



**The Upper Tribunal
(Immigration and Asylum Chamber) Appeal number: AA/03093/2015**

IMMIGRATION ACTS

Heard at: Field House

Decision and Reasons

Promulgated

On: 11 August 2015

On: 27 August 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

**MS SUMEER GHULAM RASOOL
NO ANONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr A Jaffar, counsel (instructed by Lee Valley Solicitors)

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Pakistan, born on 11 December 1975. She appeals with permission against the decision of First-tier Tribunal Judge M A Khan who dismissed the appellant's appeal on asylum and human rights grounds in a decision promulgated on 15 May 2015.
2. The appellant applied for a Tier 4 visa on 11 May 2012 which was issued and valid until 14 October 2013. She left Pakistan, arriving in the UK on 5

June 2012. She applied to extend her visa on 3 October 2013 which was granted until 12 October 2015.

3. On 4 August 2014, she claimed asylum on the basis of a well founded fear of risk of persecution on return to Pakistan as a member of a particular social group, fearing both her husband and her own family if returned to Pakistan as she had an illegitimate child.
4. The appellant claimed that her marriage to Mr Manzoor Ul Haq had been arranged and took place on 14 September 1999. She lived "sometimes" with her husband and sometimes with her mother [17]. She claimed that her husband was violent to her from the start. He used to drink. He was a gambler and socialised with "indecent people." He would sometimes burn her with cigarettes and tie up her feet and hands.
5. She gave birth to their first daughter on 7 July 2000. As her husband wanted a boy, he struck her with a rolling pin, resulting in a scar in the corner of her eye. He burned her with cigarettes while she nursed the child and she returned to her mother's house.
6. While staying at her mother's house her husband would demand money on the basis that she had been taking care of her mother and he should be compensated for this. Her brothers sometimes gave him money. When she discovered that she was pregnant on the second occasion, she feared she would not give birth to a boy. When she was five months' pregnant he took her for a scan and it was discovered that she was having a girl. Her husband then beat her.
7. After two months her husband attacked her and cut her left wrist with a knife. She was taken to the doctor and then went again to stay with her mother.
8. Her second daughter was born on 30 June 2004. After that, she did not return to her husband's home. Two of her brothers stated that they would not let her return home and she continued to live with her mother until her brothers got married in 2010. She then moved in with one of her younger brothers, Nehboob.
9. Her brothers decided at that time they would no longer give money to her husband as they were now married and could not afford it.
10. In January 2011, someone came to her brother's home and started shooting. Her brother was hit in the leg. She does not know if anyone has been arrested for that attack because straight after that her brother had a child and she became busy with that.
11. She believes that her husband was responsible for the attack because he continuously threatened her and her family. Her husband also changed his address after the attack.

12. In 2012, her brother had another child and stated he would make arrangements for the appellant to study abroad in order to learn how to run a business. She left her children with her brother and came to the UK in June 2012.
13. Whilst studying in the UK she met Mr Shehzad Ahmad. She commenced a relationship with him and became pregnant. She gave birth to a daughter on 12 November 2014.
14. She claimed that when she told her brother about her daughter's birth in the UK he stopped financial support. When she told Mr Ahmad he hung up on her and she has not been able to contact him since.
15. Her husband in Pakistan then found out about the child and came to take the children from her brother's home. This was reported to the police who paid no attention to it and no FIR was lodged. She has been speaking to her children in the presence of their private tutor.
16. She fears that if returned to Pakistan, her life as well as that of her daughter would be at risk from her husband as she is in a relationship with another man and he has fathered her child.

