



**Upper Tribunal  
(Immigration and Asylum Chamber)  
Number: AA/03162/2015**

**Appeal**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 December 2015**

**Decision and Reasons  
Promulgated  
On 18 January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MURRAY**

**Between**

**AM  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Loughran, Counsel for Elder Rahimi Solicitors, London  
For the Respondent: Mr Kotas, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant was born on 6 December 1981 and is a citizen of Pakistan. She appealed against the decision of the respondent dated 16 February 2015 refusing her application for a variation of her leave to enter or remain in the United Kingdom on the grounds that it would be contrary to the United Kingdom's obligations under the United Nations Convention and Protocol relating to the status of refugees or unlawful under Section 6 of the Human Rights Act 1998 as incompatible with her rights under the European Convention on Human Rights for her to be removed from or required to leave the United Kingdom. She had previously been granted discretionary leave to remain in the United Kingdom for six months as she

was awaiting the result of the trial of her husband who was charged with matrimonial rape. He was found guilty and received a five year sentence. The Appellant's application for a variation of leave is on the grounds that the circumstances giving rise to the previous grant of leave subsist or she qualifies for different reasons either under Humanitarian Protection or the Home Office Asylum Policy Instruction on Discretionary Leave. Her appeal was heard by Judge of the First Tier Tribunal, K S H Miller on 8 July 2015 and was dismissed in a Decision promulgated on 20 August 2015 on all grounds.

2. An application for permission to appeal was lodged and permission was granted by Judge of the First Tier Tribunal Cruthers on 14 September 2015. The permission states that the following grounds are arguable.
  - (1) When the First Tier Judge rejected certain elements of the account given by the Appellant the Judge did not make sufficient reference to the fact that she should probably have been assessed to be a vulnerable witness.
  - (2) Elements of the Judge's assessment run contrary to warnings given by the Higher Courts against assessing plausibility etc. from a primary male/western/British perspective.
  - (3) The Judge should have explained further why he considered that the Appellant did not meet the relevant test set out in Paragraph 276 ADE of the Immigration Rules (assuming that Paragraph 276ADE was argued for the Appellant at the Hearing on 8 July 2015).
3. There is a Rule 24 response opposing the permission. This states that the Appellant was tendered for cross-examination and appeared to give evidence without any difficulty. It is unclear whether it was raised at the outset that the Appellant was vulnerable or sensitive. The First Tier Judge ought to have regard to the Joint Presidential Guidance to that effect if it was raised. The response states that the Judge was entitled to make adverse credibility findings and has given adequate reasons for his credibility findings and the grounds of appeal fail to identify which section of paragraph 276 ADE is relevant to the Appellant's appeal.

### **The Hearing**

4. I asked if the Appellant's vulnerability was raised at the First Tier Hearing and was referred to the skeleton argument which was before the First Tier Judge. In paragraphs 3, 4 and 5 thereof it is stated that the Appellant is a victim of domestic violence and rape and her mental health issues are referred to, as is the Joint Presidential Guidance Note No. 2 of 2010 and Practice Direction, First Tier and Upper Tribunal "Child, Vulnerable Adult and Sensitive Witnesses" of 30 October 2008. Paragraph 4 states that this applies to this appeal. A direction for anonymity was requested and was granted.

