



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

**Case Numbers:**  
**UI-2023-000717, UI-2023-**  
**000718**  
**UI-2023-000719, UI-2023-**  
**000720**

**On appeal from:**  
**PA/50273/2022, PA/50274/2022**  
**PA/50275/2022, PA/50276/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 28 November 2023**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**MA, BA, MAA AND MJA**  
**(ANONYMITY ORDER MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Ms Grace Capel of Counsel, instructed by Asylum Aid  
For the Respondent: Mr Toby Lindsey, a Senior Home Office Presenting Officer

**Heard at Field House on 30 August 2023**

**Order Regarding Anonymity**

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants have been granted anonymity, and are to be referred to in these proceedings by the initials MA, BA, MAA and MJA respectively. No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify the appellants or any of them.

**Failure to comply with this order could amount to a contempt of court.**

## **DECISION AND REASONS**

### **Introduction**

1. The appellants challenge the decision of the First-tier Tribunal dismissing their appeals against the respondent's decision on 13 January 2022 to refuse them international protection pursuant to the Refugee Convention, humanitarian protection or leave to remain on human rights grounds. They are all nationals of Pakistan, of Baluch ethnicity.
2. The appeal is based on the claimed risk to the principal appellant ('the appellant' in this decision, unless otherwise required): the other appellants are his dependants, being his wife and their three eldest minor children.
3. For the reasons set out in this decision, I have come to the conclusion that the appellants have shown a material error of law in the decision of the First-tier Judge. The decision in this appeal will be set aside, for remaking in the First-tier Tribunal.

### **Procedural matters**

4. **Mode of hearing.** The hearing today took place face to face. Ms Rebecca Chapman, the appellants' Counsel below, gave oral evidence regarding the alleged bias by the First-tier Judge.
5. **New Matter.** The appellants applied to add a fourth child, born in the UK in May 2022, to these proceedings. Mr Lindsey did not object on behalf of the respondent.
6. **Delay.** There has been a delay in producing this decision, for which on behalf of the Upper Tribunal I apologise. The majority of the decision, and in particular the parts which deal with the oral evidence of Ms Chapman, were drafted shortly after the August 2023 hearing, but it was not possible to complete the decision then. I have a clear recollection of the hearing and my own notes, as well as the parties' skeleton arguments to assist me in reaching my conclusions.

### **Background**

7. The main basis of the appellants' case is that the appellant, and therefore his dependants, are at risk because of his pro-Baloch links and activities, both in Pakistan and in the UK. The appellant and his brother often provided accommodation for Baluchi political activists who came to Karachi for medical treatment, hosting them in their home for two to three weeks while they recovered from their medical treatment. The appellant says that his brother has been abducted and disappeared. The appellant said he had a threatening telephone call about three or four months after his brother disappeared. He went into hiding with a friend, but his family home was raided during his absence.

8. The appellant did not join a pro-Baloch party until he reached the UK, when he joined the Free Balochistan Movement (FBM) and became involved with several other movements: the Baloch Student Organisation (BSO), Balochistan National Movement (BNV), the Balochistan National Party (BNP) and the International Voice for Baloch Missing Persons (VBMP).

### **First-tier Tribunal**

9. The First-tier Judge heard oral evidence from the principal appellant, his wife (the second appellant (remotely, as she was looking after one of the children at home that day), and from Mr Faiz Mohammed Baluch, head of the Treasury Department of FBM(UK). The witnesses were cross-examined and the First-tier Judge also asked a good many questions of them. Both parties were represented, the appellants by Ms Rebecca Chapman of Counsel, and the respondent by Mr Richard Thompson of Counsel.
10. At [5.2]-[5.4] of the First-tier Tribunal decision, the First-tier Judge accepted the Amnesty International evidence about the treatment of Baloch activists in Pakistan, and that the appellant's account was consistent therewith:

“5.2 I start by saying that I accept the external evidence from Amnesty International as to the situation faced generally by known Balochi activists in Pakistan, i.e. that there is a policy of “kill and dump” of those involved in Balochi nationalism, whether as members or even low-level supporters, where for many years individuals have been forcibly disappeared, extrajudicially executed and their bodies dumped in public places or buried in mass graves with other victims of enforced disappearance. While this policy has slowed in recent years it was still in operation during the period when the First Appellant says his brother was abducted. The 2020 report on Human Rights in Pakistan by the US Department of State also confirms the prevalence of kidnappings and forced disappearances. A report from the Human Rights Commission in Pakistan dated 2019 confirms that “the stain of enforced disappearances and missing persons remains a recurrent feature of human rights violations in Balochistan”.

