



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/00730/2017
PA/00733/2017
PA/00737/2017
PA/00742/2017
PA/00747/2017

THE IMMIGRATION ACTS

Heard at Field House
On 4 June 2018

Decision & Reasons Promulgated
On 21 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

A S (FIRST APPELLANT)
P S (SECOND APPELLANT)
M S (THIRD APPELLANT)
A H (FOURTH APPELLANT)
MA S (FIFTH APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them.

This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Representation:

For the Appellant: Mr S Harding, Counsel, instructed by J McCarthy Solicitors
For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a challenge by the five Appellants against the decision of First-tier Tribunal Judge Rodger (the judge), promulgated on 11 August 2017, in which he dismissed their appeals against the Respondent's decisions of 6 January 2017. By those decisions, the Respondent had refused the protection and human rights claims of the Appellants. In essence the claims were based upon the first Appellant's particular historical profile. This involved the facts, accepted by the Respondent from the outset, that he had been involved in supplying missiles from US forces to Pakistani authorities and his involvement in opening up a school and a clinic in conjunction with a US citizen. These institutions were there to assist both male and female students. The Appellants, who lived in Peshawar, had received threats from the Taliban in the past, and this too had been accepted by the Respondent at first instance.

The judges' decision

2. In what is in many respects a careful and well-structured decision, the judge follows the Respondent's concessions of fact in relation to the first Appellant's background. He places significant weight upon an expert report from Dr Giustozzi. The judge concludes that the Appellants were at risk of persecution and/or Article 3 treatment in their home area. This risk was said to come from the Taliban and the TPP (see [60]). The judge was of the view that the core issue in the appeals was that of internal relocation. He took into account the fact that the first Appellant had been able to conduct certain business activities in Islamabad in the past and was able to earn what he regarded as sufficient sums to have funded overseas trips for himself and his family to come to the United Kingdom. Importantly, the judge then goes on in several paragraphs to find that the first Appellant and his family members could "reduce the risk" to them from the Taliban and/or the TPP by going to live in what he variously describes as "safe parts"/"safer neighbourhoods"/"safer parts" of other cities in Pakistan, including Islamabad. Reference to these locations are contained in [64], [68], [69], [70] and [72]. The judge's conclusion in essence is that provided they live in these "safe areas" within certain cities there would be no risk to them and it would not be unduly harsh for them to internally relocate in this manner.

The grounds of appeal and grant of permission

3. The succinct grounds of appeal make the following assertions. First, that the judge moved straight from an acceptance of risk in the home area to conclusions on internal relocation without specifically addressing the issue of risk elsewhere in Pakistan. Second, in the alternative to the first point, the judge had been wrong to conclude that the Appellants could be expected to live in certain, restricted, and unspecified “safe areas” within other cities in the country. It is suggested that such a state of affairs would be wholly unreasonable. Third, it is said that the judge made an error of fact in relation to the Appellant’s evidence of his earnings from certain property transactions. In oral evidence the Appellant had given a figure intended to relate to rupees, whereas the judge had assumed that this related to pounds sterling. This misapprehension had a material consequence, namely that the judge believed the first Appellant to have had a greater income than was in fact the case.
4. Permission to appeal was granted by Upper Tribunal Judge Allen on 19 January 2018.

The hearing before me

5. At the outset of the hearing I asked Ms Pal for her initial observations on the Appellants’ challenges. She sought to defend the decision, but acknowledged that the judge had indeed placed significant emphasis on the Appellants being able to live in unspecified “safe areas”.
6. Mr Harding posed the rhetorical question: what was meant by a “safe area”? This was unknowable and it would be unreasonable for the first Appellant and his family to live in “gated communities” or other restrictive areas within cities. He asked whether this would make it possible for the Appellants to earn a living or for the youngest child to go to school. Mr Harding submitted that such an existence would amount in effect to enforced self-confinement.

