



IAC-AH-PC-V1

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

Appeal Numbers: AA/01374/2015
AA/01376/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd November 2015**

**Decision & Reasons Promulgated
On 4th December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MH (FIRST APPELLANT)
AH (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr E. Waheed of Counsel

For the Respondent: Ms E. Savage, Home Office Presenting Officer

DECISION AND REASONS

The Appellants

1. The Appellants are both citizens of Pakistan and are married to each other. The first Appellant ("the Appellant") was born on [-] and his wife, the second Appellant, was born on [-]. They appealed against the decision of the Respondent dated 13th January 2015 in which she refused to grant asylum to the first Appellant under paragraph 336 of the Immigration

Rules HC 395 and refused the second Appellant's application as her husband's dependent. Their appeal was allowed at first instance by Judge of the First-tier Tribunal Blake sitting at Taylor House on 21st May 2015. For the reasons which I set out below at paragraphs 19 and 20 below I found there to be a material error of law and have set that decision aside. I have proceeded to rehear this appeal and will refer to the parties as they were known at first instance for the sake of convenience.

2. The Appellant's claim was summarised by the Judge at paragraphs 15 to 30 of his determination. The Appellant was of the Shia Muslim faith and was the president of an organisation called AK. Whilst in Pakistan the Appellant had been a professional cricketer and had obtained celebrity status. On 10th October 2010 he had participated in a demonstration against the killing of Shias by a Sunni extremist organisation Lashkar Jhangvi ("LJ"). The Appellant had subsequently received a threatening letter from that organisation on 15th October 2010 referring to him as an infidel and having committed heresy. The letter also referred to the fact that the Appellant's wife, the second Appellant, had converted to being a Shia Muslim. He subsequently received threatening phone calls in March and December 2010 telling him to cease his activities. He informed the police of these threats but they did nothing.
3. The Appellant moved from Karachi to Lahore but could not stay there because news of his activities on behalf of the Shia community was made public and LJ came to know of his work. On 13th May 2011 men from LJ attended his home and fired shots and chanted slogans. The Appellant was not at home at the time but was informed of what happened by a friend who had witnessed it. The friend was too frightened to inform the police of the incident. The Appellant left Karachi on 27th May 2011 and travelled to the United Kingdom where almost three years later on 19th February 2014 he made an application for asylum saying he could not return to Pakistan because of the danger to his life from Sunni extremists. After the Appellant made a television programme in the United Kingdom about the Shia killings the Appellant's brother in Pakistan received a phone call from LJ.
4. The Respondent did not accept the credibility of the Appellant's claim to have received threats. The Appellant's credibility had been undermined by the length of time it had taken him to claim asylum. In any event there would be a sufficiency of protection available to the Appellant if he were returned to Pakistan.

The Determination at First Instance

5. At paragraph 56 the Judge began his conclusions in the case. He accepted the Appellant to be an honest and credible witness. The Appellant was of the Shia faith and was a well-known international professional cricketer. The Judge accepted that the Appellant had received threatening letters and phone calls from LJ and that the Appellant's wife, the second Appellant, had converted to the Shia faith. The Appellant had been

president of AK, founded by the Appellant's father in 1957. The Appellant had used his position as president of this Shia organisation and his position as a high profile cricketer to promote the welfare of Shias and protest against killings. The Appellant had taken part in a rally in London in aid of a religious event and was featured in photographs of that demonstration. The Appellant had been in touch with his brother who had informed him that LJ were still interested in the Appellant.

6. At paragraph 68 the Judge considered the issue of internal relocation albeit somewhat briefly. The Judge wrote:

“I found that as the Appellant was a high profile public figure the possibility of relocation will not be open to him. I further considered on the basis of the evidence that there would be a real risk that he would be attacked and that there would not be a sufficiency of protection to prevent this from happening. I accepted the Appellant's account that when he had previously brought the threats to the attention of the police there had been no action taken on any investigation into his complaint”.

He allowed the appeal under asylum grounds and did not proceed to consider the matter under Article 8.

The Onward Appeal

7. The Respondent appealed against that decision on three grounds. The first was the Judge had made a material error of law in failing to give any or any adequate findings for accepting the Appellant's account. The second ground was that the Judge had failed to give any or any adequate findings that there was an insufficiency of protection in Pakistan and the third ground was that there were no or no adequate findings that the Appellant could not internally relocate.

