



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01534/2017

THE IMMIGRATION ACTS

Heard at Field House
On 13 April 2018

Decision & Reasons Promulgated
On 19 April 2018

Before

UPPER TRIBUNAL JUDGE FINCH

Between

[J F]

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. A. Burrett of counsel, instructed by J D Spicer Zeb Solicitors

For the Respondent: Ms Z. Ahmad, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant, who was born on [] 1980, is a national of Pakistan. He entered the United Kingdom, as a visitor, on 15 July 2016 and applied for asylum on 10 August 2016. His application was refused on 30 January 2017 and he appealed against this decision.
2. His appeal was dismissed by First-tier Tribunal Judge Fox in a decision, promulgated on 18 September 2017, and First-tier Tribunal Judge Chohan granted him permission to appeal on 24 October 2017. The Respondent did not lodge a Rule 24 response.
3. The case came before me for an error of law hearing on 16 February 2018 and in a decision, promulgated on 20 February 2018, I found that First-tier Tribunal Judge Fox had made an error of law and allowed the Appellant's appeal and set aside First-tier Tribunal Judge Fox's decision.
4. However, I preserved the finding by First-tier Tribunal Judge Fox in paragraph 48 of his decision that "the available evidence demonstrates that the appellant is a high-profile performing artist" who is at "risk of persecution by the Taliban" in Pakistan.

THE SUBSTANTIVE REHEARING

5. The Appellant did not appear but was represented by counsel, who assured me that he had the necessary instructions to proceed. I heard oral submissions by counsel for the Appellant and the Home Office Presenting Officer and have referred to these submissions, where appropriate, in my findings below.

SUBSTANTIVE DECISION

6. Article 1 of the 1951 Convention Relating to the Status of Refugees, as amended by the 1967 Protocol Relating to the Status of Refugees, states that:

"A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(2) ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”.

7. First-tier Tribunal Judge Fox found in paragraph 48 of his decision that “the appellant [had] therefore established a well-founded fear of persecution on the basis of imputed political opinion”. At the substantive hearing, the Home Office Presenting Officer did not dispute that this was the case and his written submissions noted that the re-hearing before the Upper Tribunal had been set down “for further oral submissions in relation to the issue of whether there would be a sufficiency of protection for the appellant in Pakistan”.
8. When considering whether the Appellant would be able to obtain a sufficiency of protection from the Pakistani Authorities, I have first considered the nature of the persecution which he fears. Regulation 5 of Refugee or Person in Need of International Protection (Qualification) Regulations 2006, which implements the Qualification Directive 2004/83/EC, defines an act of persecution as one which is:
 - (a) sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms; or
 - (b) an accumulation of various measures, including a violation of a human right, which is sufficiently severe as to affect an individual in a similar manner as specified in (a)'
9. In addition, Regulation 5(2) states that:

“An act of persecution may, for example, take the form of:

 - (a) an act of physical or mental violence...”
10. In paragraph 43 of his decision First-tier Tribunal Judge Fox found that the Appellant would be recognised as a refugee but for there being a sufficiency of protection in

Pakistan. He also found in paragraph 45 that the Appellant's subjective evidence was consistent with the object evidence. As a consequence, he implicitly accepted that the Appellant had been persecuted by the Taliban in the past for the purposes of the Refugee Convention. In particular, it was the Appellant's subjective account that the Taliban abducted his children in 2012 and threatened to harm them unless he agreed to give up his singing career. They also subsequently demanded a ransom for their return. In the Spring of 2014 the Appellant was shot in his right leg and he was shot at on a second occasion in 2015 when he was in his car. This incident was followed up with threats over the telephone from the Taliban.

11. The objective evidence in pages 75 to 80 and 100 to 149 of the Appellant's Bundle confirmed that both the Appellant and his wife, [NI], were very high profile popular singers in Pakistan. Many of the articles also referred to other singers who had been killed by the Taliban and it was significant in my view that many of them had been shot. Items 3, 6, 7 and 8 of the Appellant's Supplementary Bundle also refer to killings of popular singers.
12. It was not disputed that the Taliban were non-state actors for the purposes of Regulation 3(c) of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, which implements the Qualification Directive 2004/83/EC, and that the Pakistani security services were potentially actors of protection for the purposes of Regulation 4(1)(s):
13. Regulation 4(2) mirrors the principles set out by the House of Lords in *Horvath v Secretary of State for the Home Department* [2001] 1 AC 489, and states that:

"Protection shall be regarded as generally provided when the actors [of protection] take reasonable steps to prevent the persecution or suffering of serious harm by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and [a refugee] has access to such protection".