Decision on error of law

7. As I announced to the parties at the hearing, I conclude that the judge did materially err in law.
8. Initially I had thought that the judge may have conflated the issues of risk and internal relocation. However, on reflection it is just about clear enough that he has dealt with these issues separately, with reference to [68] and [69]. However, the real problem in the decision is this. It is readily apparent to me from a reading of the decision, across numerous paragraphs, that the judge has based his conclusions on the avoidance of risk and the possibility of internal relocation on the premise that the family would have

to, and would be able to, live in the types of locations mentioned previously. It is very difficult to see how these supposed “safe” zones, as it were, could ever be properly identifiable. Even if the first Appellant had a property in Peshawar which he could sell, the proceeds of this would be finite and it is very difficult indeed to see how there was any sufficiently strong evidential basis to conclude that the entire family could live in the “nicer”, more affluent, restricted, and protected areas within other cities. The judge says nothing about what might happen if any of the Appellants had to leave these areas in order to work or, in the case of the youngest Appellant, attend an educational institution. On the basis of what is said on the face of the decision and in light of the expert report, which was of course relied on heavily by the judge in material respects, the implication is if the Appellants were not able to reside and *exist wholly within* the “safe areas” then there would indeed be a risk to them from the Taliban and/or the TPP

9. In my view, whilst one can perhaps see where the judge was attempting to go with his conclusion as to possible safe areas, as a matter of law this was simply not permissible. In other words, the expectation that the Appellants could reasonably avoid risk of harm by having to live in unidentified, very restricted, geographical zones was not a sustainable one because the premise upon which it was founded is flawed. This is the case whether or not there was a mistake of facts as to the first Appellant’s earnings.
10. On that last point, it appears to me as though there was a genuine question of cross purposes in this case. I accept that Mr Harding was clearly of the view that the answer related to a sum in rupees, whereas it is equally clear that the judge believed the response related to pounds sterling. I do not blame either for failing to have this point clarified at the hearing because neither believed that this was necessary. However, I am satisfied that as a matter of pure fact, the sum related to rupees and not pounds sterling. For present purposes this is immaterial.
11. In light of the above it is appropriate for me to set the judge’s decision aside with reference to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.

Remaking the decision

12. Both representatives were agreed that I could and should remake the decision in these appeals on the evidence before me. I entirely agree. There are virtually no disputes as to the facts in these cases and no further evidence is necessary.
13. In remaking the decision, I have had regard to the judge’s findings, the Respondent’s reasons for refusal letter and the Appellants’ bundle, with particular reference to the unchallenged expert report.
14. Mr Harding submitted that there was a risk throughout Pakistan. The first Appellant and his family could not be expected to live in any confined so-called “safe areas” within other cities. Whether or not there was a home to sell in Peshawar was really beside the point.

15. For her particular, Ms Pal referred to paragraph 25 of the expert report. She submitted that the first Appellant was not of sufficiently high profile to be targeted even if he resided outside of any “safe areas”.
16. In reply Mr Harding referred me to paragraphs 14 and 19 of the expert report in relation to the ability of the Taliban to collect and disseminate intelligence. In relation to the issue of state protection he referred me to paragraphs 20 to 22 of the report and paragraphs 2.2.1 and 2.2.3 of the Respondent’s Country Policy Information Notes on Pakistan, dated June 2017.

Findings of fact

17. In the circumstances of these appeals, my findings can be briefly stated. I find that the first Appellant has the profile accepted by the Respondent throughout and reaffirmed by the judge below. He was involved in the transfer of missiles and in the establishment of school and clinic. Both these activities were quite obviously seen as being extremely adverse to the whole “ethos” of the Taliban and TPP. It has been accepted throughout that the family faced serious threats from these two organisations. I find that the first Appellant may indeed have a property in Peshawar. I find that the first Appellant was able to conduct limited business activities in Islamabad for a period of only two months in late 2013. Looking at the evidence of the first Appellant’s earnings for myself, I am satisfied that his previous reference to figures of between 100,000 and 200,00 relates to rupees and *not* to pounds sterling. The Appellant has been deemed to be generally credible by both the Respondent and the First-tier Tribunal and in my view it is wholly plausible that the figures related to local currency, something that the first Appellant would have been thinking of as a matter of second nature, as it were.