8. The application for permission to appeal came on the papers before Judge Chohan on 13th July 2015. In granting permission to appeal he wrote:

“The Judge's findings are set out in paragraphs 55 to 79. It is quite apparent that the Judge has accepted much of the Appellant's account but it does seem that the Judge has not given adequate or full reasons for accepting the Appellant's account. In other words it does seem that there is a lack of reasoning in the Judge's decision for accepting the Appellant's account and allowing the appeal”.

9. The Appellant filed a reply to the grant of permission pursuant to Rule 24 dated 2nd November 2015. This argued that the First-tier Tribunal had had the benefit of hearing the Appellant give live evidence. The Respondent's grounds alleged a lack of reasons only. The Tribunal had properly directed itself on the law and given reasons why the Appellant had been accepted as honest and credible. These were the demeanour and manner of the Appellant as a witness, his previous immigration history, the many pages of documentary evidence, the plausibility of the conduct ascribed to the Appellant's friend. In any event the Appellant's account had been considered in the round. It was open to the Tribunal to find that upon

acceptance of the Appellant's evidence of the nature of those whom he feared, the Appellant's own public profile and no prior sufficiency of protection for the Appellant when in Pakistan he would not be afforded a sufficiency of protection in the future upon return to Pakistan.

10. The reply continued that it ill-befell the Respondent to rely upon her own refusal letter's analysis of the sufficiency of protection available in Pakistan because that had stated in terms that the police had been unable to stem the tide of targeting killings especially of members of the minority Shia and Christian communities. There was nothing in the refusal letter to justify the statement that the authorities were able to offer protection to the Appellant in the circumstances he had described. Given that the Appellant was a well-known international professional cricketer he would be easily found. There was no error of law.

The Hearing Before Me

11. The Respondent relied on the grounds seeking permission to appeal arguing that the First-tier Tribunal had failed to provide adequate reasoning on the issues of sufficiency of protection and internal relocation. The refusal letter had set out a number of reasons for not accepting the Appellant's account of past persecution. Where the discrepancies were so serious they undermined the Appellant's claim it was imperative for the Judge allowing an appeal to explain how his conclusions were reached.
12. Paragraph 68 on the sufficiency of protection was almost entirely unreasoned. The background evidence cited at paragraphs 36 to 44 of the refusal letter had showed that there was an organised security service in Pakistan but the Tribunal had failed to take that evidence into account or consider the **Horvath** standard of protection. The option of internal relocation had also only been briefly dealt with at paragraph 68. The finding that the Appellant could not relocate because he was a high profile public figure was not properly reasoned. The refusal letter had set out a number of points which had argued that it was reasonable for the Appellant to relocate to Islamabad. The Appellant's fear was only in one part of Pakistan and that was Karachi. By contrast Pakistan had a landmass of almost 800,000 square kilometres and a population of over 187 million people.
13. The Judge's findings on how well known the Appellant was were also insufficiently reasoned. The last match the Appellant played in Pakistan was on 5th April 2009 eighteen months before his problems began. There were articles from Pakistan about the Appellant in 2003, 2005, 2006 but they did not refer to the Appellant's faith. There was only limited and sporadic coverage of the Appellant. Islamabad itself had a population of 1.7 million people and it was considered reasonable the Appellant could relocate there. He had skills he could utilise upon return.
14. In response Counsel for the Appellant relied on the Rule 24 reply. The case of **Malaba [2006] EWCA Civ 820** relied upon by the Respondent in

arguing that there was an insufficiency of reasons could be distinguished from the instant case. In **Malaba** the Judge had not had the advantage of seeing the Appellant give evidence which was why the Judge had to address specifically the discrepancies in the refusal letter. There was nothing in the background information cited by the Respondent at paragraphs 36 to 44 to justify the assertion that there was a sufficiency of protection. Whilst there might not be any specific country guidance on the risk to Shias *per se*, there was a risk to this particular Appellant. Internal flight was not possible and there was evidence before the Tribunal of the Appellant's cricketing career. He had played for Pakistan against England, it was not true to say he was not an international cricketer.

