



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/07752/2019

**THE IMMIGRATION ACTS**

Heard at Manchester Civil Justice Centre  
On 20 March 2020

Decision & Reasons Promulgated  
On 28 April 2020

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

H M H A  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Miss S Khan, Counsel, instructed by Primus Solicitors

For the Respondent: Mrs A McVeety, Senior Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal against the decision of Judge of the First-tier Tribunal Foudy ('the Judge') sent to the parties on 4 December 2019 by which the appellant's appeal against a decision of the respondent to refuse to grant international protection was dismissed.
2. Judge of the First-tier Tribunal Simpson granted permission to appeal on all grounds.

### **Anonymity**

3. The Judge did not issue an anonymity direction. This is a matter in which the appellant has sought asylum and I am mindful of Guidance Note 2013 No 1 which is concerned with anonymity directions and confirms that the starting point for consideration of such directions in this chamber of the Upper Tribunal, as in all courts and tribunals, is open justice. However, I observe paragraph 13 of the Guidance Note where it is confirmed that it is the present practise of both the First-tier Tribunal and this Tribunal that an anonymity direction is made in all appeals raising asylum or other international protection claims. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an anonymity direction in order to avoid the likelihood of serious harm arising to the appellant from the contents of his protection claim becoming known to the wider public.
4. The direction is detailed at the conclusion of this decision.

### **Background**

5. The appellant is a national of India and presently aged 36. He is Muslim by religion. He asserts that he married his former wife, a Hindu, in 2002. They were from different cultures and so married in secret without the knowledge of their families. Following their marriage, the couple informed their respective families as to recent events. The appellant's parents were angry but accepted the marriage. His wife's family were unhappy, and her father made a report to the police that led to the appellant being detained for one day.
6. Upon his release the appellant did not speak to his wife. Four or five days later an aunt of his wife attended the appellant's home and spoke to his family about the marriage. This was an indication that his wife's family had relented. The appellant and his wife had a Nikah ceremony and then subsequently lived together. Their child was born in 2004.
7. The appellant was issued with a six-month tourist visa to the United Kingdom on 24 September 2015. He entered this country in October 2015 and stayed for one month before returning to India. He was granted a two-year visit visa on 26 August 2016 and he travelled to this country in October 2016 returning to India in March 2017. He details that he experienced marriage difficulties in April 2017, following his return from his almost six-month visit to this country, with the couple regularly arguing. In May 2017 the appellant asserts that three men entered the family home, damaged property and threatened him. The appellant reported this incident to the police and the following day he was called to attend a police station where he was left to sit all day without speaking to anyone. He was subjected to similar treatment over the course of a week. The appellant believes he was being subjected to indirect pressure from his wife's family. He asserts that his wife has a family member who possesses a

connection to the government and is the son of a former politician who held high profile in Mumbai. His wife filed for divorce on 15 May 2017 approximately two months after he returned to India from this country. The appellant further details that he left his parents' home in June 2017 to get medication for his mother. Whilst away from the property he received a call from a friend who informed him that he should not return home as four or five men had attended the family home carrying sticks and making threats.

8. The appellant travelled to the United Kingdom on 5 July 2017. On 26 July 2017 he was served by the respondent with an IS96 ENF for illegal entry by verbal deception. He claimed asylum the following day. The respondent refused the application for international protection by means of a decision dated 2 August 2019. I note that at [48] to [62] of her decision the respondent asserted that a sufficiency of protection existed for the appellant in India. She further detailed at [63] to [77] that when taking his case at its highest, he could reasonably exercise internal relocation.

### **Hearing Before the FTT**

9. The appeal came before the Judge sitting at Manchester on 8 October 2019. The appellant was represented by Miss Khan. No Home Office Presenting Officer attended.
10. The Judge observed at [40] of her decision that on the appellant's own evidence the families became reconciled to the marriage and agreed to the Nikah taking place. The couple resided together for several years, and a child was born to them. The Judge found:

'... the appellant was accepted into his wife's family and the marriage lasted for 14 uneventful years. I therefore find it incredible that the appellant's in-laws held a significant enmity towards him.'

