



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

Appeal Number: PA/05571/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15<sup>th</sup> October 2018**

**Decision & Reasons Promulgated  
On 24 October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**S K  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms R Kotak of Counsel instructed by Marks & Marks Solicitors

For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant is a male citizen of Pakistan born in February 1984 making him 34 years of age. He appeals against a decision of Judge Wilsher (the judge) of the First-tier Tribunal (the FtT) promulgated on 13<sup>th</sup> July 2018.
2. The Appellant arrived in the UK as a student in January 2010. He was subsequently granted leave to remain as a Tier 1 (Post-Study) Migrant until 2014. A subsequent application to extend his leave on that basis was

refused. The Appellant then made an asylum claim which was refused on 15<sup>th</sup> April 2018.

3. The claim for international protection was based on risks that the Appellant claimed to face from militia groups in Pakistan due to accusations of blasphemy and apostasy, which accusations had originated from family members, in particular his step-uncle, who objected to the Appellant's perceived liberal western attitudes.
4. The appeal was heard on 31<sup>st</sup> May 2018 and the judge heard evidence from the Appellant and the Appellant's sister. The judge found the Appellant and his witness to be "highly credible witnesses". The judge therefore accepted that the risk to the Appellant emanated from his step-uncle who in November 2011 (when the Appellant was in the UK) visited the Appellant's family home armed with a gun, demanding to see the Appellant. The Appellant's sister who was living in the UK, was visiting at the time and witnessed what occurred. The step-uncle demanded that the Appellant be produced and a gun was fired and a visiting relative was shot.
5. In early 2012 the Appellant's father advised him that he had received a letter from a militant group wanting to investigate an allegation of blasphemy. The Appellant returned home and took place in a jirga with village elders. The Appellant, following the jirga made a report to the police who stated they could not guarantee his safety because the Taliban were involved.
6. After five weeks the Appellant returned to the UK. His father continued to receive threatening letters left or delivered to the family home. His father stopped the Appellant's siblings from attending college because of the risk. In November 2013 the Appellant's father was stopped by men in the street and threatened because he had not delivered his son up to meet the militants. The family moved to a different home in Pakistan but the threats continued. The family then moved back to their initial home.
7. The Appellant's sister returned to Pakistan in December 2017 and was given copies of letters from the militants. The originals had been lodged with the police.
8. The above was accepted by the judge who also accepted that the Appellant feared to return to his home area because of the demand that he appear before the militants to prove that he had not abandoned his faith.
9. The judge found that a fatwa had been issued against the Appellant and at paragraph 7 made a finding that he was "quite satisfied that there is a real risk the Appellant may be killed if he returned to his home area".
10. The judge felt there was an insufficiency of protection in the Appellant's home area which is Peshawar.

11. The judge found that there was a risk that the Appellant would be attacked if he returned to his home area for religious/political reasons. He had displayed liberal tendencies towards some other faiths such as Christians, Sikhs and Hindus, and had been wrongly labelled an apostate. The judge therefore found that the Appellant had an actual liberal political/religious opinion and an imputed political or religious opinion.
12. The judge did not however allow the appeal because it was found that the Appellant had a reasonable internal relocation option to an area of Pakistan away from his home area. The judge found that the two militant groups said to have sent the threatening letters to the Appellant's family, the TKN and the JSTS were linked to the TTP. The judge found that there would be no risk that the Appellant would be attacked or assassinated outside his home area, noting that the expert report relied on by the Appellant indicated that the TTP had only carried out one targeted attack which was in 2014 which was against a military officer. The judge found that the only incidents of actual violence towards the Appellant's family took place in 2011 and 2013, and he was of modest interest to the groups concerned. The judge found that there was no real risk that the TTP had either the incentive or the means to seek the Appellant out. There was no real risk that the Appellant would be targeted in any major city away from his home area.
13. The appeal was therefore dismissed on refugee, humanitarian protection, and human rights grounds.

