Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01516/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 17 November 2014	**On 01 December 2014**

Before

Deputy Upper Tribunal Judge Pickup

Between

Ghulam Mustafa Chaudhry
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr P Thornhill, of Thornhills Solicitors
For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Ghulam Mustafa Chaudhry, date of birth 8.6.74, is a citizen of Pakistan.

2. This is his appeal against the determination of First-tier Tribunal Judge De Haney, who dismissed on all grounds his appeal against the decision of the respondent to refuse his asylum, humanitarian protection and human rights claims. The Judge heard the appeal on 7.5.14.

3. Designated First-tier Tribunal Judge Zucker granted permission to appeal on 1.7.14.

4. Thus the matter came before me on 17.11.14 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge De Haney should be set aside.

6. The relevant background to the appeal can be briefly summarised as follows. It is claimed that the appellant became the vice-president of the Pakistan Peoples Party (PPP) in 2010 and was involved in organising meeting, sorting out voter lists and basic problems. He also claims to have organised demonstrations. In May 2010 the appellant's brother, also a PPP member, was kidnapped by the Pakistan Muslim League Narwaz (PMLN) and died on 26.5.10 from injuries sustained during his detention. The matter was pursued by complaint to the police, resulting in the arrest and prosecution of two men, Aslam and Parvez. The criminal proceedings concluded in April 2013 when they were sentenced to 7 years imprisonment.

7. It is the appellant's account that during the criminal proceedings lasting some 3 years, from about February 2011 he was threatened by PMLN members to drop the case. These threats were reported to the police. On 30.5.13 the appellant was attacked and beaten in his car and abducted. He was further beaten and tortured sustaining serious injuries until he was left outside the hospital on 4.6.13. He claims that he knew his attackers and that they were members of the PMLN. On discharge from hospital on 10.6.13 the appellant relocated to Islamabad, hiring a nurse and gunman for protection whilst remaining in hiding. When he switched his mobile phone on a month later he began to receive anonymous threats to kill him and harm his wife and children. He reported the matter to the police on 27.7.13 but they said they couldn't help him as he had no evidence. He decided to flee to the UK for the safety of himself and his family, arriving in Manchester on 4.8.13. He cannot return to Pakistan because he fears he would face a real risk of unlawful killing and torture and serious and individual threat to his life or person by reason of indiscriminate violence.

8. In the refusal decision of 12.2.14, the Secretary of State rejected the claim that his brother was kidnapped and killed by PMLN members or that any prosecution of those involved took place. The claim that he was himself kidnapped and subsequently threatened was also rejected. The Secretary of State concluded that the appellant would be able to relocate within Pakistan and that he would be able to obtain protection of the authorities within the Horvath standard.

9. At §45 of the decision, Judge De Haney accepted that it was at least reasonably likely that the appellant's brother was killed in the manner alleged. At §46 the judge was also prepared to accept that the appellant was reasonably likely to have been abducted and detained as claimed. However, at §47 the judge concluded that the appellant was released "due to a combination of pressure from the police to whom his wife had reported his disappearance, and by the other market traders and powerful bodies." The judge rejected at §48 that the appellant was in continual fear

from opposition members or that he needed to immediately flee Pakistan, or even to go into hiding.

10. In summary, the grounds of application for permission to appeal submit that the judge must have accepted that the appellant suffered ill-treatment whilst detained but did not accept any ongoing risk to the appellant after his release, with reliance being placed, by the judge, on a report, which it is submitted was not material to the time in question. It is further submitted that the judge has failed to have sufficient regard to evidence pointed to a greater risk of arrest to political opponents of the government. It is further submitted that the judge erred in failing to accept that the appellant was able to remain in Pakistan to pursue the prosecution of those who killed his brother because at that time the party which the appellant supports was in power. Finally, it is submitted that the judge failed properly to apply guidance in relation to internal relocation.

11. In granting permission to appeal, Judge Zucker pointed out that the judge found the appellant an unimpressive witness (see §42). However, the judge accepted that the appellant's brother was killed and the appellant was abducted as claimed. "It is arguable that the judge ought not to have allowed himself to have been influenced by the school reports if the appellant was detained and then released after the school year had been completed so that the report related to an earlier time.

12. "It is also arguable that the judge attached too much weight to the appellant remaining in Pakistan to pursue his brother's killer given the change of government was some time later. All grounds may be argued."