14. However, the number of singers killed by the Taliban in Pakistan raises a question as to the ability of the Pakistani authorities to take reasonable steps to prevent them being killed.
15. The Home Office Presenting Officer relied on *KU (Pakistan) v Secretary of State for the Home Department* [2012] EWCA Civ 107 where Lord Justice Sullivan held, in paragraph 23 that:

“It is common ground that the standard to be applied is not one which eliminates all risk or which offers a guarantee of protection, it is rather a practical standard which takes account of a state’s duties to its citizens”.
16. However, in the case of *AW (Sufficiency of Protection) Pakistan* [2011] UKUT 00031 (IAC), Lord Bannatyne stressed that:
 - “1. At paragraph 55 of Auld L.J.’s summary in *Bagdanavicius* [2005] EWCA Civ.1605 it is made clear that the test set out in *Horvath* [2001] 1 AC 489 was intended to deal with the ability of a state to afford protection to the generality of its citizens.
 2. Notwithstanding systemic sufficiency of state protection, a claimant may still have a well-founded fear of persecution if authorities know or ought to know of circumstances particular to his/her case giving rise to the fear, but are unlikely to provide the additional protection the particular circumstances reasonably require (per Auld LJ at paragraph 55(vi)).
 3. In considering whether an appellant’s particular circumstances give rise to a need for additional protection, particular account must be taken of past persecution (if any) so as to ensure the question posed is whether there are good reasons to consider that such persecution (and past lack of sufficient protection) will not be repeated”.
17. The objective evidence, referred to above, indicates that the Taliban viewed popular singers as easy targets, who would generate widespread publicity for the Taliban’s views and that attacks on them would serve to make others afraid to sing at or attend

concerts. It also showed that, despite the authorities being aware of the numbers of singers being killed, no additional protection was being provided to them.

18. This equates with the Appellant's own subjective evidence, which was found to be credible by First-tier Tribunal Judge Fox. For example, in his asylum statement, the Appellant said at paragraph 18 that, after his car had been shot at, he went to a police station in Peshawar and asked for some security to get home. However, he was told that they were not his servants and that they could not give him any protection. He also said that he then had to rely on some friends to escort him home and arranged for his wife and children to go into hiding with friends.
19. The Home Office Presenting Officer submitted that, as the Appellant's wife had done in the past, the Appellant could provide his own security. However, this would not amount to a sufficiency of protection for the purposes of the Refugee Convention as each state has a responsibility to provide a certain level of protection for its own nationals.
20. I have also taken into account the fact that Rule 339K of the Immigration Rules and also Article 4.4 of Council Directive 2004/83/EC *on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted* state that:

“The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution and such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated”.
21. The Home Office Presenting Officer and the objective evidence relied upon by the Respondent did not indicate that there were good reasons to conclude that the situation for singers likely to be targeted by the Taliban had improved in any way since the Appellant was last in Pakistan. In contrast, the Appellant relied on a further

article from Freemuse, entitled "The State of Artistic Freedom 2018" [Pakistan excerpt], dated 15 March 2018, which stated that:

"The state's overt and covert support for religious and militant groups as part of its military strategy in Afghanistan and to thwart Indian influence in Kashmir, has created ample space for religious groups to impose their own brands of Islam on the people. Most of these militant and religious leaders consider music and dancing as sinful and discourage them often through violence".

22. The Appellant's wife was mentioned as one of the singers who had come under pressure from the Taliban "to either quit music or shift to devotional music".
23. The Home Office Presenting Officer submitted that the Appellant could avoid the attention of the Taliban by resuming his previous employment as a property developer. However, this ignores the fact that the Taliban did not merely target the Appellant because of his chosen profession but targeted him as his chosen profession identified him as someone who was opposed to their religious and political view of the world. Therefore, any assertion that he could avoid persecution by moderating his purported religious/political views would be commensurate with requiring him to hide his true beliefs in order to avoid persecution. It has been confirmed in *HJ (Iran) v Secretary of State for the Home Department* [2010] UKSC 31 and *RT (Zimbabwe & Ors v Secretary of State for the Home Department* [2012] UKSC 38 that a person is a refugee if a return to a country of origin would lead to such a situation.
24. In *SA (political activist - internal relocation) Pakistan* [2011] UKUT 30 (IAC) Lord Bannatyne also found that:

"The pitfalls of requiring a person to act contrary of his normal behaviour to avoid persecution have been further emphasised by the Supreme Court in *HJ (Iran)* [2010] UKSC 31".
24. For all of the above reasons, I find that there would not be a sufficiency of protection for the Applicant in Pakistan and that for the reasons previously made he has a well-founded fear of persecution there.

DECISION

- (1) The Appellant's appeal against the decision by Respondent to refuse to grant him asylum is allowed.

Nadine Finch

Signed

Date 17 April 2018

Upper Tribunal Judge Finch