Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00394/2013

THE IMMIGRATION ACTS

Heard at Stoke	**Determination Promulgated**
on 29th October 2013	**on 9th December 2013**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MOSHIN RAZA SYED
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Mair instructed by Paragon Law Solicitors.
For the Respondent: Mr Lister – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of a panel of the First-tier Tribunal composed of FTT Judge I Taylor and Mr M J Griffiths JP (hereinafter referred to as "the Panel") who in a determination promulgated on the 14th June 2013 dismissed the Appellants appeal against the order for his deportation from the United Kingdom made pursuant to the UK Borders Act 2007.

Background

2. The Appellant, a citizen in Pakistan, was born on 14th October 1987. On 5th October 2008 he entered the United Kingdom illegally using a false passport. He remained in this country until 11th November 2011 when he was stopped

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trying to board a plane at Heathrow destined for Canada. He was found to be in possession of a United Kingdom passport in the name of another and so on 15th November 2011 he was sentenced at Isleworth Crown Court to 12 months imprisonment for possession and/or use of a false instrument namely a UK passport in the name of Mohamad Akbar.

3. The Panel noted that the Appellant was sentenced in the name of Ali Mohammed which is an alias and that there was considerable doubt about his actual date of birth. The Appellant continued to use this alias and a false date of birth until his screening and substantive interviews which were conducted on 29th November 2012. Indeed, in the deportation questionnaire served in February 2012 the Appellant maintained the use of a false name, a false date of birth 14 September 1993, and claimed his country of birth was Afghanistan and not Pakistan. He also gave false names for both his mother and father.

4. The Panel note the Appellant's medical history and refer to the medical evidence provided in paragraphs 12 to 16 of the determination before setting out their findings at paragraph 17 onwards, the core elements of which can be summarised as follows:

   i. The Appellant's account is broadly internally consistent although credibility issues do arise [17].

   ii. The Appellant's claim not to have known who his girlfriend's father is lacked credibility [19]. Despite claiming to be in regular contact with his brothers in Canada neither were asked to submit a witness statement and photographs provided could have been of anybody [19].

   iii. His claim to have been able to escape as his assailant forgot to lock the door was found to be incredible in all the circumstances [21].

   iv. His claim that a poster or leaflet demanding his death by means of a Fatwa in Islamabad shortly after his mistreatment and in Gujrat whilst he was in the United Kingdom was not accepted as there was no explanation for why the poster should be circulated in Gujrat many years after the incident and despite a friend stating he had sent the poster by e-mail neither the e-mail or leaflet/poster had been submitted in evidence [21].

   v. The use of the false identity indicates a number of falsehoods not only relating to whom he was, his family members, and place of birth, but also to key aspects of his claim [22]. The Panel did not accept that any satisfactorily explanation had been given for maintaining false personal details over such a long period of time to

the police, a Crown Court Judge, and the Immigration Authorities. Inconsistencies in his evidence are also noted [23].

vi. The Appellant did not apply for asylum for nearly three years. No satisfactory explanation for the delay has been provided [25].

vii. Entry to the United Kingdom with a false passport and lies told to the Immigration Authorities were noted as was the fact that it was only after being notified of liability to deportation that the asylum claim was made in which the Appellant admitted fabricating numerous elements of his claim set out in the deportation questionnaire. This damages his credibility pursuant to section 8 of Asylum, Immigration (Treatment of claimants etc) Act 2004 [26].

viii. The Appellant is not a credible witness. The core of his account to be at risk upon return is not accepted subject to one important caveat that the evidence of Dr Playforth with regard to scars was found to be "compelling". The Panel accepted the Appellant had at some point suffered injuries by being repeatedly attacked with a knife attached to a stick but how or why they were caused was not found to have been satisfactorily demonstrated by the Appellant. The Panel concede it may have something to do with the relationship with his girlfriend and family reaction to her pregnancy although the Panel were not satisfied it was anything other than a localised matter and were not satisfied that Sipah-e-Sahaba are involved. The Panel was not satisfied that a Fatwa has been pronounced on the appellant [27].

