**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2024-001084**
**First-tier Tribunal No: PA/03987/2020**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On the 25 July 2024**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**
**and**
**DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD**

**Between**

**N A K**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**REPRESENTATION**

For the Appellant: Mr D Bazini, instructed by Parker, Rhodes Hickmotts Solicitors
For the Respondent: Ms E Blackburn, Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 12 July 2024**

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# DECISION AND REASONS

**As this appeal concerns a claim for international protection, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

## INTRODUCTION

1. The appellant is a national of Pakistan. His appeal against the respondent's decision of 29 June 2020 to refuse his claim for asylum and humanitarian protection was dismissed by First-tier Tribunal Judge Chohan and First-tier Tribunal Judge Taylor ("the panel of the FtT") for reasons set out in their decision dated 21 December 2023.

2. The appellant claims the decision of the panel of the FtT is vitiated by material errors of law for reasons that are set out in grounds of appeal dated 28 January 2024. Before we turn to the grounds of appeal, we record that the task of the Upper Tribunal here has been made that much more difficult by the failure of the appellant's representatives to ensure that the Upper Tribunal is provided with all the relevant material in the Composite Bundle. In particular, we have not been provided with a copy of the previous decision(s) of the FtT and Upper Tribunal that are relevant, including copies of orders and directions issued to the parties. We understand there is a previous decision of the FtT in which the appellant's appeal against a decision to refuse his claim for international protection was dismissed. It is said in the grounds of appeal that the FtT did not accept the appellant had acted as an informant against individuals in 2006-2007 in respect of an international heroin drug operation. We have not been provided with any details of any other undisturbed findings that have been made in a previous decision of the FtT.

3. At the hearing before us, Mr Bazini submitted there was a lengthy and complex background that culminated in evidence from the police that is securely held by the FtT to support the appellant's claims. It should have been obvious to the appellant's representatives that we would need to see what has been said by the FtT and the Upper Tribunal in the past, to assist us in making an informed assessment as to whether the panel of the FtT erred in their consideration of the appeal before them. We remind the representatives of their duty to help the Upper Tribunal to further the overriding objective, which includes dealing with cases in ways which are proportionate to the importance of the case, the complexity of the issues and the anticipated costs and resources of the parties.

## THE GROUNDS OF APPEAL

4. We also observe, as we did at the hearing before us, that the grounds of appeal fail to clearly and succinctly identify the errors relied upon, and instead descend into unfocussed discussion and commentary. It would be

helpful in the future if the appellant's representatives ensure that the grounds are separated, particularised and numbered so that they identify the relevant error of law. Doing the best we can to discern the errors of law relied upon, we summarise them as follows:

a. Ground 1: The appellant claims that at paragraph [10] of their decision the panel of the FtT recorded that the respondent accepts the appellant gave limited information to the Police about the drug dealing activities of his housemates. The appellant claims there is, however, a failure to then take into account material evidence, being:

    i. The information was provided by the appellant to specialist undercover officers.

    ii. The Police provided information to the FtT confirming that the appellant told them about criminal activities.

    iii. The appellant's reasons for believing his cousin / housemates may have suspected that he "grassed" on them, which caused him to leave the UK in April 2007.

    iv. Numerous individuals were convicted.

    v. The panel of the FtT fail to make findings as to the appellant's evidence as to why he went to the police and what happened with his housemates.

b. Ground 2: At paragraph [17] of the decision the panel of the FtT found the appellant's reason for leaving the UK was not that he was in fear from the gang. In reaching that finding the panel of the FtT made a 'material error of fact, unreasonable assertions and failed to take into account objective newspaper evidence', by misunderstanding the timing of events, including that:

    i. When the appellant left the UK and returned to Pakistan in April 2007, there had been no arrests let alone convictions for any of the persons he had informed on. Though the appellant felt that they suspected him, there had been no actual accusation.

    ii. The objective evidence (Newspaper article) was that it was only following arrests in the UK that some of the gang managed to escape to Pakistan and it was at this point that the appellant was targeted.

c. Ground 3: The panel of the FtT rejected the appellant's claim that he was shot at in Pakistan in 2008 and that Shakeel or any other gang member wished to take revenge on the appellant. In rejecting the appellant's claim, the panel of the FtT failed to take

into account material matters, reached speculative/ unreasonable conclusions and failed to make material findings, including:.

