



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01762/2019 (V)**

THE IMMIGRATION ACTS

Heard via Skype

On 12 January 2021

**Decision & Reasons
Promulgated**

On 22 January 2021

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

MS

ANONYMITY DIRECTION MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Knight, Duncan Lewis Solicitors

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS (V)

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. The appellant, a citizen of Pakistan, has appealed against a decision of the First-tier Tribunal ('FTT') promulgated on 12 February 2020, in which it dismissed the appellant's appeal against a decision dated 13 February 2019 to refuse his international protection and human rights claims.

Background

2. The appellant claimed that he had a well-founded fear of persecution in Pakistan because his conviction in the UK for attempting to meet a female child under 16 (in relation to which he was sentenced to 14 months imprisonment on 21 July 2017) became known to religious extremists organisations in Pakistan, who have threatened him. The FTT heard evidence from the appellant and considered reports from a country expert on Pakistan, Dr Farhaan Wali: an addendum report dated 8 November 2019 dealing with the statutory declarations relied upon by the appellant and a full report dated 8 October 2019. Unless stated otherwise references to Dr Wali's report are to his full report.
3. The FTT concluded that the appellant's evidence was unreliable. The FTT was also not prepared to accept some of the conclusions contained in Dr Wali's report. The appeal was dismissed on asylum and human rights grounds.

Appeal to the Upper Tribunal ('UT')

4. The grounds of appeal were prepared by Counsel. The four grounds of appeal entirely focussed upon the FTT's findings regarding Dr Wali's reports vis a vis the asylum claim. The grounds did not challenge the FTT's findings regarding his family life pursuant to Article 8, ECHR or any other aspect of the human rights claim, and I need say no more about this. Permission to appeal was granted by UTJ Sheridan in a decision dated 27 July 2020.
5. At the hearing before me Mr Knight relied upon a skeleton argument (undated but sent to the UT the day before the hearing). This strayed from the pleaded grounds of appeal and sought to re-argue the appellant's international protection and Article 8 appeal. I made it clear that I considered the raising of matters that were not the subject of the grounds of appeal at this very late stage inappropriate. Mr Knight confirmed that he only relied upon submissions challenging the FTT's approach to Dr Wali's evidence. He accepted that I could ignore the parts of the skeleton argument that did not specifically address the four grounds criticising the FTT's approach to Mr Wali's report. Mr Knight made brief submissions mirroring the four pleaded grounds.
6. Mr Diwyncz confirmed that the SSHD had not submitted a rule 24 notice. He sought to take me to 'baili' to establish that Dr Wali had been criticised by the FTT in at least one FTT case, and that criticism has been upheld by the UT. I indicated that it was far too late to raise matters that could and should have been set out in advance of the hearing, or at the very least before Mr Knight began his submissions. In those circumstances Mr Diwyncz invited me to uphold the FTT's decision, for the reasons provided by it.

7. After hearing from both representatives, I reserved my decision, which I now provide with reasons.

Error of law discussion

8. This is a case in which the appellant gave extensive oral evidence, including under cross-examination – see [4] to [12] of the FTT’s decision. Having considered that evidence, together with the expert evidence of Dr Wali, the FTT made clear robust adverse credibility findings regarding the appellant’s evidence from [29] to [32], in particular finding that the appellant:

- (i) failed to provide any evidence from his brother in Pakistan or any cogent explanation for the failure to provide this evidence, when he played a central role in relaying information in support of the appellant’s claimed risk in Pakistan;
- (ii) gave inconsistent evidence regarding the source of the threatening letters;
- (iii) failed to provide a credible explanation for the delay in claiming asylum;
- (iv) provided evidence regarding his conviction which demonstrated that he was prepared to manipulate the system to his own advantage.

9. These factual findings have not been the subject of any challenge within the grounds of appeal, which solely address Dr Wali’s country expert evidence. The grounds of appeal challenge four discrete matters relevant to the FTT’s findings on Dr Wali’s evidence, to which I turn below.

Ground (i) – even-handed approach?

10. I do not accept that the FTT attached less weight to Dr Wali’s report on the basis that he failed to outline cases capable of detracting from the cases he listed wherein the court accepted his evidence as reliable. The FTT has merely *observed* at [23] that whilst Dr Wali provided a list of cases in which the Tribunal accepted his reports to be reliable, he failed to identify any cases in which his reports have been criticised or the information therein rejected. As a matter of fact this is unobjectionable and accurate. The grounds of appeal however submit that it inexorably followed that the FTT reduced the weight to be attached to the reports and in effect misconstrued the *discretionary* guidance in SD (expert evidence) Lebanon [2008] UKAIT 00078 as a mandatory direction.

11. The FTT was clearly aware that a country expert's failure to place material capable of detracting from cases in which the Tribunal accepted the reliability of a country expert's evidence, "*may reflect on the weight to be given to the evidence which is the subject matter of the expert's report(s)*" and directed itself accordingly. The FTT understood the discretionary nature of the guidance. At no point in the decision did the FTT draw adverse inferences from Dr Wali's omission. The decision is a detailed and absent a clear misdirection I am not prepared to infer one. The last sentence of [23] of the FTT's decision could have been more carefully drafted. Dr Wali could have of course made it clear that he was unaware of a single occasion in which his reports had been criticised or not accepted.