5.3 I also find that the First Appellant's account of events in Pakistan is consistent with the known risks to Balochi activities and that, if accepted, it would mean there was no realistic possibility of internal relocation to avoid the risks on return so that the UK's obligations under the 1951 Convention would be engaged.”

11. The Judge rejected the second appellant's evidence as ‘of little assistance overall because she professes to have been entirely unaware while they were in Pakistan of any political involvement on the part of her husband and/or brother-in-law and still has little or no relevant knowledge now’. The Judge took no account of the second appellant's first-hand account at [20]-[25] of the visit to her home while the appellant was in hiding, by six or seven ‘men in black uniforms [who] had cloths tied round their faces’. The men were looking for her husband, and when leaving they advised her ‘tell your husband to hand himself in’. Her evidence was that she went to

stay with her parents because she was afraid to remain in the family home.

12. The First-tier Judge dismissed the appeal principally because he found the appellant not to be a credible witness, and rejected a report by Amnesty International prepared for these proceedings because it proceeded on the basis of the appellant's core account being credible. He rejected the history of the appellant's activities in Pakistan and did not consider that the principal appellant's limited *sur place* activity was sufficient to put the appellants at risk on return, or likely to be continued after the family returned to Pakistan.
13. The Judge rejected the oral evidence of Mr Baluch and gave little weight to a letter from Mr Qambar Malik, Secretary-General of the UK-based Baloch Human Rights Council (BHRC).
14. The appellants appealed to the Upper Tribunal.

### **Permission to appeal**

15. The First-tier Tribunal refused permission but permission to appeal was granted on renewal to the Upper Tribunal, based on grounds settled by Ms Chapman on 25 January 2023. The grounds of appeal had been reframed as follows:

**Ground 1** - erroneous approach to refugee *sur place* claim;

**Ground 2** - failure to take proper account of the evidence of the second appellant;

**Ground 3** - change of position in the Respondent's Review as to whether he accepted that the appellant's brother had been taken by the Pakistani authorities. The appellants contend that the Judge should not have allowed the concession in the refusal letter to be withdrawn;

**Ground 4** - erroneous approach to the witness evidence of Mr Faiz Baluch and Mr Qambar Malik. Failed to take account of Mr Baluch's independent approach to various (undisclosed) individuals and organisations in Pakistan to verify the appellant's identity and previous activities there. Mr Baluch not obliged to disclose his sources;

**Ground 5** - erroneous approach to credibility, including detailed challenges to a number of the Judge's findings, and criticism of her descent into the arena and excessive questioning of witnesses.

16. On 2 May 2023, Upper Tribunal Judge Blundell granted permission for the following reasons:

"The grounds have been amended and re-ordered since Judge Parkes refused permission to appeal at first instance. As currently presented, I consider the grounds to be arguable. It is certainly arguable that the judge failed to engage with material parts of the Amnesty International evidence

in concluding that the first appellant was not at risk on account of his *sur place* activities alone.

The remaining grounds seek to attack the route by which the judge concluded that the first appellant's account of events in Pakistan was not credible. Those four grounds are also arguable, although some are plainly stronger than others.

The fifth ground – as now particularised – presents a detailed claim that the judge entered the arena. If that is to be pursued, those representing the appellant will recall that the ground cannot stand as evidence of the complaint and that counsel who represented the appellants before the judge will need to make a statement about what is said to have occurred, exhibiting any contemporaneous notes of the hearing. That material should be compiled and served on the respondent without delay so that [he] can consider whether [he] wishes to challenge what is said. ”

17. That is the basis on which this appeal came before the Upper Tribunal.

### **Upper Tribunal hearing**

18. I had access to all of the documents before the First-tier Tribunal and in addition to a witness statement and hearing notes taken by Ms Chapman at the First-tier Tribunal, and by the respondent's Counsel, Mr Thompson, who appeared in the First-tier Tribunal, as well as an audio recording of the hearing.

### **Ms Chapman's evidence**

19. Ms Chapman settled the appellants' renewed grounds of appeal on 25 January 2023. Despite a clear direction by Judge Blundell in May 2023 that she should make a witness statement and exhibit her notes, which would entail her ceasing to act as Counsel for the appellants, she continued to act until 'around the end of July 2023'.

20. On 19 July 2023, Ms Chapman prepared a witness statement for the Upper Tribunal. Her evidence was that the First-tier Judge had entered the arena by asking questions, although the appellant was represented by Counsel. She exhibited her notes of the hearing, which (understandably) do not include notes of her oral submissions.