15. In response the Respondent argued that the Appellant was no longer subject to further media attention in Pakistan. The articles which he had produced were from the period 1992 to 1996.
16. At this point in the case I indicated to the parties that the core issues in this case were the sufficiency or otherwise of protection in Pakistan, the possibility of internal relocation and whether the Judge had correctly addressed them. I referred the parties to the case of **AW [2011] UKUT 31**. In **AW** it was stated that the test set out in **Horvath [2001] 1 AC 489** was intended to deal with the ability of a state to afford protection to the generality of its citizens. Notwithstanding systemic sufficiency of state protection a claimant may still have a well-founded fear of persecution if authorities know or ought to know of circumstances particular to his/her case giving rise to the fear, but are unlikely to provide the additional protection the particular circumstances reasonably require. In considering whether an Appellant's particular circumstances give rise to a need for additional protection, particular account must be taken of past persecution (if any) so as to ensure the question posed is whether there are good reasons to consider that such persecution (and past lack of sufficient protection) will not be repeated.
17. For the Respondent it was argued that one still had to look at the individual circumstances, in particular whether an applicant had already been subject to harm. The Appellant in this case had never been subject to harm in Pakistan. At question 93 of the substantive asylum interview the Appellant had denied he had ever been physically harmed in Pakistan, adding that he had never been in trouble with either the police or the government in that country. By contrast in the case of **AW** also a case involving Pakistan the police had failed to provide the required level of protection. When the Appellant in this case had been asked in interview if he had told the police who was responsible he said for the threats he did not. Any lack of action from the police was not as a result of an unwillingness to investigate the matter but rather the lack of information given to the police by the Appellant on his own account. The background information in the refusal letter demonstrated sufficiency of protection and the willingness to operate the system. There was no evidence of religious extremism amongst senior police officers and there was a complaints procedure if the police did not fulfil their duties.

18. In conclusion Counsel referred to paragraph 7 of his skeleton argument citing again the refusal letter that the police had been unable to stem the tide of targeting killings of Shias. The Appellant was a member of a minority Shia community. He had received threats in the form of letters and telephone calls. The police had done nothing about the Appellant's complaints. He had attempted to move but had to return and his home was targeted and shot at. The Appellant's evidence of the inefficiency of the state apparatus to protect him was in line with the evidence quoted by the Respondent of the inability of the police to protect minority communities.

The Error of Law Stage

19. At the conclusion of the submissions I indicated that I found there was a material error of law in the Judge's determination such that it fell to be set aside and the matter reheard. The Judge's findings of fact of the past persecution which the Appellant complained of were preserved but the issues to be dealt with were whether the Pakistan authorities could offer a sufficiency of protection to the Appellant and/or whether he could internally relocate.
20. The Appellant's fear was of non-state actors and therefore he had to demonstrate an insufficiency of protection. The Judge had failed to engage with the lengthy submissions made by the Respondent in the refusal letter on this point. His treatment of insufficiency of protection and internal relocation was inadequate as it was not possible to see from the very brief contents of paragraphs 68 and 69 of the determination the basis on which the Respondent had lost the appeal. That the Appellant had suffered persecution in the past was not of itself enough to say that there was an insufficiency without some further explanation. If the Judge was basing his argument on his acceptance of the credibility of the Appellant's account he needed to make it clear why that meant there was a future risk but he had not done so. Insufficient reasoning in this case amounted to a material error of law.
21. That being the case I asked the representatives whether in those circumstances it was necessary to hear further oral testimony or whether on the basis that the Judge had made findings which I preserved submissions only were sufficient. Neither side sought to demur from that position and were content for me to proceed there and then on submissions. I did not consider it necessary to remit the matter back to the First-tier Tribunal in view of the fact that the factual matrix of the case had been found by the First-tier Tribunal which I had preserved.

The Rehearing

22. In concluding remarks the Presenting Officer relied on submissions made at the error of law stage and reiterated that the Appellant had not been the subject of physical harm. He had gone to the police. It was accepted that he was an international cricketer but there was no recent evidence of

him having a high profile, the most recent evidence being 2006 which was as far as the articles went.

23. In closing for the Appellant Counsel relied on the evidence before the First-tier Tribunal. There was further background material on the plight of the Shia community in Pakistan in the form of a report on “Shia Genocide a Crisis in Pakistan” commissioned by Lord Avebury Vice-chair of the All-Party Parliamentary Human Rights Group. The report had stated that in an attempt to undermine and destabilise any sense of security for Pakistan’s Shia community a systematic spate of killings targeting well-respected Shia professionals had been carried out. LJ was regarded as one of the most active Sunni sectarian groups operating in Pakistan and was held responsible for scores of brutal attacks on Shia targets. Despite being banned by the Pakistan Government in August 2001 and having their leader killed by the police in May 2002 the group’s activities had dramatically increased in recent years. The present chief of the organisation had been in and out of Pakistani jails. State institutions had acted with a concerning level of inefficiency, even apathy towards LJ. Judicial reform was urgently required in Pakistan but there was intimidation of Judges, lawyers and witnesses involved in cases against militant leaders. There had been accusations of active collusion and support for those who are causing harm to Shias on the part of the Pakistan Government. Although supposedly banned, LJ enjoyed free space throughout Pakistan. Support for this sectarian group did not stem from the civilian government and its representatives but from Pakistan’s powerful security establishment.
24. The Appellant had been targeted before and given the nature of LJ he had a fear of persecution or death. The state had been unable to protect the Appellant in the past which enabled the Upper Tribunal to consider future persecution might arise. The Appellant’s appeal should be allowed.