Ground (ii) - failure to provide adequate reasons for rejecting Dr Wali's evidence

12. The FTT expressly took into account the fact that Dr Wali was "*qualified as a country expert*" at [23] and was "*supportive*" of the appellant's case at [24]. When the decision is read as a whole, it is tolerably clear that the FTT recognised that Dr Wali was sufficiently qualified and had the requisite expertise to be a country expert on Pakistan. The FTT was not obliged to accept Dr Wali's evidence, simply because he was qualified to give that evidence. The FTT was of course entitled to attach limited weight to Dr Wali's evidence provided it gave sufficient reasons for doing so.
13. The FTT was clearly aware of the discretionary nature of the guidance in AAW (expert evidence - weight) Somalia [2015] UKUT 673 (IAC) and directed itself accordingly. In any event, the FTT merely referred to some of the guidance in AAW and did not necessarily accept that it all applied to the instant case.
14. The FTT did not accept that Dr Wali explained in sufficient detail: (i) why it was plausible that the appellant's conviction would have become known to religious groups in Pakistan; or (ii) how the appellant could be tracked down if he relocated to another part of Pakistan.
15. In relation to (i), Dr Wali addressed this briefly at [23] of his report. He did not explain to what extent online UK news material is viewed in Pakistan and simply made the point that because the material is "*accessible online*", it "*may be viewed across Pakistan*".
16. I am more troubled by (ii) because the FTT failed to take relevant evidence into account and failed to give adequate reasons for rejecting Dr Wali's evidence that it was plausible that extremist groups would act in the manner claimed by the appellant. In particular, Dr Wali described in detail why extremist groups would view this appellant with significant hostility at [16-21], such that he would be targeted for killing on a blacklist at [38-47] and proactively tracked down via the intelligence

network, corrupt police officers and bribery at [48-53], [71-72] and [81-84] in the context of a country in which lack of security has resulted in targeted killings by militants becoming common practice at [62].

17. The FTT's concern that Dr Wali provided "*no adequate explanation*" for the "*important statements*" in support of the view that extremist groups may be able to track the appellant through a combination of their intelligence network, bribery and the NADRA database system in the context of Pakistan, is impossible to reconcile with a full reading of Dr Wali's report. I am therefore satisfied that this limb of ground (ii) is made out.

Ground (iii) - speculation

18. At [25] the FTT appears to have rejected Dr Wali's comments on the reliability of the threatening letters sent by extremist groups on the basis that it made "*absolutely no sense that any terrorist organisation*" would provide the appellant's family with notice of their intention to harm him. This finding betrays a lack of careful scrutiny of Dr Wali's report and is irrational. Dr Wali described in detail the varied motives of extremist groups in Pakistan: their aim is not merely to kill but to use violence and the threat of violence as a means of controlling local populations - see [37], [45], [53] of Dr Wali's report.

Ground (iv) - document verification

19. The FTT was entitled to conclude that Dr Wali did not have the relevant expertise in order to verify whether documents emanating from Pakistan were counterfeit. The FTT considered Dr Wali's claimed experience in this discrete field at [26] and was entitled to conclude that he did not have the requisite qualifications or experience to *fully* verify the authenticity of documents, as he claimed. As the FTT explained, it is difficult to see how Dr Wali's experience was sufficient to enable him to distinguish an apparently cogent document from one that was made to appear that way but was in fact counterfeit.
20. Notwithstanding this, Dr Wali's qualifications and experience were clearly sufficient to enable him to comment on the plausibility of the use of different type of documents in Pakistan. In this respect, Dr Wali explained the plausibility of the use of statutory declarations in Pakistan at [17-19] and [27-30] of his addendum report. This explains why it was necessary for the statutory declarations to include obvious formalities and the FTT's finding that there was no need for such formalities at [28] fails to engage with this evidence. In addition, Dr Wali was entitled to explain the plausibility of the use of threatening letters from extremist groups. As set out above, the FTT failed to take this evidence into account.

Conclusion

21. I am satisfied that grounds (ii), (iii) and (iv) are made out for the reasons I set out above. These are errors of law which played a material role in the FTT's ultimate finding that the appellant's claim was incredible. Although the FTT provided cogent reasons for doubting the appellant's credibility, it was obliged to assess credibility holistically by taking into account Dr Wali's evidence. Whilst the FTT addressed Dr Wali's evidence, its assessment contains material errors of law, which in turn vitiated the overall conclusion on credibility.

Disposal

22. The errors of law are such that the decision needs to be remade completely. This will require fresh findings of fact. I have had regard to [7.2] of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that the matter should be remitted to the FTT.

Decision

23. The FTT's decision contains errors of law. Its decision cannot stand and is set aside. The matter is remitted to the FTT, where it will be remade de novo by a judge other than FTT Judge Fisher.

Signed: Ms M. Plimmer
Judge of the Upper Tribunal

Dated: 12 January 2021