



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

Appeal Number: AA/05077/2014

THE IMMIGRATION ACTS

Heard at Glasgow

**Decision and Reasons
Promulgated**

On 22 April 2015

On 6 August 2015

Before

UPPER TRIBUNAL JUDGE DEANS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS SILMAT SILMAT
(anonymity order not made)**

Respondent

Representation:

For the Appellant: Mr M Matthews, Home Office Presenting Officer

For the Respondent: Mr G McGowan, Quinn, Martin & Langan

DETERMINATION AND REASONS

- 1) This is an appeal by the Secretary of State against a decision by Judge of the First-tier Tribunal Fox. Judge Fox allowed an appeal by Mrs Silmat Silmat (hereinafter referred to as "the claimant") against a decision to remove her following refusal of her asylum and human rights claims. Judge Fox found that the claimant was entitled to protection as a refugee.
- 2) The basis of the claimant's asylum claim is set out at paragraph 6 of the determination by the Judge of the First-tier Tribunal. The claimant is a national of Pakistan. She was born on 22 March 1986 in a village in the

Swat Valley, where she lived until 2010. Her father is a prominent Taliban commander. After the Taliban attacked a police station she was taken into custody by the police. She then married a man of whom her father disapproved. Fearing for their safety, the claimant and her husband fled Pakistan and ultimately came to the UK. The claimant's husband's father was killed by the claimant's father. Once in the UK the claimant was a victim of domestic abuse at the hand of her husband. She is now separated from him and she does not know where he is. The claimant suffers from mental health problems.

- 3) The Judge of the First-tier Tribunal accepted to the low standard of proof appropriate for asylum appeals that the claimant's father is connected with the Taliban and may indeed be a leader of considerable influence. The judge accepted that the claimant's husband was a manipulative person determined to pursue his own interests and that he perpetrated domestic violence against the claimant. The claimant believed he had returned to Pakistan and the judge thought this was a reasonable belief. The judge concluded that the claimant is a victim of domestic violence. Were she to return to Pakistan it was likely that her husband would be able to trace her as his father used to be a policeman and he would have access to his father's contacts. If the claimant's husband was able to find her then the domestic abuse she suffered would continue and intensify. There would not be adequate protection for her in Pakistan. The claimant belonged to a particular social group, namely women who had been married. She was returning to a culture in which a woman in her position would not be welcomed.
- 4) The Secretary of State set out a number of grounds in the application for permission to appeal. It was pointed out that there were earlier determinations dismissing appeals by the claimant's estranged husband. The judge did not consider that he was required to take these determinations into account. As the separation of the claimant and her husband happened after the appeals were dismissed, however, it was contended that the negative findings in relation to the claimant's husband should stand in this appeal.
- 5) Secondly, the Secretary of State noted that the judge had accepted that the claimant's estranged husband would be in a position to trace her on her return to Pakistan. It was contended that this was entirely speculative as both the claimant and her estranged husband said they were fleeing their families. Even though the estranged husband's father was said to have been a police officer, this was not an indication that there would be a reasonable degree of likelihood that her estranged husband would be able to trace her anywhere in Pakistan. In any event, the claimant's husband's account of his background and history was not accepted by previous judges and there is no reason why the claimant's separation from her husband should undermine those findings in respect of the alleged experiences of the couple.

- 6) Thirdly, the Secretary of State referred to the judge's finding that the claimant would be returning as a single woman who had once been married. The judge failed to give any reasons why this would lead to any risk to the claimant, given that there was no evidence that she had broken or offended societal mores in Pakistan.
- 7) Permission to appeal was given on the basis of these three grounds. In granting permission the judge pointed out that there were certain other difficulties with the determination. In particular, there was an incomplete sentence at paragraph 20 and a finding made at paragraph 16 seemingly without any evidential basis.
- 8) In his submission at the hearing Mr Matthews relied on the grounds in the application. He submitted first that the judge had taken the wrong approach to the previous determinations in respect of the claimant's husband. He stated at paragraph 11 of his determination that he had read these and taken them into account, which appeared to be the correct approach. However, the judge did not give the previous determinations the potential significance in accordance with the decisions in TK (Georgia) [2004] UKIAT 00149 and AA (Somalia) [2007] EWCA Civ 1040. The previous determinations in relation to family members should form a footing for the later decision maker on the same factual matrix. The asylum claim by this claimant was the same except for the allegation of domestic violence against her husband. For example, the claimant said that following the attack on the police station the homes of the Taliban were attacked and she was taken hostage. All of this was disbelieved. The judge did not tackle this head-on. He stated at paragraph 14 that her husband had taken control of the evidence-gathering process but it is not clear what the judge meant. He minimised the impact of the previous determinations but this would not suffice as the claimant relied on the same evidence.
- 9) Mr Matthews continued that the second ground, relating to whether the claimant's estranged husband would be able to trace her in Pakistan, indicated that the judge had misunderstood the evidence. The rule 24 response lodged on behalf of the claimant appeared to be based on a misunderstanding of the evidence. No proper consideration had been given to the fact that the claimant's husband's evidence had been disbelieved. There was no evidence to show that the claimant's estranged husband could find her if she returned to Pakistan. It was of no significance if her estranged husband's father had been in the police and there was no finding to this effect.
- 10) In relation to the third ground, relating to the claimant's return to Pakistan as a single woman, the judge's finding was unsustainable. The judge's view on risk was not supported by the country guideline case of KA and Others (domestic violence - risk on return) Pakistan CG [2010] UKUT 216. The judge did not refer to this decision. In addition, the judge did not give adequate reasons for finding a risk to a single female in Pakistan. There

was no evidence as to the whereabouts of the claimant's husband although the claimant said she believed he was in Pakistan.