Conclusions on the protection claim

18. First and foremost, I conclude that the Appellant and his family would be at risk in their home area of Peshawar. It is quite obvious that there would be no state protection for them here whatsoever. In so saying I have regard to the expert report and the Respondent’s own policy guidance on Pakistan.
19. I turn to the issue of risk elsewhere in Pakistan. Again, with reference to the expert report and having regard to what the First-tier Tribunal said, it is possible that the Appellant and his family could attempt to reduce the risk to them by living in restricted, affluent, and protected areas within other cities in Pakistan, including Islamabad. Before turning to the question of whether this would be realistic and reasonable, I deal with the existence of a risk outside these potentially safe zones. In my view there is such a risk. The first Appellant may not have the highest of profiles, but his historical circumstances are nonetheless significant. He undoubtedly remains at risk in his home area and I place significant weight upon the expert report, in

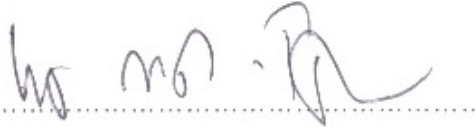
particular passages relating to the ability of the Taliban and TPP to gather and disseminate information about those of adverse interest to them. There was no suggestion that this ability would somehow disappear or prove entirely ineffective simply because the family moved to Islamabad or another major city in the country. The risk may possibly reduce somewhat in an extremely large metropolis such as Karachi, but in my view it would still cross the threshold of being reasonably likely to exist. In all the circumstances, I conclude that there would not be state protection, having regard to the expert report and the Respondent's own position, as expressed in the CPIN. The Taliban and TPP intend to do the Appellant his family harm, and the Pakistani authorities would simply be unable to offer sufficient protection.

20. I return to the issue of the "safe" zones. I take into account the possibility that the Appellant could sell the house in Peshawar and raise a certain amount of funds. This would be a finite pot, as it were. It may assist in finding certain accommodation in the short term but on any view, it cannot reasonably be expected to form an ongoing source in the medium term. I take into account the fact that the Appellants must all be able to live a reasonable life, at least by Pakistani standards. This would include the ability to work and to attend educational institutions if appropriate. In my view it is near impossible to conclude that the Appellants would be able to reasonably function as citizens of their country by having to remain within the tight geographical confines of any possible "safe" zone. In addition, these "safe" zones are, in a sense, unknowable, and it is almost impossible to be able to ascertain what they might consist of.
21. In order to avoid the risk of detection by the Taliban and TPP the Appellants would have to in effect live in what Mr Harding accurately referred to as "self-confinement" within very restricted geographical areas. These areas may well include diplomatic enclaves where private security is in place. The cost of residing in such an area, particularly where there is a family of five, would undoubtedly be high. Having regard to the well-known case law on internal relocation, including for example Januzi, I conclude that even if a real risk could be avoided by living within these "safe" zones, this would not be a reasonable option in all the circumstances. It would amount in effect to a form of captivity, or at least a severe restriction of liberty, and that cannot be an appropriate option for a family seeking to avoid persecution by ruthless and brutal organisations. A proper application of the internal relocation principle does not countenance such a state of affairs.
22. In light of the above, the Appellants are all refugees and persons whose return to Pakistan would expose them to Article 3 ill-treatment.
23. The appeals are therefore all allowed.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside.

I remake the decision by allowing the Appellants' appeals on the basis that the Respondent's refusals of their protection claims are contrary to the United Kingdom's obligations under the Refugee Convention and the Respondent's refusals of the human rights claims are unlawful under section 6 of the Human Rights Act 1998.



Signed

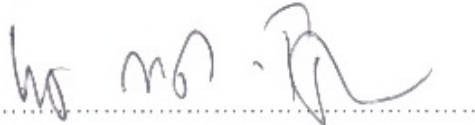
Date: 18 June 2018

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT

FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make full fee awards of £140.00 in each appeal, making a total of £700.00.



Signed

Date: 18 June 2018

Deputy Upper Tribunal Judge Norton-Taylor