Upper Tribunal (Immigration and Asylum Chamber) | **Appeal number: PA/07199/2016**

THE IMMIGRATION ACTS

Heard at:	**Field House**	**Decision & Reasons promulgated**
On	**27 September 2017**	**On 1 December 2017**

Before

Deputy Upper Tribunal Judge Bagral

Between

[W A] — **Appellant**
~~**(Anonymity Order not made)**~~

And

The Secretary of State for the Home Department — **Respondent**

Representation:

For the Appellant: Mr J Dhanji, of Counsel.
For the Respondent: Mr E Tufan, Senior Home Officer Presenting Officer.

REMITTAL AND REASONS

Anonymity

1. The First-tier Tribunal did not make an anonymity order. I have not been asked to make one and see no reason to do so.

Introduction

2. The Appellant has been granted permission to appeal the decision of Judge of the First-tier Tribunal Lucas (hereafter “the judge”) who, in a decision promulgated on 22 June 2017, dismissed his appeal against the Respondent's decision of 22 June 2015 to refuse his protection claim.

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Background

3. The Appellant is a citizen of Pakistan. He claimed international protection on the ground that he will be at real risk of persecution and ill-treatment in Pakistan on the basis that he will be subject to forced recruitment by the Taliban.

4. As the Respondent accepted the Appellant's account of past events, the hearing before the judge proceeded by way of submissions. The live issues before the judge were the issues of sufficiency of protection and internal relocation. The judge resolved these issues against the Appellant. The judge observed that the Appellant's father was able to secure the services of an agent to arrange the Appellant's departure from Pakistan, and took account of his ability to relocate from Pakistan to the UK. The judge noted that it was unexplained how or why the Appellant's father did not travel with him and found that it was inconceivable that he would entrust the Appellant's wellbeing to an agent without providing his contact details either to the Appellant or to the agent.

5. The judge also noted the Respondent's efforts to trace the Appellant's father, but he had not been furnished with the precise information provided by the Appellant and noted that no reference was made by the Appellant to his maternal uncle. The judge thus concluded that the Appellant had family in Pakistan. The judge then dealt with the issue of sufficiency of protection in the following terms:

> "36. The Tribunal does not accept that there is a general lack of State Protection available in Pakistan. There is a functioning police and military which devote considerable resources to combating radical groups within that country. There is no reason why the Appellant could not avail himself of State Protection in any area way from his home area of Pakistan. He has shown himself to be able to live and adapt to life in the UK. There is no reason why that could not occur in another area of Pakistan, well away from his home area.
>
> 37. The Tribunal does not accept that the Taliban would either have the will or desire to attempt to trace and then forcibly recruit the Appellant in a big city away from his home area – such as Islamabad or Karachi. In any event, there is a functioning system of State Protection available in these cities."

6. Those findings were dispositive of the claim and accordingly the judge dismissed the appeal.

Permission to Appeal

7. The grounds seeking permission complain that the judge erred in law in allowing a procedural irregularity in not putting to the Appellant the allegation that he was not telling the truth about his lack of contact with his father and/or maternal uncle, and the judge's assessment in relation to this issue was factually incorrect. It is further argued that the judge failed to engage with or consider the country background evidence relied upon by the Appellant in support of his claim that there was insufficient state

protection available to him. First-tier Tribunal Judge Osbourne considered that the grounds were arguable and granted permission on 20 July 2017.

Decision on Error of Law

8. At the hearing both representatives made submissions. Mr Dhanji amplified his grounds and Mr Tufan, while acknowledging the errors, submitted that they were not material – there is a large population in Pakistan and the Appellant as a young adult who had some experience of travel could relocate to another area of Pakistan.

9. After hearing the submissions of the representatives, I announced my decision that I was satisfied that the judge erred in law and I now give my reasons for doing so.

10. I consider that the central submissions made by Mr Dhanji are correct.

11. First, I accept there was a procedural irregularity giving rise to unfairness. The core elements of the Appellant's factual account were accepted by the Respondent. In the refusal the Respondent takes no issue with the Appellant's account that he does not have contact with his family and no contrary submissions were made at the hearing by the Respondent's representative. The judge at [29] noted the concessions made by the Respondent and thus the hearing proceeded by way of submissions. In the circumstances, while the judge was entitled to have concerns about the Appellant's evidence, he should have raised those concerns at the hearing to enable the Appellant an opportunity to address them. I agree with Mr Dhanji that it was unfair not to do so.

12. Second, I also accept Mr Dhanji's submission that there is an error of fact at [32] in that, the judge failed to identify the Appellant's explanation in his witness statement as to why his father did not travel with him, which infects the judge's conclusion that there is family support in Pakistan and, in turn, undermines the judge's conclusion that internal flight is reasonable.

13. Third, I also consider that the judge conducted no meaningful assessment of whether a sufficiency of protection was available to the Appellant on the basis of evidence. The question of whether there is a sufficiency of protection is a fact sensitive issue. The judge's conclusions at [36] and [37] are formed without any analysis of the facts or background evidence. The Appellant claimed that his life is at risk because he was from the NWFP region of Pakistan and that in that region the authorities are unable to provide a sufficiency of protection. The background evidence referred to by Mr Dhanji in his Skeleton Argument before the judge arguably supports that claim. There is no analysis or assessment of that evidence when there ought to have been. I am thus satisfied that the judge's conclusions are unsustainable.

14. In the circumstances, I am satisfied that the above errors are material and are sufficient to render the Decision unsafe. While I do not say that the judge's decision to dismiss the appeal was not open to him, it is the manner and route by which that conclusion has been reached which is flawed.

15. For all the above reasons, I set aside the decision of the judge. The effect of my decision is that the Appellant's appeal will need to be determined on the merits on all issues. I was unable to remake the decision at the hearing as no interpreter had been booked for the hearing. Mr Tufan submitted that further evidence would be required and invited me to remit the appeal to the First-tier Tribunal. Mr Dhanji did not dissent from such a course.

16. In most cases, the Upper Tribunal when setting aside the decision will be able to re-make the relevant decision itself. However, the Practice Statement for the Immigration and Asylum Chamber of the Upper Tribunal at para 7.2 recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it is satisfied that:

    "(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

    (b) the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

17. In my judgment, this case falls within para 7.2 (b). Given that I have decided that the Appellant's case will need to be decided on the merits on all issues and having regard to the Court of Appeal's judgment in JD (Congo) & Others [2012] EWCA Civ 327, I am of the view that a remittal to the First-tier Tribunal is the right course of action.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside in its entirety. This case is remitted to the First-tier Tribunal for a hearing on the merits on all issues by a judge other than Judge of the First-tier Tribunal Lucas.

Signed Date: 15 November 2017

Deputy Upper Tribunal Judge Bagral