5. Counsel submitted that the fact that the Rule 24 response asks whether a vulnerability issue was raised, demonstrates that the Decision does not make this clear.
6. Counsel made her submissions, referring me to the letter from St George's NHS Trust, stating that the Appellant suffers from severe depression and anxiety and PTSD. She submitted that the First Tier Judge did not consider the Practice Direction or the guidance which should have been considered in these circumstances. She submitted that extracts of the guidance are in the skeleton argument which was before the First Tier Judge. She submitted that these extracts are relevant to the First Tier Hearing and the Appellant's giving of evidence and the assessment of that evidence but there is no mention of it in the Decision. She submitted that when the Appellant's credibility is considered the Guidance should have been referred to. She referred to Paragraph 30 of the Decision which refers to the Appellant's depression and Counsel submitted that what the Appellant was suffering from was not just depression but severe anxiety and the Judge did not give proper regard to that. She submitted that the way that the Judge dealt with her vulnerability was such that he made a material error of law.
7. With regard to plausibility, Counsel submitted that the Judge characterised the Appellant's conduct without considering that the Appellant had been a victim of domestic violence. I was referred to Paragraph 25 (vii) of the Decision. This refers to the Appellant stating:- *"I've not been informed that my family in Pakistan have been contacted by Fariukh (her abuser) or his family. I have not asked my family about this."* Counsel submitted that the Judge was considering this based on Western culture not the culture in Pakistan. She submitted that it is not implausible that this Appellant waited two months before applying for asylum as she had suffered domestic violence and matrimonial rape. She submitted that the diagnosis was before the First Tier Judge and he has clearly failed to consider the impact of the trauma suffered by the Appellant but has used his own prism of reasonability.
8. I was referred to a previous Determination relating to this Appellant by Judge of the First Tier Tribunal Braybrook which was promulgated on 21 August 2012. At Paragraph 12 thereof that Judge found that a delay in claiming asylum had not damaged the Appellant's credibility in the circumstances and yet First Tier Tribunal Judge Miller has contradicted this.
9. Counsel submitted that First Tier Tribunal Judge Miller's approach to the country expert evidence amounts to an error of law. Counsel submitted that Judge Braybrook in the previous decision accepts the severe ill-treatment which the Appellant suffered and yet the First Tier Judge Miller when considering the expert report finds that some of this does not go to the Appellant's claim. He refers to the Appellant being well educated and so finds that the expert report relating to women and education does not apply in this case. He also did not accept that the attack on the Appellant in Pakistan had anything to do with her husband. Counsel submitted that the entirety of the expert report has been rejected but the expert gave a

detailed approach and made multiple findings in the general attitude to women in Pakistan. She submitted that much of the expert report is relevant and it was an error of law for the Judge to dismiss it in its entirety.

10. Counsel then referred to Article 8 of ECHR and Paragraph 27 of the Decision and the way the Judge deals with the stigma of being a divorcee in Pakistan. The Judge states that he does not believe that any stigma which attaches, would be so significant as to warrant protection under the Geneva Convention or ECHR. Counsel submitted that this is an error of law.
11. With regard to Paragraph 276 ADE, Counsel submitted that there are very significant obstacles to this Appellant reintegrating in Pakistan. She submitted that it must be an error when the Judge states that the requirements of Paragraph 276 ADE have not been satisfied and she submitted that no explanation has been given of why he finds this. He has not expanded on this in any way. She submitted that at Paragraph 33 the Judge states: "*Many people come to the United Kingdom and decide they like living here so this Appellant does not wish to return to Pakistan*". She also submitted that the Appellant came to the United Kingdom to join her husband. She co-operated with the police, she gave evidence at her ex-husband's trial and so she helped the public but none of this is considered by the Judge when Article 8 is dealt with. She submitted that when public interest considerations are looked at this should have been taken into account.
12. I was asked to find that there are material errors of law in the Judge's determination.
13. The Presenting Officer made his submissions, submitting that the grant of permission is extremely cautious. He submitted that to say the Appellant was a vulnerable witness and the Judge did not take this into account, is not sufficient. What has to be said is whether, by not taking this into account or at least not mentioning it, did this have a practical effect on his decision?
14. I was referred to Paragraph 25 of the Decision relating to credibility. He submitted that the grounds do not explain what is wrong with the Judge's findings of credibility because of her vulnerability, which have affected his decision. He submitted that at Paragraph 25(i) the Judge finds the Appellant wants to return to her family. This was in her statement of 7 August 2012. He found that there is an about turn in her evidence at Paragraph 25(v) when she states that Fariukh's family are not bad people as she is now stating that she fears return because of the possibility of an honour killing. He submitted that the Judge at that Paragraph states: "It is not believed that this is the case or that her family would be encouraging her to return to Pakistan if they thought she was likely to be at any risk from her ex-husband or his family." At Paragraph 25(viii) the Judge does not find it credible that the Appellant would have claimed asylum in a country where her ex-husband knows she is likely to be, if she is not in

Pakistan. He submitted that the Judge's credibility findings would not be any different whether the Appellant is vulnerable or not vulnerable.

