



IAC-AH-CO-V1

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

Appeal Number: AA/09344/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 11 August 2015**

**Decision & Reasons Promulgated
On 17 December 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MUHAMMAD AYAZ BAIG
(ANONYMITY DIRECTION NOT MADE)**

Respondent

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant was born on 2 April 1987 and is a male citizen of Pakistan. He entered the United Kingdom as a student in 2011 and applied for asylum in February 2014. He was refused asylum and a decision was taken on 24 October 2014 to remove him from the United Kingdom. The appellant appealed against that decision to the First-tier Tribunal (Judge Cox) which, in a decision promulgated on 18 March 2015, allowed the appeal on asylum and human rights grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.
2. The appellant claims that he comes from Kashmir and his family village is in Punjab. The judge generally found the appellant to be credible. At [41], he found "... the appellant to be quite an impressive witness." The judge

also found [45] that the appellant had been “threatened as a result of community work in his local area [of Kashmir] and that on 8 February 2014 shots were fired at him. I find that the attempt to kill the appellant is an incident of past persecution.” The judge concluded that the appellant had an objectively well-founded fear of persecution in his home area of Pakistan [48].

3. The question of internal flight within Pakistan was examined at the hearing. The judge concluded [54] that

“... on the totality of the evidence I find the appellant has failed to discharge the burden of proof. In my view the appellant’s suggestion that he would be at risk throughout Pakistan is too speculative. He has failed to satisfy me, even applying the lower standard of proof that his assailants may be able to find him anywhere in Pakistan.”

The judge directed himself to *Januzi* [2006] UKHL 5 and *AH (Sudan)* [2007] UKHL 49 and *Hysi* [2005] EWCA Civ 711. The judge also relied upon *Hj (Iran) 2010 UKSC 31*, in particular [58 – 59], the judge observed that the appellant is a “relatively young male who speaks Urdu, Punjabi and English and has spent 24 years in his home country, including his formative years.” He noted that the appellant has lived, studied and worked in Lahore where his wife is currently living. The judge also observed that,

“... in addition whilst in the UK the appellant has demonstrated considerable resilience and adaptability by studying and living here for over three years which strongly suggests that the appellant is capable of adjusting to life in different cities and cultures.”

However, the judge found [60] that the appellant had been persecuted in the past and was now suffering from depression. The appellant believes that his assailants may find him anywhere in Pakistan even though the judge found that this fear was not objectively based. He found, however, that the appellant’s fear would have “a profound effect upon him.” The judge was satisfied that “in having to relocate [within Pakistan] the appellant would not be able to continue his work on behalf of the Kashmiri. In effect, the appellant will conceal fundamental aspects of his personality.” Applying *Hj (Iran)* the judge found that it would be unduly harsh to expect the appellant to relocate within Pakistan, including to Lahore.

4. The grounds of appeal noted that the fear of the appellant of persecution in other parts of Pakistan outside his home area was not objectively well-founded and observed that the judge had not

“... concluded that the appellant would not be able to continue to work on any projects raised in Kashmir on return to another part of Pakistan – as such the core aspect which is the focus of *Hj* examination is not restricted upon (albeit there is no actual risk to the appellant).”

The grounds go on to note that “even if the result of the appellant’s depression and subjective fear is his own restriction on his actions with

respect to the Kashmir cause – the result is the same: no persecution in an area outside of his home area. The respondent’s immigration decision does not therefore infringe the essential right which *HJ* indicates should be protected.

5. I find that the grounds of appeal have merit. I find that the judge has become confused in his application of *HJ (Iran)*. Given that the judge found that the appellant’s assailants would not find him in another area of Pakistan (for example, Lahore where his wife is living) there is no reason to believe that he could not become engaged there with work on behalf of the Kashmiri people (even assuming that such work represented the core aspects of his personality). Crucially, the appellant cannot claim that he would refrain from working at all for Kashmiri causes in areas of Pakistan outside his home area out of a fear of being persecuted in those areas. The appellant could express his support for the Kashmiri cause in those areas and might also work (albeit at a distance) on behalf of the Kashmir people and do so without any objectively well-founded fear of persecution. The judge appears to be suggesting that the appellant is entitled to refugee status in the United Kingdom because he cannot live in his home area and because only in that area is he able to express his support for the Kashmiri people. That begs the question as to whether the appellant can reasonably live anywhere at all outside Kashmir without denying this core aspect of his personality. Put bluntly, this core aspect of the appellant’s personality, as understood by Judge Cox, would not be restricted any more in Lahore (a city within the appellant’s country of nationality) than it would be in Bradford (where he currently resides).
6. I find, having regard to the above, that the judge has erred in law and that his decision in respect of internal flight within Pakistan is not sustainable. The judge should have found on the facts and applying the relevant jurisprudence that the option of internal flight for this appellant would not be unduly harsh. I therefore set aside the First-tier Tribunal’s decision and remake the decision dismissing the appeal.

Notice of Decision

The decision of the First-tier Tribunal which was promulgated on 18 March 2015 is set aside. I have remade the decision. The appeal is dismissed on asylum grounds. The appeal is dismissed on human rights grounds. The appellant is not entitled to a grant of humanitarian protection.

No anonymity direction is made.

Signed

Date 22 September 2015

Upper Tribunal Judge Clive Lane