



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**First-tier Tribunal No:**  
**PA/12384/2019**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 29 June 2023**

**Before**

**UPPER TRIBUNAL JUDGE OWENS**

**Between**

**FK**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Bazini, Counsel instructed by Direct Access  
For the Respondent: Ms Cunha, Senior Presenting Officer

**Heard at Field House on 30 January 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

**History of the Appeal**

1. This appeal comes before me for re-making. I set aside the decision of First-tier Tribunal Judge Parkes sent on 10 March 2020 dismissing the appellant's protection claim on the basis that there had been a material

error of law for the reasons given in the decision dated 18 August 2022 appended to this decision at Annex A.

### **Appellant's Immigration History**

2. The appellant is a citizen of Pakistan born on 28 February 1984. He is currently 39 years old. He originally entered the United Kingdom as a student using his own identity in 2011. He claimed asylum on 15 September 2014. His claim for asylum was refused on 5 March 2015 and his appeal was dismissed by the First-tier Tribunal. The appellant appealed to the Upper Tribunal who set aside part of the First-tier Tribunal decision and re-made the decision, again dismissing the appeal. In a decision sent on 23 May 2016 Upper Tribunal Bruce made findings that the appellant was at real risk of serious harm from the Tehrik -i-Taliban Pakistan ("TTP") the "ideological twin" of the Afghan Taliban in his home area of Swat valley but found that the TTP would not pursue the appellant elsewhere in Pakistan and it was reasonable for the appellant to relocate internally.
3. The appellant submitted further submissions and documentation on 11 April 2017 which were rejected with no right of appeal on 5 September 2018. As a result of further submissions dated 5 September 2019 including up to date expert evidence the Secretary of State accepted that the appellant had a fresh claim for asylum and refused his human rights and protection claim on 25 November 2019. This is the current decision under appeal. There have been significant delays in this appeal because of the pandemic and then due to sickness.

### **The issue in this appeal**

4. The starting point in this appeal are those findings of UTJ Bruce made on 23 May 2016 (as set out at paragraph 2 above) which were preserved in my decision setting aside the decision of FtT Judge Parkes. The appellant asserts that the new evidence including the expert reports demonstrates that he will be at real risk of serious harm from the TTP in Islamabad, that there is no sufficiency of protection and that because of a change in his family circumstances, it would be unreasonable for him to relocate to a safe area. He also asserts that there would be "very significant obstacles" to his integration. The respondent opposes each of these submissions.
5. These are the issues in the appeal.

### **Evidence before me**

6. I had before me the original respondent's bundle containing inter alia the appellant's further submissions, the original decision under appeal, a statement dated 2 September 2019, a country expert report and the decision of Upper Tribunal Judge Bruce dated 10 May 2016. I had before me the original appellant's bundle and an updated appellant's bundle of 144 pages which included inter alia a skeleton argument and an updated expert report.
7. The original bundle contained the EASO Pakistan Security Situation Report dated 2018. The most recent EASO report is dated October 2021, and this was the report referred to by both representatives in their submissions. It

is available on-line. There was also before me as well as the “County Policy and Information Note” Background information - including internal relocation 2020. This has been updated and the latest version in force in relation to internal relocation is dated April 2023 which was published just after the appeal hearing. The later report reiterates much of what is said in the earlier report. If anything, the situation in Pakistan has deteriorated since 2018 as set out in the expert report due the re-emergence of the Taliban in Afghanistan and humanitarian disasters. I have considered all of the evidence before me including evidence not individually referred to here.

### **Oral evidence**

8. I heard oral evidence from the appellant who was cross examined by Ms Cunha. He adopted his previous statement dated 11 February 2020. He gave his evidence in English.
9. The appellant’s oral evidence was as follows: His family remain in the Swat valley in their village in Khwaza Khela. His father is in poor health. He had an open-heart operation and he has diabetes. He is no longer able to collect the rents from the family properties himself. The appellant has three brothers. His brother J has returned from Dubai. He was working there for a company delivering cars but had a bad accident and was sacked and lost his visa. This brother has taken over from his father and is collecting the rents on the properties and shops the family own as well as tending the land and orchard where they grow vegetables for their own consumption. A second brother, B, was on a fully funded scholarship to study in China. His course was interrupted by the Covid pandemic, and he returned to Pakistan to complete his studies on-line. A third brother, A, has finished his studies. He is looking for work and is currently working as an intern in an architect’s company in the local area although he is not being paid a proper salary.
10. The family live in a “joint family system” in their ancestral home. The family members that live there are the appellant’s mother and father, his brother J, his brother J’s wife and their four children, his younger brothers, A and B and his own wife and his two children. His children are now aged 12 and 8 and attend private school.
11. The only income received by the family is that from their rental properties. The appellant’s father has provided a breakdown of income and expenses for 2017. (There was no up to date breakdown for 2022 in the latest bundle). The family income is 96,7000 rupees per month equating to £743 per month in 2017. Outgoings came to £600. It is said that this is enough for the family to survive on without having to rely on government financial support packages. However, there is little spare money, and the family outgoings are low because the family owns their own home and grows their own food. Prices are relatively cheap in the village. The children do not receive money from the Benazir Income Support Programme or any other government help.

12. The appellant used to send remittances to Pakistan when he was working lawfully in the UK prior to ceasing work in 2017. When he was in the UK as a student, he had permission to work and worked first doing agency work, for instance as a kitchen porter. He then obtained a job at the Co-op working part-time and full time according to whether it was term time or in the holidays. After he was granted a post-study work visa, he obtained a clerical job working for an agency (Intelligent Processing Solution Ltd) as a level 7 processor working for different banks including Barclays and HSBC. He worked there until he no longer had permission to work. During this time, he sent about £17,000 to his family in Pakistan. He has not sent any money since he stopped working in 2017. He also borrowed money in order to fund his post graduate studies in the UK and has now repaid this money. He explained that NK who is said to have lent him £1500 for his post graduate studies in 2012 is a second cousin who lives in Nottingham.
13. Since 2017 he has been living with a friend of Pakistani origin from the Punjab who he met in the UK. His friend Mr ZM allows him to live in his accommodation rent free and gives him some food. He estimates that his friend spends about £200 maximum on him per month. He has other friends in the UK. He does not think any of his friends would send money to Pakistan because they know that once he returns there, he will not be able to pay the money back because it will be so difficult to get a job. His friend has an ancestral home close to Faisalabad but is not able to accommodate him in Pakistan.
14. The appellant is terrified of returning to Pakistan. Things are much worse in his own district since the Taliban took over Afghanistan. In the Swat region, the TTP have set up a separate government and they are recruiting more members. There is a lot of sympathy for them in Pakistan. In his home area there is also a lot of opposition. When he and his father were speaking out in 2007, there were few people brave enough to do so. Now there are more protests, but these are not being reported by the government. The appellant is very afraid. He has already been bombed. His father rarely leaves the house and still has a bodyguard assigned to him.
15. He fears that wherever he goes in Pakistan, the TTP will find out that he spoke out against them, and they will target him. It is very stressful for him also knowing that his family are living in a decreasing security situation. The appellant became quite tearful when giving this evidence.
16. He is sure that wherever he goes in Pakistan the local neighbourhood will become aware of his presence and of who he is and there is a risk that violent jihadists who move through radical madrassas will learn where he is and target him. The Red Mosque in Islamabad is openly defying the government and supports the TTP. There was a recent TTP motorcade incident at a checkpoint. If he returns to Pakistan, he will be living in terror. He feels a great deal of anxiety and hardly sleeps. He is fearful about being deported.