ix. The Panel accept there may be some small risk to the Appellant in his home area [28] but are also satisfied he can re-locate to Islamabad where there will be no risk from the family or their relations [29].

x. The Panel accept the Appellant is a Shia Muslim but find there is insufficient evidence to find that he is at risk solely on the basis of his religion which accounts for up to 25% of the population and having considered country guidance case law [30].

xi. In relation to the claim that Article 3 will be breached on return due to his physical and mental health, the Panel note the existence of services and treatments in Pakistan, including neurology departments and neuro-rehabilitation services. The Panel did not accept the Appellant will be destitute as suggested in the country experts report. The Panel find that although the Appellant may not have family in Islamabad but the uncle of a friend was able to afford him great assistance before and there is no reason to suppose he would not be able to do the same in the future. The Panel do not

accept that the Appellant will not be able to continue to rely on the financial support of his brothers in Canada who have supported him to date [36].

xii. The Panel accepted the Appellant is suffering from a serious condition which gives rise to a great deal of personal sympathy although they found his condition falls short of satisfying the test both the cases of N v UK and GS and EO. The Panel did not accept that humanitarian considerations which apply are on a par with the circumstances of the Appellant in the case of D v UK [37].

xiii. In relation to suicidal ideation and mental health issues, the Panel found that in light of the availability of treatment in Pakistan and having considered the Appellants circumstances cumulatively it had not been shown that Article 3 was breached [38]. The Panel also note there was no recent or indeed any psychiatric/psychologists report and information regarding his psychiatric condition could only be gleaned from his medical records. As a result they did not know what his mental state/condition was at the date of the hearing [39].

xiv. In relation to Article 8 ECHR the Panel accept the Appellant has a private life in the United Kingdom but state that apart from his hospitalisation it is not clear what he has been doing in the United Kingdom for the five years he has been here [42]. The Panel accept the question is one of proportionality [43] and that the Appellant has no legitimate expectation that the treatment he receives will continue from the NHS, even if in Pakistan the treatment is of inferior quality. In such circumstances the decision is proportionate [43].

xv. The comments by the Consultant Neurologist regarding the provision of medical services in Pakistan were noted but it not found the Consultant has the credentials to give an opinion on this topic and so no weight can be given to his comment [44].

xvi. Very little is said regarding the country report from Uzma MOEEN as her findings are predicated on the basis the Appellants account is credible, which it is not [45]. If the Appellant has committed an offence by impregnating his girlfriend the Panel, following the country guidance case of KA and others and the lack of evidence of any formal complaints being made in the past five years, found it highly unlikely that if returned he would face any criminal or Islamic sanction. The Panel also refer to the Country of Origin Information Report entry that Sipah-e-Sahaba is no longer a significant force in Pakistan and there was no evidence to suggest that it's more contemporary manifestations would be interested in a relatively minor incident that happened five years ago [45].

5. Permission to appeal to the Upper Tribunal was initially refused but granted on a renewed application by Upper Tribunal Judge Kebede on 14th August 2013.

Discussion

6. The first issue raised by Miss Mair related to the Panel's finding at paragraph 29 that if the Appellant faced a risk in his home area, identified as a small risk in paragraph 28, he could internally reallocate. The Panel considered the reasonableness or harshness of such a proposal in light of his medical condition when considering the Articles 3 and 8 elements but it is submitted that by doing so they applied too high a threshold. Miss Mair submitted that the correct test should have been that of 'reasonableness' which is suggestive of a lower threshold.

7. The facts relied upon in support of this submission are to be found in paragraph 8 of the grounds seeking permission to appeal; that the Appellant is (a) wheelchair-bound and (b) in need of constant specialist medical care which it is stated is either unavailable or not widely available in Pakistan. The Appellant is much more easily identifiable, less likely to be able to escape, would repeatedly have to access a small number of health institutions where he could easily be traced and as such would be much easier to discover than somebody without these characteristics.

