



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

Appeal Number: PA/02617/2018

THE IMMIGRATION ACTS

**Heard at North Shields
Promulgated
On 7 September 2018
2018
Prepared on 13 September 2018**

**Decision & Reasons
On 25 September**

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**S. R.
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Brakaj, Iris Law Firm

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Pakistan, entered the United Kingdom by air with his family, and claimed asylum at port on 26 November 2013. The Respondent refused that claim on 4 December 2014 and

- in consequence made a decision of the same date to remove him, and his family, to Pakistan.
2. An appeal against that removal decision was heard and dismissed by First Tier Tribunal Judge Duff in a Decision promulgated on 4 February 2014. The Judge accepted that the Appellant had generally given a truthful account of his experiences in Karachi as a Shia businessman, although some details were rejected by the Judge as an exaggeration of the original account, and untrue [22].
 3. Thus the Judge accepted, as had the Respondent, that the Appellant had been a volunteer for both the MQM political party, and for the MWM religious group, and a member of a workers union. The Judge also accepted that the Appellant and his partner in business (who was also his cousin) had received a blackmail demand, and threats to the life of himself and his family in the event of non-payment. The Judge also accepted that the Appellant, frustrated at the inability of the police to simply resolve the problem, and believing that a number of the members of the union had been similarly targeted, spoke publicly about the threats, and the extortion demands, and that he gave his name to the press in the course of that conference. Shortly thereafter, without awaiting the outcome of the police enquiry into his complaint, and using family visit visas that had been obtained in July 2013, the Appellant and his family travelled to the UK on 26 November 2013.
 4. In February 2014, and whilst the family were in the UK, the Judge accepted that the Appellant's cousin and business partner was murdered.
 5. The murder of another cousin, an Inspector of police (and thus an officer of some rank), on 15 April 2013 had preceded the Appellant's own difficulties. This murder was said by the Appellant to have resulted from his cousin's refusal to accede to demands that he release some prisoners. Save that his cousin was necessarily a member of the Appellant's family, and also a Shia Muslim, it was not suggested by the Appellant that the circumstances of this cousin's murder had any relevance to the Appellant's own position other than to demonstrate that Shia Muslims do hold positions of rank within the police force in Pakistan.
 6. Judge Duff concluded that the Appellant did face a real risk of harm in his home area, but that there was no lack of sufficiency of state protection for the general population of Pakistan against criminal acts, including blackmail and extortion threats made by non state agents [27]. He also rejected the claim that the state of Pakistan systematically failed to offer adequate state protection to those who are Shia Muslims.
 7. Permission to appeal was granted against the decision of Judge Duff by First Tier Tribunal Judge Kelly on 25 February 2015 solely on the basis that it was arguable the Judge had confused the issues of the sufficiency of state protection and internal relocation.

8. The matter came before me on 13 May 2015 when I dismissed that complaint as disclosing no arguable material error of law. The Upper Tribunal refused permission to appeal my decision. When the Appellant renewed his application to the Court of Appeal, Davis LJ rejected it and certified the complaint as totally without merit on 30 November 2015.
9. The Appellant then commissioned a report from Dr Gil Daryn of 13 July 2016 upon the issues of the sufficiency of state protection and internal relocation. That prompted a series of further submissions to the Respondent that were rejected initially on the basis they did not amount to a fresh claim, however, on 8 February 2018 the Respondent accepted that the Appellant had made out a fresh protection claim, although he went on to reject it.
10. An appeal against this decision to refuse a protection claim was then heard and dismissed by First Tier Tribunal Judge Cope in a Decision promulgated on 4 May 2018. The findings of primary fact made by Judge Duff in the Appellant's favour were not challenged by the Respondent, and in addition Judge Cope accepted that in the meantime;
 - (i) The Appellant's cousin had been murdered in 2015,
 - (ii) The Appellant's brother had received threats in January 2016 directed against the Appellant
 - (iii) the Appellant's brother in law had been murdered on 21 June 2016,
 - (iv) the suspects in the murder of the Appellant's cousin had been released from detention without conviction on bail, and had since disappeared, and,
 - (v) that there was a pattern of events that demonstrated that despite the passage of time the Appellant continued to be a person of interest to the Taleban/Lej and faced a real risk of harm from them were he to seek to return to his home area of Karachi.
11. Judge Cope accepted that Dr Daryn was an expert, and that he had given opinion evidence upon the sufficiency of state protection available to the Appellant, and, his inability to relocate within Pakistan to avoid the risk that he faced in Karachi. Judge Cope concluded that there was a lack of sufficiency of state protection for the Appellant [86], but went on to conclude that he and his immediate family could avoid the risk of serious harm that they faced by relocating within Pakistan [104].
12. Permission to appeal was granted against the decision of Judge Cope by First Tier Tribunal Judge Bird on 12 June 2018 on the basis it was arguable that he had failed to give adequate reasons for his rejection of the conclusions of Dr Daryn upon the issue of internal relocation.
13. The Respondent lodged no cross-appeal against the decision of Judge Cope, and the Rule 24 Notice of 25 July 2018 lodged in response to the grant of permission to appeal simply asserts that his findings were open to him on the evidence and adequately

reasoned, without offering any particulars. Neither party applied pursuant to Rule 15(2A) for permission to rely upon further evidence. Thus the matter came before me.