17. He has only visited Islamabad once or twice in his life. He cannot afford to live in Islamabad. It is ten times more expensive than in his village. The rents are very expensive. People fall into two situations. They are either people who have owned property there for a long time or who are very rich and who can afford to purchase a home or rent a flat, or they are people who live in insecure slum areas with no sanitary conditions. The situation is worse because there is a lot more migration into the cities as a result of increased insecurity, global warming and the recent floods. There were 33,000 applicants in a stadium for 1,600 jobs as a police officer. There are fewer government jobs available.
18. It will be very difficult for him to find employment because of the poor economy and the high level of unemployment. Further, the appellant does not have any contacts outside his home area of Swat. His work experience is as a clerk or administrator. He does not have specialist skills and even were he to find work he would not be able to afford to pay for the rent or outgoings without help, which he does not have.
19. He is not able to set up a business because he does not have the capital and no means of obtaining it. It is likely that he will end up living in a slum. He was asked if he was aware of the funds available from the Home Office for returnees. He confirmed that he was not but that £1,600 would not last very long.
20. In 2018 he had back pain and sciatica and took pain medication. He also takes omeprazole for his stomach. He also takes sleeping medication.

## **Submissions**

21. Ms Cunha for the Secretary of State relied on the reasons for refusal dated 25 November 2019. She submitted that the appellant is not at risk in Islamabad.
22. The appellant's father is no longer actively involved in opposing the TTP. In the appellant's home area, Pashtun people are demonstrating against the TTP. Many people are now vocalising against the Taliban. There is no reason the Taliban would care about the appellant's protests anymore in view of this. There is evidence in the EASO report that targeted killings have reduced. The EASO report suggests that in 2020 there were 483 security incidents in what is a huge country. She accepted that there was not much evidence postdating the Taliban takeover in Afghanistan. There is a bigger threat from global warming and floods.
23. She submitted that the appellant is not at risk in Islamabad following the findings of UTJ Bruce. There is nothing to suggest that the appellant has a significant profile. TV stations do not hold on to old recordings.
24. Further there is sufficiency of protection in Islamabad. There is a police force to which he has access.

25. In respect of internal relocation. She relied on SC (Jamaica) v SHHD [2022] UKSC 15. What is reasonable will entail a holistic consideration of all of the factors.
26. Ms Cunha submitted that the appellant is highly educated. His family are a middle class family who do not receive government subsidies. He would not be returning to the slums in Islamabad. He could avail himself of the voluntary return funds. He has done all sorts of jobs in the UK. He speaks English, Urdu and Pashtu and is able express himself eloquently. He has obtained jobs in the UK even though English was not his first language. He has been able to make friends who are financially strong enough to lend him money and provide him with support. His friends and family have given him help and advice. He would have contacts if he went to Lahore. He has connections in the Punjab which could benefit him on return. He would be considered more of an insider in a multiethnic city. His family would be able to visit him. The appellant's evidence that it would be impossible for him to obtain work is speculative. It is neither here nor there that Islamabad is expensive. When deciding on what is unreasonable what is required is not a comparison between conditions in the UK and Pakistan but between the situations that people live in Pakistan. The appellant is in a different position to other Pakistanis who are not educated, have not lived in the UK and do not speak English. There are international corporations in Islamabad and there are opportunities. The appellant has demonstrated fortitude in the UK.
27. There is government support for those living below the poverty line. The appellant can return. He is enough of an insider. He has family support and friends. He has managed to find work in the UK notwithstanding that he was a foreigner here.
28. Mr Bazini relied on his skeleton argument. He submitted that the starting point is the findings of Upper Tribunal Judge Bruce from [16] onwards. The appellant's family spoke out against the Taliban. Their objections were made public. There was a TV discussion in 2009. The family moved around before returning. The appellant's father has a bodyguard. The TTP arrested someone with the same name of the appellant. The appellant is associated with his father. His brothers were not involved and are not at risk. There is a serious risk of harm to the appellant in his home area of SWAT.
29. The risk in Islamabad is more remote. The appellant is not high profile. UTJ Bruce does not suggest there is no risk. She finds that the TTP would not enter Islamabad specifically to target the appellant.
30. Mr Bazini's submission is that the appellant's identity including the identity of his father will come to be known by his neighbours and local community. He would be identified as coming from the Northwest Frontier Province as found by UTJ Bruce. The realities of Pakistani society mean that his local community would come to learn of his background and opposition to the TTP. He would be of interest coming from the Swat and having lived in the

UK. Ms Cunha did not seek to challenge this. The risk to him would be from violent jihadists who had been based in Swat moving to a radical mosque in Islamabad and recognising him or learning of his presence. The security situation has deteriorated since 2019 because of the Taliban winning power in Afghanistan in 2021. There is an increase in the flow of violent jihadists into mosques in Islamabad. There are supporters of the TTP in the government and in local communities. The TTP is a powerful force in Pakistan. It is supported by government ministers and the Afghan government. There is a risk that the TTP will come to learn of his presence and decide to act. The risk has increased. The border areas are flooded with the TTP. The radical seminaries in the cities are open for business. They are busier and bolder. There are more militants and attacks are increasing. A one in ten chance of being persecuted amounts to a “real and substantial” risk. On the lower standard the appeal should be allowed.

31. Mr Bazini argued that the EASO report is dated 2021 and pre-dates the growth of the TTP. He points to the corruption in the security forces. There are chronic failures in police training and effectiveness. The judiciary lacks integrity and capacity. Attacks by militants are increasing. The appellant will not receive any additional protection because of the increased risk to him of being a target elsewhere in Pakistan. He will not be allocated a bodyguard.
32. As far as internal relocation is concerned, the family’s circumstances have changed since UTJ Bruce’s decision. She acknowledged that Islamabad is expensive but found that his family would be able to support him. His family are no longer able to support him. His father is ill. None of his brothers are in employment. The brother in China has returned from his studies. His brother who was working abroad has returned home. The only income is from rents. The appellant paid for his studies in the UK by borrowing money. The appellant cannot afford to live in Islamabad because of the high rents and lack of employment. UTJ Bruce’s findings in the earlier appeal are no longer valid in respect of internal relocation. Further, he would not be able to live with his wife and children. The appellant would be living in the slums of Islamabad and would also be living in constant fear that his background would be discovered.
33. Even if he were to return with the voluntary return fund, this would be eaten up within a month or so. The CPIN refers to the lack of housing. 30% to 50% of the population live in the slums which are unregulated and every so often are pulled down. It is unreasonable for the appellant who has stood up against the brutality of the Taliban in his home area and is at risk of persecution there, to live in such poor living conditions.
34. Finally, the appellant’s mental health is very fragile. Even in the UK he is terrified and does not sleep. In Pakistan he would be looking over his shoulder for people wishing to harm him. There is no infrastructure in the slums. There is very little employment and unemployment is high. It is speculative that he will be able to find employment when his family do not

come from the city have money or connections in the proposed area of relocation. The Secretary of State does not submit that his wife and children can live with him in Islamabad. Swat is a 5-to-6-hour drive away. It would be unduly harsh for him not to live with his wife and children. He cannot integrate without his wife and children. The Secretary of State concedes that there are huge economic problems in Pakistan and that global warming, and the floods have made it worse. Hundreds of thousands of people are living in very poor conditions. The Secretary of State has not explained why it would be reasonable to expect the appellant to relocate when all of the evidence suggests the opposite.

### **Preserved Findings**

35. The following findings are preserved from the Upper Tribunal Judge Bruce's decision:
- a) The appellant is from the Swat area of Pakistan,
  - b) His father was a member of the village defence committee "VDC" in his home area.
  - c) He and his father were injured in a Taliban bomb attack in mid-2008.
  - d) The appellant was interviewed anonymously in February 2009.
  - e) The appellant appeared on television in April 2009 and criticised Taliban leaders and the regime in Swat.
  - f) He returned to Pakistan without incident in 2013 and stayed in his home village for 5 days.
  - g) His family remain in Swat. The most recent threats were made in November 2014 by way of a night letter from the Taliban.
  - h) The appellant is at risk of serious harm in his home area Khwaza Khela in Swat. There is no sufficiency of protection for him there.
  - i) He previously lived in Peshawar without problems.
  - j) The appellant's father was protected by bodyguards.
  - k) The appellant is not a high target profile in Islamabad.
  - l) The Taliban would not pursue the appellant into Islamabad.