8. The Panel clearly noted the medical evidence which suggested that whatever caused the injuries to the Appellant's spine, he was mobile and improving and that his current situation arose as a result of a biopsy on his spinal-cord for which he gave informed consent. It was submitted that his future prognosis is unclear but the Panel clearly considered the medical evidence made available with the correct degree of care, anxious scrutiny, required in an appeal of this nature. I accept they stated in paragraph 29 that they would consider the reasonableness of relocation in light of his medical condition without making a specific reference back to this statement but it is clear from reading the determination that they considered this element as part of the Articles 3 and 8 considerations, neither of which they found afforded the Appellant a right to remain in the United Kingdom.

9. Miss Mair submitted this is capable of amounting to legal error as the test for the reasonableness of relocation in terms of the Refugee Convention is different from that applicable in a human rights case.

10. In SSHD v AH (Sudan) and Others [2007] UKHL 49 the House of Lords pointed out that the test to determine whether internal relocation was available was the test set out in Januzi v SSHD [2006] UKHL 5, namely that the decision maker should decide whether, taking account of all relevant circumstances pertaining to the claimant and his or her country it would be reasonable to expect the

claimant to relocate or whether it would be unduly harsh to expect him or her to do so. The test was one of great generality. In applying the test enquiry had to be directed to the situation of the particular claimant; very little was excluded from consideration other than the standard of rights protection which a claimant would enjoy in the country where refuge was sought. Baroness Hale said that all the circumstances of the case had to be assessed holistically, with specific reference to personal circumstances including past persecution or fear thereof, psychological or health conditions, family and social situations, and survival capacities, in the context of the conditions in the place of relocation, including basic human rights, security and socio economic conditions, and access to health care facilities: all with a view to determining the impact on the claimant of settling in the proposed place of relocation and whether the claimant could live a relatively normal life without undue hardship. The House of Lords said that it was not a correct application of the test to only focus on the comparison between conditions in a claimant's home country as a whole and those prevailing in the proposed area of relocation. Nor was it correct to only compare conditions in the place of habitual residence from which a claimant had fled and those in the safe haven. The decision in Januzi supported both those bases of comparison and did not suggest that one was to be preferred: the weight to be given to each was a matter to be judged by the decision maker in the context of a particular claim. It was an incorrect formulation of the test to equate unreasonable or unduly harsh conditions in the place of intended relocation with a real risk of inhuman or degrading treatment or punishment within the meaning of Article 3 of the ECHR.

11. The House of Lords in AH (Sudan) support the general proposition that an assessment of reasonableness based upon the Article 3 threshold only may be susceptible to challenge although overall if an asylum seeker will face a standard of living in the safe haven which a significant proportion of his countrymen have to endure then, absent individual characteristics making him particularly vulnerable, it will not be unduly harsh for him to relocate there.

12. In AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC) the Tribunal held that there is no legal burden on the Secretary of State to prove that there is a part of the country of nationality etc of an appellant, who has established a well-founded fear in their home area, to which the appellant could reasonably be expected to go and live. The appellant bears the legal burden of proving entitlement to international protection; but what that entails will very much depend upon the circumstances of the particular case. It will then be for the appellant to make good an assertion that, notwithstanding the general conditions in the proposed place of relocation, it would not be reasonable to relocate there.

13. In relation to the internal flight argument in a human rights case, in R (Mansini) v Tribunal [2003] EWHC 2940 Admin Beatson J held, relying on AE and FE, that the extension of internal flight to Article 3 cases was misconceived and the

appellant must show a breach of Article 3 wherever he may be returned to or required to live. That was the view of the Tribunal in WD (Syria) [2005] UKIAT 00034 (Ouseley) too.

14. In VNM v SSHD [2006] EWCA Civ 47 the Court of Appeal noted that the concept of reasonableness was not really involved in this exercise under Article 3, but suggested that Article 8 may come into play here. The Court indicated that when applying Article 8 to the issue of internal relocation, Baroness Hale's test of "the most compelling humanitarian considerations" is the correct one.