### **The Application for Permission to Appeal**

14. The Appellant applied for permission to appeal to the Upper Tribunal. In brief summary it was submitted that the judge had erred in his consideration of whether the Appellant could internally relocate.
15. It was argued that the judge had failed to take into account material evidence when considering the level of risk that the Appellant would face if he relocated. The judge had found the Appellant to be of moderate interest, but had erred by failing to consider the continuous nature of the threats and violence that the Appellant faced. The evidence which was accepted, was that threatening letters continued to be received by the Appellant's family, even when they moved address, and it was submitted that the last letter received was in 2018.
16. It was submitted that the judge had erred by misinterpreting the expert evidence that being the report prepared by Dr Giustozzi dated 28<sup>th</sup> May 2018. The judge had found that the TTP had only made one targeted attack in Islamabad, but had not referred to other evidence contained within the report, which confirms that the TTP has 27,000 active members, and had carried out 79 targeted killings in 2015. The expert had given the opinion that there would be no sufficiency of protection for the Appellant, and in the concluding paragraph had found that "his only chance of evading the TTP would be to relocate regularly around Pakistan, but this

would be very disruptive of his working and social life and would not completely protect him from the TTP". It was submitted that the judge had not taken this evidence into account.

17. In addition it was submitted that the judge had erred by failing to take into account that the Appellant's family members would be very motivated to find the Appellant if he returned, and it could not be said that the Appellant would only be of modest interest to those family members.
18. The Appellant would need to access treatment for his diabetes if he returned to Pakistan and it was submitted that the TTP would be able to locate him through the use of medical services. It was submitted that the judge had erred in finding at paragraph 8 that the Appellant had not provided background evidence as to how his uncle could access medical data. The Appellant's point was that it would be the TTP, not his uncle who would be trying to access the medical data.

### **Permission to Appeal**

19. Permission to appeal was granted by Judge Saffer of the FtT in the following terms;

"3. I am satisfied that it is arguable that the judge did not adequately assess the evidence regarding the internal relocation option. All grounds may be argued."

20. Directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside.

### **The Upper Tribunal Hearing**

21. At the commencement of the hearing Ms Pal confirmed that the Respondent had not lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules, but would contend that the judge had not materially erred in law.
22. I heard oral submissions from Ms Kotak who relied and expanded upon the grounds contained within the application for permission to appeal.
23. Ms Pal in making oral submissions contended that the judge had made adequate findings, having considered the expert report, and provided sustainable reasons for those findings.
24. Ms Kotak submitted that the decision of the FtT should be set aside and initially suggested that there should be a remittal to the FtT. On reflection Ms Kotak submitted that that would not be appropriate, and the appropriate course of action would be for the Upper Tribunal to remake the decision based upon the evidence that was before the FtT. There would be no need for a further hearing. Ms Pal agreed, that if a material

error of law was found, the decision could be remade without the need for a further hearing.

25. I reserved my decision.

### **My Conclusions and Reasons**

26. There has been no challenge to the credibility findings made by the judge and those findings stand. There has been no challenge to the conclusion that the Appellant would be at risk in his home area as there would be no sufficiency of protection for him, and those findings stand.

27. The issue that I have to decide is whether the judge erred in law in finding that there would be a reasonable internal relocation option for the Appellant.

28. It is evident that the FtT decision has been prepared with care. I am however persuaded that the judge erred in law materially, in relation to consideration of the expert report, as contended in the grounds upon which permission to appeal was granted.

29. I find that the judge misinterpreted the expert report, and did not analyse and take into account opinions given by the expert indicating that the Appellant would be at risk even if he relocated. I also find that the judge erred in concluding that the Appellant would be of moderate interest to the TTP, without considering the high interest of his step-uncle, who had demonstrated that he would use violence towards the Appellant, and as accepted by the FtT, had involved the militia in this matter.

30. I therefore set aside the decision of the FtT in relation to internal relocation and will now remake that decision.

31. I place significant weight upon the expert report. At paragraph 4 the expert concludes that there were two organisations which issued threatening letters, I will refer to them as TKN and JST. TKN is described as a radical Barelvi group and JST is an unknown group, which should be presumed to be one of about 300 radical Islamic groups operating in Pakistan.

32. At paragraph 5 the expert gives the opinion that these groups are likely to have close relations with larger groups endowed with extensive military structures, the main such group being the TTP. The FtT at paragraph 9 accepted to the lower standard of proof that TKN and JST were linked to the TTP.

