IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07958/2013

THE IMMIGRATION ACTS

Heard at Birmingham	**Determination Promulgated**
On 8th January 2015	**On 20th January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE FRENCH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MA
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant Secretary of State: Mr N Smart, Senior Home Office Presenting Officer
For the Respondent MA: Mr V Madanhi of Genesis Law Associates

DECISION AND REASONS

1. This appeal by the Secretary of State initially came before me on 11th December 2014, following which I reached a decision that there had been a material error of law in the decision at first instance made by Judge of the First-tier Tribunal Camp. His decision was set aside and I issued directions for a further hearing identifying the issues to be decided. As was pointed out in my earlier decision, I continue to refer to MA as the

Appellant and to the Secretary of State as the Respondent, the titles by which they were known before the First-tier Tribunal.

2. In the interests of clarity I set out here the first of the directions made on 12th December 2014 which reads as follows:

> "The decision of Judge Camp has been set aside. However the credibility findings he made concerning the Appellant's potential treatment in his home area are preserved. At the resumed hearing the issues to be decided will be whether the Appellant would face a real risk of persecution or treatment in breach of Article 3 in any other part of Pakistan away from his home area, whether it would be reasonable to expect him to move to such an area if no such risk is made out (having regard to his psychological condition and the position of his wife and children) and issues generally under Article 8 ECHR".

3. At the commencement of the resumed hearing Mr Madanhi said that he had only received notice of the resumed hearing on the previous day and was he clearly not in a position to proceed. He produced a copy of the letter which showed that notice of hearing had been sent to his firm and to the Appellant on 22nd December 2014. Unfortunately that letter appears to have been very seriously delayed in the Christmas post.

4. I had highlighted in the directions the issues that remained to be decided, all relating to potential relocation to a different part of Pakistan. The Appellant has a wife and three children all dependent upon his appeal. The children were born respectively in 1995, 1996 and 2003. I was conscious of the guidance given by the President in a determination reported on 4th August 2014, namely **JO and Others (Section 55 duty) Nigeria [2014] UKUT 00517 (IAC)** concerning the best interests of children.

5. Mr Smart said it was difficult for him to argue against what was set out in **JO** and he accepted that in the refusal letter there had been no consideration of issues under Section 55 of the Borders, Citizenship and Immigration Act 2009.

6. Both representatives concurred that in the light of the decision in **JO** the sensible course would be for the matter to be remitted to the Secretary of State to consider Section 55. It was accepted that matters under Section 55 had not been considered in the refusal letter. I was grateful to Mr Smart in particular for that constructive approach which meant that the hearing had not been wasted notwithstanding the short notice given. I confirmed to Mr Madanhi that the findings of Judge Camp as to risk to the Appellant in his home area (which had not been challenged) would stand, as was confirmed in my earlier decision. He would be at liberty to submit further evidence and representations to the Respondent for consideration in the context of the family relocating to a different part of Pakistan.

Notice of Decision

The initial decision made by the Secretary of State was not in accordance with the law for the reasons set out above and the Appellant's application therefore remains outstanding.

The anonymity order made in my decision of 12th December 2014 is continued.

Signed Date 13 January 2015

Deputy Upper Tribunal Judge French

IAC-AH-SC-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07958/2013

THE IMMIGRATION ACTS

Heard at Birmingham	**Determination Promulgated**
On 11th December 2014	**On 20th January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE FRENCH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MA
(Anonymity Order made)

Respondent

Representation:
For the Appellant Secretary of State: Mr D Mills, Senior Home Office Presenting Officer
For the Respondent MA: Mr V Madanhi of Genesis Law Associates

DECISION ON ERROR OF LAW

1. An appeal by MA (whom I shall continue to refer to as the Appellant, as he was known before the First-tier Tribunal) against refusal of asylum and removal to Pakistan was heard by First-tier Tribunal Judge Camp on 13th March 2014. The appeal was allowed on asylum grounds and also on human rights grounds. The Secretary of State sought permission to appeal in respect of one aspect of Judge Camp's decision. In the application it is said that the judge failed to give adequate reasons for his

conclusion on a material matter. The judge found the Appellant's account credible to the lower standard of proof and accepted that he was at risk of targeted persecution from the MQM in his home city of Karachi where the MQM were the dominant political party. It was said that the refusal letter, at paragraphs 38 to 43, expressly raised the possibility of internal relocation and sufficiency of protection from the non-MQM affiliated authorities in other parts of Pakistan. The Presenting Officer had relied upon that letter in her submissions.

2. At paragraph 42 of the determination the judge has stated as follows:

> "The option of internal relocation was not urged (except by way of reference to the refusal letter) on the Respondent's behalf at the hearing. I note the evidence that MQM has been trying to extend its influence to the Punjab. Moreover the Appellant and his family, as Mohajirs, would be noticeable in any part of Pakistan where Mohajirs are not settled. A real risk of persecution would exist anywhere in Pakistan."

The grounds go on to submit that the judge had given wholly inadequate reasons for concluding that there was no realistic opportunity for the Appellant to seek safety in another part of Pakistan. The grounds then go on to give reasons why that view is thought to have validity, points which arose in the course of the hearing before me. On 16th April 2014 Upper Tribunal Judge Deans, sitting in the First-tier Tribunal, gave permission to appeal on the grounds as lodged.

