Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03737/2013

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination sent**
on 7 January 2014	**on 13 January 2014**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

RANA FAHEEM KHAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms N Watson, of Livingstone Brown, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

(No anonymity order requested or made.)

DETERMINATION AND REASONS

1) The appellant is a citizen of Pakistan, born on 6 June 1977. He entered the UK on a student visa valid from 20 January 2011 to 6 May 2012. He was arrested on 27 March 2013 as a suspected immigration offender. He sought asylum on 3 April 2013. He claimed to be at risk on return to Pakistan from a person who lent him money to come the UK to study English. The loan had not been repaid. The lender threatened and assaulted the appellant's relatives. The police declined to become involved due to the lender's political connections.

2) The respondent refused the claim by letter dated 16 April 2013, explaining at paragraphs 47-70 why the account was not found credible; at paragraphs 71-75, why it was considered that even if he had been threatened by a lender, legal sufficiency of

protection was available; and at paragraphs 76-84, why it was considered that in any event he could relocate.

3) First-tier Tribunal Judge Clough dismissed the appellant's appeal for reasons explained in her determination promulgated on 18 September 2013.

4) The appellant sought permission to appeal to the Upper Tribunal, on these grounds:

> 2 … the Immigration Judge has erred in law in holding that on an assessment of the evidence of the appellant's individual circumstances and taking into account the decision in *AW (Sufficiency of Protection) Pakistan (2011) UKUT 31 (IAC)* it "*… cannot be said there is an insufficiency of state protection in Pakistan …" (paragraph 29, second sentence)* … It is accepted that the client cannot succeed under the Refugee Convention (*for reasons stated by the Immigration Judge at paragraph 27)*, but he maintains his appeal in respect of Articles 2 and 3 ECHR.
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> 3 Decision in *AW*: in that case, the Upper Tribunal held that it was correct to hold that there was a sufficiency of protection only *after* proper assessment of an appellant's individual circumstances (see Headnote 2 and paragraphs 23 and 24 in the case, referring to paragraph 55 (15) in *Bagdanavicius*). In particular the Upper Tribunal stated that a fact finding judge" … *must look notwithstanding a general sufficiency of protection in a country, to the individual circumstances of the appellant …" (paragraph 24).*
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> 4 Error in assessment of the appellant's individual circumstances: in paragraph 29 of her decision the Immigration Judge states that the appellant's individual circumstances are that he would return as a failed asylum seeker "*… owing money, half of which he has available to repay his lender (emphasis added).* She has made a mistake: the appellant does not have " *… half … available to repay …"* Money he had previously saved to do this was confiscated (*see paragraph 22, last sentence*). An error of fact can amount to an error in law if it is sufficiently important. Having regard to the importance the Immigration Judge (*rightly – according to AW (supra, and also referred to by the Immigration Judge)* placed on the appellant's individual circumstances, she has erred in law in making an error in fact when assessing these circumstances for the purposes of applying the test in *AW*.
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> 5 … it cannot be said that this error in fact is irrelevant since it goes to a core/crucial aspect of the Article 2, 3, ECHR claim.

5) First-tier Tribunal Judge Pedro refused permission to appeal by decision dated 3 October 2013.

6) The appellant applied for permission to the Upper Tribunal:

> 2. The appellant repeats the Grounds of Appeal before the FTT … and with reference to the decision of the FTT dated 3 October 2013 submits:
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> 3. Although clear from the decision of the Immigration Judge that his claim does not engage the Refugee Convention (*paragraph 27),* his claim was always restricted to a human rights one, in particular Article 3 (*see paragraph 3 in the Immigration Judge decision).* It is not clear from the decision whether she accepts or rejects as a fact his assertions that he will if returned suffer treatment contrary to Article 3 ECHR.
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> 4. This is why the focus on sufficiency of protection is so important. At paragraph 3 of the decision of the FTT dated 3 October 2013, the judge erred in holding that the Immigration Judge was entitled to find that the issue the appellant feared amounted to "*a civil matter*

> *over an unpaid debt …*" In the absence of any findings in fact it is unclear whether (1) that is all the fear amounts to or whether (2) he would be harmed *(as he alleges his parents were – see paragraphs 13-16)*. If (1) it is accepted that there would be sufficiency of protection but if (2) more is required to be stated for the reasons in *AW*.

7) Upper Tribunal Judge Chalkley granted permission on 22 October 2013.

8) Ms Watson relied upon the grounds and referred to paragraph 24 of AW. She submitted that the appellant's individual circumstances were in evidence before the First-tier Tribunal, in particular at paragraphs 6 and 52 of his witness statement. In his asylum interview at Q/A 126 he mentioned the money in his possession when detained for immigration offending (£3,000). The judge at paragraph 29 took that into account regarding his individual circumstances under reference to AW, but that erred in fact, because the money had been confiscated by the respondent and would not be returned. (The Presenting Officer confirmed that such would be the case.) That amounted to error of law, because it was crucial that there would not be funds to evade (or reduce) the risk by repaying half the loan. The judge had not reasoned adequately whether sufficiency of protection was available to the appellant, and that correlated with the internal relocation issue. The determination should be set aside and the case sent for fresh hearing of the oral evidence in the First-tier Tribunal.

9) The Presenting Officer dealt firstly with the last point raised for the appellant. He said that no rehearing would be needed, because even if there were error, the case should be resolved on the evidence already led. At its best, the case was plainly defeated by the internal relocation alternative. The risk of which the appellant complained was personal and local, there being no evidence that his lender had political clout so as to trace or pursue him throughout the country.

10) The Presenting Officer made his primary submission that there was no error of law such as to require the determination to be set aside. The judge did go wrong in thinking that the appellant would have £3,000 returned to him, but whether he had half the money needed to repay his lender was not relevant to whether there is legal sufficiency of protection in Pakistan. Such further reasoning as the judge gave on the sufficiency of protection issue was brief but adequate. This is a civil matter of an unpaid debt. The alleged political link, if there ever was any, has receded, because the government in Pakistan has changed. AW was a very different case on its facts. Here, there are no individual circumstances such as to suggest that legal sufficiency of protection would not apply. As to internal relocation, there was no reason why the appellant could not work and support himself in Pakistan and no evidence of any risk likely to effect him away from his home area.

11) I reserved my determination.

12) The determination does not appear to include an express resolution of credibility, but to proceed upon the basis that the appellant's claim may be taken largely at face value. It then turns to sufficiency of protection at paragraph 29. There is an error of supposing that half the money to repay the debt would be available. However, a

general sufficiency of protection in Pakistan is supported by AW, by the analysis in the respondent's refusal letter, and by the judge's other findings at paragraph 29. The judge was entitled to conclude that there was sufficiency of protection for the appellant over a "civil matter over an unpaid debt". No more needed to be said.

13) I also accept the submission that, in the alternative, this is a claim defeated by the availability of internal relocation. The proposition that the lender has a relative in the former governing party so as to extend risk throughout such a vast and populous country as Pakistan is far-fetched. There is no evidence of risk to the appellant throughout the country, and there would be nothing unreasonable in expecting him to establish himself elsewhere. (Incidentally, and without condoning any violent efforts to extract payment, there appears to be nothing unreasonable about expecting him to repay his debt.)

14) The determination of the First-tier Tribunal has not been shown to err in law in any respect such as to require it to be set aside, and it shall stand.

9 January 2014
Judge of the Upper Tribunal