



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

Appeal Number: AA/04408/2012

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On 29 May 2013**

**Determination Sent  
On 28 June 2013**

**Before**

**UPPER TRIBUNAL JUDGE KING TD**

**Between**

**MFA**

**and**

Appellant

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

Respondent

**Representation:**

For the Appellant: Mr Rassool, of counsel, instructed by Switalskis Solicitors,  
For the Respondent: Mr Kingham, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Pakistan born on 1<sup>st</sup> March 1982.
2. The appellant arrived in the United Kingdom upon a student visa granted on 19<sup>th</sup> October 2011 and claimed asylum on 20<sup>th</sup> March 2012. The respondent in a detailed reasons for refusal dated 18<sup>th</sup> April 2012 rejected

that application and gave directions for the appellant's removal from the United Kingdom.

3. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Pugh on 3<sup>rd</sup> July 2012. The appellant was not found to be credible as to his claim and in the alternative, if credible, would not sustain any risk upon return such as to engage the Convention.
4. Grounds of appeal were submitted contending that the judge was in error in the approach taken. Leave to appeal was granted in relation to that matter on 1<sup>st</sup> November 2012.
5. Thus the matter comes before me in pursuance of that grant of leave.
6. In summary it is the case for the appellant that he has been in the army for many years as an IT specialist. In that capacity he has been approached repeatedly by the Taliban for information. Though he mentioned his concerns to senior officers they seemed indifferent to his plight. The appellant contends that there came an occasion where the Taliban sought to blow him up. He fears return on that account.
7. Given the indifference of his superiors and the threats that were made against him, there came a time when the appellant sought to leave the army. That leave was refused and he has in effect deserted from the army and he fears therefore punishment from the army upon return.
8. In terms of his difficulties with the Taliban, those has been set out in some detail by the judge in the determination particularly at paragraphs 14 to 29.
9. The appellant said he joined the army in December 2001 and his computer experience was discovered. His main task was to prepare PowerPoint presentations for briefings by senior ranking officers. He worked for the United Nations, returning to Pakistan in 2005. It was upon his posting to Mangoa that his problems began. When working at that time with the movement of convoys the Taliban found out about that matter and they contacted him in 2006. In 2007 the calls became more specific. A meeting was suggested. In August 2007 the tone became more threatening, enquiries being made of his whereabouts in December 2007 by two women apparently selling cloth.
10. The threats seemingly ceased when the appellant married and got a new telephone but started again in 2010 when he was posted to Meltam. There were many threatening calls starting in March 2011 lasting until July of that year. The Taliban were still wanting data from him.
11. Matters seemingly culminated in February 2011 when the appellant caught a rickshaw which placed him in the vicinity of a bomb blast when he was injured. It is the case of the appellant that the telephone calls

continued in Gujarat. He continued to report the threats after the appellant left the army but the threats seemingly continued.

12. Reliance was placed upon the expert report of Dr Gill Daryn dated 15<sup>th</sup> June 2012. My attention was drawn to paragraph 16 of that report which speaks of the fact that the Pakistan Taliban continuously employ methods such as espionage and recruitments of collaborators against the Pakistani army as well as numerous infiltration attempts.
13. The expert concludes in paragraph 21 of the report that the appellant's claim that he was repeatedly contacted and threatened by the Taliban was plausible.
14. It is clear from paragraph 34 of the determination that the judge has in mind that particular report, but nevertheless concludes, for a number of reasons, that the appellant's account of his involvement with the Taliban lacks credibility.
15. In fairness to the appellant the judge notes that he had a successful army career, being promoted to Lance-Niak in 2009. This is equivalent to Lance Corporal. It was recognised in paragraph 33 that if the employment was as described there may be some substance in the contention by the appellant that he would be attractive to the Taliban.
16. However, the judge did not accept as being credible that the Taliban, being the organisation of violence and intolerance, would have threatened the appellant over such a long period without having taken more drastic action. The Judge did not find it credible that they would have spent some five years trying to recruit the appellant, showing a patience for which they were not well known. Those matters were raised in paragraph 50 and 51 of the determination.
17. The Judge went on to consider the relatively lowly rank of the appellant and questioned whether indeed he genuinely had such key material.
18. In any event the judge did not find it credible that, had the appellant been of the importance to the army security which he claims, his repeated complaints to his senior officers about the approaches of the Taliban would not have been taken seriously. Those matters are set out in paragraphs 47 to 49.
19. The judge considered the explosion, and though in not in any sense disbelieving the appellant that he was caught up in it and injured did not find, looking at the matter as a whole, that it was an assassination attempt specifically directed to the appellant.
20. For those reasons alone or in combination the judge did not find the account of the appellant's continuous harassment by the Taliban to be a credible one in all the circumstances.

