IAC-AH-CO-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: AA/04329/2014
AA/04327/2014
AA/04331/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 16th January 2015	**On 1st June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) MR NZ
(2) MRS RB
(3) MRS AB
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Ms S Saifolahi (Counsel)
For the Respondent: Mr T Wilding (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge O R Williams, promulgated on 14th August 2014, following a hearing at Stoke-on-Trent on 12th August 2014. In the determination, the judge dismissed the appeals of the Appellants, who subsequently applied for, and were

granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are all citizens of Pakistan, whose dates of birth are 20th May 1966, 4th February 1990, and 1st January 1946, respectively. They appealed against the decision of the Respondent that they were not refugees under the Refugee Convention, that they were not entitled to humanitarian protection under paragraph 339C, that their removal would not unlawful under Section 6 of the Human Rights Act.

The Appellant's Claim

3. The Appellant's claim is that Mr NZ has a wife, a daughter, and three sons all of whom reside in Pakistan along with his father, brother, and sister-in-law, and niece. He does not know their current whereabouts. They have moved their address. The second Appellant is Mr NZ's sister, and Mrs AB is the Appellant, Mr NZ's mother. Mr NZ was employed as a messenger for the Allied Bank in Pakistan, starting his employment in 1995. On 15th February 2010, he was at home when five men knocked on the door, did not identify the Appellant by name, but the Appellant was asked to inform them of the date the bank was to deliver cash. The men covered their faces, carried weapons, and stated that they were from the Pakistan Taliban. He was warned of severe consequences if he informed the police. On 26th February 2010, the Appellant received a phone call from five men asking the Appellant for his decision. He hung up. There was a knock on the door five minutes later. The Appellant refused to go outside. He did not report the matter to the police because he was afraid. Eventually the Appellant filed a First Information Report (FIR) with the police. There were a number of court hearings, which followed the arrest of four men who had been identified and charged, but they were released by the Sessions Court. Violence was exacted against the family. Mr NZ's nephew was murdered.

4. The judge accepted the evidence of Mr NZ that he "was a messenger for Allied Bank and would have been regarded as a person who would have knowledge of the movements of monies by criminals" (paragraph 29). However, the judge did not accept that they were members of the Taliban. The judge held that this aspect of the evidence had been embellished (see paragraph 35).

5. Subject to the above findings, the judge went on to hold that "there is in place a criminal justice system in Pakistan...". This made attacks by the persecutors punishable by sentences that were commensurate with the gravity of the crimes. The judge held "there must be a reasonable willingness by the law enforcement agencies, that is the police 'to detect prosecute and punish offenders'" (paragraph 50). Second, the judge held that the fact that there is in place a criminal justice system in Pakistan, "is

amply demonstrated by the system of First Information Reports which led to the four criminals arrest and incarceration" (paragraph 51). Third, the judge held that "there is no evidence that there is a systemic failure to take action against these four/five criminals, because, as a matter of common sense, four of them spent a year in custody with no bribery being necessary" (paragraph 53). Finally, the judge went on to consider internal relocation, and had regard to the established authorities (see paragraph 56) before concluding that the Appellants could return to a place of safety in Pakistan.

Grounds of Application

6. The grounds of application state that the judge found that the Appellants were victims of a targeted campaign by criminals, but that these criminals had no Taliban involvement, and in so doing, the judge had erred in law by reaching irrational conclusions of fact. Second, that in relation to sufficiency of protection, the judge did not have sufficient regard to the guidance in **AW (Sufficiency of protection) Pakistan [2011] UKUT 31**, which was before the judge.

7. On 17th September 2014, a Rule 24 response was entered to the effect that the judge gave careful consideration to the Appellant's claim and concluded with good reasoning that the Appellants were the subject of attentions of a criminal gang and not the Taliban. Moreover, the judge considered whether there was sufficiency of protection and gave good reasons for concluding that there was. The judge properly concluded at paragraph 57 that there was no bar to the Appellant's relocation in Pakistan.

