



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

PA/09478/2018 (V)

THE IMMIGRATION ACTS

Heard by *Skype for Business*  
On 9 September 2020

Decision & Reasons Promulgated  
**On 19 October 2020**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

**MUHAMMAD [U]**

Appellant

and

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

Respondent

*For the Appellant: Mr Forrest, Advocate, instructed by Maguire, Solicitors,  
Glasgow*

*For the Respondent: Mr Howells, Senior Home Office Presenting Officer*

**DETERMINATION AND REASONS**

1. The respondent refused the appellant's claim, on all available grounds, by a decision dated 16 July 2018.
2. FtT Judge Green dismissed the appellant's appeal by a decision promulgated on 30 January 2019.
3. The appellant produced a report by Dr Fraser Morrison, consultant clinical psychologist, dated 30 August 2018. The author was asked to opine on

“the substantive nature of the relationship” between the appellant and his wife. His conclusion was that the relationship was genuine.

4. In a second psychological report, dated 4 November 2018, Dr Morrison was asked to comment on the appellant’s ability to participate in tribunal proceedings. He concluded that it was unlikely that the appellant would be “able to participate ... in any meaningful degree”.
5. The appellant applied to the FtT for permission to appeal on grounds which in summary are as follows:
  - (1) The judge at [19] noted that the second report did not comply with Practice Directions, but failed to read the reports together on that point; and failed to consider whether defects in the report were such as to fundamentally undermine the expert evidence.
  - (2) The judge at [21] and [23] gave reduced weight to the report because the author might not have seen the respondent’s decision, but did not explain why that was so, or how that might have altered the opinion reached.
  - (3) The judge from [24] onwards explained why a variety of factors might undermine an appellant’s credibility, but did not indicate why such factors were relevant to this case.
  - (4) At [28], in referring to the absence of conclusive evidence of causation between the appellant’s account and his injuries, the judge sought “an unlawfully high level of corroboration”.
  - (5) Moving from the medical claim to the family and private life claim, the judge “unlawfully compartmentalised” the two. The appellant could not succeed on medical grounds alone, but those matters impacted on family and private life.
  - (6) The judge held that the appellant could not meet the terms of the rules on family and private life, but erroneously applied the “insurmountable obstacles” test.
  - (7) The judge failed to consider the private life of the appellant’s wife, and whether the interference with it was disproportionate.
6. The FtT refused permission by a decision issued on 7 March 2019. The appellant applied to the UT, on the same grounds. The UT refused permission by a decision dated 9 May 2019.
7. The appellant petitioned the Court of Session for reduction of the UT’s refusal of permission. He averred that it was arguable whether the FtT was entitled to give little or no weight to the second report. The parties entered into a joint minute. They have not provided the UT with a completed copy, but it appears to have been in terms of the grounds of

appeal going to that report. On 20 July 2020, the UT granted permission (in light of the joint minute and the Court's interlocutor).

8. The case came before me accordingly on 9 September 2020. The hearing was clerked from a hearing room at the tribunals centre, George House, Edinburgh. I conducted it from a hearing room at the tribunals centre, Aberdeen. Representatives attended remotely. No members of the public attended, either in person or remotely. The technology functioned without difficulty.
9. Parties agreed that the case turned on whether the FtT was entitled to give little or no weight to the second report, and on whether any error in that respect was material. Having heard their submissions, I reserved my decision.
10. The judge records at [14] the respondent's submissions about deficiencies in the second report and at [18 f] the appellant's submissions in reply. He resolves the matter for reasons given at [20 - 22], concluding at [23] that the report is "significantly deficient in its failure to comply strictly with ... the Practice Directions" and that as it is "based on self-reporting" it must be "treated with circumspection".
11. Mr Forrest accepted that the judge was correct at [21] in discerning that the second report (at page 2) was unclear whether it was about the appellant's relationship or about his ability to participate in a hearing. He argued, however, that the author made it clear on the same page, in the report as a whole, and in its conclusion (at page 7), that it was about ability to participate.
12. Mr Forrest did not suggest that the judge was wrong in identifying non-compliance with Practice Directions in respect of not setting out the facts and instructions on which it was based. His argument was that the judge made more than could be justified of those deficiencies, as the first and second reports could be read together to show the basis on which the author proceeded. The judge was concerned by absence of reference to the refusal letter, but it is specified in the preamble to the first report.
13. I consider that the judge's observations of deficiencies in the second report were accurate. Those were live issues at the hearing, to which the appellant's advocate made her reply. The phrasing "significantly deficient" may be rather strong, reading the two reports together; but the view that opinions based on self-reporting by an appellant must be treated with circumspection has not been challenged, and that reasoning has nothing to do with formal shortcomings in the report.
14. Mr Forrest submitted that the judge when focusing on deficiencies in the report "did not see the wood for the trees", and that error was material, because the case turned on credibility. However, the appellant's focus on those remarks has also to be put in context. Despite his observations, the judge accepted that the relationship between the appellant and his wife is

genuine (the first report) and he made nothing of absence of his direct oral evidence (the second report). The appellant has not referred to anything in the decision which is based on rejection of the conclusions in the reports.

15. The appellant claimed to be at risk from a gang over a land dispute with its origins in 2001 - 2006, successfully evaded until a kidnapping and escape in 2009, and evaded again until departure from Pakistan in 2011. He did not seek protection until January 2018. The judge's decision on the protection claim at [24 - 28] is based on the unlikelihood of any real ongoing risk after such a period; the long delay in claiming, which suggested no real fear; and the implausibility of ongoing interest, or ability to locate the appellant. Among those reasons, the judge says nothing about the absence of evidence from the appellant. His reasoning is not based on inconsistencies which might have been explained away by mental difficulties.
16. The appellant has not shown that the judge's observations on the reports involved the making of any error on a point of law.
17. Even if, on reading the two reports together, the judge was more stringent in his observations than he might have been, the appellant has not shown that those observations led to any error in resolving the substance of the case. They had nothing to do with the finding that no real risk was established.
18. Mr Howells pointed out that the respondent's decision was also based on the appellant's evidence that his grandmother continued to live on the land allegedly in dispute without coming to any harm; on legal sufficiency of state protection; and on availability of internal relocation. He accepted, however, that the judge omitted to deal with the sufficiency of protection and relocation alternatives.
19. It might be read into the decision that the case was bound to fail on those alternatives; but that should have been dealt with explicitly, even if only briefly, not left to implication.
20. Mr Forrest did not advance any grounds other than those related to the medical reports.
21. Given the history, I do not think that the further grounds are covered by the grant of permission; but in any event, they do not fairly reflect the decision, are no more than disagreement, and disclose no error on any point of law.
22. The decision of the FtT shall stand.
23. No anonymity direction has been requested or made.



5 October 2020  
UT Judge Macleman

### 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.