i. The panel of the FtT failed to identify the magnitude of the criminal activity.

ii. To suggest, at [21], that Shakeel would commit the murder of the appellant at a 'Jirga' in front of so many witnesses and members of his own community and that since he had not done so, the appellant's claim is not to believed, is plainly irrational and unreasonable.

iii. The arrests and convictions of the gang occurred long after the appellant's arrival in Pakistan April 2007. There would have been no motivation/reason to harm the appellant until 2008, which was when the attack occurred.

iv. Even if the appellant embellished his claim about a shooting, the Affidavit he relied upon confirms that there was a serious dispute between him and his cousin Shakeel, whom the appellant had lived with in the UK. The panel of the FtT failed to make any finding on whether it accepted or rejected the content of the Affidavit.

d. Ground 4: The panel of the FtT, at [36], rejected the appellant's claim that Shakeel accused the appellant of blasphemy. In reaching their decision, the panel of the FtT failed to consider the content of the Affidavit in which an allegation of blasphemy is referred to and confirms the appellant's grandfather condemns the appellant for shaming the family.

e. Ground 5: The panel of the FtT noted, at [36], that the 'expert states that there are blasphemy laws in Pakistan'. The appellant relied upon two expert reports. The first is a report of Dr Antonio Giustozzi and the second from Dr Owen Bennet Jones. The panel of the FtT fail to engage with the expert evidence when considering the appellant's account of events and the risk upon return.

f. Ground 6: The panel of the FtT speculated about what the Police in Pakistan might do and failed to take into account the appellant's evidence and expert reports when doing so. They also failed to acknowledge the appellant had already attempted to relocate by moving to Karachi.

g. Ground 7: The panel of the FtT rejected the appellant's claim that his cousin and his cousin's friend were shot in Pakistan in March 2018. The panel of the FtT criticise the appellant for not elaborating on aspects of his evidence, however:

i. The evidence of the appellant was not challenged by the Presenting Officer or the panel of the FtT

ii. The panel of the FtT erroneously said it can take into account a failure to provide readily available corroborating evidence, and the suggestion that the evidence is 'readily available' is 'speculation', without any enquiry as to whether it is available.

iii. Where matters were 'unclear' to the panel of the FtT, fairness demanded the appellant be given an opportunity to address any concerns.

h. Ground 8: The panel of the FtT said that if Shakeel and/or the gang were looking for the appellant and had contacts in Dubai, he would be relatively easy to find. The mere fact that it was "possible" for him to be located is not the question. The question is whether there is a possibility (reasonable likelihood) that they would not have located him via social media/employers' website.

i. Ground 9: the panel of the FtT, in not accepting a militant group would threaten the Appellant or understanding how this related to his claim, ignored the expert evidence as to why such a group would become involved.

j. Ground 10: In assessing the credibility of the appellant, the panel of the FtT failed to have regard to the medical evidence that the appellant was suffering from "severe depression symptoms" and "severe anxiety symptoms". The (unreferenced) medical report noted that the appellant claimed to be at risk from a drug cartel.

k. Ground 11: In the analysis of the Article 8 claim the panel of the FtT failed to recognise that the appellant has not lived in Pakistan for 16 years, his wife is from Uzbekistan and the children have never lived there. There is a failure to acknowledge or consider the impact on a child with Down's syndrome currently receiving extensive assistance/treatment in the UK. The panel of the FtT failed to engage with the evidence of the experts as to the difficulties, discrimination, suffering and stigmatisation etc that the appellant's wife and child would suffer if required to go and live in Pakistan.

5. Permission to appeal was granted by First-tier Tribunal Judge Murray on 19 February 2024. Judge Murray said:

> "It is arguable that the FTT failed to take material evidence into account as set out in the grounds. In particular it is arguable that the FTT failed to consider the Appellant's account within the context of the expert evidence."

## The Hearing Before Us

6. Mr Bazini adopted the grounds of appeal. He submits there is material that was received from the Police that is securely held by the FtT and is not referred to in the decision of the FtT. He submits that this material

puts the background to the appellant's protection claim in context, and the panel of the FtT failed to appreciate the gravity of the repercussions that flow from the information provided by the appellant to the police. Mr Bazini submits it was insufficient for the Tribunal to simply record that the respondent had accepted that the appellant gave limited information to the police in the UK about the drug dealing activities of his housemates. The appellant had provided evidence of the steps he had taken by way of a 'subject access request' to secure information from the police about the information and assistance he had provided. The evidence included an 'Incident Log' of a report made by the appellant to West Yorkshire Police on 30 August 2018, and a complaint made by the appellant to the Independent Office for Police Conduct, in April 2021. Mr Bazini submits the evidence provided by the police to the FtT is not properly reflected in the decision.