### **Further findings**

36. In order to decide whether the appellant would be at risk of serious harm in Islamabad or whether it would be unreasonable for him to relocate internally in Pakistan, I am required to make some additional findings taking into account the up-to-date evidence including his witness statement, that of his father, a breakdown of income and expenditure as well as the appellant's oral evidence and expert evidence.

### **Risk to the appellant in Islamabad**



37. The starting point is the finding of UTJ Bruce that the TTP would not pursue the appellant into Islamabad.
38. The risk is now premised on him being randomly recognised or on violent jihadists learning of his presence and targeting him.
39. I find firstly that there is a very low risk of the appellant being randomly recognised. He last appeared on TV in 2009, 14 years ago and there are no TV recordings kept. His appearance will have changed, and he can mitigate the risk to himself of randomly encountering a violent jihadist by avoiding areas around radical madrassas (as stated by the expert). I find given the tight security in Islamabad that violent jihadists would not feel able to freely roam the streets and would remain in areas where they were less at risk from security forces. In my error of law decision, I found that a similar finding which was made by the previous judge was sustainable and in line with UTJ Bruce's decision.
40. I turn to the risk of the appellant being targeted by a violent jihadist who learns of his presence in Islamabad.
41. At paragraph 11 and 12 of his original report Dr Bennett-Jones states:

“[11]Because Pakistan has such a large population it is often assumed that individuals can resettle and disappear without trace. Those with resources – Osama bin Laden comes to mind – can manage to do it but for most people, it is not a realistic aspiration. The residents of Pakistan's major cities tend to be segregated into districts based on ethnic and religious affiliation and as a rule, everyone knows everyone else's business. New arrivals in a city district are widely discussed as the community tries to establish who they are and where they come from. Working out the identity of neighbours is especially important in a country where militants are active and try to conceal themselves among the general population. Similar considerations mean an employer would be reluctant to take someone on without having a pretty clear idea as to his family background, religious affiliation etc.

[12] To some extent FK's status as returning British Pakistani would be of some benefit to him: it could help him explain why he suddenly turned up in a district where he had no other connections. He could pretend his family was in the United Kingdom. But that advantage could be outweighed by the disadvantages of his new neighbours being cautious as to why he had not remained in the United Kingdom. There would inevitably be speculation that he was trying to get away from some legal or family problem. It is reasonable to assume that before long, FK's neighbours would work out his background and the identity of his father.”
42. He also stated:

“That FK would be attacked on return to Pakistan would be far from a certainty, but wherever he was in the country, he would need to be vigilant and would be well advised to remain as discreet and low profile as possible. He should avoid living near or moving close to any radical madrassa or mosques for fear that he would be recognised. Although he could go

unnoticed by his enemies for a considerable period of time over the medium to long term, he would have a genuine reason to be anxious and worried about his security”.

43. Dr Bennet-Jones provided an update on 16 January 2023. In respect of risk, it states the following at paragraph 14:

“Whilst I think Mr Bazini accurately reflects the point being made in the initial report, having re-read all the material in this case, I think that the fact that FK stood up against the Taliban gave him prominence. People do talk about these influential families, and it is my view very likely that if FK moved to Islamabad and had any social contact with other Swatis word would get out that he was there. I take the point of the First-tier Tribunal that this is speculative. However, I think it is an assessment grounded in the realities of Pakistani society”.

44. And at 16:

“It is true that someone may have misplaced concerns. However, I reaffirm my assessment in the initial report that there would be genuine reasons for concern in this case”.

45. I accept the views of the expert expressed above. The expert evidence was not challenged by the respondent. I accept that in Pakistan for cultural and social reasons, to the lower standard it is likely that when the appellant arrives in a new community his presence would be noticed, and his background discussed as the community would want to know his family background and that this applies to any new arrival in a community in Pakistan because the nature of society there. I therefore accept that before long members of his own new local community would find out that he was from Swat, that his father was part of a village defence committee and also that his political views were in opposition to the TTP. I also find that his presence would probably become known to others not only in his local community but in the wider Swati community in Islamabad because his father was a village elder who he describes as head of the village or the “khan of the village”. I agree with the expert that word is likely to get out that he was there.
46. The issue is whether this information would come to the attention of a violent jihadists in a radical madrassa who would choose to act on that information.
47. In his latest report dated 16 January 2023 the expert provides an update on the security situation in Pakistan. In his view the security situation has deteriorated because of the Taliban winning power in Afghanistan in 2021 well after the date of UTJ Bruce’s decision.
48. I am satisfied that the expert report is more up to date than the EASO report which sets out in the detail the number of security incidents and attacks in 2020 and 2021. I accept that this report does not take into account the deteriorating situation since the Taliban took over Afghanistan.

49. The TTP having lost control of Swat and been defeated in 2007 to 2011 are now regrouping and have re-established themselves in the northwest province of Khyber Pukhtoonkhwa in general and in the Swat valley in particular. The law-and-order situation in that area is worsening. There have been talks between the Pakistani government and the military. There were developments in 2022 such as the kidnapping of police and army personal and the establishment of checkpoints. In September 2022 a roadside bomb in Swat killed 8 people. A former member of a village defence committee and two policemen were among the victims of the attack and there were numerous other incidents in the same area. There were large scale protests in October 2022 against the targeting of a school van. The incidents are set out from paragraph 23 to 25 of the expert report.
50. The expert then goes on to consider the ability of the Taliban to re-establish themselves in Islamabad.
51. He refers to the Red Mosque again emerging as a focus for Pakistan Taliban activity. This was previously a national centre for violent jihadists. The Mullah has been openly defying the authorities. The TTP have also threatened senior politicians in Pakistan. In December 2022, a TTP suicide attack killed a policeman and left several other civilians injured.
52. At paragraph 35 the expert concludes:

“The security situation in Pakistan has deteriorated significantly since the initial report was written. The Taliban have already infiltrated the north-west of the country and can be expected to be spreading their influence through Pakistan in the coming months. They will use violence when doing so. There will be an increased flow of violent jihadis into mosques in cities including Islamabad posing an increased risk to the appellant compared to the risk he faced in March 2019.”
53. I therefore accept that the risk to the appellant has increased since 2016 because of the increase of violent jihadists.
54. The expert speaks of the Taliban wanting to specifically target village defence committee members in his latest report at 10 and that they do want to discourage critics by targeting them specifically. He refers to the attack above in Swat.
55. Nevertheless, despite the expert commenting that there would be genuine reasons for concern in this case, I find that the risk to the appellant is too remote. It is predicated on someone in the community getting in contact with the violent jihadists in the radical madrassa to inform them of the presence of the appellant and then the violent jihadists deciding to initiate an attack on the appellant and then carrying out that attack. Mr Bazini characterises the risk as one in ten. I take note of paragraph 49 of MAH (Egypt) [2023] EWCA Civ 216 in this respect. The requirement that an applicant’s fear of persecution should be well founded means that there has to be demonstrated “a reasonable degree of likelihood” that he will be

persecuted for a Convention reason. I agree that a 10% chance of something happening may satisfy the relevant test.

56. However, in my view having considered all of the evidence, I do not agree with Mr Bazini that there is a 10% chance of the appellant being attacked. I find the risk to be much lower than this because of the number of factors that would need to align for the appellant to become a victim. The TTP are not the Pakistani authorities but a third party agent and in Islamabad security is tight. TTP targets are wide ranging and include the police and security services who are more obvious and easy targets because of their visible presence. The one recent documented attack against a village defence committee member took place in Swat not in Islamabad. There have been very few incidents in Islamabad so far and those which have taken place in 2022 have been directed at police officers. There were only 13 or 14 incidents in the last few years.
57. UTJ Bruce found the appellant not to be high profile. Although the expert states that the fact that the appellant stood up gave him prominence this was in the context of Swat and was some time ago. When finding that the appellant is not high profile UTJ Bruce took the appellant's public resistance to the TTP into account and I do not find that the recent expert comment dislodges this finding.
58. I take into account the expert's view that the appellant would have a genuine reason to be worried about his security and I find it plausible that given the appellant's previous history of being attacked and the current security situation that he is worried and anxious. However having considered all of the evidence in the round I do not find on the lower standard that he is at risk of being targeted by the TTP in Islamabad.

