



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/03429/2015

**THE IMMIGRATION ACTS**

Heard at Glasgow  
On 25 August 2015

Decision and Reasons Promulgated  
On 28 August 2015

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ROBIA SARWAR

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A F Miller, of Hamilton Burns & Co, Solicitors  
For the Respondent: Mrs S Saddiq, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. By determination promulgated on 21 May 2015, First-Tier Tribunal Judge Farrelly dismissed the appellant's appeal, advanced under the Refugee Convention on the basis of risk to her in Pakistan as an unmarried mother. The Judge did not find her to be a credible witness.
2. The appellant did not insist upon her ground of appeal number 1.
3. Ground of appeal number 2 says:-

"At paragraph 34 ... the Judge makes the finding that Mr Yusuf [father of the appellant's child] is the appellant's spouse ... this is speculation ... no evidence was

submitted ... with regards to marriage and no submissions were made by either party to this effect. The Judge has failed to provide adequate reasoning why he has come to this conclusion ....”

4. Miss Miller submitted that the finding of a marriage was unsupported by documentary evidence, oral evidence or any reasoning. Mr Yusuf in his statement and in oral evidence said that he and the appellant were no longer together. The issue was plainly material to a claim based on risk as an unmarried mother, which the determination recognised at paragraphs 18 and 39 to be a real possibility. It was accepted that the Judge gave some reasons for the negative findings regarding aspects of the appellant’s evidence, but Miss Miller maintained that there were no reasons for the finding on the marriage.
5. Ground 3 says:-

“[If] the Judge was entitled to come to the finding that Mr Yusuf was the appellant’s spouse ... the Judge has erred in failing to carry out a proportionality assessment with regard to the appellant’s and her “husband’s” Article 8 rights should she be removed ...”
6. Miss Miller submitted that a proportionality exercise fell to be carried out on the basis of the alternative finding, although she accepted that it was difficult to put such a case when the appellant’s instructions were that the facts were quite to the contrary.
7. Ground of appeal number 4 says:-

“At paragraph 34 ... the Judge states “however, no evidence has been led to confirm his status in the UK”. A copy of Mr Yusuf’s biometric residence permit was lodged ... the Judge failed to take into consideration evidence that he should have had regard to.”
8. Miss Miller accepted that this was not a ground which on its own might lead to the determination being set aside, but said that it was an obvious error which added to the overall criticism.
9. Finally, Miss Miller submitted that the determination should be set aside and a rehearing of the evidence undertaken to determine the true extent of the relationship between the appellant and Mr Yusuf.
10. Mrs Saddiq submitted that the Judge dealt very appropriately with the credibility of the evidence of the appellant. He had particular regard to the cultural background and context, for example at paragraphs 15-18 and 24. He explained why he did not find her to be as naïve as she suggested. He gave good reasons for rejecting her account about her immigration history, her illegal residence for over two years, why she was unable to produce or replace her Pakistani passport, why a marriage was proposed but did not proceed, and inconsistencies in what she said to the police, to the respondent and to the tribunal about the loss of her passport. At paragraph 33 the judge took account of the possibility of the claim being true against the cultural background, along with the implausibility of those aspects, but concluded that he did not believe the appellant’s account about her child being born out of wedlock, and that this allegation was made in order to remain based on a false asylum claim which did not reflect any risk of persecution on return. Those were more than sufficiently reasoned findings, properly weighed up, which were sufficient to dispose of the case.

As to ground 3 even if the Judge had looked further at proportionality, based on his findings the outcome would have been no different, in or out of the Rules. Failure to note the evidence of the immigration status of Mr Yusuf made no difference as the child was not a UK citizen. The determination should stand.

11. I raised the question whether the finding on the marriage at paragraph 34 went further than was strictly necessary, and whether the conclusions at paragraph 33 would have been enough. Mrs Saddiq submitted that the finding on the marriage was well within the scope of the Judge and did not reflect any error. She said that the finding that they were spouses was intended to reflect an Islamic ceremony as mentioned at paragraph 19, not a marriage legally registered in the UK. An Islamic marriage would be all that would be required for the appellant not to be perceived as an unmarried mother in Pakistan.
12. Miss Miller in response acknowledged that the Judge referred to background evidence and to the cultural context, but emphasised that the finding on the marriage was material, and that it was based on no direct evidence whatsoever.
13. I indicated that I was not satisfied that there was any error such as to require the determination to be set aside.
14. While Miss Miller focussed on such points as might be criticised in the determination, I broadly preferred the submissions on behalf of the respondent, as summarised above. The Judge was entitled to find that the appellant failed to prove her case. He gave several good reasons, set out in the determination and founded upon by Mrs Saddiq. It makes no difference that the status document of Mr Yusuf was overlooked.
15. The conclusions at paragraph 33 were sufficient to dispose of the case.
16. I do not think that the conclusion about a marriage at paragraph 34 was speculative or unreasonable. Rather, it was a sensible inference from all the information before the Judge. It is unsurprising that there was no direct evidence when the fact of the marriage, if such be the case, is one which the appellant and her witness were anxious to conceal from the tribunal. I also agree that by a marriage the judge meant an Islamic marriage not given legal form in UK law (and hence not on UK official records). But even if his finding went too far, the point would be immaterial.
17. The appellant's appeal to the Upper Tribunal is dismissed. The determination of the First-Tier Tribunal shall stand.
18. No anonymity order has been requested or made.



Upper Tribunal Judge Macleman

27 August 2015