13. The Rule 24 response submits that it was clear that the appellant was able to survive 3 years in Pakistan during court proceedings and was neither murdered by his brother's attackers or their associates, nor targeted for being a political activist.

14. The Secretary of State also counterclaims that the positive credibility findings at §45 and §46 are inadequately reasoned. Certainly no reasoning is provided within those paragraphs and it is not entirely clear from the decision why the judge reached those conclusions. However, in the light of my conclusion as to the appellant's grounds of appeal, these errors were not material to the decision and do not require the decision to be set aside and remade on that ground.

15. §2 of the grounds suggests that because the judge accepted part of the appellant's case relating to his brother's death and his own abduction, that the judge must also have accepted that he was tortured during detention, given the medical evidence which was capable of corroborating his version of events.

16. The Rule 24 response submits that the judge provided good reasons for concluding that the appellant did not demonstrate a real risk on return to his home area. That the judge accepted some parts of the appellant's case does not indicate that other parts were accepted and it is speculation to suggest so. The appellant was found to be an evasive witness who failed to give his evidence in a straightforward manner and was very prone to exaggeration. In the circumstances, only those parts specifically accepted by the judge can be regarded as accepted. However, it may be concluded

from the judge's statement at §46 that the appellant was reasonably likely to have been "abducted and detained as claimed," that this included the account of mistreatment in detention. This is perhaps supported by §54, where the judge accepted that "whilst I accept that what the appellant claims happened to him may have happened it is also clear that he believed there was a sufficiency of protection…"

17. The grounds seek to rely on this issue in §3 of the grounds to complain that whilst the appellant had suffered serious injury whilst held captive by his political enemies, the judge was not prepared to accept that he was in fear of his political opponents after discharge from hospital or that he needed to seek international protection. However, there is nothing inconsistent in these findings, and it was open to the judge to accept certain parts of the appellant's case and give substantial reasons for not accepting that the appellant was in any real fear from opposition political members or that he needed to flee. In essence, this ground of appeal is argumentative and seeks to reargue the negative findings of the judge which were open to him on the evidence and for which cogent reasons were given. In essence, the judge found that the appellant's behaviour post-release undermined the claim to be in fear or need international protection, or need to go into hiding. It is also clear that at §44 the judge found the appellant's repeated evasions and failure to satisfactorily answer why he should be targeted after the conclusion of the prosecution when he had not been so targeted during the three preceding years. I find that the judge has made clear findings on this issue which were open to him on the evidence and justified by cogent reasons.

18. Another ground of appeal criticism is that in reaching these conclusions the judge relied on school records of an almost perfect attendance. The judge also relied on the fact that the appellant was able to remain in Pakistan in order to finance selling his business and transferring funds to enable him to set up in business in the UK. At §3 the grounds suggest that as the appellant was abducted in May 2013 and was not discharged from hospital until June 2013 the attendance record could not conceivably relate to the time of his abduction and detention, and thus unfairness has resulted from this error.

19. I do not accept that there is any material error in relying in part on the school report. The school record shows that it covers the 2012 to 2013 academic year. It allows of only two terms, first and second. In each term the child's record is almost A+ in all subjects. It is clear that the report is for the end of year VI and notes that the child is promoted to class VII. The personal comments of the headmistress speak of the child in the past tense and wished her luck. Whilst attendances are only noted for 82 of the 83 days in the first term and there is no entry for attendance in the second term, it is clear from the marks for the second term that the child must have been present. More significantly, no reference is made to any absences by either of those making personal comments about her progress. I find it follows from the above that whatever may or may not have happened to the appellant, his child was able to continue at school, progressing very well in all subjects, with no difficulties. This entirely contradicts the appellant's claim that his children were taken out of school

and undermines the appellant's factual claim and the need to flee Pakistan. In the circumstances, I find no error in the judge's treatment of the school record.

20. §4 of the grounds of appeal suggest that in reaching his conclusion on sufficiency of protection, the judge overlooked the changed political scene in Pakistan following the 11.5.13 elections, when PMLN won the election, ousting the PPP of which the appellant was member. At §44 the judge noted Mr Thornhill's submission that this change of political power was the reason why the appellant would now be targeted and was not targeted whilst the PPP was in power and the background material suggests that the police are more willing to prosecute members of opposition parties.