### **Sufficiency of protection**

59. I also note in this respect that UTJ Bruce made a finding at [20] that there was sufficiency of protection in Islamabad. Mr Bazini did not address this in his skeleton, potentially as a result of my directions. However, the issue was addressed by Ms Cunha and Mr Bazini in submissions.
60. The country guidance of AW (sufficiency of protection) Pakistan [2011] UKUT 31 is now very old but states that in general despite the failings of the police and security services there is sufficiency of protection. These failings are outlined in the EASO report and the latest Country Policy and Information note on agents of protection. There continue to be failings and weaknesses in the police, security forces and judiciary in Pakistan in general.
61. UTJ Bruce referred to Mr Guistozi's report which indicated that Islamabad is the safest part of Pakistan. This appears to be supported by the EASO report 2021 and latest CPIN dated 2023. The CPIN states at 6.2.2
 

"According to the January 2022 DFAT report, 'Islamabad has a lower crime rate than other major cities due to its large security presence.

62. It is apparent from the EASO report that security incidents in Islamabad are significantly lower than elsewhere in Pakistan. In 2020 there were said to be 13 casualties and in the first six months of 2021, 14 casualties.
63. The evidence put forward by the appellant in relation to sufficiency of protection was in Mr Bennet -Jones first report at 6. This states:
- “Targeted killings in Pakistan are a common occurrence. Most politicians even at a provincial level have armed guards. VIP culture is strong in Pakistan and when a politician is in government the state will provide these guards. When politicians are in opposition however, they have to pay for a protection team from their own funds. Senior business executives and journalist have their security costs covered by their companies. Typically, some of the guards in a team will remain at the home of the person they are protecting 24/7 whilst others in the team will provide protection when the person they are guarding is on the move. Despite these efforts however many assassination attempts succeed. It is commonplace for people who are a target in Pakistan to remark” if they want to get me, they will get me, however many guards I have”.
- “Most people who are not VIPs will receive no effective state protection at all. In the tribal areas on the border with Afghanistan, people facing a threat because of some kind of blood feud with move at all times with their own weapon at hand. In urban areas this is more difficult. People with gun licences from the authorities but they would not be allowed to buy weapons readily”.
64. In my view the problem with the expert evidence is that the expert is referring to politicians, journalists and VIPs and the appellant simply does not have such a high profile as found by UTJ Bruce. He has been outside Pakistan for 12 years and has not continued to criticise the TTP publicly since he left Pakistan. Further the expert evidence does not deal specifically with the situation in Islamabad which is on all the evidence before me the safest place in Pakistan.
65. Mr Bazini submitted that the appellant came under headnote 2 of AW in that the authorities ought but are unlikely to provide extra protection because of the circumstances particular to his case giving rise to the fear because he has been subject to past persecution and is at risk of persecution in his home area. In my view this does not apply because firstly the risk to the appellant is too remote in Islamabad in the first place; secondly, the appellant has been found not to be a “high profile target” and thirdly, because he does not have any specific vulnerabilities in terms for instance of his gender or sexuality that would make him more at risk. Further, circumstances will have changed since the past persecution in that the appellant will be no longer living in the area where he was persecuted.
66. I find that there is sufficiency of protection for the appellant in Islamabad.

### **Internal relocation - circumstances on return to Islamabad**

67. The appellant's circumstances are said to have changed because the appellant's brother in Dubai who was earning foreign currency can no longer work because of an accident. All the family are living in the family home and there are more dependents to support. He states that his family can no longer support him.
68. The appellant has also provided new evidence to address the point made by UTJ Bruce that he was able to finance his post graduate study by demonstrating that he borrowed the money from family friends in the UK which has been repaid and that in fact he was sending remittances to Pakistan to support his family there.
69. The appellant's evidence about the situation of his brothers was backed up by supporting documentary evidence in respect of his brother's scholarship to study in China and the cancellation of the UAE visa in respect of another brother. He also provided bank statements, evidence of remittances and letters in relation to his loan for his student studies. I accept that he borrowed money from friends and relatives to fund his post graduate studies in the UK and that he has repaid this money and that he sent remittances to Pakistan whilst he was working.
70. I find that the appellant's current family background is as he describes. I find that the appellant's entire family lives in the family home in Khwasa Khela in the Swat area of Pakistan and that his father is now elderly and sick. The family live in their ancestral home and they receive income from rents and shops as well as growing their own produce on their land. I accept that the appellant's brother who was studying in China has now returned because of the pandemic, that another brother is working as an intern in an architect's office and that the brother who was working in the UAE has returned and is now managing the family income from rents. I accept that there are approximately 11 people living in the family and that there are therefore more dependents to support.
71. I also accept as inherently plausible the appellant's evidence that his family income in this remote part of Pakistan is likely to be lower than that of a wealthy individual in Islamabad although I do note that according to the 2017 income and expenditure breakdown, the total income of £735 is over double the average wage of a mid-ranking administrator in Islamabad. It is manifest that the family is not destitute. They have not had to resort to any government or international aid. On the appellant's evidence four children in the current family attend private school, and the appellant and two of his brothers have all been educated to degree level, one brother having the wherewithal to obtain a scholarship in China and another studying architecture. The family is well educated and middle class. They are described by the appellant as village elders and important in their own community. The 2017 breakdown of income and expenditure shows that the income the family receives from rents is 96,700 rupees per month (approximately £743) and that after the payment of expenses including utility bills, groceries, driver salary, prescribed medication, pocket money for dependents, fuel and car maintenance and mobile

phone payments which amount to £600 there is only £143 left for social activities and “pocket money”.

72. One of their expenses is for a driver. The family cannot be described as currently living in poverty. They are able to support themselves and have money left over at the end of the month. The 2017 breakdown of income and expenditure was not particularly helpful because it is now 6 years out of date and not supported by any independent evidence such as tax returns but it does not demonstrate that the family have no spare income.
73. The appellant’s evidence about the expense of living in Islamabad was supported by both the Home Office CPIN and the opinion of the expert. This expert has already been found to be by credible by UTJ Bruce and Ms Cunha did not attempt to undermine or criticise his expertise. I accept the expert evidence.
74. The appellant states that he would not be able to afford to relocate to Islamabad (where it is asserted by the respondent that he would be safe). I take into account the evidence on the cost of housing. The latest 2023 CPIN states:
- “A report published by the UN Development Programme (UNDP), dated December 2018, noted that ‘Pakistan has a huge housing deficit of nearly 10 million units and growing. Urban population growth in the country has not been matched by growth in housing units or equitable access to land, resulting in housing shortages and the growth of slums. The number of slums is an indication of rising inequalities. Almost 55 percent of the population in Karachi lives in slums.’
- “3.4.3 According to a World Bank blog, published 11 March 2022, ‘Half of all urban households are overcrowded or live in informal settlements with inadequate access to basic infrastructure and services. Formal housing is out of reach for most of the population and mainly owned by men.’
75. This appears to be along the same lines as the June 2020 CPIN quoted in counsel’s skeleton argument which states:
- “30% to 50% of urban dwellers live in slums most of which are unregulated informal settlements that have inadequate access to public services infrastructure and social facilities”.
76. Dr Guistozzi’s evidence in 2016, was that rents in Islamabad were \$200 to \$350 a month and bills were about the same amount and that this about twice the average salary in Pakistan. This evidence was accepted by UTJ Bruce but her finding was that the appellant would be able to manage because he was able to finance his post-graduate studies and rent in the UK together with the fact that he has family in Pakistan who could support him.
77. The expert Bennett Jones was asked to address this issue in his latest report. He states:
- “Much depends on how much money he has. As I understand it, he would be reliant on his own resources. If he is not running a business of his own, then

a website with information on this subject indicates that salaried jobs pay on average 76,400 Pakistani rupees a month, the equivalent to £273.38. I checked this figure with a contact who runs a UN agency in Islamabad, and he confirmed that this would be a typical monthly salary for a junior to mid-ranking administrative official in the UK. Having said that the UK tends to pay better than many Pakistani employers”.