15. He submitted that nothing has been submitted by Counsel stating to what extent the Judge's findings are unfair and what difference it would have made if the Presidential Guidance on vulnerability had been made more of, by the Judge. He submitted that the credibility findings are material whereas the Presidential Guidance in relation to the credibility findings are not material and there is nothing to suggest that the Judge used a prism of reasonability through his own eyes.
16. The Presenting Officer referred to Paragraph 25(vii) and delay. At Paragraph 25(vii) of the Decision the Judge refers to the Appellant being an intelligent well educated woman. The Presenting Officer submitted that as an intelligent well educated woman she is well aware of what happened in the previous Determination by judge Braybrook and so has altered her story.
17. With regard to the expert report, he submitted that the Judge has engaged with the pertinent parts of the report and has distinguished the Appellant's claim from the case put forward by the expert. He submitted that what the Judge has done has analysed the expert report and made reference to the parts which he does not believe apply to this Appellant. Because the Appellant is well educated the expert cannot say that her ex-husband and his family are likely to carry out revenge on the Appellant or her family. The Judge states that the expert cannot know that the Appellant's family would hastily get her "married off" to shed the stigma of her being a divorcee. He submitted that the Judge has found that the Appellant's family has supported her through all her problems and the Judge's dealings with the expert report contain no error at all.
18. The Presenting Officer submitted that the Judge is aware of the medical evidence. He refers to it at Paragraph 29 and states:- "*I am surprised that there is not more detailed medical evidence available.*" At paragraph 30 of his Decision the judge refers to the case of **AEFE (Sri Lanka) 2002 UKIAIT 05237** relating to reports on depression and notes that the report was prepared by a CBT Service and not a consultant psychologist or psychiatrist. He does not find that on return to Pakistan the Appellant's mental health will deteriorate. He finds there is no evidence of this and finds that she can access medication or therapy there and will be supported by her family.
19. With regard to Article 8 and Paragraph 276 ADE he submitted that Paragraph 33 contains no error and clearly the terms of Paragraph 276 ADE cannot be satisfied.
20. The Presenting Officer submitted that the Judge has properly considered the case relating to the medical evidence and the expert evidence and there is no error of law in the Determination.

21. I asked Counsel if her argument relating to Paragraph 276 ADE is in connection with the difficulties she believes this Appellant might have, integrating into Pakistan and she said that is the case.
22. Counsel responded to the Presenting Officer's submissions submitting that when credibility was assessed by the Judge, had her vulnerability been properly considered, less weight would have been given to her credibility and perhaps less weight would have been given to the Appellant's family's support. She submitted that although the family states they are supportive they will want to marry her off. I put to her that that is surely supposition on the part of the Appellant and the expert. Counsel submitted that the Judge did not consider the culture in Pakistan and the stigma.
23. She submitted that with regard to credibility it cannot be right for the Judge to state that it is not credible that the Appellant would not ask her family about her ex-husband's family getting in touch with them. She submitted that this is the Judge's perception and he has not considered the culture or the trauma the Appellant has suffered. There is also the fact that the Appellant did not claim asylum for two months. She submitted that again the Judge has not paid regard to the domestic abuse and marital rape. She submitted that these omissions by the judge have impacted on his consideration of the claim.
24. With regard to the change in the Appellant's evidence, she submitted that any changes are due to the fact that her circumstances have now changed. She is divorced and her husband has been imprisoned for rape. She submitted that she states that her family has always supported her but the family support will mean that they wish her to marry to avoid the stigma.
25. She submitted that the Judge failed to consider her reactions and her mental state as a victim of abuse and rape and if she did not ask her family whether they had been approached by her ex-husband's family that might well have been because she does not want to think about that aspect of her life, or discuss it.
26. Counsel submitted that one of the Judge's findings was the rejection of the expert report. He found that on certain premises the report does not apply to the Appellant. He refers to the Appellant being well educated and he also states that the attack on the Appellant may have had nothing to do with her husband. She submitted that the Judge reached incorrect findings because he failed to consider the expert report properly.
27. I was asked to read the report. In this the expert refers to the attitude towards women in Pakistan. The COI report and other background evidence is referred to, and she submitted, that clear findings are made which are relevant to the Appellant. She submitted that revenge by her ex-husband's family is likely in Pakistani culture and the honour code has to be taken into account. I was referred to the country guidance on women in Pakistan and arranged marriages and she submitted that this

report should have been given weight by the Judge and not to do so is an error.

28. Counsel submitted that this Appellant suffers from PTSD, severe depression and severe anxiety. She submitted that the Judge did not look at this and her other evidence cumulatively and did not properly understand her situation. She submitted that he has not made sufficient findings on the very significant obstacles to her returning and re-integrating into Pakistan. She will be a divorcee and a victim of domestic violence whether her family support her or not.
29. I was asked to find that there are errors of law in the Judge's decision.

