



Upper Tier Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: AA/05064/2015  
AA/05065/2015  
AA/05068/2015  
AA/05074/2015

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 31<sup>st</sup> March 2016

Decision & Reasons Promulgated  
On 12<sup>th</sup> April 2016

Before

Deputy Upper Tribunal Judge Pickup  
Between

YSR

AN

MSY

MSY(2)

[Anonymity direction made]

Appellants

and

Secretary of State for the Home Department

Respondent

**Representation:**

For the appellants: Ms L Mair, instructed by Silverdale Solicitors  
For the respondent: Ms R Petterson, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appeal of YSR, his wife AN, and their two children, citizens of Pakistan, against the decision of First-tier Tribunal Judge Foudy promulgated 6.11.15, dismissing on all grounds their appeals against the decisions of the Secretary of State, dated 16.1.15, to refuse the asylum, humanitarian protection and human rights claims made by YSR with the other appellants as his dependants, and to remove them from the UK. The Judge heard the appeal on 26.10.15.
2. First-tier Tribunal Judge Andrew granted permission to appeal on 27.11.15.
3. Thus the matter came before me on 31.3.16 as an appeal in the Upper Tribunal.

### **Error of Law**

4. For the reasons set out below I found such error of law in the making of the decision of the First-tier Tribunal as to require the decision of Judge Foudy to be set aside and the decision in the appeal remade by allowing the appeals of each of the appellants.
5. The relevant background can be summarised briefly as follows. Mr YSR claimed to be a police officer in Gurakhan, a person of influence, and a Shia Muslim, married to a Sunni Muslim. He started a religious group called [ ], which made him the target of Sunni extremists. He and family members were attacked in 2004, 2010, September 2012, and twice in August 2013, the last by being shot at. He then came to the UK and claimed asylum.
6. At §21 Judge Foudy found that Mr YSR had substantiated his account of events in Pakistan and in consequence at §26 found his claims to be credible and that he has a well-founded fear of persecution in his home area of Pakistan. However, the judge went on at §27 to find that internal relocation is available to him, stating that all the people he fears are in his home area and that as Pakistan is a large country and as he had experienced nothing untoward in Rawalpindi, Karachi, Islamabad or any other large city, he could find employment there. "There is no persuasive evidence that anyone seeking to harm the appellant has any influence outside the appellant's home area therefore he and his family will be as safe as any ordinary Pakistani family is." Thus the judge concluded at §32 that whilst he had a well-founded fear of persecution, the appellant had not satisfied the judge that he would face a real risk of persecution if he returned to Pakistan." The judge dismissed his asylum, humanitarian and human rights claims.
7. In summary, the grounds complain that the judge made errors in relation to the internal relocation assessment, having found the first appellant, on whose appeal the appeals of the other appellants are dependent, to be an entirely credible witness.
8. In granting permission to appeal, Judge Andrew stated, "Internal relocation was not raised in the refusal letter and it would appear that no submissions were made in respect of it either. Thus the first appellant gave no evidence in relation to the same. The judge made no findings in relation to internal relocation based on the first appellant's profile bearing in mind the findings she had made as to his credibility. This I find to be an arguable error of law."