“Living costs are very dependent on rents. Given his marital commitments, I presume he would need a two bedroomed flat. A typical rent for such a property in a secure part of Islamabad where the threats to Mr Khan would be reduced would be around £900 per month”.

78. Mr Bennet Jones does not give an opinion on how much it would cost for the appellant to live on his own or in shared accommodation, nor which secure part of Islamabad he is referring to.
79. From the evidence before me, I accept that the appellant’s family circumstances are currently as such that they cannot afford to pay for an expensive rent for the appellant (for instance of \$900) in an urban centre in Islamabad. I accept that even if the appellant utilised the voluntary return package of £1,600 that this will last him a matter of months only.
80. However, I do find that his family will be able to provide him with some limited financial support. They have some income left over every month and may be able to make some additional economies. Nor is it plausible that his two younger brothers who are graduates and who live in the local area where the family is a prominent family with connections will remain unemployed indefinitely. I find that his family would do everything possible to assist him. The family are close, and the appellant supported the family from the UK by sending over £17,000.
81. The next question is whether the appellant will be able to obtain employment which would assist him to pay rent and bills in order to enjoy a relatively decent standard of living. His evidence is that he will not be able to obtain employment. Ms Cunha submits that this is speculative. Mr Bazini states that it is speculative that he will be able to obtain employment.
82. The factors in his favour are that he is educated to Master’s degree level, and he speaks fluent English and Pashtun as well as Urdu. He has some vocational work experience in the UK working for the Co-op and for a clearing house in administration. He is IT literate. I do not agree with Mr Bazini that this is negligible work experience. He will be in a much better situation than a working-class individual in Pakistan without any qualifications, experience of living abroad or foreign language skills. The factors that would hinder him in finding employment are the length of his absence from Pakistan, his lack of previous work experience in Pakistan and his lack of connections with anyone in Islamabad. I accept that his family do not have connections in Islamabad because they are based in the Swat valley. However, I also take into account the evidence in Dr Bennett Jones report is that there will be Swati communities in Islamabad with whom he can connect. I find that the appellant will, in time, be able to



build up connections as he has done in the UK where he has made friends with people who have been willing to support him financially over a long period. These connections may assist him to find work. I take into account the background evidence at page 32 of the supplementary bundle that there is an unemployment rate of 30% amongst younger workers (although this is 16% for boys) including individuals with professional degrees. The current overall employment rate is said to be 6.9%. This means that the majority of the population are in employment. I have also had sight of the evidence in relation to large numbers of applicants applying for a limited number of police officer jobs. I take into account the evidence that it is difficult to obtain government jobs.

83. The appellant also is very anxious and fearful about returning. I accept that he does have a subjective fear on return. This is plausible in light of the fact that he was previously attacked and the threats to him. Nevertheless, he has not provided any supporting medical evidence that his mental health would deteriorate so significantly if he were to return that it would prevent him from functioning on a day-to-day basis or working.
84. Mr Bazini submits on the lower standard that the appellant will end up living in a slum and that this would be unreasonable or unduly harsh. I find firstly that even on the lower standard that the appellant will not end up in a slum. He has managed to house himself in the UK where he has been living illegally. He is a resourceful individual. He has not found himself on the streets. He referred to a second cousin in Nottingham. I find that he would do everything possible to find some kind of work and that that employment together with some limited amount of support from his family would allow him to rent a flat or some kind of accommodation at the cheaper end of the scale for about \$200 to \$350 a month and pay his expenses. I find it implausible that his middle class educated family would not also do everything within their means to prevent him from living in a slum whilst he re-establishes himself. His mental health problems in the UK have not prevented him from working. He is physically well. I accept that returning will be difficult for the appellant and stressful for him and the prospect will be daunting and that it will not be easy to obtain employment. However, he has previously lived apart from his family in Peshawar and would be returning to a large city with multiple ethnic communities including individuals from his own community. In his own statement he states that his family would not be able to join him in the short to medium term which I find is an admission that he would be able to survive and support himself in the short term. I do not find that it would be initially unduly harsh for him to live apart from his family in order to ensure that he is safe. His family can join him once he has established himself. He has already chosen to live apart from his family when he came to study in the UK and his family are being provided for financially by his family.
85. Nevertheless, I turn to the alternative factual scenario. If the appellant could not find employment and his family could not send him sufficient

financial support, he might well end up living in unregulated housing on the outskirts of Islamabad in a “slum”.

86. There is a lack of evidence before me in respect of the slums although what evidence there is refers to informal housing is dire. There is reference to a lack of proper sanitation, water, inadequate infrastructures and precarious living with the risk of demolition.
87. The caselaw on internal relocation is summarised in the recent case of SC (Jamaica) v SSHD [2022] UKSC 15. It refers both to Januzi v Secretary of State for the Home Department [2006] UKHL 5; and AH (Sudan) v Secretary of State for the Home Department (United Nations High Commissioner for Refugees intervening) [2007] UKHL 4995.
88. It is said at paragraph 95 of that decision:
- “The correct approach to the question of internal relocation under the Refugee Convention is that set out in Januzi at para 21 and in AH (Sudan) at para 13 (see paras 58 and 59 above). It involves a holistic approach involving specific reference to the individual’s personal circumstances including past persecution or fear thereof, psychological and health condition, family and social situation, and survival capacities in order to determine the impact on that individual of settling in the proposed place of relocation and whether the individual “can reasonably be expected to stay” in that place. It does not take into account the standard of rights protection which a person would enjoy in the country where refuge is sought”.
89. I set out paragraphs 58 and 59 for convenience.
- “58. The test of reasonableness involves consideration of all the relevant circumstances looked at cumulatively. In Januzi Lord Bingham summarised the correct approach to the problem of internal relocation. He stated, at para 21, that: “The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so ... There is, as Simon Brown LJ aptly observed in Svazas v Secretary of State for the Home Department [2002] 1 WLR 1891, para 55, a spectrum of cases. The decision-maker must do his best to decide, on such material as is available, where on the spectrum the particular case falls ... All must depend on a fair assessment of the relevant facts.”
59. Lord Bingham returned to the test of reasonableness in AH (Sudan) v Secretary of State for the Home Department (United Nations High Commissioner for Refugees intervening) [2007] UKHL 49; [2008] AC 678. He stated, at para 13 that “the test propounded by the House in Januzi was one of great generality, excluding from consideration very little other than the standard of rights protection which an applicant would enjoy in the country where refuge is sought.”
90. The appellant although subjectively frightened and unable to sleep because he has previously been the target of the TTP, has not provided any supporting medical evidence to demonstrate that his health would deteriorate on return to the extent that it would be a breach of his human

rights or that he would be unable to function on a day-to-day basis. He is physically healthy apart from some historical backache. Although he is used to living in comfort in a middle-class environment, I find that he would be able to survive in a slum, as do a large percentage of the Pakistani population. I do not accept that his family would not be able to give him any financial support at all. It would be unpleasant and unpalatable, but he does not have any specific vulnerabilities on account of his sex or any disability and apart from his anxiety he is better equipped than most to cope because of his education, his ability to survive in a country where he was living illegally and his family connections. I note the wording in Januzi at [5]. “There is no warrant for excluding, or giving priority to, consideration of the applicant’s way of life in the place of persecution. There is no warrant for excluding, or giving priority to, consideration of conditions generally prevailing in the home country”.

