



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

Appeal No: PA/01698/2020 (P)

THE IMMIGRATION ACTS

Decided under rule 34

Decision & Reasons
Promulgated
On 2 February 2021

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

M A

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS (remit to FtT) (P)

1. The appellant is a citizen of Pakistan, aged 35. He appeals against the decision of FtT Judge Swaney, promulgated on 31 July 2020.
2. After granting permission to appeal, the UT issued directions with a view to deciding without a hearing (a) whether the FtT erred in law and (b) if so, whether its decision should be set aside.
3. In a response dated 1 December 2020, the SSHD accepts that the FtT erred, in light of the principles established in *Hj (Iran)* [2010] UKSC 31, by failing to consider whether the appellant “would in future refrain, due to fear of persecution, from expressing genuinely held views in respect of religious matters if returned to Pakistan”.
4. The SSHD “takes a neutral stance on (i) the appropriate venue for any remaking and (ii) whether and to what extent findings of fact should be preserved.”

5. In a response dated 11 December 2020 the appellant says “as to disposal” only that “paragraphs 31 and 32 of the FtT decision should be preserved”.
6. In those circumstances, the UT may now fairly decide issues (a) and (b) above without a hearing.
7. The “*Hj (Iran)*” issue was canvassed only faintly on the appellant’s behalf in the FtT and in the grounds of appeal to the UT, so the SSHD’s position is astutely and fairly taken; but the concession is plainly correct. Also plainly, the error is one which requires the decision of the FtT to be set aside and remade.
8. The findings at [31] and [32] are that the appellant wrote the articles he claimed to have written; expressed opinions on political and religious matters likely to put him at odds with the public and with the authorities; and “may well”, in consequence, have received threats by internet and email.
9. In accordance with the appellant’s request and the respondent’s neutral approach, the findings at [31] and [32] are “preserved”, to the effect that they stand as a determination of those issues of fact, not to be revisited unless some good reason emerges in course of further proceedings; that is to say, along the lines of the well-established “*Devaseelan*” principles (although this is not the usual “*Devaseelan*” instance).
10. It is a little more problematic how to deal with the FtT’s other findings of primary fact. Some of those were negative to the appellant. No reason has been established either to set them in stone or to set them at naught.
11. The appellant’s general credibility cannot be divorced from the question how he is likely to behave in future. He seeks to adduce further evidence. It would be difficult and artificial to tie the hands of a future judge by findings already reached. Accordingly, although error has been established on one issue only, I consider that fairness requires an overall re-appraisal, which is apt for the FtT rather than for the UT.
12. Under section 12 of the 2007 Act, and under Practice Statement 7.2, the case is remitted to the FtT. The next tribunal will require to resolve the case on its merits, on all materials placed before it, not being limited by the previous decision, other than to the extent explained above.
13. The member(s) of the FtT chosen to consider the case are not to include Judge Swaney.
14. The FtT made an anonymity direction, which remains in place.

Hugh Macleman

UT Judge Macleman
8 January 2021

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 in detention 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 working 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.