3. A new representative had been appointed shortly before the hearing. He submitted a response under Upper Tribunal Procedure Rule 24 which Mr Mills had the chance to consider. That response had been served very late but I appreciated that there had been a change of representative. It appeared to me that the matters covered in the notice were likely to be points which would be argued in any event in the course of the hearing and I saw no objection to the notice being received.

4. Mr Mills, for the Secretary of State, made the point that the MQM was a majority party in Sindh province and in particular in Karachi but a minority party elsewhere. He referred to election results and to the background material which had been before the judge. The background evidence pointed to the MQM being resented elsewhere in Pakistan outside Sindh province and the idea that they would be able to act with impunity to harm the Appellant was not supported by the evidence, he contended. What the judge said did not justify the conclusion that internal relocation was not available. It was not the case that internal relocation had not been relied upon. It was dealt with at some length in the refusal notice which the Presenting Officer expressly referred to. There was no evidence that the MQM was actually able to extend its influence and he referred to an article from the Express Tribune newspaper appearing in the Respondent's bundle. Elements of the MQM had planted bombs which

generated antipathy and there was no evidence that they had any significant influence beyond Karachi.

5. He continued saying that Pakistan was a very large country and there was a general sufficiency of protection. He submitted that the judge had not addressed sufficiently the question of whether the Appellant would be at risk in Punjab province. Secondly, he said, the judge appeared to be saying that it would not be reasonable for the Appellant to relocate out of Karachi because his family were Mohajirs but there was no substantial evidence to support that. The refusal letter noted some discrimination but not of a serious nature. The response under Rule 24 argued that the Appellant would be recognised but it had not been explained how that would occur. He spoke Urdu which was the national language and it was not logical that he would face problems in that regard. The Appellant did have health problems but the judge had not found that these involved a potential breach of Article 3. He had previously been a successful businessman. There was nothing to point to it being unreasonable to expect him to live elsewhere.

6. In response to those submissions Mr Madanhi relied upon the Rule 24 response, he had put in. The points he made were that the judge had indicated that he had read the objective evidence and the reasons given were sufficient. There was no need for the objective evidence to show overwhelming evidence of risk or that the MQM had established actual influence in the Punjab province. The response then went on to say that in fact the judge was not making a finding on internal relocation but rather that the Appellant would be at risk wherever he went and it was unnecessary to consider the reasonableness of relocation. He continued that the MQM was the fourth largest party in Pakistan and was not necessarily confined to Sindh province. If the Appellant returned his first port of call would be to his home area. Relocation would be difficult because of his ethnic background. His family had been targeted. There were also significant medical issues.

7. Having considered those submissions I came to the view that there had been an error of law on the part of the judge. There was background evidence before him supporting the view that persons of Mohajir origin would not be at a real risk of persecution in Punjab province on account of their background. There was also evidence as to the limited reach of the MQM in areas other than around Karachi. The judge had not addressed these issues and had not given express reasons why the Appellant would face a real risk if he moved to another province such as Punjab. The finding made was inadequately reasoned having regard to the background evidence. It was not possible for the Respondent to ascertain from the determination the reasoned basis on which that element of the appeal succeeded

8. Having reached that view I asked for submissions on the questions of risk and internal relocation. It was also the case that the Appellant had pleaded that his removal would be in breach of Article 8 ECHR. As the

judge had allowed the appeal on other grounds this issue was not specifically addressed in the determination (see paragraph 47). The Appellant was present but there was no interpreter so that he was not in a position to give evidence. There was a reference to the prospects for relocation contained at paragraph 34 of his original statement. Having considered the submissions made and bearing in mind that in addition to himself I am also having to have regard to the position of the Appellant's wife and children in this country and that the Appellant appears to suffer from psychological difficulties I have decided not to make a final decision at this stage but that the best course is for the appeal to be relisted before me when if so advised the Appellant and his wife may give oral evidence and I will consider any further documentary evidence submitted by either party in accordance with the directions below.

9. As an anonymity direction was made in the First-tier Tribunal it is appropriate that it should be continued in this Tribunal and I make an order to that effect in the following terms. **Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identity the original Appellant or any member of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction may give rise to proceedings for contempt of court.**

Signed Date 12 December 2014

Deputy Upper Tribunal Judge French

Directions for Resumed Hearing

(1) The decision of Judge Camp has been set aside. However the credibility findings he made concerning the Appellant's potential treatment in his home area are preserved. At the resumed hearing the issues to be decided will be whether the Appellant would face a real risk of persecution or treatment in breach of Article 3 in any other part of Pakistan away from his home area, whether it would be reasonable to expect him to move to such an area if no such risk is made (having regard to his psychological condition and the position of his wife and children) and issues generally under Article 8 ECHR.

(2) Any further witness statements or other documents relied on are to be served upon the Tribunal and upon the other party at least five days before the resumed hearing.

(3) The hearing is listed before me at Birmingham on 8th January 2015. An Urdu interpreter will be required. The time estimate is one and a half hours.

Signed Date 12 December 29014

Deputy Upper Tribunal Judge French