considered in the context of the decision as a whole. It is clear to the parties why the Appellant's evidence was not accepted.
18. The fourth reason for rejecting the Appellant's account about his role within the MQM is that his credibility was damaged by virtue of Section 8(4) and (6) of the 2004 Act (see paragraph 65). There is no challenge to this finding in the grounds.
19. The choice of the word "ambiguous" by the judge, at paragraph 72, relating to what it is the Appellant fears, is not properly explained by the judge. However, what is clear is that the Appellant's appeal was dismissed primarily for the four reasons identified above and not as a result of ambiguity as found by the judge. Nothing turns on the judge's findings of ambiguity.

Ground 3

20. Ground 3 asserts that the judge did not properly consider the Appellant's sur place activities for the PSP. It is asserted that the judge did not place any weight on the Appellant's evidence that his uncle saw him on television and as a result threatened him or the photographic evidence showing the Appellant with the UK and European president and joint secretary of the PSP which were taken on 29 September 2019. In addition, Mr Norman, who gave oral evidence, wished to rely on a letter which was dated 10 September 2019 (page 34 of the Appellant's bundle). In this letter Mr Norman confirmed that the Appellant is an active member of the PSP. There was no issue taken with Mr Norman's evidence at the hearing. In addition there was a letter from the president of the PSP UK and Europe of 26 June 2019 which indicates that the Appellant has been an active member of the organisation since 22 October 2017. It is asserted that the judge did not take into account this evidence.
21. In relation to ground 3 the Secretary of State's case is that the judge accepted that the Appellant was a member of the PSP and there was no "objective evidence" that membership of the PSP in Pakistan is unlawful or that it would lead to a risk of persecution. It is asserted that it is clear that the judge did not accept that the Appellant had been threatened by his uncle. In reply the Appellant repeats that the judge does not make a finding about whether the Appellant had been threatened by his uncle. It is also asserted that there was "objective evidence" that established that the Appellant would be at risk of persecution on return to Pakistan and that the judge referred to this evidence at paragraph 75 of the decision.

Ground 3 - conclusions

22. The judge considered the sur place activities at paragraphs 68 - 71. She took into account the documentary evidence relied on to support that that he was a member of the PSP; however, the Appellant's own evidence was that he had not done anything for the last six to eight months. The judge accepted the Appellant's evidence about his activities for the organisation and that he was a member. In relation to the evidence of a threat having been made to the Appellant via his family as a result of his uncle having seen him on television attending a political event, a proper reading of paragraphs 70 and 71 makes it clear that the judge did not accept the Appellant's evidence. The judge found that if there had been a threat to his family the Appellant would not be speaking regularly to his mother. To understand the conclusions reached by the judge the decision must read as a whole.
23. At paragraph 75 of the decision the judge refers to background evidence of MQM action against the PSP. There was no background evidence that would suggest that the Appellant's sur place activities alone would place him at risk on return. His case was not presented on this basis in the alternative.

The application under Rule 15 (2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008

24. The Appellant gave evidence relating to PSP. It is therefore appropriate to engage with this when considering ground 3. The application is to adduce evidence that was

not before the FtT. There is a letter from Mr Masroor of 12 March 2020. He is the president of the PSP. He says that the Appellant is actively involved with the party. He comments on the Appellant's previous political background. There is a letter from Mr Raza who is the joint secretary of the PSP.

25. In addition there is a newspaper article published in "the Daily Urdu Bulletin" on 4 February 2020 which relates to the opening ceremony of a branch office of the PSP and in which it is asserted the Appellant can be seen. There is a translation of the newspaper article. There are further photographs submitted in support of the Appellant's case. The photographs are said to show the Appellant's participation in the opening ceremony of a branch office and there is evidence supporting the identification of the witnesses. It is asserted by the Appellant's representatives that the evidence was not available at the time of the First-tier Tribunal because the branch office of the PSP was not opened until after the hearing.
26. Whilst it is obvious why evidence relating to the opening of the branch office could not be before the FtT, it is not explained why there was no evidence from the witnesses. In any event, the evidence makes no difference to the findings of the judge in relation to the Appellant's activity with the party in the UK. Whilst there is an assertion made by the witnesses that the Appellant was an active member of MQM, they did not attend the hearing before the FtT. The evidence does not explain how the witnesses became aware of the Appellant's previous political activity or how long they have known him. Their evidence does not support the Appellant having received a threat from his uncle. There is no good reason for admitting the evidence in the context of consideration of whether the First-tier Tribunal made an error of law; however, it would make no difference in any case to the decision. If the Appellant has increased his activity with the PSP and is claiming that this will put him at risk, it is open to him to make fresh submissions under paragraph 353 of the Immigration Rules.

