



IAC-FH-AR-V1

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

Appeal Number: AA/00664/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 8 February 2015**

**Decision & Reasons Promulgated
On 24 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**M I
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bandegani, Counsel, instructed by Leonard & Co Solicitors

For the Respondent: Miss N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal arising from a decision of First-tier Tribunal Judge Hussain which was promulgated on 26 November 2015. It is brought with the permission of First-tier Tribunal Judge Fisher dated 18 December 2015. I will persist in the anonymity direction which was properly made in the First-tier Tribunal.
2. This appellant was born in January 1983. He is a national of Pakistan and his immigration history is fully set out in the decision of the First-tier

Tribunal. The issues which fell to be determined on that occasion related to issues of asylum and humanitarian protection. The appellant is a member of the Hazara community and it was accepted by the First-tier Tribunal Judge that he also held a position as a police officer.

3. Although this is a full and detailed decision, the difficulty lies in discerning what precisely the First-tier Tribunal Judge decided on the issues which called for determination. In particular it is conceded on behalf of the Secretary of State that there are inconsistencies in the apparent findings which the First-tier Tribunal Judge made. The relevant part of the decision reads as follows:

“27. Any persecution or ill-treatment to which the appellant may be subject would be no greater than that is levelled at members of his community generally.

28. I have no reason to doubt the appellant's evidence that except one of his brothers, the rest of have left Pakistan. Such migration would be unsurprising given the instability that reigns in the appellant's home country but it is not a sufficient reason to find that the appellant personally is at real risk of ill-treatment for a Convention reason.

29. If I am wrong in my conclusion, then the question that is ultimately going to be determinative of whether the appellant can relocate to another part of Pakistan. On this issue the appellant's expert, unless I have misread the information, expressed no firm opinion.

30. What the expert does say in paragraph 24 is that whilst the systematic attack and targeting of the Hazara peoples is by now hardly disputable, it appears also evident that the state is unable and perhaps unwilling to protect the Hazaras in the wake of the increased deterioration of the law and order situation in Baluchistan. Baluchistan, especially Quetta, is by most described as a garrison town where the army and the paramilitary forces such as the Frontier Corp struggle to maintain law and order. The expert then quotes various extracts and objective evidence to support her opinion. As to whether Hazaras could relocate elsewhere outside of Baluchistan, she cites at paragraphs 28 the extracts from some publication which states that whilst a majority of Hazaras in Pakistan lived in around the city of Quetta, there are Hazara communities elsewhere in Pakistan, notably Karachi, Lahore and Multan.

31. From the above, I conclude that the appellant has not shown that he would not be able to relocate internally to a part of Pakistan other than Quetta where he can live in reasonable safety.

32. The Secretary of State considered the appellant's human rights within the terms of paragraph 276ADE. She noted that the appellant had not lived in the United Kingdom for more than 20 years and there were no insurmountable obstacles to his return there. I have considered the appellant's oral as well as written evidence in this regard and find that he has not demonstrated that there are any insurmountable obstacles to his return.

4. Paragraphs 33 and 34 include reference to the Convention and Refugee Protocols and the judge's conclusions at paragraph 35 read as follows:

“Given the above factual conclusions I find that the appellant has discharged the burden of proof of having a well-founded fear of persecution for a Refugee Convention reason. I come to my conclusion that the appellant's removal would not cause the United Kingdom to be in breach of its obligations under the Refugee Convention.”

5. Both the detail of the decision and an holistic reading of the whole reveal it to be both confused and confusing. I agree with the representatives of the Secretary of State that paragraphs 27 and 28 cannot possibly hang together because of the mutual inconsistency in their findings. I also find paragraph 35 very difficult to comprehend. In common with the judge who granted permission to appeal, I cannot help wondering whether there is a typographical error in paragraph 35 where what is asserted by the judge seems to be the reverse of the overall tenor in which the preceding paragraphs were phrased.
6. In the light of these errors of law, in particular the First-tier Tribunal Judge's assessment of the issue of relocation, I need to consider whether they are material. Clearly the First-tier Tribunal Judge did not apply the correct legal test when considering whether relocation internally to a part of Pakistan other than Quetta was such that the appellant could live “in reasonable safety”. That is some way distant from the legal test which is to be applied.
7. Equally there is significant confusion from the First-tier Tribunal Judge as to whether this appellant needed show that there was a particular risk to him, greater than that to other members of the Hazara community generally. I have been taken to extracts from the expert evidence which was before the First-tier Tribunal Judge which suggests that the material in question was either not considered by the judge, or if it was considered it was misinterpreted. Certainly the passage which the judge summarises at paragraph 30 of the determination fails to take into account a key qualification which appears in the expert's report at page 59 of the supplementary bundle indicating that ‘Hazaras’ in other districts of Pakistan may not be ethnic Hazaras as is claimed.
8. I do not consider that the fact these various arguments were pursued in the alternative is a reason why the final conclusion of the First-tier Tribunal Judge can be in some way salvaged. An appellant is entitled to know not only the conclusions of the First-tier Tribunal Judge but the reasoning which led to these conclusions. In this case the progressive planks of the reasoning are so opaque that there is a failure in the judicial function of making clear what the findings are and the reasons for those findings. The judge ought properly to have approached this matter following the established approach as commended by the House of Lords in **AH (Sudan) [2007] UKHL 49**. The judge singularly failed to do that.
9. I have given consideration to retaining this matter in the Upper Tribunal for further consideration but it seems to me that what is essential here is that the matter be remitted and reheard by a different First-tier Tribunal

Judge who can receive oral evidence, tested if necessary cross-examination, and apply the proper legal test to that evidence making findings which are appropriate.

10. It therefore follows that this appeal will be allowed and the matter will be remitted to the First-tier Tribunal to be decided de novo. I do not propose preserving any of the findings of the First-tier Tribunal as I regard the decision to be flawed and incoherent and it would not be appropriate to take such a course.

Notice of Decision

Appeal allowed. Case remitted to First-tier Tribunal for rehearing.

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 him or any member of their 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 *Mark Hill*

Date 20 February 2016

Deputy Upper Tribunal Judge Hill QC