9. Ms Mair relied on procedural unfairness in the decision of Judge Foudy, pointing out that it was neither raised in the reasons for refusal nor by the presenting officer during the Tribunal hearing. She explained that it was not raised because the Secretary of State was aware that Sunni extremist elements operate throughout Pakistan and the authorities are unable or unwilling to control them or offer protection. They act with impunity and the background material indicates there is strong suspicion that the authorities in fact collaborate with these extremists. It is submitted that if the first appellant's factual claim was accepted in its entirety, there could be no internal relocation. It is further submitted that if the judge considered that it was a relevant matter it should have been raised at the appeal hearing and the appellants or their representative allowed to address it. Ms Mair, who represented the appellants at the First-tier Tribunal appeal hearing, stated that she had pointed out the depth of reach of Sunni extremist elements in her closing submissions to Judge Foudy. In the circumstances, it is submitted that it was not proper for the judge to go behind the Secretary of State's case to find that internal relocation was available.
10. The Rule 24 response, dated 7.12.15, submitted that there is no error in relation to internal relocation; it was considered in context, in light of the first appellant's profile and previous experiences. It is submitted that it was a Robinson obvious point that internal relocation would be considered by the judge; if the appellants failed to address it, that was a matter for them.
11. I find that internal relocation is always a live issue in an asylum case as a person cannot make out an asylum claim unless he can also demonstrate that there is no place to which he can reasonably be expected to go within the country to which he would be returned. However, it is the usual practice of the Secretary of State to separately deal with this issue in refusal decisions, and it was absent in this refusal decision. However, I find that the decision was in error of law in that there was ample and clear evidence before the judge that internal relocation was not a viable option, which may explain why it was not relied on in the refusal decision, and that the decision and findings at §27 are not sustainable and amount to an error of law.
12. The factual summary set out by the judge at §9 of the decision is in reality a restatement of the first appellant's witness statement. The judge accepted that he was a police officer and a person of influence who had founded a Shia group. The incidents in 2004, 2009, 2010, were accepted, as was that he had arrested people involved in Sunni extremism. He tried to return to Pakistan in 2012 and 2013 but had to come back to the UK because of the attacks against him by Sunni men, including being shot at on his way home from a wedding. Those attacks were confirmed by the appellant's witness statement and a FIR to have taken place in Gujranwala (Punjab Province) 160 Km from his home area and Sialkot 170 Km from his home area. Ms Mair submitted that the judge failed to take into account that he had experienced difficulties outside his home area. In fact, the cities referred to by the judge are much closer to home than where he was attacked. It was not the appellant's case that all the people he feared were in his home area. He also waited a number of years before

returning in the hope that things would have died down, but they were able to locate him outside his home area.

13. In addition, the appellants' bundle contains significant and relevant evidence from A168 onwards that there has been a huge increase in sectarian violence in Pakistan, including a reported five-fold increase in Sunni extremist incidents against Shias, and in particular a large number of attacks in Karachi. At A173 is a report that despite the Shia neighbourhood being barricaded, a Sunni suicide bomber was able to explode his device. The judge's attention was also drawn to A215 where the 2013 USCIRF entry for Pakistan states in summary, "Religious freedom violations in Pakistan rose to unprecedented levels due to chronic sectarian violence particularly targeting Shi'I Muslims." In the same report at A218 under the heading 'Attacks against Shi'I Muslims,' it is recorded that militants and terrorist organisations targeted Shia processions and mosques with impunity during the reporting period, and that the response by the Pakistani government has been grossly inadequate. "Whilst at times police were present when attacks occurred, they were unable to stop attackers before people were killed." At A219 the very groups the first appellant claimed in his witness statement to fear, the LeJ and TTP are described as having originated from Punjab Province but developed a nationwide network and has proclaimed its goal of cleansing Pakistan of Shias, who it believes are not true Muslims. "While the Pakistan government has banned them both, some observers conclude that the Pakistani intelligence maintains contact with the groups and fosters relationships."
14. Ms Mair additionally submitted that the judge failed to take into account against this country background information the first appellant's individual circumstances of being a police officer, a person of influence, unafraid to arrest Sunni extremists and having a high role in a Shia organisation he helped found. He also married a Sunni Muslim, all of which brought him to the adverse attention of Sunni extremists. On that profile and with the evidence of the reach of these organisations he must be at risk in any area or Province.
15. In the circumstances, the conclusion in §27 is contrary to the evidence presented to the Tribunal, fatally undermined and thus unsustainable.
16. It follows from the above that on the basis of the judge's acceptance of the first appellant's factual case in its entirety, he has made out his asylum claim to the requisite lower standard. In the circumstances, it is not necessary to address the other claims. The appeals of the other appellants stand or fall with that of the first appellant.

### **Conclusions:**

17. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I re-make the decision in the appeal of each appellant by allowing the appeals on asylum grounds.



**Signed**  
**Deputy Upper Tribunal Judge Pickup**

**Dated**

Deputy Upper Tribunal Judge Pickup

**Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order.

Given the circumstances, I consider it appropriate to make an anonymity order.

**Fee Award**                      **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.



**Signed**  
**Deputy Upper Tribunal Judge Pickup**

**Dated**