Grounds 4 and 5

27. Ground 4 asserts that the judge did not make clear findings whether the Appellant was tortured in Pakistan and that she failed to take into account the Appellant's evidence at paragraphs 52 to 54 of his witness statement. Ground 5 asserts that the judge erred in failing to place weight on the Rule 35 report prepared by Dr Ahmad. The Appellant asserts that the judge erred in failing to place weight on the Rule 35 report in circumstances where the Respondent did not question Dr Ahmad's qualifications and that the Appellant was released from detention following consideration of the report.

Grounds 4 and 5 – conclusions

28. It is necessary to consider the evidence that was before the First-tier Tribunal relating to the Appellant having been tortured. During the Appellant's interview he was asked a number of questions about the treatment he received

Question 127: how many times were you asked to commit crimes for the MQM?

Answer: all the time, every second or third day they would ask me.

Question 128: did you carry out any of the crimes that you were asked to do?

Answer: I never did so they tortured me and assaulted me many times.

Question 129: how many times were you tortured and assaulted?

Answer: six to seven times.

Question 130: who tortured you?

Answer: there were two men who were political workers along with one policeman and I do not know their names but I can recognise them. Each incident they were unknown to me. I knew some of them but not all of them.

Question 131: how many times were you tortured?

Answer: I was tortured and assaulted at the same time.

Question 132: when did these tortures happen?

Answer: in 2010 and December 2010 and couple of times in 2012.

Question 131: how were you tortured?

Answer: they struck my legs with iron rods and I was unable to walk for three months and they burn the back of my hands and they with pliers they pressed my fingers and I was bleeding. They used to punch and slap my face.

Question 134: where did these tortures take place?

Answer: it was in a unit office in Gulshan Iqbal, unit office number was 67A.

Question 147: what happened after you were tortured?

Answer: after the torture I was in pain and crying, they offered me some water to drink and asked me to leave after some time. After I was bleeding I went to the hospital.

Question 148: did they let you go after all the times you were tortured?

Answer: yes and my parents would always get upset because they knew what I had been through.

Question 149: did you sustain any injuries from these tortures?

Answer: yes.

Question 150: did you have to go to hospital for these?

Answer: yes once I went when they struck my legs, they warned me not to say anything to the hospital that would lead to a police report.

Question 151: how long were you in hospital for?

Answer: two hours.

Question 152: what injuries did you sustain?

Answer: my legs were injured when they were hitting me with the rods.

Question 154: how did you get to the medical centre?

Answer: I went on my motorbike but my leg was in pain.

Question 155: so you rode your motorbike to the medical centre?

Answer: yes.

Question 156: how were you able to ride your bike if you could not walk for three months?

Answer: I went with great difficulty, I was limping and it was only parked two to three minutes away on my left leg and was able to start my leg with the right leg and somehow I got there.

Question 157: how many times did you have to go to the hospital?

Answer: twice I got serious injuries so I have to go.

29. In response to the Appellant's interview the Secretary of State's position is set out at paragraphs 50 to 52 of the Reasons for Refusal Letter and it states as follows

“ In your asylum interview you claim that you were asked to commit crimes every two to three days but you never carried out the tasks and so was tortured a total of six or seven times in 2010, December 2010 and in 2012 (AIR 127-129, 132). You claim that there were two MQM supporters and a policeman who tortured you and the torture took place 'in a unit office in Gulshan Iqbal, unit office number was 76A' (AIR 130, 134). You claim that

'they struck my legs with iron rods and I was unable to walk for three months and they burn the back of my hands and they with pliers they pressed my fingers and I was bleeding. They used to punch and slap my face' (AIR 133).

51. Alternatively, you state that you rode on your motorbike after the attack and went to the Almustafa Medical Centre for two hours where you were treated. You state 'I went with great difficulty, I was limping and it was only parked two to three minutes away on my left leg and was able to start my leg with the right leg and somehow I got there' (AIR 149-156).

52. It is noted that you have provided various accounts of how you were beaten and what happened during this incident between your Rule 35 report and asylum interview. Your inability to provide consistent details regarding a core aspect of your claim has damaged your credibility. In addition, it is not plausible that you were beaten with iron rods which resulted in you being unable to walk for three months, that you would then be able to escape the incident on a motorbike. As a result, your credibility has been damaged.”

30. The Rule 35 report of 13 February 2019 reads as follows

“This person says he is a victim of torture in his country Pakistan.

He says he was a MQM (a political party) member and was given an illegal task in 2010 and he was advised that he should not disclose to anyone. He did not like the idea and discussed with his dad who told his uncle who was also a very active leader of MQM. In December 2010 he was called to party headquarter and was beaten up with a metal bar and sustained injuries to his L leg. He was treated at Almustafa Hospital in

Gulshan Iqbal, Karachi, Pakistan. He was tortured by various means on numerous occasions. In July 2011 he was again tortured when a hot metal plate was applied to his L hand and also L index finger was injured. He was treated at the same hospital.

