



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

Appeal Number: AA/07582/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10 February 2016
delivered *ex tempore* on 10
February 2016**

**Decision & Reasons Promulgated
On 26 February 2016**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**A R
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Brown Counsel instructed by

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

REMITTAL AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order in order to protect the anonymity of the appellant who claims asylum. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the Appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

2. The appellant is a citizen of Pakistan who was born on 10 April 1976. She appeals, with permission granted on 5 February 2015 (Judge Grant-Hutchison) against a decision of the First-tier Tribunal (Judge Turquet) which, in a determination promulgated on 12 January 2015, dismissed her appeal against a decision of the Secretary of State to remove her to Pakistan dated 15 September 2014 following the refusal on that date of her claim for asylum, for humanitarian protection and leave to remain in the UK under Art. 8 of the European Convention.
3. The appellant's case is that she came to the United Kingdom on 23 March 2010 together with her husband whom she had married in Pakistan in March 2003. The substance of her claim was that during the course of her marriage she was the subject of domestic abuse both by her husband and also by his family. He returned to Pakistan some time between October 2012 and December 2013, leaving the appellant in the UK. During the course of her marriage the appellant became pregnant on a number of occasions and she was forced against her will to have children as it became clear that there were medical reasons why pregnancy was not advisable to her. It was also part of her case that she underwent a termination in the UK and that was against the wishes of her husband.
4. In her Reasons for Refusal Letter of 15 September 2014 the Secretary of State did not accept the appellant's account. The reason underlying that conclusion was that the appellant had failed to claim asylum until 2014 and that the delay, taking into account the approach set out in para 339L of the Immigration Rules, meant that the appellant was not entitled to the benefit of the doubt. In addition the Secretary of State considered that the appellant had failed to establish that she would be objectively at risk on return as a single woman or on account of her claimed domestic violence.
5. In the appeal to the First-tier Tribunal the Secretary of State relied upon the Reasons for Refusal Letter and submitted that putting the appellant's claim at its highest she could not succeed.
6. The initial grounds of appeal to the First-tier Tribunal drafted by the appellant's Counsel before the First-tier Tribunal state at para 11 that the appellant was not asked questions in cross-examination and the issues before the First-tier Tribunal were essentially those relied on by the respondent in the refusal letter.
7. In dismissing the appellant's appeal on the international protection grounds the judge in a detailed determination running to some 68 paragraphs took a number of points against the appellant leading the judge to find the appellant's claim not to be credible. In particular, at paras 36, 38, 39, 41 and 49 the judge observed that there was an absence of supporting documentation for aspects of the appellant's claim. In para 36 the judge in particular noted that there were no records to support the appellant's case that she had been seeing a GP and had been admitted to hospital in the past as she claimed.
8. The grounds of appeal to the Upper Tribunal argue that the judge's decision was inadequately reasoned but, in particular before me, Ms

Brown, who represented the appellant submitted that the points taken by the judge had in effect led to the proceedings being unfair as the appellant had not had a proper opportunity to deal with the matters raised.

9. In addition, with the assistance of Mr Jarvis who represented the respondent, it became clear that the respondent had medical notes submitted by the appellant's previous representatives as part of her claim from the GP showing her hospitalisation and termination that followed and that her husband was opposed to it.
10. Further, Ms Brown made a number of other points concerning the adequacy of the judge's determination, in particular her treatment of the expert evidence at para 48 of the determination where the judge found the expert report not to be of assistance in reaching any findings as the judge had not accepted the credibility of the appellant. Ms Brown submitted that the expert had at para 113 of her report concluded that the events set out in the account of the appellant were both plausible and consistent with the expert's knowledge of events and life in Pakistan.
11. On behalf of the respondent Mr Jarvis submitted that the medical notes did not take the matter much further although he accepted that they had not been put before the judge. He submitted that the burden was upon the appellant as was the accepted approach as well as by virtue of para 339L and Art.4(5) of the Qualification Directive. It was for the appellant to provide all the relevant documents that she wished to rely on and the judge could not be criticised for observing consistently with the case of **TK (Burundi) v Secretary of State for the Home Department [2009] EWCA Civ 40** that their absence was relevant to an assessment of the appellant's credibility. He submitted that it was not for the Presenting Officer to go through each and every point and the Presenting Officer in this case had, he said, entirely properly put the respondent's case on the basis of the appellant's claim taken at its highest.
12. It is not necessary for me to deal with every point raised by Ms Brown because I have concluded that there are a number of errors in the judge's determination and approach to the evidence which result in her adverse credibility finding being flawed.
13. First, whilst I accept that it was for the appellant to prove her case before the First-tier Tribunal those proceedings must necessarily be objectively fair. The stance taken by the respondent before the First-tier Tribunal was certainly no more than was set out in the refusal letter. I accept that the respondent did not concede the appellant's account was credible. Nevertheless in the absence of cross-examination or new points being raised by the judge during the course of the hearing, the appellant was not aware that the judge would subsequently rely on the absence of documents which in the judge's view would have assisted to substantiate the appellant's claim including evidence from relatives, those who had dealt with her in the UK and the medical evidence to which I have referred. The judge was entitled in principle to take each point that she did but, as a matter of fairness, given the way that the case was presented the judge

was required to give the appellant the opportunity to deal with the matters raised.

14. Secondly, there was evidence not considered by the Judge. In respect of the delay there was evidence in the appellant's witness statement (para 10) that the reason she delayed in claiming asylum after her husband left the UK was because she was in fear of him because of what she was told he and his family would do to her. Likewise, the respondent had medical notes consistent with the appellant's account that she had been treated in the UK and had undergone a termination against the wishes of her husband.
15. As a result, in addition to the judge failing to give the appellant an opportunity to deal with the absence of supporting evidence the judge also failed to deal with the supporting evidence that was before her or, in the case of a medical notes, should have been before the judge. I am not suggesting that there was any sinister reason as to why that evidence was not produced but it simply was not perhaps by oversight. The judge was as a result not able to look at it and, in fact, commented upon the absence of supporting medical evidence.
16. Taking together these matters, it seems to me that the appellant in presenting her case to the judge was not given a fair opportunity to deal with matters that the judge considered relevant and important in reaching her adverse credibility finding. I do not say that the judge was bound to reach a different view but rather that the assessment of the evidence and the process leading to the judge's findings required the judge to give the appellant the opportunity to deal with the matters which were for the first time raised in the judge's determination and consider the evidence available (or which should have been made available by the respondent). These errors fatally undermine the Judge's adverse findings.
17. Mr Jarvis accepted that if the judge's credibility finding could not stand then her finding in relation to risk on return likewise could not stand. I agree. It is clear that the linkage between the two findings results in both falling if the credibility finding cannot stand.
18. It is the case that the judge gave a number of detailed reasons for not accepting the appellant's credibility but I cannot be satisfied that the errors that I have identified were not material to her finding.

Decision

19. For these reasons the First-tier tribunal's decision to dismiss the appeal involved the making of a material error of law. The judge's decision cannot stand and is set aside.
20. Given the nature and extent of fact-finding required in re-making the decision, the appeal is remitted to the First-tier Tribunal for a re-hearing *de novo* before a Judge other than Judge Turquet. None of the Judge's findings are preserved.

Signed

A Grubb
Judge of the Upper Tribunal