



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/10039/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 16th April 2018

Promulgated

On 03rd May 2018

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

NN

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Singer, instructed by Majestic Solicitors Ltd

For the Respondent: Ms K Pal, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born in 1985. He appeals against the decision of First-tier Tribunal Judge Oliver, dated 11 December 2017, dismissing his appeal against the refusal of his protection claim on asylum and human rights grounds.
2. The Appellant appeals on the grounds that the judge erred in law in his assessment of whether the Appellant could internally relocate. The judge failed to apply the appropriate test of whether it would be unduly harsh for him to do so set out in Januzi v Secretary of State for the Home Department & Others [2006] UKHL 5. The judge applied the wrong test to

his assessment of internal relocation and gave insufficient reasons for why he found that the Appellant could internally relocate. The judge's conclusion that the Appellant could relocate to Karachi was flawed given the evidence in the background material to which the judge failed to make any reference.

3. Permission to appeal was granted by Upper Tribunal Judge Rintoul on 19 February 2018 on the grounds that it was arguable that First-tier Tribunal Judge Oliver erred in his approach to internal relocation given the particular and unusual facts of this case.
4. In the Rule 24 response, the Respondent did not oppose the Appellant's application for permission to appeal on the basis that the First-tier Tribunal Judge had not adequately considered the internal relocation issue and invited the Tribunal to determine the appeal with a fresh oral continuance hearing to consider whether the Appellant would be able to relocate.

The Judge's Findings

5. The judge made the following findings:

“23. The appellant has produced no witness statement from his father or from his colleague in Dubai and he delayed making his asylum claim for over 5 years after coming to the United Kingdom, but he has produced evidence of the complaints made by his father and has given a cogent explanation for why he did not claim asylum sooner. I find that the appellant has presented a credible and well documented history of the threats that he faced as a policeman in Pakistan. The terrorist in whose name he claims that threats were made is no longer a threat but he claims that Al Qaeda and associated groups will still target him on return. It was held in AW (sufficiency of protection) Pakistan [2011] UKUT 31 that a sufficiency of protection was generally available in Pakistan and the respondent's country information (June 2017) argues that this is still the case. Each case, however, has to be considered on its own merits and I find that as a prominent policeman, even though time has now passed, there may remain an effective threat if he returns to the areas to which he used to be posted. These areas, however, are all in the Punjab in the middle of a very large country and I find that he will be able safely to relocate outside this area place such as Karachi, where adequate protection will be available.

24. At its highest, the medical evidence produced by the appellant is by no means sufficient to mount any claim under article 3 or 8. He has no family life in the United Kingdom and while he will have developed some private life during his six years in the country, his status has always been precarious and I find he has no private life claim to remain under paragraph 276ADE of the Immigration Rules.”

Submissions

6. The Respondent accepted that the judge had made an error of law. Mr Singer submitted, following paragraph 7 of the Practice Statement dated 25 September 2012, although remaking is the normal approach even if further fact-finding is necessary, this case should be remitted to the First-tier Tribunal because the Appellant had not had an opportunity for his case to be properly considered by the First-tier Tribunal. In this case the Appellant's account had been accepted as credible by the Respondent and the only issue on appeal was whether he could internally relocate. The judge failed to properly apply the correct test or to make any findings on whether it would be unduly harsh for the Appellant to relocate. He merely relied on the fact that it was a large country and gave no reasons for why the Appellant could relocate to Karachi.
7. Mr Singer submitted that the Appellant had been deprived of an opportunity of a fair hearing before the First-tier Tribunal and therefore the matter should be remitted. Ms Pal agreed that this was the appropriate course of action in the particular circumstances of this case.
8. Paragraph 7 of the Practice Statement of 25 September 2012 states: Disposal of appeals in Upper Tribunal
 - 7.1 Where under section 12(1) of the 2007 Act (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b)(i) or proceed (in accordance with relevant Practice Directions) to re-make the decision under section 12(2)(b)(ii).
 - 7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal 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 in order 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.
 - 7.3 Remaking rather than remitting will nevertheless constitute the normal approach to determining appeals where an error of law is found, even if some further fact finding is necessary.
9. In MM (Sudan) [2014] UKUT 105 (IAC), at paragraph 26, McCloskey J held: "We consider that, as a fairly strong general rule, where a first instance

decision is set aside on the basis of an error of law involving the deprivation of the Appellant's right to a fair hearing, the appropriate course will be to remit to a newly constituted First-tier Tribunal for a fresh hearing. This is so because the common law right to a fair hearing is generally considered to rank as a right of constitutional importance and it is preferable that the litigant's statutory right of appeal to the Upper Tribunal should be triggered only where the former right had been fully enjoyed."

10. The only issue before the First-tier Tribunal was internal relocation. The judge's findings are set out above. They are inadequate and fail to address the appropriate test. I find that the Appellant has been deprived of an opportunity to have his appeal properly considered by the First-tier Tribunal and the appropriate course, given the unusual circumstances of this case, is to remit it to the First-tier Tribunal for a rehearing.
11. I set aside the decision dated 11 December 2017 and in accordance with paragraph 7.2 (a) I remit the matter to the First-tier Tribunal for re-hearing. None of the judge's findings are preserved.

Notice of Decision

The Appellant's appeal is allowed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

J Frances

Upper Tribunal Judge Frances
2018

Date: 27 April

TO THE RESPONDENT **FEE AWARD**

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

Signed

J Frances

Upper Tribunal Judge Frances
2018

Date: 27 April