



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

Appeal Number: AA/05680/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 20 March 2014 and 15 April 2014**

Determination Sent

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

HAKEEM BALOCH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Jorro, instructed by Asylum Aid

For the Respondent: Ms A Holmes, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

- 1.** The appellant, Hakeem Baloch, was born on 16 December 1990 and is a male citizen of Pakistan. The appellant had been admitted to the United Kingdom as a student in 2011 and, in May 2012, he claimed asylum. A decision was taken on 11 June 2012 to refuse to grant him asylum and to remove him from the United Kingdom by way of directions under Section 10 of the Immigration and Asylum Act 1999. The appellant appealed against the removal decision to the First-tier Tribunal which dismissed his

appeal. The appellant sought permission from the Upper Tribunal and, by a Decision on an Error of Law dated 5 October 2012, Deputy Upper Tribunal Judge Zucker set aside the First-tier Tribunal determination and directed that the decision be remade in the Upper Tribunal at a resumed hearing. Following the making of a transfer order, the resumed hearing came before me at Field House on 20 March 2014 and, following an adjournment, on 15 April 2014. I have annexed Judge Zucker's determination to my own and have marked it "A".

2. The burden of proof in the appeal is on the appellant and the standard of proof is whether the appellant would suffer, respectively, persecution or treatment contrary to the ECHR (Articles 2 and 3) if he were to be returned to Pakistan. I have applied that standard of approval in the present appeal.
3. In April 2014, I heard evidence from the appellant and from his witness, Mr Haider. Both witnesses spoke in Baluchi with the assistance of an interpreter (it had been necessary to adjourn the hearing in March 2014 because the Baluchi interpreter had failed to attend. At the March 2014 hearing, I had heard evidence from the appellant's expert witness, Professor Yunas Samad, Professor of South Asian Studies in the School of Social and International Studies at the University of Bradford. Professor Samad has prepared three detailed reports. The first report of June 2012 seeks in part to examine the credibility of the appellant by placing his written account of past events in the Balochi area in the context of background material relating to that area of Pakistan. I have to say that I found Professor Samad's evidence, both written and oral, to be very helpful. He was able to comment on the appellant's activities on behalf of the Balochi Separatist Movement in Pakistan but also on the appellant's *sur place* activities within the United Kingdom. In his oral evidence, he gave persuasive testimony regarding the activities of diplomats operating out of the Pakistan Embassy in London who, he claims, regularly monitor demonstrations and rallies held by Balochi separatists in this country. Professor Samad did not seek to exaggerate the appellant's role either as a *sur place* activist or within Pakistan; the appellant is still only 24 years of age and has been living in the United Kingdom since 2011 so his role in separatist politics in Pakistan has had little time to develop. However, I am satisfied, having heard Professor Samad, that low and medium level Balochi separatists are closely monitored both in Pakistan and in the United Kingdom and that, within Pakistan, there exists a significant level of risk to such individuals from the Pakistani authorities.
4. I was assisted also by the approach of the appeal taken by Senior Home Office Presenting Officer, Ms Alice Holmes. Ms Holmes did not concede the appeal but equally she did not seek to cross-examine the appellant nor did she make any submissions either as regards his credibility or that of the other witnesses or as regards the level of risk which the appellant claims he faces in Pakistan. As a consequence of the approach which she adopted, Mr Jorro, for the appellant, likewise made only brief submissions in addition to the detailed skeleton argument which he has produced.

5. In the light of all the evidence, I am satisfied that the appellant is genuinely committed to the Balochi separatist cause and I find that his account of past events in Pakistan and in the United Kingdom is generally accurate. I am satisfied that the appellant's *sur place* activities in the United Kingdom are reasonably likely to have come to the attention of the Pakistan Embassy through the monitoring activities of the diplomats working there and that some account of those activities would have been relayed to the security services in Pakistan. In light of the approach adopted by Ms Holmes, I do not propose to address in detail the appellant's account but, in determining the credibility of the appellant, I have had regard to all the evidence both written and oral. As I have indicated above, I was particularly impressed by the evidence of Professor Samad which I accept in its entirety.
6. I find that the appellant is a genuine Balochi separatist and that he and his family have suffered harassment and discrimination on account of their Baloch ethnicity. I accept that he is a member of the Baloch Student Organisation and also the Baloch National Movement (BNM). I accept that the appellant's uncle (Mehboob Ali Wadhela Baloch) was murdered in Pakistan on account of his separatist activities. I accept that the appellant's family home was raided by Pakistani security forces in April 2011. I accept the appellant's description of his *sur place* activities.
7. The question, therefore, arises as to whether an appellant having the profile which I find he possesses to be of real risk of persecution or ill-treatment upon return to Pakistan. I accept Professor Samad's evidence and that of the other witness, who is the United Kingdom foreign spokesman for the BNM, that the Pakistan authorities will carefully scrutinise the profiles of young males returning from abroad to homes in Balochistan. I find that it is reasonably likely that the appellant's profile (both as a member of a Pakistan Balochi separatist family and as an activist for Balochi separatism whilst in the United Kingdom) will be known to the security services who are reasonably likely to interview him upon return. I find that the Pakistani authorities are prepared to use extreme methods (including torture and murder) against those individuals whom they perceive as a threat to the unity and security of Pakistan. I find that this appellant's political profile, although that of a young and relatively inexperienced man, is sufficient to bring him to the attention of the Pakistan authorities and I find that there are substantial grounds for believing that he would be at real risk of ill-treatment either at the point of his arrival in Pakistan or subsequently whilst living in Balochistan, his home area.
8. The appellant further seeks to rely upon *SA (political activist - internal relocation) Pakistan* [2011] UKUT 30 (IAC). In that decision, the Upper Tribunal reaffirmed the principle that a genuine political activist cannot be expected to avail himself of the option of internal flight should he be at risk (as I find this appellant is) in his home area of his country of nationality. Further, Ms Holmes did not seek to persuade me that the

