



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

Appeal Number: PA/07142/2018

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 7 May 2019**

**Decision & Reasons  
Promulgated  
On 13 May 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FROMM**

**Between**

**[B S]**

(ANONYMITY DIRECTION MADE)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Ms E Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS ON ERROR OF LAW**

1. The appellant appeals with the permission of the First-tier Tribunal against a decision of Judge of the First-tier Tribunal I D Boyes dismissing his appeal against a decision of the respondent, dated 21 May 2018, refusing his protection claim.

2. The appellant is a citizen of India. He arrived in the UK in October 2009 in order to study. He was refused an extension of stay as a student in 2011 and, having failed in a further attempt to obtain leave, on 6 October 2017 was arrested and detained by the police on the basis he was considered to be an overstayer. In due course he claimed asylum.
3. The appellant claimed that his father had borrowed a large sum of money from a Mr [ST], who was now a minister. In around October 2007 he demanded the deeds to the appellant's father's land on the basis that, when the debt was repaid, he would return them. The appellant claimed he was attacked in December 2007 by people demanding he should transfer the land into their names. The appellant's father transferred the land to the appellant in 2008.
4. Additionally, the appellant claimed that, in 2006, he was arrested and tortured by the police while demonstrating in Amritsar. He was detained for three days. During that time, he claimed he was tortured.
5. The respondent refused the appellant's protection claim because the appellant's account was not considered credible. The lateness of the claim was prominent in the respondent's consideration. The appellant's appeal was heard by the judge at Newport on 5 July 2018 and dismissed in a decision promulgated on 11 July 2018.
6. In a brief decision, the judge found he was not satisfied the appellant was at any risk in relation to the land dispute with Mr [T]. There was no evidence of the transaction, of Mr [T], of the land being seized or of threats being made to the appellant. In any event, even if the matter were true, the appellant could obtain help from the police and/or relocate to another part of India. Regarding the political claim, the judge agreed with the respondent that the appellant's decision to join a party in February 2018, which was after his arrest and asylum claim, did not evince a genuine political belief. The appellant had seemingly joined the organisation to bolster his claim. In any event, the party was not one which was outlawed or banned and there was no evidence that mere membership of the party in the UK or indeed India would put a person in peril. The judge rejected the claim that the appellant had been arrested and tortured for his political beliefs. There was a rule 35 report highlighting a number of injuries but these could have been incurred in a variety of ways. He found the lateness of the claim hugely undermined the appellant's credibility.
7. The judge considered separately whether removing the appellant would breach his human rights on account of his mental health problems. He found it would not because there would be proper and sufficient treatment available for him in India. Finally, the judge found there were no significant obstacles to the appellant's integration in India.

8. Very brief ground seeking permission to appeal were submitted. Permission to appeal was nonetheless granted because it was considered arguable that the judge's treatment of the medical evidence was superficial. It was considered arguable the judge had not considered humanitarian protection and had given inadequate consideration to articles 3 and 8 of the Human Rights Convention. It was considered arguable the judge's approach to the fact-finding exercise was inadequate.
9. The respondent has not filed a rule 24 response.
10. The appellant is not legally represented and he did not attend the hearing. I checked that a notice of hearing had been sent to his last known address in Birmingham. This gave the appellant sufficient notice of the hearing. The notice has not been returned undelivered and I can safely assume it was received. The procedure rules permit the hearing to go ahead in the appellant's absence if I am satisfied that reasonable steps have been taken to notify a party of the hearing and it is in the interests of justice to proceed with the hearing. I was satisfied on both points. There was no reason to adjourn. There is mention in the papers of the appellant suffering from ill-health but there was no evidence before me to show he was unfit to attend the hearing.
11. Ms Everett submitted the decision of the First-tier Tribunal does not contain any material error of law. I agree and I dismiss the appellant's appeal. My reasons are as follows.
12. The judge was plainly right to note that the land dispute did not provide the appellant with a Refugee Convention reason.
13. The judge considered the evidence that the appellant had been able to provide in support of his claim and he was entitled to find it lacking such that the burden of proof was not discharged even to the lower standard applicable.
14. When, in paragraph 19, the judge expressed himself in terms that "no evidence" had been provided in respect of various matters, he must be understood as meaning no supporting or documentary evidence had been provided. His decision that the appellant could seek the protection of the police does not address the claim by the appellant that Mr [T] is a minister. However, it is clear that no evidence was submitted supporting that claim and the decision is best understood as meaning the judge was not prepared to accept the appellant's assertion without more.
15. I find no material error of law in the judge's consideration of the land dispute claim.

16. Regarding the other limb of the appellant's protection claim, concerning his political activities, the judge considered the two highpoints of the evidence, which were his joining a political party in the UK and the rule 35 report. He was entitled to find that none of this was capable of overcoming the doubts sown by the lateness of the claim, which the appellant only made after his arrest, or his failure to mention being arrested and tortured in the screening interview.
17. The judge was entitled to find that the appellant's decision to join the party in February 2018 was to bolster the claim made in November 2017, some eight years after he arrived in the UK and six years after his last period of leave expired. The judge also noted, in paragraph 22, that the appellant had not established that membership of the party he joined would place him at risk on return.
18. The medical evidence consisted of nothing more than a rule 35 report, which is not independent evidence of torture. As the judge noted, if the use of the term "consistent" were to be interpreted according to the Istanbul Protocol categorisation, at best the report showed the appellant's injuries could have been caused in a number of ways.
19. The medical evidence did not entitle the judge to find a breach of article 3 as a consequence of removing the appellant to India where treatment would be available for his mental health problems. I see no material error in the decision.
20. I do not see on what other basis this appellant might be entitled to a grant of humanitarian protection.
21. Finally, with regard to article 8, as with all parts of the decision, the judge's reasoning extremely concise. However, I cannot see any material error given there seems to have been no reliable basis put forward on which the appellant could have met the rules on private or family life grounds and there would seem to be no exceptional circumstances to warrant a grant of leave outside the rules.

## **NOTICE OF DECISION**

The Judge of the First-tier Tribunal did not make a material error of law and his decision dismissing the appeal shall stand.

### **Anonymity**

The First-tier Tribunal made an anonymity direction which I continue.

Signed

Date 7 May 2019

A handwritten signature in black ink, consisting of a large, stylized 'N' followed by a horizontal line with a small upward curve and a final downward stroke.

**Deputy Upper Tribunal Judge Froom**