33. The expert at paragraph 6 confirms that the TTP carried out 79 targeted killings in 2015 and operates in a way similar to that of the Afghan Taliban, once two or three warnings have been issued, and the threatened individual fails to respond, he is considered to be sentenced. The Appellant was warned directly or indirectly multiple times, and therefore in the expert's view he would be considered as sentenced.

34. At paragraph 9 the expert records that several hundred tribal elders had been executed by the TTP because of a refusal to collaborate with that organisation or for collaborating with the government. At paragraph 10 the Peshawar school attack in 2014 is described as the most indiscriminate attack by the TTP.
35. At paragraph 11 the expert gives the opinion that it is plausible that the Appellant who advertised liberal, social and religious views could be reported to the TTP, and the TTP has a record of targeting social activists of various types. The expert considers the police force in Pakistan commencing at paragraph 12 of his report. I take into account that AW (sufficiency protection) Pakistan [2011] UKUT 31 (IAC) decided that there was a systemic sufficiency of State protection in Pakistan, but the particular circumstances of an individual must be taken into account. Dr Giustozzi at paragraph 12 emphatically states that the Appellant would not be able to rely on Pakistan's police for protection, due to a lack of capacity and lack of will. Dr Giustozzi comments that the police are rarely seen to confront terrorist groups.
36. At paragraph 17 of the expert report comment is made that law enforcement in Pakistan is strongest in Islamabad, "but it is obvious that the TTP has infiltrated Islamabad and is able to operate there, as it carried out a few attacks. Terrorist attacks in Islamabad are relatively frequent". Later in the paragraph Dr Giustozzi states that the main source of terrorist attacks in Islamabad is the TTP and lists a number of incidents in 2014 in which the TTP were involved.
37. The opinion is given that if the Appellant's case has been referred to the TTP, "he might be at risk in almost every urban area of Pakistan". The opinion is also given in paragraph 17 that as the Appellant's step-uncle has been a source of information for the radical groups about the Appellant, there would be a risk that he would be tracked down through his family.
38. It is in paragraph 19 of the expert report that it is stated that the only known plan to assassinate an individual in Islamabad was in November 2014, although in the same paragraph it is stated that it is obvious the TTP has infiltrated Islamabad and is able to operate there, and so far TTP attacks in Islamabad have been high profile operations.
39. At paragraph 20 the expert gives the opinion that the TTP would be able to operate virtually anywhere in Pakistan and in paragraph 24 the expert gives his concluding opinion which is that there is little doubt that the Appellant has the typical profile of a TTP target. The type of threats made to the Appellant and his family are described as standard practice for the radical groups of Pakistan. The Pakistani authorities do not normally provide close protection to individuals with the Appellant's profile. The Appellant's only chance of evading the TTP would be to relocate regularly around Pakistan but this would not completely protect him.

40. I find having placed significant weight upon what I consider to be a well-balanced expert report, that the report proves to a reasonable degree of likelihood that the Appellant would remain at risk if he returned to Pakistan and relocated to an area away from his home area. I do not find that he would have a reasonable internal relocation option and do not find that he would have a sufficiency of protection. I take into account the concluding paragraph of the report in which the expert describes the Appellant's only chance of evading the TTP would be to relocate regularly around Pakistan, but take the view that this would not be reasonable, as it suggests that the Appellant would never be able to settle in one place and would have to continually move from one area to another. In addition the expert gives the opinion that even if the Appellant regularly moved, this would not completely protect him.
41. For the reasons given above, I find that as there is no reasonable internal relocation option, there is a reasonable degree of likelihood that the Appellant would be at risk if returned to Pakistan, and his appeal must therefore be allowed.

### **Notice of Decision**

The decision of the First-tier Tribunal contained an error of law and was set aside. I substitute a fresh decision.

The appeal is allowed on asylum grounds and on human rights grounds with reference to Article 3 of the 1950 Convention.

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

I have decided to make an anonymity direction because the Appellant has made a claim for international protection. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 17<sup>th</sup> October 2018

Deputy Upper Tribunal Judge M A Hall

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

As I have allowed the appeal I have considered whether to make a fee award. I make no fee award. The appeal has been allowed because of evidence considered by the Tribunal that was not before the initial decision maker.

Signed

Date: 17<sup>th</sup> October 2018

Deputy Upper Tribunal Judge M A Hall