IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI 2023 002644
UI-2022-002276

First-tier Tribunal No: PA/51484/2020
PA/51484/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

8TH January 2024

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

RM
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Smith, Counsel instructed by Legal Rights Partnership
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 15 December 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of his family, is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant or any member of his family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Judge Barker promulgated on 23 March 2023.

2. However, for ease of reference hereafter the parties will be referred to as they were before the First-tier Tribunal.

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3. Permission to appeal was granted by Upper Tribunal Judge Pickup on 8 August 2023.

Anonymity

4. An anonymity direction was made previously and is maintained as this appeal concerns a protection claim made by a vulnerable person.

Factual Background

5. The appellant is a national of Pakistan now aged forty. He arrived in the United Kingdom with his mother and sibling during 1990 as a visitor. The family returned to Pakistan and came back to the United Kingdom in 1991. On 20 January 1998, the appellant and his family were granted indefinite leave to remain in the United Kingdom. The appellant's application for naturalisation was refused on 25 January 2003 because he had acquired a long series of criminal convictions. A decision to make a deportation order was served on the appellant on 29 October 2007 and his appeal against that decision failed. A deportation order was signed on 27 July 2008. The appellant was convicted of further offences on 5 March 2012 and an application he had previously made for the revocation of the deportation order was refused. His appeal against that decision was allowed on human rights grounds and the deportation order was revoked. The appellant was arrested for a criminal offence on 29 August 2017 upon returning to the United Kingdom. He subsequently received a conviction for motoring offences and insurance fraud on 3 January 2018 and was sentenced to 6 years' imprisonment.

6. On 23 January 2019, the appellant applied for asylum. That claim was based on a land dispute as well as a separate argument he had with others over an issue with a boiler. Those disputes had led to violent attacks including the shooting of the appellant's father which had led to his leg being amputated. The appellant was also shot at. The appellant relied on his relationship with two partners as well as his 6 children and referred to his poor mental health and that he was suffering from sciatica.

7. On 8 September 2020, the Secretary of State made a deportation order under section 32 (5) of the UK Borders Act 2007. The decision letter relied on section 72 of the Nationality, Immigration and Asylum Act 2002 owing to the length of the appellant's prison sentence. The appellant was also excluded from a grant of Humanitarian Protection for the same reasons. The protection claim was rejected, in respect of the land dispute, because it was considered that the appellant could receive protection from the authorities in Pakistan and that he could relocate within Pakistan. The claim regarding the boiler issue was rejected as it was not accepted that the appellant had provided a consistent, detailed, and credible account of this matter. The appellant's failure to claim asylum before being notified of an immigration decision was said to damage his credibility with respect to section 8(5) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. Consideration was given to the appellant's medical history, with the respondent concluding that he could receive treatment in Pakistan. As for Article 8, it was not accepted that there were very compelling circumstances over and above the exceptions to deportation.

The decision of the First-tier Tribunal

8. At the hearing before the First-tier Tribunal, the appellant and his mother were treated as vulnerable witnesses on health grounds and adjustments were made

to enable them to give evidence. The appellant's partner also gave evidence. The judge concluded that the appellant rebutted the presumption set out in Article 33(2) of the Refugee Convention. The judge accepted that the appellant had provided a credible account of being at risk of persecution in Pakistan on account of the land dispute, that there was an absence of effective protection in Pakistan and that it was not reasonable to expect him to relocate. The judge did not accept that the appellant had identified a Refugee Convention reason but concluded that his removal would breach Article 3 ECHR and he was therefore entitled to Humanitarian Protection. The same facts led the judge to find that the appellant had established very compelling circumstances and therefore the appeal was also allowed on Article 8 grounds.

<u>The grounds of appeal</u>

9. The grounds of appeal made four points. Firstly, the judge failed to give adequate reasons in respect of the section 72 findings. Secondly, there was said to be a failure to have regard to material matters in relation to the findings on internal relocation. Thirdly, it was argued that the judge applied an elevated standard in finding that there was no sufficiency of protection available to the appellant. Lastly, it was submitted that the judge failed to follow a structured approach to their article 8 consideration.

10. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

> It is arguable that by focusing on the fact that there had been no offending since 2014 and on issues of rehabilitation, the First-tier Tribunal gave insufficient consideration was given to the overall history and in particular the appellant's long criminal offending behaviour with some 36 previous offences before those for which he was sentenced to a term of 6 years' imprisonment. It is also arguable that insufficient weight was given to the public interest including public confidence in the judicial system.
>
> It is also arguable that the findings on internal relocation and sufficiency of protection were inadequately reasoned and unduly sympathetic to the appellant's subjective fears. Arguably inadequate reasons are provided for finding it would be unduly harsh to expect the appellant to relocate. Similarly, an arguably one-side approach is taken to sufficiency of protection. Arguably, the First-tier Tribunal has changed the definition of what would be sufficient protection, raising it to a high standard of deterrence and protection in advance against those who may wish to harm the appellant when finding that the Pakistani authorities were unable or unwilling to provide a sufficiency of protection.
>
> Finally, it is also arguable that the article 8 ECHR assessment was woefully inadequate. It is not clear that the judge had followed the structured approach required in relation to public interest considerations under s117C of the 2002 Act.

