



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

Appeal Number: PA/04838/2018

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 21 October 2019**

**Decision & Reasons Promulgated  
On 28 November 2019**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**CHOUDHRY [A]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Moriarty, instructed by Elaahi solicitors

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant was born on 3 June 1984 and is a male citizen of Pakistan. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 28 March 2018 to refuse him international protection and his claim on human rights grounds. The First-tier Tribunal, in a decision promulgated on 15 May 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. I notified both representatives that I intended to set aside the decision and return this appeal to the First-tier Tribunal. I shall, therefore, be brief giving my reasons. The account of the hearing before the First-tier

Tribunal which is set out in the grounds of appeal to the Upper Tribunal prepared by Ms Daykin of counsel (who appeared for the appellant at the First-tier Tribunal hearing) has not been disputed. I accept that, on the morning of the hearing, the presenting officer produced for the first time in the current appeal a previous decision concerning the appellant who had been found by the First-tier Tribunal to have entered a 'sham' or marriage of convenience. I accept that it was agreed at the hearing that the appellant would not seek an adjournment on account of this late production of evidence by the respondent provided the presenting officer did not refer to specific findings of fact in the previous decision, in particular the findings concerning the 'sham' marriage. It appears that, at the outset of the hearing, the presenting officer sought only to rely upon the fact that a previous Tribunal had found that the appellant was not a credible witness. Contrary to that apparent agreement, the judge proceeded to reject evidence that the appellant's wife had left him on account of his homosexuality. The clear implication in the judge's reasoning at [16e] is that the appellant's 'wife' was his spouse in name only, their marriage being a 'sham'. I accept the appellant's assertion that, had the appellant known that the judge was likely to make more extensive use of the previous decision than the parties had agreed at the outset of the hearing, then the appellant would have applied for an adjournment. Whether or not such an application may have been granted by the judge, I accept that the appellant has effectively been denied a fair hearing.

3. Secondly, I agree with the appellant that the judge has made virtually no reference to the medical evidence concerning the appellant's mental health condition. At [13], the judge accepted the reports from the two doctors as independent evidence but did not accept their opinions as regards the appellant's claimed sexuality. Otherwise, he says nothing more regarding their evidence. However, the reports present a picture of an individual who is seriously psychologically unwell. The judge has failed to have proper regard to the medical evidence when considering how the appellant may reintegrate in Pakistani society. I accept also that at there was evidence in the reports that the appellant may be at risk of committing suicide, a risk which exists irrespective of any credibility findings which the judge might reach. That risk has not been assessed by the judge. Finally, I accept that the judge should have made clear in the decision why the appellant would not give oral evidence at the hearing. As the grounds point out, the medical evidence indicated that the appellant was not fit to give evidence or, indeed, conduct litigation before the First-tier Tribunal.
4. In the light of what I say above, I set aside the First-tier Tribunal decision. The appeal will be returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing. The representatives of the appellant should, if they consider it appropriate, take steps to appoint a litigation friend notwithstanding the practical difficulties which may be involved. If the appellant will give evidence at the next hearing and needs an interpreter, his representatives shall notify the First-tier Tribunal immediately on receipt of this decision.

**Notice of Decision**

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*.

Signed

Date 2 November 2019

Upper Tribunal Judge Lane