Findings

25. The Appellant’s claim in this case is that he fears non-state actors. He does not indicate that he fears the Pakistan Government itself. The Appellant has been subject to threats and his house was attacked while he himself was absent. He has not suffered any physical harm. He does not consider that the authorities would offer him a sufficiency of protection in the future and he denies that he can internally relocate within Pakistan for example to Islamabad the capital because he would be found wherever he went due to his high profile status as a former international cricketer.
26. As the case of **AW** makes clear the question of sufficiency of state protection which arises when the fear is of non-state actors breaks down into two parts. The first is whether there is in fact a systemic sufficiency of state protection at all. If there is then the Tribunal must go on to consider in the light of the Appellant’s particular circumstances whether he is unlikely to be afforded the additional protection his particular circumstances require.

27. In **AW** decided in 2011 the Upper Tribunal held that it was proper to have regard to guidance given in a 2002 country guidance case **AH (sufficiency of protection - Sunni extremists) Pakistan [2002] UKIAT 05862** and as commented on in **Hussain [2005] CSIH 45**. In those cases the starting point was that it had been held by the Tribunal that there was a sufficiency of protection in Pakistan. **AW** appears not to depart from that, what **AW** is concerned about is the effect on sufficiency of protection cases of the ratio in **Bagdanavicius**, in particular the Court of Appeal decision in that case at **[2005] EWCA Civ 1605**. Sufficiency of state protection meant a willingness and ability on the part of the receiving state to provide through its legal system a reasonable level of protection from ill-treatment of which the claimant for asylum has a well-founded fear. The effectiveness of the system provided was to be judged normally by its systemic ability to deter and/or to prevent the form of persecution of which there is a risk, not just punishment of it after the event. Notwithstanding a systemic sufficiency of state protection in the receiving state an Appellant may still be able to establish an Article 3 claim if he can show that the authorities there know or ought to know of particular circumstances likely to expose him to a risk of Article 3 ill-treatment.
28. In this case the Appellant makes two arguments. The first is that there is in fact no systemic sufficiency of protection and he prays in aid an extract from the Respondent's own refusal letter together with the All-Party Parliamentary Committee report on the plight of Shias. The second part of the Appellant's argument is that even if there is otherwise a systemic sufficiency of protection, given the Appellant's particular circumstances, namely his high profile as a former international cricketer and someone who has worked for the rights of Shias, he would be targeted in such a way that the authorities would be unable to afford him the necessary level of protection (over and above that which would be otherwise available to any other Pakistan citizen). In either case he cannot relocate.
29. The Respondent relies on the Country of Origin Information Report extracts of which were cited in the refusal letter. It is important to note that paragraph 38 of the refusal letter relied upon by the Appellant begins with the sentence "Pakistani police are regularly charged with quelling sectarian violence and investigating cases of religious intolerance". The paragraph goes on to say that whilst there had been attacks against Shias during the month of Moharram particularly in Shia processions marking Ashura, Ashura passed peacefully in most of the country on account of the security measures put in place by Pakistan's law enforcement authorities. Several suspected militants were arrested in Karachi and security cameras helped prevent terrorist activity in Lahore. There were improvements in police professionalism during the year. The Respondent's view was that Pakistan had a willing and organised security service which was deployed to protect the citizens of Pakistan. In relation to the complaint of inaction by the police the Respondent cited evidence from the Country of Origin Information Reports that there were complaints procedures and redress in civil courts where most cases were settled out of court. As against that the

Appellant argues that the picture painted by the All-Party Parliamentary Group suggests that there is widespread persecution of Shias.