11. The respondent filed a Rule 24 response dated 20 September 2023. In it, the appeal was robustly opposed, with it being contended that the grounds were an attempt to reargue the appeal.

<u>The error of law hearing</u>

12. When this matter came before me, Ms Cunha was inconvenienced by not having her laptop with her. I therefore provided her with the First-tier Tribunal decision and reasons, the Secretary of State's grounds of appeal and the Rule 24 response.

13. Ms Cunha confirmed that after a short break to refamiliarise herself with the papers that she was ready to proceed. Thereafter, I heard succinct submissions from both representatives. At the end of the hearing, I stated that the decision of the First-tier Tribunal contained no material error of law, and that the decision was therefore upheld. I give my reasons below.

Decision on error of law

14. The Secretary of State's first complaint was that in deciding not to uphold the section 72 certificate, the judge failed to give adequate reasons and failed to take relevant matters into account. Ms Cunha clarified that she was not pursuing paragraph 5 of ground one which concerned rehabilitation. At this juncture, I note that paragraphs 3 and 4 of the grounds erroneously import tests from section 117C (4) of the 2002 Act and that Ms Cunha did not pursue these matters either. The only part of the first ground amplified by Ms Cunha was what she described as the respondent's main issue. That being that the judge failed to take account of the fact that the appellant had been released on licence, and this was why he had not reoffended, as there was still an element of control in place. There is no substance in this complaint. The judge demonstrated throughout the decision that she had detailed regard to the appellant's historic offending including the warning letter he received from the Home Office before concluding that the offence in question was a particularly serious crime. Under the section of the decision dealing with section 72, the judge again mentioned the appellant's offending history and in recording that he had not offended since 2014, noted that he had left the UK and spent time in custody during that period. The remainder of this ground amounts to disagreement with the judge's conclusion that the appellant no longer represented a danger to the community. The judge's finding on this was supported by substantial evidence from professionals dealing with the appellant when he was serving his prison sentence as well as his probation officer. At [40], the judge specifically engages with the respondent's submissions and at [41] she noted the presence of protective factors which include a stable home, the appellant's partner, child, and his mother's ill health. In addition, the judge accepted that the appellant was genuinely remorseful for his offending and motivated to pursue a life free from further offending. The assertions made in ground one are not made out.

15. In the second ground, little more than disagreement is expressed with the judge's conclusion that it would be unduly harsh for the appellant to relocate to another part of Pakistan. It is asserted in the grounds that no details were provided as to the appellant's vulnerabilities, there was no evidence that his mental health would significantly deteriorate, that he had returned to Pakistan several times and that his vulnerabilities had not prevented him from committing offences. Ms Cunha's submissions did not take this ground any further. Neither the grounds nor Ms Cunha engage with the uncontested evidence of a clinical psychologist which was before the First-tier Tribunal. That report referred to aspects of the appellant's circumstances in addition to the facts underpinning his protection claim. I will not set out the details here as they are of an intensely private nature.

16. In reaching her findings, the judge took account of the appellant's education and ability to work but accepted the expert evidence that his mental health would deteriorate further if he was returned to Pakistan, away from his support system in the United Kingdom and that he would suffer further were he to relocate to an area where he would face isolation [67-73]. The judge notes that

the medical care available in Pakistan would not extend to the emotional support the appellant received from his family in the United Kingdom and that the appellant's subjective fear of those he is at risk from would further put his mental health at risk.

17. At this point, it is worth recalling that there is no challenge to the appellant's account of being at risk of serious ill-treatment from his relatives in Pakistan. This ground identifies no material error of law.

18. The following point is made in ground three.

> At [67] the FTTJ finds that the appellant would not have sufficiency of protection on return from the authorities because little action was taken against the perpetrators over the land dispute. However, it is submitted that an elevated standard has been applied given that sufficiency of protection exists.

19. Ground three has not been particularised and as such is not made out. Ms Cunha attempted to stray beyond what was said in ground three in her submissions. She made no application for these additional points to be made and it follows that no permission was granted for her to do so. In any event, the points she made were lacking in substance and did not engage with the evidence relating to sufficiency of protection which was before the judge. That evidence included FIRs which referred to a series of complaints made by the appellant's late father, following which the violent acts simply continued. In addition, there was a country expert report adduced by the appellant, the content of which was not challenged on behalf of the respondent. At [68], the judge reached the following conclusion.

> Dr Bennett-Jones comments on state protection generally in Pakistan, and says that as a result of the challenges they face, the police can only protect a few high profile individuals, and the suggestion that the appellant would be afforded effective protection from hostile relatives is "totally unrealistic" (para 21 & 22). He goes on to say, and this is evident throughout the entire report, that the police simply do not want to intervene in matters that they deem to be 'family matters' such as this. I am satisfied that this opinion has been demonstrated in practice in this particular case, and that the authorities have for many years, failed to act properly to protect the appellant's father from the violence that I accept that he has suffered at the hands of his feuding family members.

20. The grounds do not engage with the judge's finding that the appellant was unlikely to obtain protection on the specific facts of his case and as such do not identify an error of law.

21. As for the last ground, Ms Cunha accepted that if there was no material error identified in the preceding three grounds, this ground would fall away. As indicated above, I am not with the respondent on grounds one to three and therefore any error in the judge's approach to article 8 is immaterial.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal is upheld.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 December 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is <u>in detention</u> under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 <u>working</u> days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email