appellant should be required to conceal his genuine political views in order to protect himself from possible persecution.

9. It follows from what I have said that the appellant is a refugee and that his asylum and Articles 2/3 ECHR appeal should be allowed. In those circumstances, he is not entitled to a grant of humanitarian protection.

DECISION

10. This appeal is allowed on asylum grounds.

11. This appeal is allowed on human rights grounds (Articles 2/3 ECHR).

Signed

Date 2 May 2014

Upper Tribunal Judge Clive Lane

Annex A

DECISION ON ERROR OF LAW

- 12.** The Appellant is a citizen of Pakistan whose date of birth is recorded as 16 December 1990. On 28 March 2011 he applied for a Tier 4 (General) Student visa which was issued to him on 6 April 2011, and valid until 25 December 2012. On 11 June 2011 he entered the United Kingdom. On 28 May 2012 he claimed asylum as a refugee. On 11 June 2012 a decision was made to refuse the application pursuant to paragraph 336 of HC 395 (as amended), and on that same date a decision was made to remove him from the United Kingdom by way of directions pursuant to Section 10 of the Immigration and Asylum Act 1999. By Notice dated 13 June 2012 he appealed to the First-tier Tribunal and on 23 June 2012 his appeal was heard at Harmondsworth by First-tier Tribunal Judge Chana.
- 13.** The Appellant's case was that he was at risk of persecution because of his activities in Pakistan with the Baluchi National Movement ("BNM"). Judge Chana noted that there was no issue with the fact that the Appellant was a member of the BNM but noted also that it was the Respondent's case that as a low level member he would not have been a person at risk and would not have come to the adverse attention of the authorities. Judge Chana made various adverse credibility findings against the Appellant and dismissed the appeal on all grounds.
- 14.** By Notice dated 27 June 2012 the Appellant made application for permission to appeal to the Upper Tribunal. Three grounds were taken.
- 15.** The first was that no reference was made whatsoever by the judge to the expert evidence of Professor Yunas Samad, Professor of South Asian Studies in the School of Social and International Studies at the University of Bradford whose report was contained within the Appellant's bundle. Reference was also made to the case of Mibanga -v- Secretary of State for the Home Department [2005] EWCA Civ 367 in which Wilson J said at paragraph 24:

"It seems to me to be axiomatic that a fact-finder must not reach his or her conclusion before surveying all the evidence relevant thereto".

Specific aspects of the expert's report were set out within the particulars of the first ground which went, it was submitted, to the issue of the Appellant's credibility and the extent to which he was an activist in the BNM.

- 16.** The second ground was an attack on the manner in which the judge assessed the evidence generally. The third ground related to the judge's assessment of internal relocation said in the Grounds to be, "woefully inadequate".

- 17.** On 27th June 2012 Upper Tribunal Judge Chalkley granted permission stating:

“I believe that the Appellant’s application does disclose matters which are properly arguable. Not only does First-tier Tribunal Judge Chana appear to fail to examine the expert evidence to which she was referred in the written submissions she accepted, but also fails to demonstrate that she has considered any of the background evidence before making her findings of fact.

Permission to appeal is granted on all three challenges”.

- 18.** Thus the matter comes before me. Mr Tufan, for the Respondent takes a realistic view and accepts that there is an error of law on the basis of an absence of reference to the expert report as well as to the documents referred to in the skeleton argument. Both parties agreed that a rehearing was necessary because of that and I agree.
- 19.** It is not possible to remake the case immediately because unfortunately there is no interpreter available and Mr Tufan, due to one of his colleagues having been taken ill, only received the papers at the last moment. In the circumstances there will have to be a resumed hearing of this matter.

DECISION

The determination of Judge Chana dated 25 June 2012 contained an error of law and is set aside to be remade by the Upper Tribunal at a resumed hearing yet to be fixed.

Signed

Date

Designated First-tier Tribunal Judge Zucker