30. As has been commented upon there is no specific country guidance authority on the position of Shias or the risk which they face as such. The evidence such as it is from the Country of Origin Information Report is that where the police make a specific effort persecution of Shias by fundamentalist Sunni groups can be prevented. Indeed the All-Party Parliamentary Group appears to suggest that organisations such as LJ are not in fact sponsored by the civilian government of Pakistan but appear to have links with rogue elements of the security forces. A past leader of LJ has been killed by the security forces and other members have been jailed. This evidence does not in my view demonstrate that the Pakistan authorities are complicit with the persecution of Shias such that there is a risk *per se*. Rather it shows that Shias can be protected by the police force in Pakistan and there is therefore a systemic sufficiency of protection.
31. As **AW** makes clear that of course is not the end of the case. The burden is on the Appellant to the lower standard to show that there is nevertheless a real risk of harm to him because of his particular circumstances and the fact that he would need protection over and above that available to ordinary citizens. He bases this on his past as a cricketer, his activities for the Shia community and the fact of the past persecution.
32. The Appellant was accepted by the Judge as having been an international cricketer in the past. It is fair to point out however as the Respondent does that the Appellant's cricketing days were twenty years ago. It is not at all clear why the Appellant should be at a heightened state of risk now wherever he might move in Pakistan. Of course where the Appellant was being targeted by an extremist group he would need to avail himself of the protection of the Pakistan authorities but given the lack of information which he gave to the authorities (as evidenced in his interview) it is difficult to see what more the authorities could have done to specifically help him. The Appellant was not physically harmed but was the subject of threats made in his local area. Those threats were not acted on in terms of physical attacks or attempts on the Appellant's life. Given the violent nature of LJ as stated in the All-Party Group and given the length of time over which the Appellant complains he received threats from that organisation it is hard to avoid the conclusion that LJ did not harm the Appellant physically because they did not intend to do so. They had ample opportunity to do that if they wanted to. If as the Appellant says he was a well-known figure because of his cricketing career, he could have been easily found by them and yet they did not harm him.
33. In those circumstances I do not consider that the Appellant had such particular circumstances that he did require an extra level of protection of the sort envisaged in **Bagdanavicius**. The All-Party Group makes it clear that LJ are prone to acts of violence against members of the Shia faith but they have not perpetrated violence against the Appellant's person. As **AW**

makes clear it is important to consider the nature of the past persecution which an Appellant has suffered when assessing future risk in a sufficiency of state protection case. In the instant case before me the level of persecution suffered by the Appellant and accepted by the Judge was not such as to require additional measures peculiar to the Appellant's circumstances.

34. Furthermore the Appellant's account referred to difficulties in Karachi and the fact that he could not remain in Lahore because his involvement with a meeting had been made public. However the localised nature of these threats would not necessarily mean they were relevant in the capital city Islamabad where the Appellant could access protection from state officials. It is important to note that the Appellant's case was that he came from a family of Shias, his father having been a prominent Shia in Pakistan. And yet when the Appellant was asked at question 135 in his interview whether his sister and brother who still lived in Pakistan had been attacked by Lj he replied no (question 135). That evidence underlines the fact that there is not a risk in Pakistan to Shias *per se*, it also shows that members of the Appellant's family have not suffered as a result of the Appellant's activities. I would agree with the comments made in the refusal letter that there is no reason why the Appellant could not internally relocate to Islamabad. It is significant to note that at page 15 of the All-Party Parliamentary Group they refer to a worrying surge of violence in Karachi, Lahore and Quetta but not Islamabad.
35. The Appellant could internally relocate to Islamabad if he did not wish to live in Karachi or Lahore. There is a sufficiency of state protection and there are no particular circumstances pertaining to this Appellant which would require particular methods of protection over and above those which other Pakistani citizens would expect to receive. The second Appellant is dependent upon the Appellant's appeal. As I have found that there is a sufficiency of state protection for the Appellant and that he could internally relocate I also find that there is a sufficiency of protection for the second Appellant and that she too could internally relocate. It follows from my dismissal of the Appellant's appeal that the second Appellant's appeal must also fail. I therefore dismiss the appeal.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and I have set it aside.

I have remade the decision by dismissing the Appellant's appeal.

Appeal dismissed.

~~I make no anonymity order as there is no public policy reason for so doing.~~

Signed this 27th day of November 2015

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Deputy Upper Tribunal Judge Woodcraft

TO THE RESPONDENT
FEE AWARD

As no fee was payable and the appeal has been dismissed I make no fee award.

Signed this 27th day of November 2015

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Deputy Upper Tribunal Judge Woodcraft