11. As to the familial connection to an Indian politician, the Judge found at [50] that the appellant was credible as to there being such connection but he had failed to advance any 'reliable' evidence that this politician had taken any particular interest in the family, or more importantly, was willing to exert any influence on their behalf:

'The appellant has adduced no evidence to show that any person in a position of power in India is willing or even inclined to 'pull strings' on behalf of the appellant's wife in order to cause harm to the appellant. Moreover, there is no credible evidence that the appellant's wife or her family wish harm to befall him. The appellant makes a number of unsubstantiated and, frankly, fanciful allegations that unknown men sought to threaten him and assumed that they had been sent to do so by his ex-wife. However, the marriage is over, there appears to be no benefit to [the ex-wife] in harming the appellant and the appellant has no evidence that she or her family members are behind any of the incidents he complains of.'

12. The Judge proceeded to consider internal relocation and sufficiency of protection at [17] of her decision:

'I find that the appellant has patently failed to establish that he has a genuine fear of persecution in India and that it is a well-founded fear. I also find that the appellant has failed to establish that internal relocation is not available to him in India, which is a huge country with a vast population, and/or that the Indian authorities cannot or will not provide adequate protection to him.'

13. I observe that the Judge considered the issues of sufficiency of protection and internal relocation by taking the appellant's case at its highest and as an alternative decision to the earlier rejection of the core of the claim.

### **Grounds of Appeal**

14. The appellant relies upon unsigned grounds running to three pages. The essence of the challenge is identified at §2 of the grounds:

'In the appellant bundle, which included a witness statement covering 63 paragraphs and 7 documentary evidence, the Appellant has provided a detailed and chronological account of his troubles in India. It is submitted however that Judge Foudy's findings in paragraphs 14 to 16 of the determination are brief and touched on limited aspects of the appellant's account. Consequently, Judge should have made a more in-depth finding of the appellant's credibility during the appeal hearing.'

15. The appellant further asserts that the Judge failed to give adequate reasons when reaching her decision.
16. In granting permission to appeal by a decision dated 8 January 2020 Judge of the First-tier Tribunal Simpson reasoned, at [2]:

'Permission to appeal is granted because as asserted the Decision arguably disclosed:

- i. illustrated by the brevity of reasoning (14-16), failure to provide an overall adequacy of consideration and reasoning concerning the totality of evidence relied upon by the appellant in his asylum appeal, and/or reasoning as to those parts of the appellant's evidence weight was given and those parts weight not given; and
- ii. failure to make findings on material matters viz. claimed persons of influence in the appellant's ex-wife's family and/or misconceive the appellant's story viz. the appellant's ex-wife's family and police harassment (15, 16).'

17. The respondent filed a rule 24 response observing that the grounds of appeal amount to nothing more than a disagreement with the findings of the Judge. The respondent

observed that it is trite law that a decision will not have to cover each and every point made by the appellant during the course of the hearing, relying upon [3] of the headnote to *Durueke (PTA: AZ applied, proper approach)* [2019] UKUT 00117 (IAC).

### Decision on Error of Law

18. At the outset of the hearing I asked Miss Khan and Mr McVeety to help me identify whether the grounds of appeal expressly challenge the Judge's alternative findings at [17] that there was a sufficiency of protection and the availability of internal relocation for the appellant in India.
19. In her usual eloquent and helpful manner Miss Khan addressed me upon the grounds of appeal. She accepted that there was no express reference to [17] of the decision within the grounds, in circumstances where there were express challenges to [9], [14], [15] and [16]. However, she submitted that the Tribunal could find that the alternative decision at [17] was addressed within certain paragraphs of the grounds. She took me first to §5 of the grounds, which details:

‘An example of the lack of reasons is found in paragraph 15 of the determination, in which Judge Foudy had among others, criticised the appellant as having failed to adduce evidence to show that her (sic) ex-wife's family wish harm to befall him. In making this conclusion, Judge Foudy appeared to have overlooked two pieces of evidence, marked as Exhibit HA06 and HA07, which had been included in the appellant bundle. These documents dated 25 May 2017 and 21 June 2017 relate to written complaints made by the appellant and recorded by the Indian police in the appellant's own name. They are therefore contemporaneous evidence of the appellant's allegation of being harassed and threatened by his ex-wife and members of her family. Apart from a blanket dismissal of any evidence, no other findings were made in relation to these documents nor any reasons provided as to whether any weight have (sic) been attached to them or otherwise.’