The Judge's findings

17. In his findings of fact and credibility, the Judge noted that the core of her claim was that her husband was violent with her from the first day of the marriage in 1999. He set out the history of that relationship including his attempt to kill her and her unborn child in 2004, after which she went with her mother and three brothers, who were living with their mother at the time. When her two brothers got married, Mehboob took her to live with him. There was an attack on her brother's house in January 2011. Her brother was shot in the leg.
18. The Judge noted that she produced an English translation of the FIR. The appellant came to the UK in June 2012 as a student and met a man, Shezad Ahmad. They had an affair for between three and four months, after which she became pregnant and gave birth to a baby daughter. She claimed that the child is illegitimate which is forbidden in Pakistan. Her family and husband would cause her and "her children" harm if she returns [43].
19. The appellant claimed that after her brother's house was attacked in January 2011, he went to the police station but did not give any names to the police. She produced an English translation of the FIR stating that she was married to Manzoor Ul Haq. Her brother's report was that he is sure that the appellant's parents in law arranged the attack on him as he was not sending the appellant to their house. The appellant however stated in interview, in her written statement and oral evidence before the Tribunal that her parents in law died shortly after her marriage in 1999. The Judge found the appellant's explanation as to this major discrepancy to be vague

and evasive [44]. He did not find her evidence before him or the documentary evidence in the form of the FIR to be credible or consistent.

20. Judge Khan stated that the appellant's evidence is that she came from a very conservative Muslim family and had a religious upbringing. Against that background, she claimed that she met a man, Shehzad, in a park in London and had a relationship with him for three to four months. She does not know anything about this man, his address, his date of birth, age, or his immigration status or what work he did to support himself.
21. He found that the appellant's evidence about their relationship and her getting pregnant "stands totally against her conservative Muslim values and her religious upbringing. I do not accept the appellant's evidence of this relationship or the birth of the illegitimate child. I do not find the appellant's evidence to be credible or consistent." [45]
22. Judge Khan stated at paragraph 46 that the appellant claimed that Shehzad wanted to marry her and she wanted to marry him. She was in agreement with him about marriage. Judge Khan stated that this is despite the fact that she claims to be still married to Mansoor Ul Haq in Pakistan. The appellant's explanation is that she has not told Shehzad about her marriage in Pakistan [46].
23. He found that evidence puts the status of her marriage in Pakistan still continuing in serious doubt. If she is still married to Mansoor Ul Haq, why would she even consider marrying Shehzad. He again stated that he did not accept the appellant's evidence with regard to her relationship with Shehzad and giving birth to an illegitimate child to be credible or consistent [46].
24. The Judge noted that the appellant stated that her brother's friend came to visit her to give her some money and clothes. That was when she was four months' pregnant. This friend then telephoned her brother and told him about her pregnancy.
25. Judge Khan did not find it plausible or credible that the appellant's brother's friend would be aware at that stage that the appellant was pregnant and that he reported the matter to her brother.
26. In his ultimate conclusion, the Judge found that the appellant had invented her evidence around the case law of Shah and Islam but which has left many implausible and unexplained discrepancies. He did not find the appellant to be a credible or a consistent witness. In this case, credibility is paramount if she is to succeed under the principles of Shah and Islam. He found that the appellant is totally unreliable [48].
27. Even though he found the appellant's credibility to be totally discredited, he assessed the possibility of risk of persecution on her return. He did not accept the appellant's version of events. He did not accept that she would be at risk on return to Pakistan. He did not accept that the threats from

her family in Pakistan are genuine, or that they would be carried out as claimed by the appellant. He found that the claimed threats have been generated by the appellant for the purpose of the asylum claim and have no reality about them whatsoever [50].