15. The Panel found the decision to deport proportionate when considering the Article 8 element of the appeal. In doing so they state in paragraph 43 "Although the compassionate circumstances of this case are obvious, we are also satisfied that the decision of the Secretary of State is in all the circumstances of the case a proportionate one.

16. The Panel could have taken more care in relation to the language used, for example in paragraph 28 stating there may be some small risk to the Appellant returning to his home area rather than specifying whether the risk was sufficient to engage the Refugee Convention but they did consider the issue of relocation. They found that the Appellant has support available to him in Pakistan, which is a finding within the range of those the Panel were entitled to make on the evidence and, in paragraph 36, that he will receive financial support. The Panel correctly accept there are medical facilities available to meet the Appellant's needs in Pakistan. The Panel clearly found that the Appellant had not substantiated his claim that he was at risk in all of Pakistan and had not proved that he would be at risk in a major city such as Islamabad which is where the Appellant lived in the past and where he may have to live to access appropriate medical treatment on return. He has not proved that he is likely to be targeted in Islamabad and the fact he may be in a wheelchair or have limited mobility is noted but as it has not been proved that he was likely to be targeted and therefore that he would need to escape, the significance of this submission is somewhat muted. As the case law shows the burden is upon the Appellant to prove that it is unreasonable in all circumstances to expect him to relocate and having considered all material made available to the Panel, the evidence on which they found they could attach due weight, and their conclusions in relation to the availability of assistance, and in relation to Article 3 and 8, it cannot be said that this burden was discharged such as to show that a finding that it was reasonable in all the circumstances is perverse or irrational. It has not been shown that the most compelling humanitarian considerations are present making internal relocation unreasonable in all the circumstances.

17. Paragraph 10 of the grounds acknowledges that the Panel considered the medical evidence although claims this was limited to Article 3 considerations and not the reasonableness of internal relocation but that is an issue I have commented upon above. I accept the Appellant's medical condition makes life

more difficult and trying for him than it may for others and that he may face difficulties such as infections, but I do not accept Miss Mair's submission that he will be unable to access medical facilities to provide for his needs. Miss Mair stated at the outset that the Appellant was not at court on the day of the hearing as he had been re-housed in NASS accommodation but allegedly could not cope as a result of which he was moved to Social Services accommodation but has now been readmitted to hospital, although there was no medical evidence to prove the same. There is no evidence that adequate services would not be available to the Appellant in Pakistan which includes the availability of hospitalisation, if required, to flush out any blocked catheters or to deal with acquired infections.

18. I find no merit in the argument the Panel failed to consider the long-term need for medical care as the evidence shows that such facilities are available and there was no evidence to prove to the contrary.

19. It was also submitted the Panel had made findings regarding the seriousness of the crime and in paragraph 27 of the determination has stated that it was "localised". The core finding of the Panel is that the Appellant was not credible which is a sustainable finding based upon the catalogue of lies and deceit practised by him relating not only to his identity but also the country of nationality and his account. The Panel accept that he had scars on his back and found the evidence to be probative of the presence of scarring but not causation. The Panel accepted that it may have something to do with the relationship with his girlfriend and family's reaction but was not satisfied it was anything other than a localised matter involving their respective families in the village.

20. Miss Mair's submitted that the Panel erred in not considering the expert evidence provided in relation to this issue, that being the report of Uzma Moeen, has not merit for the Panel were clearly aware of the existence of the report and set out in paragraph 45 why they chose to place very little weight on it. I accept that the report was predicated on the basis that the Appellants account was credible and although most of the account was rejected not all of it was. The Panel, however, go on to consider the situation facing the appellant as if he has committed an offence by getting his girlfriend pregnant by reference to the country guidance case and set out their findings in paragraph 45 of the determination which have not been shown to be perverse, irrational, or contrary to the evidence.

21. Having read the determination as a whole I am not satisfied the Panel has erred in law as suggested by Miss Mair. It must be remembered that the core of the claim under the Refugee Convention was religious and political. In paragraph 30 the Panel accepted the appellant is a Shia Muslim and the finding he had not substantiated his claim to be at risk as a result of his religious identity is a sustainable finding. The conclusion in paragraph 27 that at its best the Appellant was complaining of a localised issue removes any suggestion of a

political element in all of Pakistan. Mr Lister submitted the fact the Appellant was found not to be credible damages his claim to be a member of a Particular Social Group (PSG) and the fact the Panel considered the country guidance case law is a relevant factor.