7. Mr Bazini submits that there had been no arrests in 2007 when the appellant returned to Pakistan and so, he submits, there would be no reason for the appellant to consider he would be at risk in Pakistan. He submits that in considering the appellant's claim that his cousin was shot in Pakistan in March 2018, the panel of the FtT said the appellant did not elaborate in his evidence as to how he had obtained the photographs relied upon, and sought corroboration, when no corroboration is required. Mr Bazini submits that the appellant's grandfather had provided an Affidavit regarding a 'Jirga' held in Pakistan and although the panel of the Tribunal rejected the appellant's claim that he had been shot at in Pakistan, there is no suggestion in the decision that the panel considered that the Affidavit is otherwise untrue. The Affidavit refers to allegations by Shakeel "during the last few months" that the appellant has "awful thoughts about Islam and Muslims". It supported the appellant's claim that he has been accused of blasphemy. The panel of the FtT said the appellant provides no detail as to this aspect of his claim without considering a document that lends support to the claim. Mr Bazini submits the Tribunal failed to engage with the expert evidence that was relied upon by the appellant, being that provided by Dr Owen Bennett-Jones and Dr Antonio Giustozzi. The experts considered the claims made by the appellant and their opinions lend support to those claims. The panel of the FtT made credibility findings without reference to the opinions expressed by the experts. As far as the Article 8 claim is concerned, Mr Bazini submits the evidence of the expert was that the appellant's daughter would suffer stigma and isolation in Pakistan. The panel of the FtT did not engage with that evidence. He submits that at paragraph [43] the Tribunal referred to the objective evidence that was relied upon by the respondent, but failed to refer to, let alone have regard to, the expert evidence relied upon by the appellant.

8. On behalf of the respondent, Ms Blackburn accepted there do appear to have been documents from the Police that are not set out in any detail in the decision of the panel of the FtT. She submits that, having considered the material provided by the Police, the respondent accepted the appellant had provided information and it was sufficient for the Tribunal to

summarise, as it did at paragraph [10], that the respondent accepted the appellant gave limited information to the police about the drug dealing activities of his housemates. As the panel record at paragraph [15], the respondent did not accept the appellant's account of subsequent events, and she submits, the panel properly went on to consider the various strands of the appellant's claim.

9. Ms Blackburn submits that a careful reading of paragraph [17] of the decision establishes the panel of the FtT were aware of the relevant timeline. They noted the appellant returned to Pakistan in 2007 rather than Dubai, and it was open to them to conclude that it is not credible that the appellant would return to Pakistan, knowing that he had provided information to the police and must have known that there would be a risk to him on return to Pakistan. The point made by the panel of the FtT was that the appellant's betrayal of his cousin and housemates could have been discovered at any time. Ms Blackburn submits that, having noted the respondent now accepts the appellant gave limited information to the police, it was not necessary to make reference to the news articles regarding the prosecution and convictions. She submits the panel plainly considered the Affidavit that was relied upon by the appellant and they was not satisfied that it supports the appellant's account of events and undermined his credibility. Ms Blackburn submits the panel of the FtT were plainly aware of the expert evidence relied upon by the appellant. They referred to the expert evidence, albeit briefly, at paragraphs [24], [25], [36] and [40] of the decision. She accepts it would have been helpful for the panel to have referred to the expert evidence in a little more detail, but that is not to say that they did not engage with it. Ms Blackburn submits that the credibility of the appellant was central to the appeal and it was for the appellant to establish his case, to the lower standard. The panel considered the evidence relied upon by the appellant and it was open to them to conclude that the appellant's account is not credible for the reasons set out in the decision. It was open to the panel of the FtT to find that the appellant has fabricated his claim simply to remain in the UK.