### **Decision and Reasons**

30. I have to decide if the Judge made a material error of law in his decision promulgated on 20 August 2015.
31. It is clear that the Judge has considered the Appellant's mental health and the evidence about this on file. This is referred to at Paragraph 29 of his decision. The Judge makes an Anonymity Direction on request as did the previous Judge in his Determination. The Judge refers to the medical evidence but states that he is surprised there is not more detailed evidence available. This is a relevant point. He refers to depression and PTSD and also her inability to sleep but he refers to her having no suicidal thoughts and no plans to act on any such thoughts. He refers to the report by the CBT therapist and to the uncertainty of the asylum decision attributing to her depression. It is true that the skeleton argument which was before him refers in particular to the Appellant being a vulnerable and sensitive witness but the Judge is aware of the factors contributing to her vulnerability and has still found the Appellant to lack credibility. Counsel has not explained to me how the Judge's decision would differ had he made specific reference to her vulnerability or how his assessment of her credibility would be any different. The Judge has noted that she was raped by her husband and he was sentenced to five years imprisonment as a result. The Judge has given weight to objective indications of risk rather than her state of mind. It seems that at the Hearing the Appellant gave her evidence well. There are no clear discrepancies in her evidence but the Judge does not believe what she said. It is not an error not to mention the Practice Direction or the Presidential Guidance note in the Decision. Had he not considered the medical evidence before him that would have been an error but that is not the case. I find that the fact that her vulnerability is not specified in the decision has had no practical effect on the judge's decision. He was aware of her circumstances.
32. With regard to plausibility the Appellant has changed her story because her husband has now been convicted of matrimonial rape. The Judge finds that this is the case, but the Appellant's family has always supported her and wishes her to return home. She now states that she does not want to return home because her family will force her to re-marry but there is no evidence of this apart from her oral evidence and what the expert states

and the Judge has rejected much (but not all) of the expert evidence. As stated by the Judge the Appellant did not think her ex-husband's family were bad but she has changed her evidence and is now stating that she fears them on return.

33. The Judge refers to ***Devaseelan 2000 JUKIAT 00702*** but accepts that there is now new evidence and a different situation to consider.
34. At Paragraph 24 of the decision the Judge refers to the differences in the Appellant's claim now. Her husband has been convicted of marital rape, they have been divorced and there is evidence of her mental health issues. This paragraph states that the question is whether the Appellant can safely return to Pakistan today. The Judge states that it is clear that the Appellant's parents will support her and want her to return to Pakistan to be with them. The Appellant does not state that her ex-husband's family have changed from being good people. The Judge clearly believes that she has mentioned honour killings because she wishes to remain in the United Kingdom. This is not something that was considered before. The judge also states logically that her family would not have encouraged her to return to Pakistan if they thought this was likely.
35. With regard to ***Devaseelan*** the Judge goes along with the previous Determination, that the attack on the Appellant was a random robbery. She was not being specifically targeted by her husband or his family. The Judge finds that the Appellant is intelligent and well educated and that this had an effect on her claiming asylum when she did.
36. At Paragraph 26 of the Decision the Judge again refers to credibility. He does not believe that the Appellant has presented an accurate picture about the attitude of her family or Fariukh's family. He points out that the families live around three hour's drive from each other.
37. There is then the expert report. I find the Judge has properly considered this. He has noted matters which do not apply to the Appellant. He finds the expert's statement that her family is likely to hastily get her married off if she returns to Pakistan unlikely as there is no evidence to support this. He has considered the stigma of the Appellant being a divorced woman in Pakistan and finds she has changed and exaggerated elements of her claim to try to give her a better claim.
38. I find that the Judge has properly considered the expert evidence and dealt with it accordingly.
39. The grounds of application state that the Judge has not completed his argument about Paragraph 276 ADE of the Rules. The section which the Appellant's representative refers to is whether the Appellant would have difficulty re-integrating into Pakistan. The Judge finds that that is not the case. He finds that she can return and live with her family in safety. He finds that her mental health will probably improve because her family is there. He gives proper reasons based on the evidence before him for these findings.



40. As he finds that that is the case the terms of the paragraph 276ADE of the Immigration Rules cannot be satisfied and he finds that there is no good argument for considering the claim outside the Rules. He refers to the Appellant not wishing to return to Pakistan. He comments that it would not be unduly harsh for her to return and states that the fact that she does not want to return does not outweigh the need for effective immigration control and public interest. It was put to me by Counsel that because the Appellant co-operated and helped the Police with their enquiries, relating to her rape, this should be taken into account in any proportionality assessment. Public interest is still an issue. Even when this is taken into account, in a proportionality assessment, public interest must succeed.

**Decision**

41. I find that there is no material error of law in the First Tier Judge's Decision dismissing the appeal, promulgated on 20 August 2015.

42. Anonymity has been directed.

Signed

Date

Deputy Upper Tribunal Judge Murray