



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

Appeal Numbers: AA052262015
AA052312015

THE IMMIGRATION ACTS

Heard at Newport (Columbus House)

**Decision & Reasons
Promulgated
On 23 May 2016**

On 17 May 2016

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SB
AB**

Respondents

(ANONYMITY DIRECTION MADE)

Representation:

For the Appellant: Mr I Richards, Home Office Presenting Officer
For the Respondents: Mr J Edwards instructed by Adam Khattak Solicitors

DECISION AND REASONS

1. I make an anonymity order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) in the light of the appellants' claims for asylum. This order prohibits the disclosure directly or indirectly (including by the parties) of the identity of the appellants. Any disclosure in breach of this order may amount to a contempt of court.

This order shall remain in force unless revoked or varied by a Tribunal or Court.

2. Although this is an appeal by the Secretary of State, for convenience I will refer to the parties as they appeared before the First-tier Tribunal.

Introduction

3. The first appellant was born on [] 1965 and the second appellant is her daughter who was born on [] 2003. Both are citizens of Pakistan.
4. The appellants claim to have arrived in the UK on 2 March 2014. They claimed asylum on 21 March 2014. The basis of their claims was that the first appellant's husband was a senior official in the Balouch Rabuta Ittefak Tehreek (BRIT) Party. The first appellant also held a high position in the women's wing and the second appellant volunteered for the party.
5. The appellants claim that as a result of their political involvement the first appellant's husband had been abducted by agents of the Pakistan Security Services on 18 October 2013 and when this was reported to the police they had refused to help. The first appellant had then received threats by telephone and her father had been spoken to, abducted and released on 25 February 2014. The appellants left Pakistan on 2 March 2014 using their own passports after an uncle paid a bribe to get them through the airport. The appellants fear that if returned to Pakistan they will be killed by the authorities.
6. In her decision letter dated 4 March 2015, the Secretary of State rejected the appellants' account including that the first appellant's husband and the first appellant herself had been targeted by the Pakistan Security Services. As a consequence, the Secretary of State refused the appellants' claims for asylum, humanitarian protection and under Articles 2 and 3 of the ECHR. The Secretary of State also rejected the appellants' claims under Article 8. The appellants appealed to the First-tier Tribunal.

The Judge's Decision

7. Judge O'Brien heard evidence from the appellants and made factual finding on the evidence in favour of the appellants. At paras 25-26 of his determination he said this:

"25. I am satisfied, therefore, to the necessary standard that the First Appellant's account is true. Given the background evidence of persecution of Balochs by the Pakistani authorities, the First Appellant's husband's abduction and the sudden incidence of threats of violence and abduction suffered by the Appellants after they began political activity, I am satisfied that they have a well-founded fear of persecution and/or serious harm by reason of their political beliefs and/or their ethnicity. I am fortified in this conclusion by the fact that the First Appellant has seemingly come and gone perfectly happily between Pakistan and the United Kingdom for many years and that there is no

other apparent reason (nor one advanced by the Respondent) for her suddenly wishing to stay permanently in this country.

26. It follows that the Appellants are entitled to a grant of asylum.”

The Secretary of State’s Appeal

8. The Secretary of State sought permission to appeal to the Upper Tribunal. On 29 September 2015, the First-tier Tribunal (Judge Reid) granted the Secretary of State permission to appeal on the basis that the judge had arguably erred in law by failing to consider whether the appellants would be able to obtain a “sufficiency of protection” from the Pakistan authorities and whether internal relocation was an option.
9. In a response under rule 24 dated 29 October 2015, the appellants sought to uphold the judge’s decision on the basis that, since the judge had accepted that the appellants were at risk from the Pakistan State in particular the Pakistan Security Services, the issue of sufficiency of protection from the state did not arise and internal relocation was also not a safe option.

Discussion

10. On behalf of the Secretary of State, Mr Richards submitted that the judge had failed to deal with the issue of sufficiency of protection or internal relocation. That, he submitted, was an error of law but the real issue was whether it was material given that the source of the persecution was the Pakistan State itself. He accepted that the Secretary of State had not raised the issue of internal relocation in the decision letter.
11. The judge’s finding that the appellants are at risk from the Pakistan State, in particular the Pakistan Security Services, is not challenged. In the light of that, it is difficult to see how any argument based upon sufficiency of protection or internal relocation could lead the judge to find that the appellants had not made good their asylum claims.
12. The issue of sufficiency of protection arises when the actor of persecution is a “non-State actor”. Hence, the Qualification Directive (SI 2006/2525) in Art 3 states that an actor of persecution or serious harm may be (a) the state; (b) any party or organisation controlling the state or a substantial part of the territory of the state. In addition, Art 3(c) includes non-State actors in the following circumstances:

“Any non-State actor if it can be demonstrated that the actors mentioned in paras (a) and (b), including any international organisation, are unable or unwilling to provide protection against persecution or serious harm.”
13. Article 4 of the Qualification Directive goes on to deal with who can be “actors of protection”. The important point for the purposes of these appeals is, however, that the issue of “sufficiency of protection” only

applies where the actor of persecution is a “non-State actor” and has no application where the actor of persecution is the state itself.

14. It might be that in a highly unusual circumstance the particular situation in a country may give some grounds for believing that one arm of the state may be able and willing to protect an individual from persecution by another arm of the state. That will, however, be highly unusual. There is no evidence to suggest that it could apply in these appeals.
15. In fact, in these appeals the Secretary of State did not suggest in her refusal letter that the Pakistan State would be able and willing to protect the appellants from the agents of persecution in the state if the appellants’ claims were accepted.
16. In her decision letter, the only reference to sufficiency of protection is in paras 38-40. Those paragraphs refer to the decision in Shah and Islam [1999] Imm AR 283 and AW (sufficiency of protection) Pakistan [2011] UKUT 31 (IAC). The former case concerns the risk to women in general (and in particular of domestic violence) as a “particular social group” and, if at all, the protection offered by the state against such domestic abuse by non-state actors. The latter is concerned with the protection of the Pakistan State against non-State actors, in particular the MQM, a political party. Paragraph 38 makes plain on its face that the consideration of sufficiency of protection is on the basis that the appellants’ claims have not been established. It is, therefore, concerned only with a sufficiency of protection to the appellants as returning women to Pakistan. There is no assertion and no supporting evidence cited that the Pakistan State would be able or willing to provide sufficient protection to the appellants against the Pakistan Security Services itself.
17. Likewise, although the heading above paras 38-40 includes “internal relocation”, no specific reference is made thereafter to it and, as Mr Richards accepted, the decision letter does not assert in substance that the appellants may internally relocate.
18. Even though the judge referred to “sufficiency of protection” and “internal relocation” and the applicable approach at paras 16-18, nothing in the evidence, given his finding that the appellants were at risk of persecution at the hands of the Pakistan State, could have led him to conclude that the Pakistan State was able and willing to protect the appellants from agents of the Pakistan Security Services on return to Pakistan or that they could safely and reasonably avoid such a risk by internally relocating within Pakistan.
19. The Judge did not materially err in law in reaching his decision.

Decision

20. The judge's decision to allow the appellants' appeals on asylum grounds did not involve a material error of law. Those decisions stand.
21. The Secretary of State's appeal to the Upper Tribunal is, accordingly, dismissed.

Signed

A Grubb
Judge of the Upper Tribunal
Date 23 May 2016

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

A Grubb
Judge of the Upper Tribunal
Date 23 May 2016