28. Accordingly, he found that the appellant had not established her case that she is at real risk of persecution on her return to Pakistan.
29. On 12 June 2015, First-tier Tribunal Judge McDade granted the appellant permission to appeal on the basis that the Judge had not properly considered or made findings on “many of the points raised in the skeleton argument” and had failed adequately to address or properly interpret the objective evidence.
30. Mr Jaffar, who had not represented the appellant before the First-tier Tribunal, adopted the grounds seeking permission. He also produced the skeleton argument before the First-tier Tribunal. He submitted that the respondent had accepted at the second paragraph 52, which appeared after paragraph 54, at page 7 of the detailed reasons for refusal, that it was accepted that the appellant had experienced domestic violence from her husband from the beginning of her marriage; that she had given birth to a child who is not her husband's in the UK, and that her husband had tried to take her children but was unsuccessful.
31. He submitted that the core of the appellant's claim is that she fears return to Pakistan with her illegitimate child, both of whom would become subject to degrading treatment or worse. It would be very difficult for her to seek protection from the enforcement authorities when such authorities could pursue her on possible grounds and charges of adultery. There are very strong non state actors in Pakistan, motivated to harm - or worse - a lady who “indulged herself in adultery” and the child who is the result of such “indulgence.”
32. He submitted that the Judge in his findings on paragraph 44-48 had no regard to the positive “findings” by the respondent in the refusal letter at paragraph 52.
33. The reason behind the refusal to accept the appellant's evidence regarding a relationship with a man in the UK or the birth of the illegitimate child on the basis that she comes from a conservative Muslim family and that she has a religious upbringing constitutes a misdirection.
34. He submitted that there is no “objective evidence” suggesting that girls who come from very conservative Muslim families with a religious upbringing could not have had such a relationship as the appellant had, and could not have had a child as she did. Even though the Judge's contention that her evidence of the relationship with Shezad and getting pregnant stood against her conservative Muslim values and her religious upbringing, this could not be considered to be impossible.

35. Moreover, the finding at paragraph 46 of the determination regarding Shezad wanting to marry her and she wanting to marry him was despite the fact that she claimed still to be married to her husband in Pakistan. Her explanation that she had not told Shehzad about her marriage in Pakistan puts the status of her marriage in serious doubt. If she is still married to him, why would she even consider marrying Shezad? That was the basis upon which he did not accept her evidence with regard to her relationship with Shehzad and giving birth to an illegitimate child to be credible or consistent.
36. Mr Jaffar submitted that there was no evidence by way of background suggesting that a married woman could not even consider marrying another man just because she is married.
37. Moreover, the refusal to accept her evidence with regard to the relationship and the giving of birth to an illegitimate child does not explain the fact that the child is not from her husband.
38. Accordingly, he submitted that the Judge's finding that the appellant had invented her evidence to bolster a claim was not properly reasoned and was against the acceptance of facts by the respondent in the refusal letter.
39. It was also submitted in the grounds that the Judge had regard to the fact that the appellant's child was born on 12 November 2014 and was a Pakistani national who would accompany her mother to Pakistan. Those were considered to be the best interests of the child. However, it is contended that the Judge erred in not considering the risk associated with the status of the child, who is illegitimate and born out of wedlock, returning to a conservative society of Pakistan where non state actors remain very strong and influential in imposing their "writs". This was in contravention of the duty imposed by s.55 of the 2009 Act. There was no careful examination of all the relevant information and factors.
40. Nor did the Judge consider the country guidance decision in KA and Others. That authority had been specifically drawn to the attention of the First-tier Tribunal in the skeleton argument at paragraph 18. Even though in general, women on return would not face prosecution on charges of adultery in Pakistan, and would not be at real risk of a flagrant denial of their rights to a fair trial, it will always be necessary to consider the particular circumstances of the individual case.
41. The skeleton argument had referred to the country information guidance relating to Pakistani women, dated 16 July 2014.
42. Mr Jaffar also referred to part B of the appellant's bundle, before the First-tier Tribunal, which contained a report from the Human Rights Commission of Pakistan in 2014. This contained 50 pages of background evidence referring to ill treatment of women in Pakistan.