The hearing

14. When the appeal was called on for hearing Ms Brakaj invited me to recuse myself, even though she accepted that my doing so would inevitably lead to an adjournment of the hearing. She was unable to articulate any reason why I should do so, beyond pointing to my decision of 1 June 2015, which she accepted had been upheld by the Court of Appeal. She accepted that there had been no issue of the Appellant's credibility before me, and that I had heard no evidence from him. In the circumstances I refused her invitation, as one that would serve no purpose other than to delay the disposal of the appeal, and waste public funds.

Internal relocation

15. Although much of Ms Brakaj's argument turned upon the approach of Judge Cope to the issue of whether or not there was a sufficiency of state protection available to the Appellant upon return, the fact remains that, as set out below, Judge Cope determined this issue in the Appellant's favour, and the Respondent has not sought to challenge that conclusion [86].
16. Nevertheless, to the extent that I understood her arguments, Ms Brakaj advanced two challenges; first that Judge Cope's overall approach to the expert's evidence was to belittle it so that the expert's opinions upon the issue of internal relocation were not afforded adequate weight, and, second that adequate reasons were not given for reaching a conclusion upon the issue of internal relocation that differed from the expert's opinion.
17. Whilst Judge Cope accepted Dr Daryn as an expert, he did express criticism of the expert's report, because the author had made no reference to any of the jurisprudence of the Upper Tribunal that was relevant to the issues upon which he was offering opinion evidence. Thus, as I understand his evidence, Dr Darryn's opinion was that there existed a systemic insufficiency of state protection in Pakistan; a position that finds no support in the jurisprudence. Otherwise, Judge Cope accepted that Dr Daryn's observations were appropriately sourced [75].
18. Ms Brakaj's starting point was to argue before me that Judge Cope had materially erred in law by making any criticism of Dr Darryn once he had accepted him as an expert. That is an argument that is in my judgement quite untenable.
19. Ms Brakaj was obliged to accept that the Judge's criticism of the failure to engage with the jurisprudence relating to Pakistan was factually accurate - Dr Daryn did not seek to do so. Since it was a factually accurate criticism, it was one that it was perfectly open to Judge Cope to make. It is not unreasonable to expect an individual offering expert evidence upon such issues as arise in the Tribunal

- to engage with the Tribunal's previous views, and to explain why, if that be their opinion, the position within the country has altered sufficiently significantly to require a different approach. The failure to do so goes to the weight that a Judge can afford to that opinion evidence, and in my judgement that is the point that Judge Cope was quite properly and fairly making.
20. Ms Brakaj also argued that Judge Cope in making reference to the decision of AW (sufficiency of protection) Pakistan [2011] UKUT 31 had failed to refer himself to a country guidance decision, since AW did not enjoy that status. I understood her argument to be that if AW did not enjoy that status, then Judge Cope could not properly have relied upon its content in order to reach different conclusions to those of Dr Daryn upon the issue of internal relocation.
 21. Ms Brakaj did not produce a copy of the Upper Tribunal's decision in AW, or, the decision of KA and Others (domestic violence risk on return) Pakistan CG [2010] UKUT 216 to which AW refers. Nor did she produce, or make reference to, AK & SK (Christians: risk) Pakistan CG [2014] UKUT 569. Both KA and AK & SK remain current country guidance. As she was forced to accept when I produced the decision for her, and directed her attention to the passage, the difficulty with the argument that Judge Cope erred in failing to make reference to current country guidance is that the Upper Tribunal in AW specifically relied upon KA [34] in reaching the conclusion that the claimant had not established that there was a systemic insufficiency of state protection.
 22. Moreover, as noted above, Judge Cope followed the reiteration to be found in AW of the guidance of the House of Lords in Bagdanavicus [2005] UKHL 38 upon the proper approach to the issue of sufficiency of protection. Thus he directed himself (quite properly) to consider not just whether there was a systemic failure by the Pakistani authorities, but to have regard to the individual circumstances of the Appellant in order to address the sixth and fifteenth propositions of Auld LJ, as one whose family members had already suffered the most serious persecution. Having done so he concluded in the appellant's favour that the authorities in Karachi were unable to provide a sufficient level of protection to him, and as Ms Brakaj accepts, the Appellant can make no complaint about that.
 23. Accordingly I reject Ms Brakaj's first challenge, namely that Judge Cope's overall approach to the expert's evidence was to belittle it so that the expert's opinions upon the issue of internal relocation were not afforded adequate weight.
 24. I turn then to the second challenge, namely that adequate reasons were not given for reaching a conclusion upon the issue of internal relocation that differed from the expert's opinion. I note that it is not suggested that no reasons were given, and I also note that the Court of Appeal have recently revisited the guidance upon the issue of the adequacy of reasons in MD (Turkey) [2017] EWCA Civ 1958.