20. Ms. Khan noted the appellant's contention that he had made written complaints recorded by the police that were not been acted upon. She contended that this was implicitly a challenge to the finding that a sufficiency of protection existed. However, I find that §5 is expressly constructed as a reasons challenge to [15] of the decision and not to the alternative finding which is founded upon the Judge having taken the appellant's case at its highest. I conclude that §5 of the grounds does not aid the appellant in my consideration of this particular issue.
21. Miss Khan drew my attention to §7 of the grounds, and in particular to the concluding five lines:

‘... This is clearly not the case because as per paragraph 36 of the appellant's witness statement, he was made to attend the police station for no apparent reason and sit for long hours on end, not just on occasion, but *every day for a whole week*. It was under these circumstances that he had believed that the police were

colluding with the family of his ex-wife to mentally pressure and quietly intimidate him.'

22. Miss Khan submits that this is an express challenge to the Judge's conclusions as to sufficiency of protection. However, when reading this paragraph of the grounds in its entirety there is an express challenge to the reasoning in [9] and [16] of the decision, but there is no reference to [17]. Upon a fair and consistent reading of this paragraph of the grounds, it can only reasonably be read as constituting a reasons challenge to the Judge in respect of her consideration of the appellant's attendance at the police station. I am unable to conclude that this paragraph can be read as being either an express or implied challenge to the alternative finding at [17] as to sufficiency of protection.
23. Miss Khan further relies upon §8 of the grounds:
- 'It is further submitted that Judge Foudy has not engaged with the appellant's account in its detail and as a whole and has ignored vital facts of the appellant's case. Judge Foudy appears to have overlooked the appellant's account of fearing threats of 'gau rakshak' or mob lynching by his ex-wife's Hindu boyfriend and associates. This is an important aspect of his case as it is linked to his ability to internally relocate within India, which is again a crucial issue that the judge should have given more in-depth reasons on.'
24. Miss Khan observes that internal relocation is expressly addressed in this ground and therefore establishes a challenge to the Judge's decision as to internal relocation. I observe that §8 is a reasons challenge primarily directed to the substantive consideration of the asylum claim. However, I am satisfied that it is possible to read into this paragraph an express challenge to the internal relocation finding at [17].
25. Upon considering the grounds of appeal with care, I find that there is no express or implied challenge to the Judge's finding in the alternative at [17] that even if the appellant were subject to a real risk of persecution or a real risk of a breach of protected article 3 human rights from members of his former wife's family in Mumbai, a sufficiency of protection exists: *Horoath v. Secretary of State for the Home Department* [2001] 1 AC 489. As there has been no challenge to this alternative decision, I note the recently reported decision of the Upper Tribunal in *OK (PTA; alternative findings) Ukraine* [2020] UKUT 00044 (IAC) and observe that permission should not have been granted on the grounds as pleaded if there is, as I find is the position here, a reason why the appeal would fail. In the circumstances of this matter there is no express or implicit challenge to the Judge's finding as to a sufficiency of protection existing in India and therefore this appeal must fail.
26. Despite having found that this appeal must fail, I proceed to consider the underlying substance of the appeal in the alternative. The Judge's decision is short and terse, but this does not by itself establish a material error of law. The appellant is critical of the length of the decision because in his view he has provided significant detail both by way of his witness statement and accompanying documents and therefore expected a

lengthier decision. I observe that the appellant's witness statement addresses personal history in detail and I am satisfied that consideration of much of the presented personal history was not essential to the task the Judge had to undertake. When considering claims of international protection, a judge is required to consider the core issues and to make findings upon them. Following *Budhathoki (reasons for decisions)* [2014] UKUT 00341 (IAC) judges need to resolve the key conflicts in evidence and explain in clear and brief terms their reasons for preferring one case to the other so that parties can understand why they have lost. Reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by a judge: *Shizad (sufficiency of reasons: set aside)* [2013] UKUT 85 (IAC), at [10].