91. In summary, I do not find on the lower standard that it is unreasonable or unduly harsh for the appellant to relocate to Islamabad.

### **276ADE (vi)**

92. This is not the same test as that of internal relocation above but many of my findings are relevant. The appellant is a Pakistani national. He has been living outside Pakistan for 11 years. Nevertheless, he is familiar with Pakistani culture and society. He retains close links with his large family in Pakistan including his wife, children, parents and siblings. Even if he is not able to live with his wife and children in the short term, he can communicate with them by mobile phone and it is open to them to visit him. He is also immersed in the Pakistani culture in the UK, living with a friend of Pakistani origin and having extended family in the UK including NK who refers to the appellant being a frequent visitor to his household. He is fluent in Pashtun, Urdu and English. He is educated to degree level and indeed has a Masters in Management (Human Resources) from Northampton University. He has work experience in the UK including working in shops and in administration. He has lived outside the Swat area in Peshawar. He is clearly familiar with Pakistani society and would be enough of an insider to participate in society. I take into account that he feels very anxious and worried about returning because he was previously the victim of an attack and the insecure security situation. Nevertheless, there is insufficient medical evidence before me to demonstrate that his mental health would deteriorate to such an extent that it would be a breach of Article 8 ECHR nor Article 3 ECHR to return him nor that it would prevent him from seeking or finding work nor from participating in society in general. He stated that he takes some medication to assist him to sleep only. Physically he is well apart from historic backache. I have found that he will be able to access some limited financial support from his family, that he will be able to find work, make new friends and build up a network of contacts. I do not accept that his subjective fear of return on its own is sufficient to equate to a “very significant obstacle” to return in the lack of any supporting documentary evidence. It will no doubt be difficult for the appellant to readjust to life in Pakistan having lived in United Kingdom in

more security and he will have hurdles to overcome in finding work and a new place to live. Having considered all of his circumstances in the round, I do not find that he will face “very significant obstacles” on his return to Pakistan.

93. Mr Bazini at no point submitted that the appeal could succeed under a wider Article 8 ECHR proportionality exercise. In any event I find that the appellant can speak English and has not been reliant on public funds which are neutral factors. He does not satisfy the immigration rules in respect of private life and his private life has been established whilst he has had a precarious immigration status in the UK. I give it little weight. The focus of his family life is in Pakistan and he can replicate his private life in all its elements in Pakistan. I take into account that he has previously been threatened by the TTP and is subjectively frightened of returning but in my view this on its own is not sufficiently compelling to render a refusal of leave unjustifiably harsh.

**Notice of Decision**

- (1) The appeal is dismissed on protection grounds.
- (2) The appeal is dismissed under Article 3 ECHR and Article 8 ECHR grounds.

**R J Owens**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

28 June 2023

## Appendix A



IAC-AH-KRL-V1

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

Appeal Number: PA/12384/2019

### **THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**On 9 March 2022**

.....  
**Before**

**UPPER TRIBUNAL JUDGE OWENS  
DEPUTY UPPER TRIBUNAL JUDGE HALL**

**Between**

**FK  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

#### **Representation:**

For the Appellant: Mr Bazini, Counsel, instructed by Direct Access

For the Respondent: Ms Ahmed, Senior Presenting Officer

### **DECISIONS AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Parkes sent on 10 March 2020 dismissing his appeal against a decision dated 25 November 2019 to refuse his human rights and protection claim.

#### **Background and Immigration history**

2. The appellant is a national of Pakistan born in 1984. He entered the UK as a Tier 4 student in 2011. His student leave was extended to 18 September 2014.

#### **The positions of the parties**

3. The appellant asserted in his fresh claim that he is at real risk of serious harm throughout Pakistan including in Islamabad from the Taliban who have a wide reach through radical madrassas. He relied on further expert evidence addressing this issue. Further he asserts that it is not reasonable for him to relocate internally because of his genuine fear of being attacked and lack of financial resources. Finally, there are very significant obstacles to his integration for the same reasons. He would not be able to live with his wife and children in Islamabad. The position of the Secretary of State is that there is sufficiency of protection in Pakistan. The appellant can relocate safely to Islamabad. Thus, internal relocation is available. There would be no very significant obstacles to reintegration on return to Pakistan.

### **The decision of the First -tier Tribunal**

4. The judge in accordance with the principles set out in Devaseelan (Second Appeals-ECHR-Extra Territorial Effect) Sri Lanka [2002] UKIAT 702, started with the findings of the Upper Tribunal in 2016. In summary these are that the appellant is from the Swat area of Pakistan, his father was a member of the village defence committee "VDC" in his home area. He and his father were injured in a Taliban bomb attack in mid-2008. The appellant was interviewed anonymously in February 2009. The appellant appeared on television in April 2009 and criticised Taliban leaders and the regime in Swat. He returned to Pakistan without incident in 2013 and stayed in his home village for 5 days. His family remain in Swat. The most recent threats were made in November 2014 by way of a night letter from the Taliban. The appellant is at risk of serious harm in his home area Khwaza Khela in Swat. There is no sufficiency of protection for him there. He can relocate safely to Islamabad because he previously lived in Peshawar without problems and there was no evidence of Taliban insurgents pursuing individuals in the VDC into Islamabad. There would be sufficient protection. Further any obstacles to him living in Islamabad due to the expense would be overcome by the fact that he would have family members who could support him while he was living there.
5. The judge then went on to consider whether there is now a risk to the appellant outside of his home area in the light of the new evidence.
6. The judge considered the expert report of Dr Bennet -Jones including developments since the previous expert report prepared by Dr Giustozzi. The judge took into account the low number of attacks in Islamabad, the fact that it has been many years since the appellant has returned to Pakistan, that he visited Pakistan safely in 2013 and that his television interview footage will not have been retained. The judge found that the increase in radical madrassas would not lead to a risk to the appellant. The judge found that the population of Islamabad is not static, and that the appellant would be of no more interest compared to anyone else on moving to a new area. The judge did not consider that the risk reached the necessary threshold and also that there would be no "insurmountable obstacles" to reintegration.

### **Grounds**

7. The judge's reasoning is flawed by way of the following:  
Ground 1 - The judge's assessment of the risk to the appellant in his home area is flawed.

The judge appears to suggest that there has been a lowering of risk in his home area. This finding was not open to him because of the Upper Tribunal's previous findings and the appellant's evidence that his father still has individual protection in the form of security guards. If the judge has incorrectly analysed the risk in the home area this will impact on the assessment of risk elsewhere. The judge also failed to take into account the expert evidence from Dr Guistozzi that the appellant would be recognisable in Pakistan as a result of his television appearance.

Ground 2 - The judge has failed to provide reasons or adequate reasons for rejecting the expert evidence that the appellant's background would be discovered by the local population wherever he resides. The judge has erroneously evaluated the risk from radical madrassas rather than from the violent jihadists who travel through them.

Ground 3 - The judge has failed to make any findings on internal relocation.

Ground 4 - The assessment of very significant obstacles is flawed because the judge has failed to engage or make findings on the latest evidence that the appellant provided on the difficulties he would face in living in Islamabad.

#### Grant of permission

8. Permission was granted by First-tier Tribunal Judge Beach on all grounds on 23 April 2020 although she noted that grounds 3 and 4 were in her view stronger than grounds 1 and 2.
9. There was no rule 24 response.