21. Ms Chapman's notes record a number of questions asked by the Judge, but only two objections by her, the first dealing with a potential mis-interpretation as to why the appellant delayed 5 days following arrival before claiming asylum. The Judge confirmed that she had understood that the appellant had spent 5 days finding out how to claim asylum before doing so, which was the point Ms Chapman was trying to clarify.

22. The second objection by Ms Chapman during the appellant's evidence was as follows:

"I did not ask Baluch Voice for Missing persons for proof of my political activities with them. When I was working I did not need any proof from them.

Now - for this case?

Now I have not much contact with Pakistan and Baluch Voice for Missing persons. I did not ask them to get a letter for me.

Mr Faiz Baluch says he has cross checked your identity? *I objected to this q as unfair on the basis that A was not involved in the discussions between Faiz Baluch and the organisations. A confirmed no Faiz did it his own way.*

Did you tell him who to contact? No I told Faiz about my activities, not who to contact."

23. Ms Chapman records no objections made by her during the evidence of Mr Baluch or the second appellant. However, immediately before Mr Thompson's submissions, Ms Chapman's note says: "*Joanna - she [the Judge] was x examining him*". As this followed the record of the second appellant's evidence (the appellant's wife), the reference was not to her evidence but must, therefore, have referred to the oral evidence of either the appellant or Mr Baluch. There is no witness statement from 'Joanna' and she was not available at the hearing.
24. Ms Chapman's notes end with a summary of Mr Thompson's submissions, but (understandably) not of Ms Chapman's own submissions.
25. Ms Chapman adopted her statement and answered some supplementary questions from Ms Capel. She said that she had not asked for a transcript of the First-tier Tribunal hearing, but she had raised concerns about the interpretation. She said that in drafting grounds of appeal, it was her practice to put the grounds in order of importance. The criticism of the Judge was the last numbered ground (ground 5). She considered it 'just a point worth raising'.
26. Ms Chapman explained why it had taken her so long to stand back from the appeal. She had drafted the First-tier Tribunal grounds of appeal, which were unsuccessful, and was not confident of a different outcome on the renewal grounds. Ms Chapman drafted those over Christmas 2022, a very short period: she assessed that she should continue to act, despite the difficulty of her professional position, because she would have had to get cover over Christmas and New Year, when there were few Counsel available.
27. Ms Chapman said that she had made her statement in response to the grant of permission, as soon as it was granted. The Judge had raised new points in the questions she asked, but Ms Chapman confirmed that she had been offered the opportunity to reexamine and deal with those points, which she had not taken.
28. There was no cross-examination.

29. I asked Ms Chapman whether she had raised bias in her submissions. She could not recall whether she had. I then explained that I had listened to the audio file, including her submissions, and there were no such submissions on the audio recording. Ms Chapman said that she must accept that she had not raised the issue, in that case.
30. I asked Ms Chapman whether the Judge's questions had been hostile, or courteous. She confirmed that the Judge had been courteous throughout, but maintained that the Judge had asked too many questions.
31. I asked for clarification of the 'Joanna' observation. Ms Chapman said that 'Joanna' was an advocate at the West Bengal Bar who was shadowing her that day, through the Pegasus Scholarship Trust, a joint Indian/UK scheme run by the Inner Temple. She agreed that as the 'Joanna' remark preceded her own submissions, it was notable that even so, she had not raised the point with the Judge.
32. There was brief re-examination, dealing with the Pegasus Trust scheme. Ms Chapman said that, some years ago, she had herself benefited from a visit to India with the Pegasus Trust.
33. There was no witness statement from 'Joanna': Ms Chapman said that 'Joanna' had returned to India and her UK email address was no longer functioning. She had not sought to reach 'Joanna' by any other means (for example, through the Pegasus Trust).

### **Respondent's notes of hearing**

34. The notes kept by Mr Thompson were made available to me during the hearing. They are relatively brief, dealing with the hearing as follows:

"Did the hearing proceed smoothly with no disputes involving the adjudicator? Yes

There were points through the cross where Appellant 1 was not happy with the interpreter's interpretation of parts of the answers.

There was a question raised by the judge as to an interpretation of tourist and visit and the interpreter confirmed it was the same Baluchi word for both. ...

Counsel made an application to expand on the witness statement inasmuch as introducing some of the photographs into evidence - this was allowed. The appellants were cross-examined and asked questions by the judge, Mr Baluchi was also asked questions in re-examination.