21. In any event, the appellant no longer had any access to such information and would no longer be of any interest to the Taliban on that account.
22. Mr Rassool seeks to suggest that the Judge did not pay due regard to the expert report. It seems to me quite the reverse. The judge clearly had in mind what was said, but in the practical application of the facts did not agree with the conclusion to be drawn.
23. The particular facts have been carefully analysed situation in the determination, and I do not find any error of approach by the judge in that respect. It has been emphasised on many occasions that credibility should be viewed holistically, looking at all matters from different angles and taking into account various factors. It seems to me that that is precisely what the judge has done in the circumstances of this case.
24. The next issue relates to the claimed desertion by the appellant. Evidence that is relied upon by the appellant in support of that contention was firstly his military card issued in 2002. He contends that if he had retired from the army he would have been required to have handed that back.
25. The second document being that set out in Annex I to the respondent's bundle, namely the letter which the appellant claims that he presented to his commanding officer dated 17<sup>th</sup> February 2011 wishing to retire from the army. A copy of the original of that letter is produced with it crossed cancelled. The appellant contends that it was the attitude of his superior officer merely to deny that application.
26. The letter itself was reacquired from the army files by a friend.
27. The judge paid careful regard to that letter, particularly at paragraph 53 to 56 of the determination. It was noted that it was a letter in the Urdu language but had "cancel" written upon it in English. The judge comments that perhaps a more appropriate word would have been "refused".
28. The judge noted the issue of the letter and of the card.
29. The judge noted the manner of the appellant's departure upon his own passport and did not consider that it was credible that the appellant could have departed upon that passport and obtained a student visa had he been somebody who had been regarded as having deserted from the army.
30. It is perhaps of significance in the circumstances of the case that the letter is dated 17<sup>th</sup> February 2011. The appellant was supposed to return to the army in April 2011 but did not do so and there came a time when he was sought by the police who went to his property to find him because he had not returned to the army. Seemingly, according to the appellant as noted

in paragraph 28 of the determination, an FIR was issued in connection with that matter.

31. No FIR has been presented nor any document relating to the interest purportedly shown in the appellant by the authorities following his desertion.
32. The point which Mr Kingham makes in the course of his submissions to me is that there is no material from the army, whether by way of stoppage of pay, letter or correspondence seeking him subsequent to his departure or indeed before.
33. Mr Rassool, who represents the appellant, invited me to find that given the two documents that were in existence the benefit of the doubt should have been given to the appellant in the claim which he makes. It is clear that he had been in the army for a long time and there must have been some reason for him not to have continued in it.
34. Although the skeleton argument as submitted by Mr Rassool seeks to deal with the Taliban as a distinct entity from that of desertion, as Mr Kingham indicates both are to some extent interrelated.
35. If, in fact, there was no credible evidence that the appellant was the subject of repeated threats from the Taliban, then clearly the reason which he gives for his desertion would not have been substantiated. If the appellant had the expertise of such importance within the army it is surprising, Mr Kingham submits, that there is no further documentation to show any interest by the army in him and in his absence.
36. There is some substance to that matter because of course the appellant did not leave Pakistan until October 2011, many months after his claimed desertion. It is surprising in those circumstances that there were no letters from the army written to him requesting him to return or any recent documents showing military service .
37. The judge therefore came to the conclusion that the appellant was not a deserter. In the alternative, however, the question was considered whether in those circumstances he would face persecution or prosecution were he to return. That is a matter that has been considered by the judge at paragraph 63 onwards. In that connection the judge had regard to the evidence in the expert report that under the penal code a deserter could be imprisoned for two years and/or pay a fine.
38. Mr Rassool seeks to rely upon the penal code which seems to speak of capital punishment for desertion, although that would seem more to relate to desertion on active duty. It was not a matter raised specifically by the expert.

39. Reliance is placed upon the treatment of certain deserters but, as was noted by the judge specifically in paragraph 70 of the determination, they related to high ranking officers rather than to the position of the appellant.
40. Looking at the matter as a whole I find that the approach taken by the Tribunal judge was entirely proper in all the circumstances. The nature of the appellant's claim has been considered from a number of perspectives and findings properly open to be made have been made. Due account has been given to the expert report. I find that the decision of the judge has been arrived at carefully and with full consideration to the facts. In essence the grounds of appeal amount to little more than an attempt to reargue the merits of the appeal.
41. Mr Rassool seeks to indicate that further evidence is likely to be presented. That may or may not be the case, but I have to focus upon the analysis of the case as was conducted by the judge at the hearing. If further material evidence has come to light which alters the case for the appellant then no doubt an application for a fresh hearing can be made.
42. However, for the purposes of this matter I do not find there to be any material error of law in the approach taken by the judge to these issues.
43. In the circumstances the decision shall stand, namely that the asylum appeal is dismissed, that in relation to humanitarian protection is dismissed and that in respect of human rights is also dismissed.

Signed

Date

Upper Tribunal Judge King TD