43. He also referred to paragraph 1.3.9 and 1.3.10 contained in the COI report before the Tribunal.
44. He submitted that the Judge has not made a finding as to the “status of the child”, i.e. whether the child is legitimate or not.
45. He submitted that the respondent accepted that the appellant's claim of being a member of a particular social group due to her status as a Pakistani woman.
46. However, there was no finding by the Judge as to whether the husband has carried out violence up until 2011.
47. He submitted that the respondent accepted that part of her claim of domestic violence that she experienced at the hands of her husband. It was also accepted that her husband had tried to take her children but was unsuccessful (at paragraph 52 of the refusal letter). He also referred to paragraph 57 of the reasons for refusal where the respondent had regard to the US State Department Country Report on human rights practices, 2013. It was noted that there are frequent failures to punish abusive spouses, which contributed to a climate of impunity.
48. Mr Jaffar submitted that if the decision is set aside, this is an appropriate case for remittal to the First-tier Tribunal for a decision to be made on all the available evidence.
49. On behalf of the respondent, Mr Melvin has produced written submissions. He relied on the Rule 24 response. At paragraph 3, it is noted that the Judge found that the appellant was not credible or consistent, and rejects the claim that the appellant had an affair and as a result became pregnant. The Judge also did not accept that the appellant would be at risk from her family and that the threats against her are not credible. Given the adverse findings, she could not show that she is at risk on return for a Convention reason.
50. He submitted that the Judge gave detailed reasons for the finding that the FIR was not credible or consistent.
51. He submitted that Judge Khan's findings that it was incredible that someone who asserts that she hails from a conservative Muslim family and that she herself practised her religion, without knowing anything about the man, could possibly have a child with Shehzad. He submitted that the Judge gave clear reasons for not believing this part of the claim.
52. He also submitted that it is clear from the decision that the Judge did not accept that she is still married to Manzoor Ul Haq in Pakistan [46] and that he has given clear reasons for that finding.
53. Given the above evidence, including the fact that her two children are in Pakistan with her family members, the Judge clearly expects that she would be returning to the protection of her own family as set out in the

refusal letter at paragraph 83-84 and at paragraph 50 of the determination.

54. He submitted that given the clear reasons for those findings, the issues raised in the skeleton argument fall away.
55. It was not accepted that the appellant had given reliable evidence on the core issues. If those findings are sustainable, which Mr Melvin submitted they are, the Judge was not in material error by failing to consider all the points raised in the permission application, which are based upon the appellant's telling the truth.
56. He submitted that the grounds raised constitute in effect a disagreement with the findings of the First-tier Tribunal and that she has manufactured her claim in order to benefit from the Refugee Convention. Nor was there evidence that the appellant has been accused of committing adultery.
57. Mr Melvin relied on authorities such as MK (Duty to give reasons) Pakistan [2013] UKUT 641 and Shizad (Sufficiency of Reasons: Set aside) [2013] UKUT 85. Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which the appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the Judge.
58. Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised, and the relevant country guidance has been taken into account, unless the conclusions the Judge draws from the primary data were not reasonably open to him or her.
59. He submitted that there had been no material error.
60. In reply, Mr Jaffar submitted that a core issue related to the effect of the appellant's having an illegitimate child. There was no clear conclusion drawn by the Judge that the appellant is not married. At most the marriage is not subsisting. These issues were not properly engaged with by the Judge.
61. Nor did the submissions by Mr Melvin engage with the reasons given by the Judge at paragraphs 46, 45, and 47.

Assessment

62. The core of the appellant's case is that she had been subjected to violence by her husband since July 2000 when she gave birth to a girl. When she became pregnant with her second child, shown to be a girl, her husband beat her up. Two months after that he attacked her and cut her wrists with a knife. She then went to stay with her mother again. The child

was born in June 2004. After that, she did not return to her husband's home.