## Decision

10. The assessment of credibility and the risk upon return in a claim for international protection is always a highly fact-sensitive task. In an appeal such as this where, as Ms Blackburn submits, the credibility of the appellant is in issue, Tribunal Judges adopt a variety of different evaluative techniques to assess the evidence. A judge will for instance consider: (i) the consistency (or otherwise) of accounts given by the appellant at different points in time; (ii) the consistency (or otherwise) of an appellant's narrative case for asylum with his actual conduct at earlier stages and periods in time; (iii) whether, on facts found or agreed or which are incontrovertible, the appellant is a person who can be categorised as at risk if returned, and, if so, as to the nature and extent of that risk (taking account of applicable Country Guidance); (iv) the adequacy (or by contrast paucity) of evidence on relevant issues that, logically, the appellant should

be able to adduce in order to support his or her case; and (v), the overall plausibility of an appellant's account.

11. In considering the grounds of appeal and the oral submissions made before us, we have a considerable amount of sympathy with the submissions made by Ms Blackburn and we regard many of the matters relied upon by Mr Bazini as nothing more than disagreement with the conclusions reached by the panel of the FtT. It became apparent during the course of his oral submissions that many of his criticisms actually demonstrate that the panel of the FtT considered the points in question, and they were simply not resolved as desired by Mr Bazini. That in itself does not amount to an error of law.

12. We have reminded ourselves of what was said by the House of Lords in *SSHD v AH (Sudan)* [2007] UKHL 49[2008] 1 AC 678 and by the Supreme Court in *Perry v Raleys Solicitors* [2019] UKSC 5; [2020] AC 352. The FtT is a specialist body, tasked with administering a complex area of law in challenging circumstances. It is likely that, in doing so, it will have understood and applied the law correctly. Appellate judges should not rush to find misdirection merely because the judge at first instance might have directed themselves more fully or given their reasons in greater detail. There is a real rationale for the deference which an appellate court will display towards a trial judge's findings of fact, and proper restraint must be exercised before deciding to interfere with such findings. We have borne those principles firmly in mind.

13. The panel of the FtT properly noted that the respondent now accepts the appellant gave limited information to the police. The particular officers and the circumstances in which that information was provided adds nothing. It was uncontroversial that a number of individuals have been convicted. Is does not form any part of the appellant's claim that he was a key prosecution witness at the trial, and the panel of the FtT was not, in all the circumstances, required to engage in any detailed analysis of the criminal prosecution. It was sufficient for them to note that the core of the appellant's account arises from the information he provided to the police about the drug dealing activities of his housemates. The panel properly noted that, apart from that concession made by the respondent, the respondent disputes the appellant's account of the events that he claims followed.

14. In *Y –v- SSHD* [2006] EWCA Civ 1223, Keene LJ referred to the authorities and confirmed that a judge should be cautious before finding an account to be inherently incredible, because there is a considerable risk that they will be over influenced by their own views on what is or is not plausible, and those views will have inevitably been influenced by their own background in this country and by the customs and ways of our own society. However, he went on to say, at [26]:

> "None of this, however, means that an adjudicator is required to take at face value an account of facts proffered by an appellant, no matter how contrary

> to common sense and experience of human behaviour the account may be…"

15. The respondent had highlighted a number of matters that undermined the appellant's claims in the decision to refuse the appellant's claim for international protection. The panel of the FtT made a number of valid criticisms about the appellant's account of events. When they considered the appellant's account of his cousin having been shot in Pakistan in 2018 and the evidence he relied upon, the panel of the FtT noted there is no need for corroboration in asylum cases. In *TK (Burundi) v SSHD* [2009] EWCA Civ 40 the Court of Appeal noted there is a lower standard in asylum claims, but if there is no good reason why evidence that should be available is not produced, a judge is entitled to take that into account in the assessment of the credibility of the account. Mr Bazini refers to the decision of the Court of Appeal in *MAH (Egypt) v SSHD* [2023] EWCA Civ 216. There, the Court of Appeal held that the Upper Tribunal had erred in an international protection claim in holding that an asylum seeker's account was untruthful. The Court of Appeal concluded the Upper Tribunal had required more from the appellant than was necessary. It had failed to properly apply the correct standard of proof in asylum cases, which was the "lower standard of proof", and had proceeded on the basis that corroborative evidence was necessary even though it had directed itself that that was not a legal requirement. However, that decision was specific to the facts.