Submissions

8. At the hearing before me on 16th January 2015, Ms Saifolahi, appearing as Counsel on behalf of the Appellants, wisely submitted before me that she would not elaborate upon the Grounds of Appeal, which were set out extensively before the Tribunal, but chose to summarise those grounds as follows. First, the basis on which the First-tier Tribunal Judge concluded that the criminal gang were not members of the Taliban was flawed. Second, that this would effectively have impacted upon the remaining issues of sufficiency of state protection, risk, and the availability of IFA. Third, and in any event, even if these matters were not accepted, the judge's assessment of state protection within Pakistan did not take account of the Appellant's particular circumstances, where those people who had been apprehended as the persecutors of the Appellants, were then subsequently released.

9. For his part, Mr Wilding made the following submissions. First, the judge was entitled to conclude that, whereas he would accept that the people who were harassing the Appellants were a criminal gang from the local area, they were not the Taliban, and this had been fabricated to

strengthen the Appellant's case. Second, but in any event, even if the judge was wrong about all these matters, he referred to the applicable authorities in relation to IFA, and concluded that internal relocation was available to the Appellants. Third, the grounds state (at paragraph 2(ii) that the fact that the FIR does not mention the Taliban does not mean that the Taliban were not the Appellant's persecutors. However, this does not follow at all. The relevant question is what findings were open to the judge to make. The judge made the findings on the basis of the evidence. It is not clear why the FIR does not specifically state that they were indeed the Taliban, if they were. The findings, accordingly, were open to the judge, because there was no misunderstanding of the evidence, and no misinterpretation of it. Similarly, paragraph 2(iii) states that the Tribunal wrongly concluded that as a matter of "common sense" the Taliban would not be living in a local village, informing the populous of their affiliation, and becoming known to the police, and that they would not be targeting low level messengers of banks. However, it was for the judge to come to a conclusion one way or the other on the evidence. The judge did so. The judge was not in error. Finally, as far as sufficiency of protection was concerned, the judge was correct in concluding (at paragraphs 50 to 53) that there was a proper criminal justice system, that was being applied in Pakistan, and the Appellants could turn to it for protection.

10. In reply, Ms Saifolahi submitted that the reason why the judge's findings in relation to the persecutors being not members of the Taliban, was flawed, was that the evidence was not considered, and was actually misinterpreted, in relation to this question, by the judge. On sufficiency of protection, the judge made the finding, which did not take into account the country guidance case of **AW**. A specific limit in the case was overlooked. The death of the family members of the Appellants was a material factor. The availability of FIA would not compensate for the risk attending upon the Appellants.

No Error of Law

11. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.

12. First, there is a question as to whether the judge was right in concluding that the criminal gang were not members of the Taliban. The judge concluded that this was an attempt to "beef up" the argument in relation to asylum (see paragraph 35). However, the judge gave very extensive reasoning for this conclusion, setting it out carefully in individual paragraphs, with ample recitation of the evidence and objective materials (see paragraphs 36 to 41). The judge was entitled to come to this conclusion. This was a conclusion open to the judge. There is absolutely no error of law here at all.

13. Second, and in any event, the judge concluded that there was a criminal justice system in Pakistan in line with established standards that are internationally recognised, and this is amply demonstrated by the system of First Information Reports (see paragraphs 50 to 51). Indeed, the judge had evidence before him that there was no "systemic failure" because four of the criminals had been apprehended (see paragraphs 52 to 53).

14. Third, the judge had proper regard to internal relocation under a separate heading in the determination (see paragraphs 55 to 57), where regard was had to the established authorities on the meaning of internal relocation. It was unnecessary for the judge to do this given that he had already concluded that there was an established criminal justice system in place, which had no systemic failures, but the fact that this was done, only strengthens the probity of the determination.

15. Finally, proper consideration was given to all the other issues, including Article 8 of the ECHR (see paragraphs 50 to 62 to 63). Accordingly, notwithstanding Ms Saifolahi's elegant and comprehensive submissions before me, there is no error of law in this determination.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity order is made.

Signed Dated

Deputy Upper Tribunal Judge Juss 29th May 2015