



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/06813/2017**

**Appeal Number:**

**Extempore judgement**

**THE IMMIGRATION ACTS**

**Heard at Royal Courts of Justice**

**Decision &  
Promulgated**

**Reasons**

**On 16 October 2017**

**On 24 October 2017**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**RM**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr D Jones, Counsel instructed by Duncan Lewis & Co Solicitors

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Pakistan and his date of birth is 29 July 1984. He made an application for asylum. The application was refused by the Respondent on 12 July 2017. The Appellant appealed and his appeal was dismissed by Judge of the First-tier Tribunal Housego in a decision promulgated on 10 August 2017 following a hearing on 8 August 2017. The Appellant was granted permission to appeal by Judge of the First-tier Tribunal Scott-Baker on 22 August 2017.

2. The Appellant came to the UK on a visit visa in 2011. He overstayed and claimed asylum on 22 May 2017. The Appellant's account, very much summarised, is that he joined the Pakistan Muslim League (PML) in 2004. The Appellant refused to allow a former member of the National Assembly of Pakistan (MNA), to whom I will refer as MJA, to join the PML. Following this in September 2009 and January 2010 MJA assisted the authorities in arresting the Appellant after which he was detained and tortured. The Appellant's father secured his release by way of payment. In 2010 the Appellant was riding his bike with a friend and MJA's men attempted to shoot him. The bullet hit the Appellant's friend and the Appellant fell off his bike and suffered injuries.
3. Judge Housego found the Appellant to be lacking in credibility and rejected his claim.
4. The Appellant relied on a report from Consultant Psychiatrist, Satinder Sahota. Dr Sahota documented in his report the Appellant's brief background history (paragraph 3.3), his medical, psychiatric and forensic history (paragraph 3.4), assessment of the Appellant's medical state as at 31 July 2017 (paragraph 3.5) and he undertook a physical examination of the Appellant (paragraph 3.6). The doctor noted various scars on the Appellant's thumb and fingers and he recorded that the Appellant reported to him that they were caused by an incident when he was attacked with a knife and the assailant attempted to stab him and the Appellant managed to grip the blade with his left hand.
5. The doctor concluded that the Appellant meets the criteria for adjustment disorder complicated by post traumatic symptoms (paragraph 4.1(c)). The doctor concluded that post traumatic symptoms are most likely caused by the history of torture and abuse suffered in Pakistan (paragraph 4.2(a)). the doctor concluded that the scars on the Appellant's left hand are consistent with his account of being attacked in 2010 and that the size, location and shape of the scars do not indicate self-injury, operation or accidental incisions and that the pattern of scars is consistent with cutting injuries that could occur by gripping a knife as described by the Appellant during the attack in 2010 (paragraph 4.2(b)). The doctor concluded that the Appellant's account of symptoms of psychological trauma is consistent with a victim of torture (paragraph 4.2(c)). The doctor acknowledged that credibility is a matter for the court. He opined that there is a history of symptoms which in the doctor's view are likely to have been experienced by a victim of torture given the characteristics and quality of symptoms described and that the psychiatric evidence is consistent with a victim of abuse or torture (paragraph 4.2(d)). In the doctor's opinion, the Appellant's medical health is likely to deteriorate if returned to Pakistan.
6. Before the judge there was a report from Dr Giustozzi. Dr Giustozzi gave his opinion in relation to mental health care provision in Pakistan and general background evidence.
7. There was a Rule 35 report from Dr Sayed who examined the Appellant on 25 July 2007 stated, "on examination he has scars which may be due to

the attack described. He claims he was mentally tortured and keeps washing himself”.

