



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

**Appeal Number: PA/05321/2019**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20 February 2020**

**Decision & Reasons Promulgated  
On 5 March 2020**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**SMA**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr J. Gajjar of counsel, instructed by SMA Solicitors

For the Respondent: Mr S. Kotas, Home Office Presenting Officer

**DECISION AND REASONS**

**BACKGROUND TO THE APPEAL**

1. The Appellant is a national of Pakistan. He first entered the United Kingdom, as a student, in 2002. He last entered the United Kingdom on 17 August 2015 and applied for asylum on 6

October 2015. His application was refused on 7 March 2016 and his subsequent appeal was dismissed on 11 October 2016.

2. The Appellant made further submissions on 11 April 2017 which the Respondent accepted amounted to a fresh claim but she refused his application on 24 May 2019. He appealed against this decision and First-tier Tribunal Judge Hussain dismissed his appeal in a decision promulgated on 1 November 2019. The Appellant appealed and First-tier Tribunal Judge Gumsley granted him permission to appeal to the Upper Tribunal on 15 December 2019.

### **ERROR OF LAW HEARING**

3. Counsel for the Appellant and the Home Office Presenting Officer made oral submissions and I have taken these into account when reaching my decision below.

### **ERROR OF LAW DECISION**

4. The Appellant's first ground of appeal relates to the Judge's assessment of the weight to be given to a letter from Jholey Lal Law Associates. In paragraph 13 of his decision, the Judge referred to a letter, dated 6 April 2017, but this would appear to be a mistake as the letter in question, which was at page 16 of the Appellant's Bundle, is dated 28 January 2017. In this letter, the lawyer confirms that the Appellant's father had sought his assistance and mentioned that, although he could not assist him, he did call the local police station on 10 January 2017 and ascertained that the police had visited the family home and were looking for the Appellant.
5. The letter does not mention when the Appellant's father attended the attorney's office and, the Judge asserted that this was inconsistent with the affidavit of the Appellant's father, dated 6 February 2017, which says that he visited on 5 January 2017. However, in my view, this is not necessarily the case. Nor can it necessarily be inferred from the wording of the affidavit that the attorney contacted the local police station on 5 January 2017.

6. There was another letter from Jholey Lal Law Associates which had an address at the bottom of it but it was open to First-tier Tribunal Judge to cast doubt on the reliability of the letter, dated 28 January 2017, on the basis that it did not give an address for the firm. It was also open to him to note that the extract from the Sindh Bar Council only refers to an Abdul Raqaque Channa and says that he practices in Lakarna district and division. No explanation was given at the error of law hearing for the difference in the name on the letters and the name in the extract from the Sindh Bar Council.
7. The record of proceedings on my file was difficult to read but I note that the refusal letter made it clear that the Respondent did not believe that the letter, dated 28 January 2017, was an official letter from a legal firm in Karachi. It was also confirmed by the parties' own records of proceedings that the Home Office Presenting Officer had put it to the Appellant at the First-tier Tribunal that lawyers can be paid to write letters which were not accurate. Therefore, whether or not the lack of an address on the letter was out to the Appellant, he was generally on notice that the Respondent did not believe it was a letter which could be relied upon, as required by *AM (fair hearing) Sudan* [2015] UKUT 00656. The very fact that the Appellant had provided another letter from the Jholey Lal Law Associates with an address on it indicates that he was aware that the lack of an address may go to the credibility of the earlier letter.
8. But I have also taken into account that First-tier Tribunal Judge Hussain made an error of fact in paragraph 17 of his decision when considering the letter from the MQM, dated 21 January 2017. It may well be the case that the Appellant's family had informed the MQM of the difficulties that they were experiencing since the Appellant left Pakistan. But this did not detract from the fact that the letter confirmed that the Appellant had worked with the Party until 2013. This was evidence which was within the knowledge of the Rabita Committee and did not derive from anything it may have been told by the Appellant's family. As a consequence, First-tier Tribunal Judge Hussain should have considered what weight to give to this aspect of the letter.
9. In addition, the fact that the Appellant had asked witnesses to provide evidence to assist him at his appeal does not necessarily render any such evidence self-serving, as was suggested in

paragraph 18 of the decision. If this was the case, an appellant would have serious difficulties in succeeding in an appeal where the burden of proof falls upon him.

10. It is also the case that when considering whether there would be a sufficiency of protection for the Appellant in Pakistan and whether he had a well-founded fear of persecution the Judge failed to consider the evidence provided by the Appellant in the context of relevant objective and country evidence contained within pages 102 – 131 of the Appellant’s Bundle. In particular, he failed to take into account the information about the Rule of Law provided in paragraphs F1 and F2 of the Freedom House Report *Freedom in the World 2019: Pakistan*.
11. For all of these reasons I find that First-tier Tribunal Judge Hussain’s decision did contain errors of law.
12. The parties agreed, that if an error of law was found, the appeal should be remitted to the First-tier Tribunal due to the extent to which credibility had been in issue in First-tier Tribunal Judge Hussain’s decision.

## **DECISION**

- (1) The Appellant’s appeal is allowed.
- (2) The appeal is remitted to the First-tier Tribunal to be heard *de novo* before a First-tier Tribunal Judge other than First-tier Tribunal Judge Hussain, Anstis or Gumsley.

**Nadine Finch**

Signed  
Upper Tribunal Judge Finch

Date 20 February 2020