- 11) Mr Matthews continued that overall some passages in the determination were difficult to read and there was one incomplete paragraph. This was not necessarily an error but when added to the grounds the decision should be set aside.
- 12) Mr McGowan relied on the rule 24 response on behalf of the claimant. He accepted that paragraphs 20, 21 and 26 of the determination appeared incomplete. Clarification had been requested but there had been no response. Nevertheless the determination should be looked at as a whole. The question was whether the claimant was a victim of domestic violence and, if so, whether she would be at risk on return. This was a free-standing appeal on domestic violence. If the judge had grasped the core of the claim and properly reasoned the decision in respect of this, then the other errors were not material.
- 13) In relation to the previous determinations Mr McGowan pointed out that the claimant was not the appellant in respect of these. The judge properly addressed the determinations in paragraph 11 and gave reasons in paragraphs 14 and 15 for departing from their findings. The claimant's husband had used deception to enter the UK and relied on false documents, raising section 8 issues. The previous judges were not aware that the claimant had nothing to do with this. The judge had found the claimant's husband to be manipulative. The only evidence of the claimant referred to in the previous appeals was a claim that her brother had been detained and that her husband was only at a police station briefly. This was the only discrepancy between the claimant's evidence and her husband's. The claimant had covered the discrepancies in the previous appeals in her evidence but her explanation was not referred to in the determination. The judge was entitled to depart from the previous findings and accept that the claimant was a credible witness.
- 14) Mr McGowan continued that it was not the claimant's evidence that her husband's father was a police officer. It is not clear from where the judge acquired this supposed fact. The claimant's husband's father was now deceased. It was known that a computerised ID card was required for living in Pakistan. This gave a person's name and address and included a former address. There was a national database through which the claimant could be found.
- 15) In relation to return as a single female, Mr McGowan submitted that there was country information before the judge, including a schedule of relevant passages. He submitted that Pakistan was still a patriarchal and misogynist society. It was dangerous to report domestic violence. Each passage in the country information needed to be examined on the plight of women in Pakistan. The case of KA referred to a woman with family support to help her relocate. Even if the claimant could go into a shelter, what would happen when she left? If she had no effective protection in

Pakistan then she would qualify for asylum. The judge found that the claimant's father is in the Taliban and the claimant had married against her father's wishes. She would not have family support. It was next to impossible for a single woman to live alone in Pakistan.

- 16) In response Mr Matthews argued that there was a difference between a submission which said that unreasoned findings were supported by the evidence and a submission stating that findings could have been made but were not. In this decision the judge had made inadequate findings and given inadequate reasons for those findings he had made. The judge had erred in relation to the claimant's husband's determinations and he had erred over the issue of whether the claimant's husband's father was in the police. There was evidence that the claimant's husband had left her. The issues had not been resolved by proper findings. There were no findings at all on the breakdown of the marriage. The claimant's evidence in her witness statement was that she had left her husband.
- 17) Mr Matthews asked for the decision to be set aside. The issues of credibility had not been resolved and as a result there should be a fresh hearing.
- 18) Having heard the submissions I accept that the judge was entitled to find that the claimant was a victim of domestic violence and there was some scope for him to find that the adverse credibility findings made against the claimant's husband in his earlier appeals would not necessarily undermine the credibility of the claimant's account of events in Pakistan.
- 19) Nevertheless, when it comes to the judge's assessment of the risk on return, there is an identifiable lack of relevant findings and, in addition, a lack of adequate reasoning. In particular the judge did not have regard to a relevant country guideline case of KA and Others. The judge made findings at paragraph 26 that the claimant was a victim of domestic violence who would not have adequate protection in Pakistan and that because her husband's father had been in the police, he would be able to use his father's contacts to trace her. These findings were not adequately supported by the evidence. In his submission before me Mr McGowan referred to evidence on the vulnerability of single women in Pakistan. As Mr Matthews pointed out in his response, however, there is a difference between showing that findings are supported by the evidence and showing that findings could have been made on the basis of the evidence but were not.
- 20) The findings at paragraph 26 of the determination are little more than vague generalisations without any adequate evidential basis and without adequate reasons. For the judge to reach the conclusions which were reached, a considerably more thorough analysis would have been required of the claimant's evidence and of the country information. This analysis was lacking. The conclusions the judge reached cannot be sustained.

- 21) I am satisfied that the judge erred in law, in particular, in assessing the risk on return to the claimant. At the hearing before me it appeared that both parties were agreed that if the decision was set aside further findings would be required. Mr McGowan asked if the judge's finding in relation to domestic violence could be preserved. Where an appeal is to be remitted for further evidence to be heard and findings to be made, there is a possibility that if findings are preserved these may unduly restrict the approach of the new Tribunal in assessing the evidence before it. Accordingly I direct that no findings made by Judge Fox should be preserved.
- 22) On the basis of the errors of law found in the determination, it is set aside. In my view the fact finding required to re-make the determination is such that it is appropriate that it be remitted to the First-tier Tribunal for a hearing before a different judge with no findings preserved.

Conclusions

- 23) The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
- 24) I set aside the decision.
- 25) The appeal is remitted to the First-tier Tribunal to be re-made at a hearing before a different judge with no findings preserved.

Anonymity

- 26) The First-tier Tribunal did not make an order for anonymity. No application for such an order has been made to me and in the circumstances of this appeal, I am not satisfied that there is a significant reason for making such an order at this stage.

Signed

Date

Judge of the Upper Tribunal