8. I will engage with the grounds insofar as they concern the expert evidence. The challenge, as I understand it, is that the judge has failed to properly engage with this evidence and has failed to consider the evidence in the round.
9. The judge set out his findings in relation to the expert evidence as follows:
  - “65. The Appellant claims to suffer from depression and other mental health problems. There is no reason why he cannot receive treatment in Pakistan. He has received little treatment here in the UK, and there is no reason for the UK taxpayer to pay for treatment he can, if he needs it, get in Pakistan. He has family there from whom he can receive support.
  66. I have carefully considered the medical reports of Dr Giustozzi and Dr Serota. The Appellant has scars on his left hand. They may have been caused any number of ways. The assessment that the Appellant has mental health issues is derived entirely from the account of the Appellant to them. Their conclusions are doubtless entirely correct for someone who has been truthful throughout. They rightly observe that the assessment of credibility is a matter for the Tribunal. For the reasons given in this decision I did not find the Appellant credible (and keeping firmly in mind the lower standard of proof required). The absence of any medical care or serious mental health difficulty for the last 7 years undermines the veracity of the account. There is no one giving evidence of his long term mental ill health although he says he has a friendship group in the UK. It is just not true.
  68. In so far as there is an Article 3 claim based on a combination of mental health and the other factors, it is untenable. There is no medical evidence that the Appellant can meet the tests set out in N v SSHD [2005] UKHL 31 and GS (India), EO (Ghana), GM (India), PL (Jamaica), BA (Ghana) & KK (DRC) v SSHD [2015] EWCA Civ 40. I take full note of the professionalism of the preparers of the reports before me: but they are predicated on acceptance of the account of the Appellant to them: I find that account not credible, so that the foundations of the opinions are on sand (which is not to criticise the DRs in any way).
  69. The account of being attacked by being shot at by associates of MJA is not credible and I reject it. If they were really trying to kill him they would have stopped and done so when he fell off. There is no evidence of injury to the friend, who remains unnamed. There is evidence of hospital treatment for multiple lesions. Either this is an unreliable document, applying Tanveer Ahmed v SSHD (Pakistan) [2002] UKIAT 00439, or it is accounted

for by a routine (if painful) road traffic accident. I find the former, as how this piece of paper has survived in good order over 5 years, why it was kept at all, and how it was sent to the Appellant all remain unexplained.”

10. A proper reading of paragraphs 66 and 68 of the judge’s decision makes it clear that he did not consider the medical evidence in the round. He did not find the Appellant to be credible and therefore did not attach weight to the medical evidence. This is a Mibanga error (*Mibanga [2005] EWCA Civ 367*). There was no holistic assessment of the evidence. For this reason alone the judge materially erred.
11. There were further significant problems with the decision. I will briefly engage with these. The first obvious matter of concern is that Dr Giustozzi did not prepare a medical report. He is not a medical doctor. There is no discrete finding made by the judge about his evidence.
12. The judge did not make adequate findings in respect of the medical evidence, considering the extensive opinion of Dr Sahota (not Dr Serota, as recorded by the judge). In the view of the judge the (medical) evidence came entirely from the account the Appellant gave to “them”. It is not entirely clear to whom the judge referred to as “them” because there was only one medical report. There was of course a Rule 35 report, but it is not apparent from the decision what the judge made of this piece of evidence. Considering the error in identifying Dr Giustozzi as having prepared a medical report, I am not satisfied that the reference to them is a typographical error. I am not satisfied that the reference to them is to Dr Sahota and Dr Sayed because there is no specific reference by Dr Sayed to mental health and, in any event, the Rules 35 report is not mentioned in the findings. I conclude that the judge has not carefully considered the evidence.
12. The evidence of Dr Sahota (and the background evidence of Dr Giustozzi) was unarguably capable of corroborating the Appellant’s account and it was inadequately engaged with by the judge. Whilst the more a diagnosis is dependent on assuming that an account given by an Appellant is to be believed, the less likely it is that significant weight is to be attributed to it, this does not mean that the report is not independent evidence and the judge in my view did not recognise this. Whilst it was open to the judge to decide not to attach weight to the medical evidence, it was not considered in accordance with the guidance in *JL [2013] UKUT 145*.
11. Both parties agreed that the matter should be remitted to the First-tier Tribunal for a re-hearing.

### **Notice of Decision**

The decision of the judge to dismiss the appeal is set aside. The matter is remitted to FtT for a fresh hearing.

**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 19 October 2017

Upper Tribunal Judge McWilliam