63. The appellant claimed that when her brothers stopped paying her husband in 2010, having paid since 2004, there was then an incident in 2011 when her brother was shot.
64. She claimed that she had an affair in the UK with a man called Shehzad.
65. In the respondent's conclusions in the reasons for refusal, it was accepted that she had experienced domestic violence from her husband from the beginning of her marriage in Pakistan, although it was not accepted what had occurred at her brother's home as there were inconsistencies. It was however accepted that she gave birth to a child who is not her husband's in the UK. It is also accepted that her husband tried to take her children but was unsuccessful.
66. Notwithstanding the acceptance of those facts, the Judge did not accept her evidence of the relationship with Shehzad or the birth of the illegitimate child [45]. The basis for that finding was that the appellant claimed to have come from a very conservative Muslim family and had a religious upbringing. Against that background, she claimed she met Shehzad in a London park and had a relationship with him. She did not know anything about him. Her evidence about that relationship with him and getting pregnant was found to stand "totally against the conservative Muslim values and her religious upbringing." The Judge therefore did not accept her evidence of this relationship or the birth of the illegitimate child.
67. At paragraph 46, the Judge stated that the appellant claimed that Shehzad wanted to marry her and she him. The Judge stated that this was despite the fact that she claimed still to be married to her husband in Pakistan. Her explanation is that she had not told Shehzad about her marriage in Pakistan. That evidence put the status of her marriage in Pakistan "... has (sic) still continuing in serious doubt." [46] Why, if she was still married, would she even consider marrying Shehzad? The Judge again stated that he did not accept her evidence with regard to her relationship with Shehzad and the giving birth to an illegitimate child to be credible or consistent [46].
68. However, at paragraph 54, the Judge noted with regard to the Article 8 claim, that the appellant's child was born on 12 November 2014 and was just over six months old.
69. The Judge therefore stated on two occasions that he did not accept her evidence of the relationship with Shehzad or the birth of the child. It is however accepted by him that her child was born on 12 November 2014.

70. He also stated that her evidence that she is still married to her husband in Pakistan and that she had not told Shehzad about her marriage in Pakistan, puts the status of her marriage in serious doubt.
71. It is not clear what the Judge meant by that statement. It is not evident why he did not accept she gave birth to an illegitimate child. In stating that he does not accept the appellant's evidence to be credible, it is not clear whether he is asserting that the marriage between the appellant and her husband terminated prior to her becoming pregnant. If that is so, there is no evidence to substantiate that.
72. I find that the Judge's reasoning that because she comes from a very conservative Muslim family and has had a religious upbringing, and that her relationship with Shehzad and getting pregnant went totally against her values, is non sequitur. There was no evidence by way of background or otherwise substantiating that assertion. As the Judge clearly accepts that the appellant's child was born on 12 November 2014 in the UK, it is not evident whose child that is. Merely because she was still married to her husband did not mean she would not even consider marrying Shehzad.
73. It was on that basis that the Judge did not accept her evidence with regard to that relationship or the giving of birth to an illegitimate child.
74. I find that those findings amounted to material misdirections. The result was that the Judge found that she had invented her evidence around the case law.
75. Although the Judge stated at paragraph 50 that "I do accept the appellant's version of events" it appears that he intended to say that he did not accept her version of events. In any event, he went on to state that he did not accept that she would be at risk on her return to Pakistan and did not accept the threats from her family in Pakistan are genuine, or that they would be carried out as claimed. Again, he found that these claimed threats were generated by the appellant for the purpose of the asylum claim and had no reality about them whatsoever.
76. In rejecting her claim of a relationship in the UK which resulted in the birth of an illegitimate child the Judge's assessment of the appellant's risk on return to Pakistan was also affected.
77. Moreover, the Judge has not given consideration to the country guidance cases or the background information produced in the appellant's bundle.
78. For these reasons, I find that the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is accordingly set aside and will be re-made.
79. I have had regard to the Senior President's Practice Statement regarding the issue of remitting an appeal to the First-tier Tribunal for a fresh decision. In giving effect to that approach, I am satisfied that the effect of the error has been to deprive the appellant before the First-tier Tribunal of

the opportunity to have her case properly considered by the First-tier Tribunal. In any event, there will be a complete re-hearing with no findings preserved. This is an appropriate case to remit.

80. The appeal is accordingly remitted to the First-tier Tribunal for a fresh decision to be made.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and the decision is set aside. It is remitted to the First-tier Tribunal (Hatton Cross) for a fresh decision to be made.

No anonymity direction is made.

Signed

Date 24 August 2015

Deputy Upper Tribunal Judge Mailer