22. As stated above, the Appellants claim that he fears the family must be considered in light of his overall credibility and I find the finding that it had not been proved that he would be at risk outside his home village has not been shown to be perverse or irrational. The reference the core account the Appellant sought to rely upon is that contained in paragraph 11 of the determination which is not challenged before me as being an inaccurate record. Credibility findings are set out in paragraphs 18, 19, 20 and 21.

23. In relation to the submission the Appellant's circumstances on a compassionate basis are similar to those of the appellant in D, which was rejected by the Panel, I find no legal error in doing so. Such cases involving medical treatment where it is necessary to consider N and D are cases more about death than life. The Appellant's circumstances, however difficult for him, come nowhere near to approaching this threshold.

24. Mr Lister submitted there was no direct challenge to the Article 8 findings in the grounds which is correct.

25. In her response Miss Mair referred to the Convention reason of a PSG which had not been argued before the Panel and as such it is not an error if the Panel failed to deal with it. Even if they did, their sustainable finding show that the fact there is a relocation option available and the findings of little risk, suggesting the necessary threshold of persecution may not be crossed, would mean it would fail in any event. So even if they should have dealt with this element any failure is not material.

26. Miss Mair also submitted that if the Appellant failed under the Refugee Convention the Panel should have considered whether he qualified for a grant of Humanitarian Protection which applies in any event if there is no Convention reason. I accept this as a statement of the law and the fact the Panel did not consider it may suggest legal error although the question of internal relocation is as applicable to humanitarian protection as it is to a Refugee Convention claim. The sustainable finding that there is a viable internal relocation option is equally fatal to that argument. I therefore find such a failing not material to the decision.

27. Paragraph 339C of the Immigration Rules states:

"A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:

(i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom;
(ii) he does not qualify as a refugee as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;
(iii) substantial grounds have been shown for believing that the person concerned, if returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country; and
(iv) he is not excluded from a grant of humanitarian protection.

Serious harm consists of:

(i) the death penalty or execution;
(ii) unlawful killing;
(iii) torture or inhuman or degrading treatment or punishment of a person in the country of return; or
(iv) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

28. Even of the risk of serious harm was proved paragraph 339O of the Immigration Rules states:

"(i) The Secretary of State will not make:

…. (b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.

(ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making his decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.

(iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return.

29. At the hearing Miss Mair was referred to the recent decision of SHH v UK 60367/10 ECtHR (Fourth Section) the judgment in which was made final on 8th July 2013. In that case the Court considered the appeal of a disabled man fighting to prevent his return to Afghanistan where he claimed he will be more susceptible to violence and homelessness. The Court found that the difficulties for disabled people were not the fault of the Afghan authorities and that the problems facing an applicant would be largely the result of inadequate social

provision and so the approach adopted in N was the appropriate one. The Court found that the applicant's case does not disclose very exceptional circumstances as referred to in the applicable case-law (N. v. the United Kingdom). Accordingly, the implementation of the decision to remove him to Afghanistan would not give rise to a violation of Article 3 of the Convention.

30. The approach of the Panel and their analysis of the evidence is supported by this judgment as it is by the guidance provided in GS and EO (Article 3- health cases) [2012] UKUT 397 reported on 24th October 2012.

31. I agree with the comment by the Panel and Miss Mair that this is a case involving an Appellant for whom there is sympathy although he has not helped his cause by his lies and dishonesty. If compassion per se was all that was required he may succeed but it is not. The Panel either applied the correct legal tests or made decisions which, although infected by legal error, are sustainable as it has not been shown such error is material to the decision to dismiss the appeal. The determination shall stand.

Decision

32. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

33. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed…………………………………………….
Upper Tribunal Judge Hanson

Dated the 22nd November 2013