21. However, even if the appellant's party is no longer in power, he is not facing any prosecution or action against him from the authorities. Further, it is significant that the judge found that the appellant was released because of pressure in part from the police. The abduction was on 30.5.13, which was after the change in political control, yet the police were still assisting the appellant, and his wife had reported his abduction to the police. Further, given that there had been a change of political control in favour of those associated with his abductors and the killers of his brother, there was ample opportunity to kill the appellant and rely on their political control to expect that as they were in power there would be little risk of prosecution, a viewpoint consistent with Mr Thornhill's reliance on the background information. This scenario is ample justification for the judge's conclusion that the appellant was not at any real risk and even if he were, he could access meaningful protection from the police in Pakistan. Once again, this ground of appeal appears to be no more that a disagreement with the findings of the judge and conclusions to which he was entitled to come and for which cogent reasons have been given.

22. With regard to the issues of relocation, Mr Thornhill relied on SA (Political activities – international relocation) Pakistan [2011] UKUT 30, as in that case the appellant claim was to fear persecution at the hands of the PPP, who were in opposition at that time whilst the appellant was a member of PMLQ. It is curious that this is the mirror image of the appellant's claim, including the murder of a brother, but on this occasion the violence was perpetrated by the PPP.

23. The Tribunal in SA held that the internal relocation principle could not require a political activist to live away from his home area in order to avoid persecution at the hands of his political opponents, which was akin to the pitfalls of requiring a person to act contrary to his normal behaviour in order to avoid persecution highlighted in HJ (Iran) [2010] UKSC 31. The appellant in SA did not have the prominent political profile of his brother, but he had been an active party worker attending numerous political gatherings over a lengthy period. The Tribunal held that it was unjustified not to regard him as a political activist and found that any return to his home area would expose him to a real risk of serious harm against which he would not receive adequate protection. "In our judgement also, the only way the appellant could achieve safety by relocation was if he effectively decided to live in hiding or in political exile." It is clear from the foregoing that the Tribunal found that the appellant in SA was not able to obtain adequacy of protection in his home area.

24. In the light of the foregoing, if the appellant in the present appeal can properly be regarded as a political activist in the same or more significant way than the appellant in SA, internal relocation would not a viable option if it would mean giving up his political activity and having to live in hiding. It is not clear to me that this would necessarily follow and as the PPP is a mainstream party, whether in power or opposition, the appellant would be able to engage in similar political activism elsewhere in Pakistan. This may well distinguish this appellant from SA. However, the judge did not consider these factors and thus I consider it only fair to proceed on the basis that internal relocation is not a viable option, on the basis of SA.

25. However, the situation of the appellant in SA is rather different to the appellant in the present appeal, as found by Judge De Haney. In SA, the Upper Tribunal found that the appellant had neither sufficiency of protection nor a viable option of relocation and his factual claim was accepted. In the present case, the considerations of relocation and sufficiency of protection were findings addressed in the alternative the primary conclusion at §48 that the appellant had failed to substantiate his claims that he is in continual fear from opposition members or needed to either go into hiding, or seek international protection outside Pakistan. On that basis, neither internal relocation nor sufficiency of protection is an issue crucial to the outcome of the appeal. It follows that as the relocation finding was addressed in the alternative, any error in respect of the judge's conclusion on relocation cannot amount to a material error of law.

26. It is not entirely clear whether the judge in fact accepted that the appellant was a political activist, but even if he can be properly described as a political activist in the light of SA, and is in consequence in need of protection, it is clear from the determination that the judge found that there was sufficiency of protection from the authorities in Pakistan, that his family had relied on the police; that he had already benefited from their actions to secure his release; and that all of his behaviour before leaving Pakistan demonstrated that there was a sufficiency of protection for him in Pakistan. This issue is addressed at length in the decision and I find that the judge has provided cogent and strong reasons for reaching this conclusion, quite independent of the issue of internal relocation.

27. In the circumstances, I find no error of law in this regard and no material error of law in the decision when read as whole such as to require it to be set aside and remade. I do not find the decision or the reasoning perverse or irrational, but on the contrary a conclusion the judge was entitled to come and for which cogent reasons have been provided. There is no merit in the grounds of appeal.

Conclusions:

28. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed: Date: 27 November 2014

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable in this case and thus there can be no fee award.

Signed: Date: 27 November 2014

Deputy Upper Tribunal Judge Pickup