27. I am satisfied that the findings at [15] are entirely reasonable and sustainable. Whilst the appellant makes a great deal of his in-laws having a connection to a local politician who prior to his death had some influence and notoriety, it cannot be said to be perverse that the Judge found that there was no reliable evidence that this man, and his son, took any particular interest in the family or was willing to exert any influence on their behalf. The grounds of appeal are unhelpful in as far as they place reliance at [6] upon the now deceased politician connected to the appellant's in-laws. Miss Khan accepted before me that the key family member was the son of the deceased politician. She sought to rely upon evidence relating to the son, whom the appellant asserts is also a local politician in Mumbai. However, the documentary evidence before this Tribunal, and previously before the Judge, primarily details that the son is a local businessman with connection to religious and charitable entities. There is one reference within the documents to him being a senior executive officer to a state government, but this is not identified in the document under a category of 'political work' or 'politics' but under the title 'social work' and no further detail is given. The Judge was perfectly entitled to find that there was simply insufficient evidence to establish that a distant relative of the appellant, or his son, were in any way willing or capable of exerting influence of such nature as to require officers at a police station to target the appellant consequent to the breakup of his marriage, or to require state agents to pursue him. What is said to be a reasons challenge is actually a perversity challenge and the appellant is incapable of coming close to sustaining it.
28. I accept the appellant's contention that the Judge erred in finding that he had only been required to attend the police station for one day and to remain there all day with no-one talking to him. His evidence is that he had to do so for a week. But the Judge made a clear finding that this was not 'mental torture' as alleged by the appellant. The Judge's finding at [60] is that the police were busy and had other things to do. The appellant relies solely upon his own assertion that his in-laws had influence with the police and the Judge was lawfully entitled to conclude, to the requisite standard, that the appellant could not meet the burden placed upon him to establish this element of his claim. The appellant is wholly unable to come close to establishing an error of law in respect of this issue.

29. With the helpful direction of Miss Khan I read various paragraphs of the appellant's witness statement and, on his own case taken at its highest, he simply surmises that his in-laws are connected to the people who visited his parents' home to intimidate and threaten and further surmises that his in-laws persuaded the police not to take his complaint seriously. The appellant is unable to found a meritorious perversity challenge to the Judge's lawful conclusion that there is insufficient reliable evidence, even on the lower standard, to sustain the core elements of his case.
30. As for the issue of internal relocation, I have found that a challenge is raised in relation to the Judge's finding at [8] but I find it unsustainable upon careful consideration. The appellant's case is that he is unable to reside elsewhere in India because he is at risk of being targeted by mob lynching consequent to his being Muslim. Before the Judge he relied upon various objective material that relate to a period of recent Indian history where Hindu vigilante groups have attacked Muslims, and in cases Christians, in relation to cow vigilantism. Such action is sporadically ongoing, with approximately 60+ such attacks having occurred since 2010. This is a very sensitive subject in India at the present time, with the Supreme Court of India ruling in September 2017 that each state should appoint a police officer in each district to take strict action against cow vigilantism: Poonawalla v. Union of India No. 754 of 2016 (6 September 2017). Having read the documents before the Judge such as the Human Rights Watch Report entitled 'Violent Cow Protection in India' (February 2019) it is clearly established that not every part of India in which Muslims reside is subjected to such vigilante action. Miss Khan was unable to direct my attention to significant instances of such vigilantism taking place in the larger urban areas of India. I find that the Judge could lawfully conclude when considering internal relocation that large sections of the Muslim population are not touched by such vigilante action. I am satisfied that no reasonable judge considering the evidence filed in this appeal and properly self-directing themselves could find that a Muslim male seeking to avoid his in-laws consequent to an acrimonious breakup of a marriage, would be unable to relocate elsewhere in India because of the risk of mob lynching. Therefore, whilst the Judge erred in her understanding as to the appellant's evidence as to how many occasions he was required to attend the police station, I find that there was no material error in law in the Judge's finding that when the appellant's case was taken at its highest he could reasonably internally relocate within India.

### **Notice of Decision**

31. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.
32. The decision of the First-tier Tribunal is upheld, and the appeal is dismissed.



**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

33. Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed: *D. O'Callaghan*

**Upper Tribunal Judge O'Callaghan**

Date: 6 April 2019

**TO THE RESPONDENT**  
**FEE AWARD**

As the appellant has been dismissed, no fee award is made.

Signed: *D O'Callaghan*

**Upper Tribunal Judge O'Callaghan**

Date: 6 April 2020

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NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).

3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).
5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is “sent” is that appearing on the covering letter or covering email