Other comments on the proceedings:

[The second appellant] at first said that she was not aware of the disappearance of the brother-in-law, but this was quickly corrected AFTER the interpreter had introduced himself (there was no suggestion of anything other than a genuine misunderstanding/confusion). She did not know the

detail – she did not know the family were coming to the UK permanently/to seek asylum.

OUTCOME OF THE HEARING:

Determination reserved”

## Discussion

35. The oral and written submissions at the hearing are a matter of record and need not be set out in full here. I will deal with the grounds of appeal in the order in which Ms Chapman arranged them, as on her evidence, she puts the strongest grounds first.
36. **Ground 1:** Erroneous approach to *sur place* claim. I am satisfied that the Judge erred in qualifying the weight given to the Amnesty International report on the basis that it had accepted the appellant’s account of his history and his brother’s abduction. That is a plain *Mibanga* error: the credibility of an account falls to be considered on all of the evidence advanced, and in the round.
37. **Ground 2:** Failure to take proper account of the evidence of the second appellant. Again, there is merit in this ground. The second appellant was not cross-examined on her account of the second visit of the people in black clothes, after the abduction of her brother-in-law, while the appellant was in hiding. The Judge asked a clarificatory question about the house being raided, but the evidence thus obtained is not weighed in the decision.
38. These errors having been established, the appellants’ appeal succeeds. The errors are plainly material to the outcome of the appeal. However, I consider it necessary to deal briefly with the remaining three grounds, for completeness.
39. **Ground 3:** Change of position in the Respondent’s Review as to whether he accepted that the appellant’s brother had been taken by the Pakistani authorities. The appellants contend that the Judge should not have allowed the concession in the refusal letter to be withdrawn.
40. There is no merit in this ground. The case of *Carcabuk and Bla* [2000] IAT 00/TH/01426, is clear: the respondent may withdraw a concession on appeal, but if he does not do so, such concession will bind the Tribunal. *Carcabuk* was considered by the Court of Appeal in *AK (Sierra Leone) v Secretary of State for the Home Department* [2016] EWCA Civ 999 (21 June 2016).
41. The dilemma resolved in *Carcabuk* predates the present digital system which allows for a Respondent’s Review, precisely so that the appellant knows what case they have to meet at the hearing. In this appeal, the respondent’s review on 6 July 2022 gave ample time for the appellants to prepare for the respondent saying that he did not accept that the brother



had been abducted as claimed. There was no extant concession by the date of hearing.

42. **Ground 4:** Erroneous approach to the witness evidence of Mr Faiz Baluch and Mr Qambar Malik. The appellants contend that the First-tier Judge failed give proper weight to Mr Baluch's account of having approached various (undisclosed) individuals and organisations in Pakistan to verify the appellant's identity and previous activities there. Mr Baluch was not obliged to disclose his sources, but if he did not do so, it reduced the weight which could be given to his evidence. The weight to be given to expert witnesses is always a question for the fact-finding Tribunal.
43. I remind myself that an appellate Tribunal may not interfere with findings of fact and credibility, including as to the weight given to expert evidence, where these are made by a fact-finding judge who has all the evidence, oral and written, before him, save where those findings are 'rationally insupportable': see *Volpi & Anor v Volpi* [2022] EWCA Civ 464 (05 April 2022) at [65]-[66] in the judgment of Lord Justice Lewison, with whom Lord Justices Males and Snowden agreed. That high standard is not reached here.
44. **Ground 5** - Erroneous approach to credibility, including detailed challenges to a number of the Judge's findings, and criticism of her descent into the arena and excessive questioning of witnesses. This ground is not made out. Despite 'Joanna's' observation, Ms Chapman, who is a very experienced Counsel, did not take the point either during the hearing or in her closing submissions.

## **Conclusions**

45. The matters set out in Grounds 1 and 2 do disclose an error of law and one that is material to the conclusions of fact and credibility by the First-tier Judge. Grounds 3 to 5 are unarguable.
46. There is no alternative but to set aside the decision of the First-tier Judge for remaking. The weight to be given to the Amnesty International report is a matter for submissions. However, additional oral evidence from the second appellant will be required, I am unable to remake the decision without a further hearing.
47. The combination of these two errors of fact and law taints the First-tier Judge's reasoning so significantly that I have concluded that it is necessary for this appeal to be remitted to the First-tier Tribunal for rehearing afresh, with no findings of fact or credibility preserved.

## **Notice of Decision**

48. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed.

**Judith A J C Gleeson**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 22 November 2023**