Now he is complaining of anxiety symptoms, insomnia, panic attacks and flashbacks which are affecting him...".

In Section 6 under the heading "assessment" the doctor states as follows

"In my opinion the symptoms he is describing can be consistent with the clinical findings today and I am raising my concerns that he may be victim of torture and his case needs further investigated. I am also concerned that this ongoing detention can have adverse effect on his physical and psychological wellbeing".

31. The Appellant's evidence relating to the issues raised by the Secretary of State in the Reasons for Refusal Letter at paragraphs 52 to 54 of his witness statement read as follows:-

52. In relation to paragraphs 51 and 52 it is stated that I provided various accounts of how I was beaten up and what happened during the incident between your Rule 35 report and my asylum interview. However, it is correct to advise that I gave various accounts of the incident. The Rule 35 report notes that I 'was beaten up with a metal bar and sustained injury to his left leg'. Answer to question 133 of the asylum interview notes that 'they struck my legs with iron rods'. The difference is that of the words used by the interpreter in the Asylum Interview Record. Metal bar and iron rods are the same thing. Further my understanding of the question 133 on the basis of the way it was asked was to describe how torture took place on different occasions rather than how torture took place on one particular occasion so I did explain how I was tortured accordingly. The questions asked just prior to question 133 show the context in which the question 133 was asked.
53. Further the Rule 35 report notes that I sustained injury on my left leg as a result of the torture that took place in December 2010. This is what I explained in response to question 156 when I explained that I started my motorbike with my righto leg and went to the hospital.
54. Further the Rule 35 report notes that I was tortured when a hot metal plate was applied to my left hand and also left index finger was injured. This incident of torture occurred when I was given the task to go and burn a bus, my cousin was the leader of that task. That happened in July 2011. I went along the group but was just there and did not physically take part in the actual activity and refused to my cousin to burn the bus. Question 198 of the Asylum Interview Record notes that I told that the bus was burned in June or July 2011. It was after that refusal to actively engage in the actual criminality that my cousin once again reported me back and further torture took place in which is what I described in the rest of my answer to question 133 where the answer is noted as 'they burn the back of my hands and they with pliers they pressed my fingers and I was bleeding'. I was giving information to the interpreter who would translate for me and this may have caused some misunderstanding in the mind of the interviewer. However, if specific questions were asked to seek clarity I would have obviously been able to provide the same at the interview.

55. The rest of my answer in response to question 133 notes that ‘they used to punch and slap my face’”.
32. None of the Appellant’s accounts are particularly coherent. He had the opportunity to give some clarity in his witness statement. In his interview he says he was attacked in 2010 and 2012. He described an attack to his legs and hands. The Rule 35 report describes the Appellant saying that he was attacked in 2011 causing injury to his hand and in 2012 causing injury to his legs. He attempts to explain the inconsistency in dates, in response to the RFRL, in his witness statement with reference to an incident involving a bus about which he referred to in his interview. However, in the interview, when discussing this incident, he did not say that he was tortured at this time. There is nothing to indicate that the judge was not aware of and/ or did not take into account the Appellant’s evidence in an attempt to explain the clear discrepancies. The judge specifically mentions paragraph 53 of the Appellant’s witness statement (see paragraph 63). The Appellant seeks to explain the inconsistencies in his evidence at paragraphs 52-55. I am satisfied that the judge took the evidence into account and made findings that were open to her. The judge was entitled, at paragraph 59, to conclude that the account given by the Appellant relating to the dates on which he said he was tortured was inconsistent. The judge explains the inconsistencies at paragraphs 60, 61 and 62. The judge was entitled to conclude that there was an inconsistency relating to the extent of the Appellant’s injuries after the torture in 2010 rendering him unable to walk for three months but being able to travel by motorbike to the medical centre. These were findings that were open to the judge on the evidence before her.
33. What weight to attach to the Rule 35 report was a matter for the judge. There is no error arising from paragraph 63 of the judge’s decision. The judge did not take issue with evidence of scarring; however, she did not accept that the Appellant was tortured in accordance with his account. The judge did not have to explain the scarring. The burden of proof rests on the Appellant. The judge does not accept that this Appellant was the victim of torture and therefore paragraph 339K is not material to the judge’s decision.

Ground 6

34. The Appellant submits that the judge did not have regard to the objective evidence about MQM with regard to internal flight; however, there is no need for me to engage with this because the judge did not err when concluding that the Appellant was not at risk on return.
35. There is no error of law arising from the decision of the FtT. The decision dismissing the Appellant’s appeal on protection grounds is maintained.

Notice of Decision

The appeal is dismissed.

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

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 their 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.

Signed *Joanna McWilliam*

Date 15 May 2020

Upper Tribunal Judge McWilliam