16. Here, the appellant claims that his cousin and his cousin's friend were shot in Pakistan in March 2018 and that Shakeel had telephoned the appellant from an anonymous number and told him that this was a message for him. The appellant relied upon photographs from the scene of the shooting but did not explain how the photographs were sent to him, or where the additional pictures came from or how they were received. There was an absence of evidence regarding the identification of the men in the photographs and their connection to the appellant. The appellant relied upon an FIR that was untranslated and a 'Magistrate Order' that had been translated and was at odds with the claim made by the appellant. In *MAH (Egypt)*¸ Singh LJ said, at [86]:

> "It was common ground before this Court that there is no requirement that the applicant must adduce corroborative evidence: see *Kasolo v Secretary of State for the Home Department* (13190, a decision of the then Immigration Appeal Tribunal, 1 April 1996). On the other hand, the absence of corroborative evidence can, depending on the circumstances, be of some evidential value: if, for example, it could reasonably have been obtained and there is no good reason for not obtaining it, that may be a matter to which the tribunal can give appropriate weight. This is what was meant by Green LJ in *SB (Sri Lanka)* at para. 46(iv)."

17. Although we reject the overall criticisms made by Mr Bazini, we do accept that the panel of the FtT failed to adequately engage with the evidence of the experts that, although not decisive, did provide at least some support for the appellant's claims. Dr Bennett-Jones expressed the opinion that

the appellant's account of what happened in Swabi in 2008 is consistent with what he would expect and that he is not surprised that methods of dispute resolution having failed, a militant group then got involved at a time when violent jihadism was at its height in Pakistan and many of the groups that emerged at that time in places such as Swabi, were little more than criminal gangs using religion to legitimise their activities. Dr Bennet-Jones also expresses the opinion that blasphemy laws are often misused to settle property disputes and other petty matters because as soon as the issue of blasphemy comes into play then it is very difficult to protect the accused from spontaneous attacks by people who may well have no particular involvement in the case. Dr Bennet-Jones also addresses the possibility of the appellant's wife, an Uzbek, living and settling in Pakistan and the problems the appellant's daughter who has Down's Syndrome would face. We agree these are all matters that the Tribunal fails to engage with.

18. Similarly, Dr Giustozzi refers to the prevalence of local justice and blood feuds in areas of Pakistan. It is said that the appellant and his family would be at risk from Shakeel and his gang. The panel was not bound to accept the evidence of Dr Bennett-Jones or Dr Giustozzi and we can see several reasons why, on closer analysis, it would have been open to the panel to conclude that they could only attach little weight to the opinions expressed. However, the problem here is that the panel does not engage with the evidence or give any reasons for attaching little weight to, or indeed rejecting, the evidence of the experts, against a background of the respondent not appearing to have challenged the expert reports in any meaningful way.

19. A holistic view of all the evidence must be taken. The appellant should not assume that his appeal is bound to succeed if the expert evidence is considered. For present purposes we simply cannot be satisfied that the panel of the FtT would have reached the same conclusions regarding the appellant's credibility and dismissed the appeal if the evidence had been considered. We therefore accept that the decision of the FtT must be set aside.

## DISPOSAL

20. We are conscious of the Court of Appeal's decision in *AEB v SSHD* [2022] EWCA Civ 1512, *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC) and §7.2 of the Senior President's Practice Statements. Sub-paragraph (a) deals with where the effect of the error has been to deprive a party before the Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the FtT, whereas sub-paragraph (b) directs us to consider whether we are satisfied that the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

21. Having regard to the nature of the error of law, we are persuaded that no findings can be preserved, and we accept the appellant was deprived of a fair opportunity to have all the evidence he relied upon, properly considered by the FtT. Despite the history of this appeal, we are persuaded that the appropriate course, in fairness to the appellant, is for the appeal to be remitted for rehearing before the FtT afresh.

## Notice Of Decision

22. The decision of First-tier Tribunal dated 21 December 2023 is set aside with no findings preserved.

23. The appeal is remitted to the FtT for hearing afresh with no findings preserved.

24. The parties will be notified of a hearing date before the FtT in due course. It is for the parties to liaise with the FtT if it is considered that a Case Management Review Hearing will be of some benefit to ensure any material provided by the Police and held securely by the FtT is available at the hearing of the appeal.

**V. Mandalia**

**Upper Tribunal Judge Mandalia**

Judge of the Upper Tribunal
Immigration and Asylum Chamber

**16 July 2024**