25. Judge Cope noted Dr Daryn's opinion that relocation within Pakistan would provide at best only short term relief from the risk faced in Karachi, and the example he had relied upon of families frequently being able to trace those individuals who had run away in order to punish them [Daryn #25 ff53] [89].
26. As Mr Diwnycz pointed out however, Dr Daryn did not identify how any of the families who had traced individual members had been able to do so. He did not for example suggest that there was any evidence to suggest that any of them had been able to do so by corruptly accessing the computerised data relating to national identity cards, or indeed any other source of computerised data held by the Pakistani authorities. The mechanism by which the tracing of any individual had occurred was left entirely unexplained.
27. Nevertheless Dr Daryn's conclusion was that powerful terrorist groups such as the Taleban/Lej would probably be able to exercise their influence in order to trace an individual if they wished, perhaps through use of the computerised system of national identity cards. Dr Daryn advised that the national authority would soon be able to identify the entry of any individual into Pakistan, and their whereabouts (even if it could not yet do so, and even if he offered no firm timescale for the acquisition of that ability). If and when the authorities could do so, then it was his opinion that since no state institution was free from corruption, the data would become available to those who were interested in it, and in a position to use their influence and financial strength to acquire it. Thus it was plausible that a group such as Taleban/Lej that was continuing to persecute the Appellant and his family would sooner or later be able to locate him.
28. It is not disputed before me that Judge Cope faithfully set out Dr Daryn's opinion evidence in this regard. Nor is it disputed that Dr Daryn's opinion was heavily qualified, or, that the Judge was required to make an assessment of whether in all the circumstances of the case the risk of tracing that Dr Daryn had identified was a real one, or, no more than a theoretical future possibility. If it were the latter, then since the Appellant faced a risk of harm from individuals based in Karachi, it was reasonable to expect the Appellant to avoid the risk that did exist in Karachi by way of relocation.
29. Ms Brakaj accepted that Dr Daryn had never been requested to update his opinion evidence since July 2016. Thus if, as a result of the passage of the intervening two years, the risk that an individual could be traced through corrupt access to data, has become more concrete as a result of advances in technology, without adequate safeguards against the data being obtained corruptly, then neither I, nor the Judge, were provided with evidence of that change. In my judgement it is not open to the Appellant to argue that since a significant period of time has passed since that opinion evidence was delivered in July 2016, the risk must necessarily have

- increased, and must necessarily have become concrete rather than theoretical.
30. As a generic argument that it was unreasonable to expect him to relocate, the Appellant argued that his religion and wealth would attract adverse interest anywhere in Pakistan. That is a novel approach, because relative wealth is usually considered to facilitate relocation. Thus the Appellant argued that as one who would be perceived to be a wealthy Shia he would be at risk of harm across the whole of Pakistan from non state agents. Dr Daryn supported this argument on the basis he would be an “obvious target” for terrorist and extremist anti-Shia groups throughout Pakistan. The Shia minority form some 25% of the population of Pakistan, and as the Judge noted, the evidence before him did not support the suggestion that they all faced a real risk of persecution on account of their faith. The Judge recognised that there had been sectarian attacks, but that is not the same thing [102]. There was in my judgement no error in his approach to this generic argument.
 31. The Judge set out the relevant evidence upon the ability of the Taliban/Lej to trace the Appellant within Pakistan [89-100], and his assessment was that whilst the risk of being traced anywhere in Pakistan by those currently targeting his family in Karachi was indeed a theoretical future possibility, it was not a real current risk [100]. In my judgement it cannot properly be argued that the reader of the decision is unable to see or understand the Judge’s reasoning, and therefore the complaint that he gave inadequate reasons must fail.
 32. I note that although neither Dr Daryn, nor Ms Brakaj sought to engage with it, Judge Cope’s decision was also consistent with the guidance to be found upon internal relocation within AK & SK (Christians: risk) Pakistan CG [2014] UKUT 569. No argument is raised to the contrary before me.
 33. The reality of course is that the argument Ms Brakaj sought to pursue is that the Judge’s assessment of the evidence was perverse, because it was not open to him to disagree with the opinion evidence of Dr Daryn. The problem with that approach is that permission was neither sought nor granted for such a challenge.
 34. It follows that I dismiss the appeal.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 4 May 2018 contained no error of law in the dismissal of the Appellant’s appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

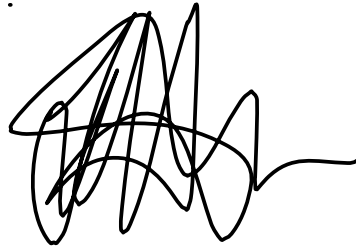
Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is

granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 14 September 2018

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.