#### **Risk in Home Area - failure to take into account material factors flawed approach to Devaseelan**

10. Mr Bazini relied on the grounds and argued that it is not clear from the decision whether the judge accepted that there was a risk to the appellant in his home area and that he was required to identify the level of risk in the home area. He submits that the judge suggests at [18], also at [23] and [24], that the length of time passed since the events that brought him to the Taliban's attention and the fact that he returned for a visit in 2013 suggests a lowering of risk. He submits that this approach was not open to the judge because UTJ Bruce had already made findings that the fact he made a visit in 2013 did not detract from the risk to him in his home area, the judge ignored the evidence accepted by UTJ Bruce that threatening letters from the Taliban were at the very least still being sent in respect of the appellant in November 2014 despite the fact that the events that had brought him to the attention of the Taliban had taken place many years beforehand and thirdly, the judge ignored the evidence of the appellant that his father was still being guarded by security guards, that his movement is restricted and he lives his life as a prisoner in his own home which was accepted by UTJ Bruce in 2016 and continues to be the unchallenged evidence of the appellant. All of this points to the level of risk to the appellant and his father remaining high in his home area. The judge's assessment of risk is flawed which must impact on the question of risk elsewhere in Pakistan since if the risk in the appellant's home area has been incorrectly assessed it is bound to follow that the assessment of risk elsewhere may be undermined by such error.

11. Ms Ahmed submitted that the judge properly followed the findings of UTJ Bruce and found that the appellant was at risk in his home area. The judge directed himself properly.
12. The starting point for consideration applying Devaseelan principles are the findings of UTJ Bruce. The core of the appellant's account and his credibility were accepted by UTJ Bruce. She held that the appellant would be at real risk of serious harm and persecution should he return to his home area in "Khwaza Khela" in Swat. UTJ Bruce, however, considered that he would not be at real risk of serious harm if he relocated to Islamabad because she did not consider that he would be sought out there by the Taliban insurgents and that there would be sufficiency of protection.
13. We are not in agreement that the judge did not correctly apply the Devaseelan principles. The judge directed himself to Devaseelan at [7] and in the same paragraph manifestly demonstrated that he was aware that the findings of UTJ Bruce were his starting point, stating:

"The findings made in that decision form the starting point for the consideration of the appellant's case in this decision. I can depart from the findings and conclusions made if there is evidence to justify doing so. The guidance in Devaseelan applies."
14. And at [8]:

"The starting point in Judge Bruce's decision is set out at paragraph 18. These include that the appellant is from Swat, his father is a member of the VDC in his home area and so may be at risk, he and his father were injured in a Taliban bomb attack in mid-2008 and he was interviewed anonymously in February 2009. In addition, the appellant's claim to have been threatened at gun point twice was not accepted. He had returned to Pakistan in 2013 and stayed in his home village for 5 days and then travelled to Islamabad without incident. The family remain in Swat".
15. And at [9]

"Judge Bruce's findings are set out from paragraph 16 onwards starting with a summary of the accepted facts. In addition, Judge Bruce found that in January 2009 the Taliban arrested a man with the same name as the appellant, the appellant appeared on television in April 2009 and criticised Taliban leaders and the regime in Swat and threats had been made, the most recent being in November 2014 involving a night letter. The appellant would not be able to return to his home area for the reasons given at paragraph 18."
16. There is no error in the judge's approach to the Devaseelan principles. The judge at no point departs from UTJ Bruce's finding that the appellant would be at real risk of serious harm in his home area. This is manifestly accepted. The judge has clearly taken into account at [9] above that the appellant was most recently threatened in 2014 by way of a night letter. There is no error here. The judge also was aware that the appellant's father has the benefit of a bodyguard because at [16] he refers to the expert report which comments on this, and he also refers to paragraph 18 of UTJ Bruce's decision which refers to the bodyguard. We are also satisfied that the judge did not suggest that because the appellant visited Pakistan in 2013 without incident that there was any lowering of the risk in his home area.



17. The judge has manifestly read UTJ Bruce's decision and taken into consideration her findings as his starting point. We are not satisfied that the judge has made a finding that there was some kind of lowering of the risk to the appellant in his home area as suggested by the grounds, nor that there is any error in his approach. The decision turns solely on whether there was a real risk of serious harm to the appellant outside of his home area and specifically in Islamabad.
18. Mr Bazini also submitted that the judge erred at [18] by finding that the appellant would not be remembered or recognised from being on TV bearing in mind the length of time contrary to Dr Guistozzi's report which stated at paragraph 13 that the appellant would be well known because of his television appearance.
19. Mr Bazini submits that the judge was bound to explain and give lawful reasons why he was departing from this expert evidence which amounts to a significant error of law in approach.
20. Ms Ahmed submitted that this evidence had already been considered by UTJ Bruce when considering the risk to the appellant outside his home area. She had found that the appellant would not stand out in Islamabad and that he would not be at risk there.
21. This report was before UTJ Bruce who found that the appellant appeared on television the Kyber news channel in April 2009 where he had spoken out against the Taliban in particular the leader of the TTP in Swat who he referred to as an "animal". She went on to find that the appellant was not a "high target profile" in Islamabad and that the object of the Taliban in Swat was to prevent the VDC from operating and that since the appellant is now longer in Swat he was not a threat to them. She further found that there is sufficiency of protection in Islamabad. It is clear that UTJ Bruce fully took into account Dr Guistozzi's report and the appellant's TV appearance when making her findings that the appellant is not at risk outside Swat.
22. Since those findings were the judge's starting point, it therefore follows that there was no error for the judge not to have referred to the report or given reasons for rejecting this opinion. Judge Bruce manifestly did not find that the TV interview had raised the appellant's profile to the extent that he would be recognisable outside Swat and this was the starting point for the judge.
23. The further evidence before the judge from the more recent expert report was that TV stations do not retain broadcast content.
24. At [18] the judge stated:
  25. "The appellant has not lived in Pakistan since he came to the UK and he has not appeared on television since then, if the television station has not retained footage as the expert suggests it is not clear how that appearance would be recalled or be a source of danger. The fact of the appearance might be recalled in Swat but is not clear with all that has happened in Pakistan since then it is not obvious why the appellant would still remembered (sic) still less identified outside his home area."
26. We are satisfied that the judge was entitled to consider the extent to which the appellant would be recognised outside of his home area. We are satisfied that the judge gave adequate reasons for finding that the appellant would not be recognised outside of Swat as a result of the TV interview. The judge was entitled

to take into account that the TV interview was in 2009, that the appellant has not been to Pakistan for many years and not appeared on TV since then and that TV footage is not retained. A further five years has elapsed since Dr Guistozi's report (which was prepared in 2016) and the judge's finding that the appellant would not be recognised outside Swat as a result of the interview is both adequately reasoned and was open to the judge on the evidence before him. There was no error in the judge's approach to Dr Guistozi's evidence.

Ground 2 - The judge has failed to provide reasons or adequate reasons for rejecting the expert evidence that the appellant's background would be discovered by the local population wherever he resides.

27. The judge's approach to this evidence appears at [20] as follows:

"I note what Dr Bennett-Owen says about individuals moving to an area and arousing interest, but the population of Islamabad cannot be static and the appellant would hardly be the first person to move to any one of the many suburbs of the city. Given the size of the population and the movement that large cities generate the evidence does not show that the appellant would be of particular interest compared to anyone else new to the area".

28. Mr Bazini submitted that the judge erred because the expert evidence made it clear that anyone new to an area without connections would be of interest and the appellant's background would eventually be discovered.

29. Ms Ahmed's submission is that the judge addressed the report, and it was open to the judge to find that the risk the appellant is speculative in the context of the evidence as a whole.

30. Our view is that paragraph [20] is unclear. It is not clear whether the judge is saying that the appellant would be of no more interest compared to anyone else and therefore of little interest or whether he is acknowledging and accepting the expert evidence that anyone new to an area would be of interest to the local population. The judge has not made a clear finding as to whether he accepts that the local population would eventually discover his family background and his previous criticism of the Taliban. The paragraph above appears to be rejecting the expert evidence that the appellant's identity would be discovered but it is ambiguous. This is in our view an error because we are unable to discern whether the judge rejects or accepts the expert evidence and the reasons for this.

