



IAC-FH-AR-V1

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

Appeal Number: IA/44313/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4<sup>th</sup> December 2015**

**Decision & Reasons Promulgated  
On 5<sup>th</sup> January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

**Between**

**MUHAMMAD JALIL KHAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss A Jones, Counsel, instructed by Farani Javid Taylor Associates

For the Respondent: Miss A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Pakistan whose date of birth is recorded as 8<sup>th</sup> June 1983. On 13<sup>th</sup> February 2014 he made application to regularise his status in the United Kingdom having regard his claim that there would be a violation of his human rights were he to return to Pakistan (and not Ghana) as set out at paragraph 1 of the decision of the First-tier Tribunal now under appeal. The Secretary of State refused the application having regard to Appendix FM paragraph 276ADE and the wider application of

Article 8. The Appellant's appeal was brought and heard on 29<sup>th</sup> April 2015 at Hatton Cross.

2. It was part of the Appellant's case that he was now in a relationship with Fozia Khan and that he would be at risk on return to Pakistan because, although he was an overstayer, when in Pakistan in December 2001 he was kidnapped, beaten and held for ten days. Those who attacked him demanded money from his family. After ten days he was found by the police and returned to his family after being treated in hospital for his injuries. This is set out at paragraph 21 of the decision of Judge Monaghan. It was also acknowledged at paragraph 21 of the Decision and Reasons that the Appellant was scared to return to Pakistan.
3. The judge considered the various issues without the Appellant being represented and without a Presenting Officer present and concluded that the appeal was to be dismissed both under Articles 3 and 8 ECHR; I refer to paragraph 50. It seems clear from reading the decision as a whole that the judge had regard to the medical conditions when considering Article 3 rather than any risk to the Appellant.
4. Not content with the decision of the judge, by notice dated 22<sup>nd</sup> May 2015 the Appellant sought permission to appeal and on 3<sup>rd</sup> August 2015 Judge of the First-tier Tribunal Hollingworth granted permission but quite rightly the judge pointed to an arguable error occurring because the judge, the judge hearing the case, had not made the decision in respect of the Appellant's Article 3 arguments relating to the fear on return as distinct from the medical conditions.
5. It is important to note that although Fozia Khan was not accepted as a credible witness the Appellant was. Absent from the decision was any consideration of whether or not the Appellant remained at any risk consequent upon what had occurred all those years ago when he was kidnapped. In other words, although the judge accepted that there was a subjective fear of return to Pakistan, the judge having found the Appellant credible there is no sufficient examination by the judge of whether such fear was objectively well-founded. If it were, then having regard the appropriate standard it is possible that the Appellant was entitled to succeed not only under Article 3 but also arguably under Article 8 because of the third test in **Razgar [2004] UKHL 27**, which requires an assessment of whether the decision is in accordance with the law.
6. Miss Everett quite fairly had little to offer by way of submissions on the point. In my judgement there has been a material error of law in that consideration of the issue may have produced a different result.
7. There was some discussion as to whether the matter should remain in the Upper Tribunal on the basis that there was a very narrow issue now left to be resolved but Miss Jones was not in a position to proceed despite clear directions but I accept as she submitted that there are issues of funding and it is not always possible to obtain funding speculatively. In these

circumstances having regard to paragraph 7 of the Senior President's Practice Statement of 2012

**Notice of Decision**

8. The decision of the First-tier Tribunal contained a material error of law and is set aside to be remitted to the First-tier Tribunal
9. No anonymity direction is made.

**Directions**

10. The findings of the First-tier Tribunal shall be preserved with respect to those issues already determined but for the avoidance of doubt that the appellant was found credible does not mean that the First-tier Judge hearing the remitted appeal will necessarily be required to accept whatever the appellant has to say about his objective fears, if any.
11. The issue will be confined to the extent to which if at all the appellant's Articles 3 and 8 rights would be violated by any return after consideration of his evidence if any, relating to those fears.
12. No interpreter will be required.
13. For the avoidance of doubt the appellant has made clear that he does not claim to be a refugee on the basis that no Convention reason is engaged.
14. Case to be heard at Taylor House.
15. Not before Judge Monaghan.

Signed

Date

Deputy Upper Tribunal Judge Zucker