31. The judge goes on to consider the risk to the appellant at [21] to [25].

32. At [21] the judge acknowledges that there "may be a risk to the appellant which can never be entirely eliminated" but considers whether this meets "the lower threshold of a real risk". He states a "real risk is not necessarily the same as a real concern". The view of the judge is that the expert report and appellant's submissions rely on a "high degree of speculation" because the appellant's name is not particularly unusual or that he is unique or would stand out. The judge's view is that a great deal of time has elapsed and that it is speculation that the appellant would be at risk because of the increase in radical madrassas and the limited ability of the government to control them.

33. The opinion of the expert is that wherever the appellant moves to in Islamabad eventually his family background will come to light because this is the nature of Pakistani society where the community will interrogate the background of any

newcomer despite the size of the population and the fact that the appellant would be living in a large city.

34. At [13] of the report Dr Bennett-Jones states inter alia:

“The greatest risk would be posed by one of the many violent jihadists who were based in Swat having moved to a radical seminary or mosque in for example Islamabad, recognising Fayaz Khan and deciding to take action. Violent jihadists in Pakistan are quite mobile and move through an informal network of radical mosques and madrassas that provide them with sanctuary, board and lodging. The fact that Fayaz Khan has appeared on TV and was apparently well-known to the Taliban in Swat increases the degree of risk.”

35. The expert then explains that there has been an increase in unregulated radical madrassas and that targeted killings are a common occurrence.

36. As we see it the expert’s analysis of the risk includes the assumption that a violent jihadist in Swat moved to a radical seminary or mosque in Islamabad. His evidence is that there is an increase in such madrassas and a lot of movement by jihadists. The task of the judge was to make findings on the likelihood of this happening. The next stage is whether that violent jihadist would come across the appellant or recognise him or learn of his presence in Islamabad. When looking at this our view is that the judge failed to take into account the expert evidence that the appellant’s family background evidence would be known and also referred to the risk being from radical madrassas rather than from violent extremists. The risk is next predicated on the basis that the violent jihadist has not only moved to Islamabad, learned of the appellant’s presence and background but that he has decided to take action. The judge fails to take into account in this respect that the appellant has received night letters from the Taliban in Swat, that he is recognised there and that his father continues to have protection.

37. The expert’s view is that in time the appellant’s personal background would be known and that it would be a “real concern” for him. This could be said to relate to the appellant’s subjective frame of mind but could also relate to the objective risk to him. The judge characterises the risk in terms of “may”. We are therefore satisfied that it was a material error by the judge not to analyse the expert evidence and make unambiguous findings as to whether he accepted that expert evidence and if so whether the risk met the test of a “real risk” in light of the expert report and background of the appellant.

38. We are satisfied that there are errors in the judge’s approach to the expert evidence and his findings on risk and that this is material to the outcome of the appeal.

### **Grounds 3 & 4- Internal Relocation and insurmountable obstacles**

39. Ms Ahmed accepted that the judge’s treatment of this issue was brief. Her argument was that the evidence about the cost of living in Islamabad was not supported by independent evidence and that it is for the appellant to choose whether his wife and children join him in Islamabad.

40. The judge accepts that at the very least the appellant is at risk in his home area in line with the findings of UTJ Bruce absent any new evidence enabling him to depart from such a conclusion. In these circumstances the judge was bound to

consider in the light of the new material whether internal relocation was unreasonable or unduly harsh. The judge plainly erred in law as he failed to give any consideration whatsoever to the question of internal relocation. The judge only considers the risk of harm in Islamabad, which he completes at [25], and then he immediately goes on to consider the Immigration Rules. There is a complete failure to address the issue of internal relocation. This is a material error.

41. Although UTJ Bruce had found that internal relocation was possible this was on the basis that the appellant could be supported by his family. The appellant in his bundle produced further evidence in his witness statement about the manner in which he funded his studies in the UK, his family's current financial situation and evidence about the cost of living in Islamabad.

42. The appellant provided detailed evidence in his witness statement addressing the issue of internal relocation and difficulties in reintegration. He stated:

"Firstly I would be in constant fear of my background being discovered and of being recognised. Secondly the financial situation in Pakistan is dire at present. It is almost impossible to find a job in a major city and to afford the extremely high costs of living. The fear of being killed by TTP/jihadists will remain with me for the rest of my life while residing in Islamabad or any other city. I am concerned about the recent economic situation of Pakistan. Recent IPSOS survey revealed that about 83% of Pakistanis are concerned about their job security while 31% of the respondents have themselves or people known to them have lost their jobs due to prevailing economic conditions. Renting a small property would cost in excess of \$300 a month and the current circumstances of my family are such that they would not be in a position to financially assist me. My father has been supporting my family back in Pakistan but is struggling to do this due to the deteriorating conditions of the economy in Pakistan. I am concerned that as I will have no financial support from my family, it will only add to my inability to support myself, wife and kids in Islamabad if they join me there. Relocation will mean that I will have to find accommodation as opposed to living in my family home in Swat where I don't pay any rent. School fees would also be very high in a city like Islamabad. I would like to point out that my younger brother no longer studies in Islamabad and has gone to China for further studies on a fully funded scholarship. My twin brother is no longer working in Dubai due to the cancellation of his visa following an accident and he will not be able to help me financially and he is a further burden and entirely reliant on my father living under his roof. It is of the utmost importance that as a husband and father I be reunited with my wife and children as soon as possible but it would be impossible at least in the short/medium term for me to be able to support them with food, shelter and schooling in Islamabad. They currently live rent-free under the roof of my father in an area which is far cheaper than Islamabad. If they join me in Islamabad they would find themselves living in poverty and possibly destitution. I would be a total stranger searching for work with the fear of persecution trying to support not only myself but them as well. In truth I would not be able to have my wife and children join me for their own wellbeing and safety. Having fled my own area due to a risk of persecution such a situation of continued separation from my loved ones would I believe be harsh and unreasonable."

43. We are also satisfied for the same reason that the judge erred in his approach to paragraph 296ADE (vi) of the immigration rules which the judge dealt with in a

few short paragraphs in which he referred to “insurmountable obstacles” which is the incorrect test in any event. There was no attempt by the judge to engage with the up-to-date evidence, or the submission that the appellant’s real fear was an obstacle to reintegration. The appellant had previously specifically been targeted in a bomb attack and had received individual threats. The judge does not address any of the appellant’s or his expert’s evidence on the difficulties he would have in seeking to re-integrate.

44. We are satisfied that the judge’s findings on internal relocation failed to take into account material factors and had the judge considered these factors, he may have come to a different conclusion. This error is material to the outcome of the appeal.

### **Disposal**

45. Mr Bazini’s position is that the decision could be retained in the Upper Tribunal because the issues are narrow and Ms Ahmed was neutral on this issue. We decided to retain the decision in the Upper Tribunal for re-making because the facts are largely agreed and the issues are limited to whether the appellant is at risk from the Taliban outside of his home area, internal relocation and very significant obstacles to reintegration.

### **Notice of Decision**

1. The making of the decision of the First-tier Tribunal involved the making of an error of law.
2. The decision is set aside in its entirety with those findings of Upper Tribunal Judge Bruce forming the starting point of the appeal as summarised at paragraph 5 above preserved.
3. The appeal is adjourned for re-making at the Upper Tribunal.

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

### **Directions**

1. Within 7 days of the date when this decision is sent, the parties shall file with the Tribunal their dates to avoid in the period October to December 2022.
2. The appeal is to be relisted for a hearing at Field House on a face-to-face basis with a time estimate of 3 hours taking into account the parties’ dates to avoid.
3. By no later than 7 days before the relisted hearing the Secretary of State is to file at the Tribunal and serve on the appellant a position statement/skeleton argument dealing with the issues of risk to the appellant outside his home area (addressing the authorities on the threshold of “a real risk”, internal relocation and 276ADE(vi)).

4. In the same timeframe the appellant is to file at the Tribunal and serve on the respondent a skeleton argument addressing the matters set out at paragraph 3. above.
5. Any additional evidence is to be accompanied by the relevant Notices.

Signed R J Owens

Date 18 August 2022

Upper Tribunal Judge Owens