



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

Appeal Number: PA/12439/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 July 2019**

**Decision & Reasons Promulgated  
On 26 July 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FROMM**

**Between**

**W B  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr H Cheng, Solicitor

For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

**DECISION AND REASONS ON ERROR OF LAW**

1. The appellant in this appeal is a citizen of Pakistan who was born on 11 January 1961. She appeals with the permission of the First-tier Tribunal against a decision of Judge of the First-tier Tribunal Bowler dismissing her appeal against the decision of the respondent to refuse her protection claim, dated 15 October 2018.
2. The background to the appeal is as follows. The appellant claimed asylum on 8 March 2018, a few weeks after her visit visa expired. She said she was a Shia Muslim and her husband had been a prominent member of the community such that threats were received from extremist Sunni groups.

The appellant's home was attacked in 2016 and, while the appellant was visiting her family in the United Kingdom, the house was burned down. Her husband died in the fire.

3. The appellant's claim was rejected by the respondent for reasons set out in a reasons for refusal letter, dated 15 October 2018. The respondent accepted the appellant was a national of Pakistan and that her religion was Shia Muslim. However, the respondent did not accept that the appellant had given an accurate account of the difficulties she faced in Pakistan.
4. The appeal was heard by Judge Bowler sitting at Hatton Cross. The appellant pursued her protection claim and also argued that removing her would breach Article 8 of the Human Rights Convention. The judge heard oral evidence from the appellant and her three adult children who reside in the United Kingdom. Having done so, the judge concluded that the appellant's account of the attack on her house in 2016 and the burning down of her house in with her husband in it in 2017 were fabrications. She went on to consider the risk to the appellant as a Shia and found her circumstances did not give rise to a well-founded fear of persecution. She was not at risk on return as a lone woman or if she returned to her husband. She also found no breach of Article 8. The appeal was therefore dismissed.
5. First-tier Tribunal L Murray granted permission stating as follows:

"It is arguable that the First-tier Tribunal has failed to engage with the Appellant's assertion that she would be at risk as a result of her husband's position in the TNFJ<sup>1</sup> and the expert's evidence in regard to the risk to him and her as a result. Whilst the other grounds are less arguable I do not refuse permission ..."
6. The respondent has not filed a Rule 24 response.
7. I heard oral submissions from the representatives as to whether Judge Bowler's decision contains material errors of law such that it should be set aside and remade.
8. For the appellant, Mr Cheng made four points. Firstly, he argued that the judge erred by failing to make any findings about the risk to the appellant, not simply on the basis that she is Shia, but as a member of the TNFJ and the wife of a leading member. The judge had not taken account of the report of Dr Farhaan Wali, who had given his expert opinion on the risks.
9. Secondly, the judge erred when assessing whether there were very significant obstacles to the appellant's reintegration in Pakistan by wrongly interpreting the medical report of Dr Mangion as "guarded evidence". The judge had misapplied the standard of proof.

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<sup>1</sup> Tehrik-e-Nifaz-e-Fiqha-e-Jafaria.

10. These two grounds are grouped under a challenge described as a failure to consider evidence.
11. Thirdly (ground 2), Mr Cheng argued the judge's characterisation of the expert report of Dr Wali as containing "sweeping" statements which were unsourced was inaccurate. This ground is described as showing a failure to consider background evidence.
12. Permission was also granted on a further point (ground 3), although Mr Cheng did not develop any submissions on it. The ground, as drafted, simply argues the judge made irrational findings in not concluding that the appellant faced a breach of Article 2 or 3 given the weight of medical evidence showing she depended on support "for her survival" and would suffer deterioration in her condition without treatment.
13. Ms Pal argued the decision does not contain any material errors of law. Although the judge did not make express findings about risks arising from any link to the TNFJ, this was part and parcel of her rejection of the asylum claim. The judge was entitled to find the appellant would not be at risk. The judge's treatment of the expert evidence was adequate. The report of Dr Wali was not well sourced. The medical evidence did not reach the high threshold required, as confirmed by the Court of Appeal in SSHD v PF (Nigeria) [2019] EWCA Civ 1139. The judge had also clearly addressed paragraph 276ADE(1)(vi) of the Immigration Rules correctly.
14. Mr Cheng replied briefly, reiterating his first three points.
15. I find no error of law in Judge Bowler's decision, which stands. The decision is thorough and well-reasoned. The judge reached sustainable conclusions on the available evidence.
16. It is true the judge did not make a specific finding regarding whether she accepted the appellant's husband is or was a prominent figure in the TNFJ, which the appellant describes in her witness statement as a "sect" of Shi'ism, but which is better described as an organisation<sup>2</sup>. The judge's express finding is a total rejection of the appellant's account of her family experiencing problems at the hands of Sunni extremists. She went on to find there was no generic risk of persecution simply on account of being Shia.
17. It is also true that Dr Wali expressed a view in his report that the appellant's husband's role as president of the Gujrat branch would make the family high profile targets for Sunni militant groups<sup>3</sup>.
18. The question is whether this represents a lacuna in the judge's consideration of the appeal, as Mr Cheng argued. I find not. In the first place, I regard the findings made by the judge are sufficient to dispose of the entirety of the protection claim. She rejected the totality of the

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<sup>2</sup> See paragraphs 28-30 of Dr Wali's report.

<sup>3</sup> See paragraphs 32, 55, 85 and 97 of Dr Wali's report.

account put forward by the appellant and her children for sustainable reasons. I find it implicit from this that she also rejected the claim that the appellant's husband was a prominent member of the TNFJ.

19. However, even if I were wrong about that, the consequence of the judge's rejection of the claim that the family were harassed at all, let alone subjected to shootings, arson and murder, is that whatever profile the appellant's husband had, it was not sufficient to draw hostility from Sunni militants. The appellant was 56 when she arrived in the United Kingdom. She had lived safely in Pakistan for all those years, voluntarily returning to Pakistan after each of the many visits she made to the United Kingdom.
20. As for Dr Wali's report, the judge gave reasons for giving his opinions little weight in respect of certain matters, such as his opinion on the authenticity of a newspaper article<sup>4</sup>. In my judgment, the sections of the report which concern the risks to the appellant as a member of the TNFJ are concerned, I do not consider the judge could conceivably have attached weight to them either. The only references I can find to attacks on TNFJ members consist of two shootings, both in 2008<sup>5</sup>. The reference to "multiple reports of law enforcement and pro-Sunni militant violence towards the TNFJ" is completely unsourced<sup>6</sup>.
21. It can be seen that I was not swayed by Mr Cheng's attempt to convince me that Dr Wali's report is well-sourced, such that Judge Bowler erred in finding otherwise. Her general comments on the report is found at paragraph 66 of her decision. I find her observations are accurate and I do not consider that Mr Cheng was able to demonstrate that the report contains sufficient sources such that the judge was wrong to conclude it was substandard. I agree with Judge Bowler on this point and find no error in her assessment.
22. The other points pursued relate to the appellant's claim under Article 8. I note the judge gave thorough treatment to the Article 8 claim, looking first to the private life provisions of the rules and then to wider considerations outside the rules.
23. Dr David Mangion is a consultant physician and geriatrician specialising in stroke medicine. He read the appellant's medical records and examined her. He found, among other things, that the appellant's limbs are swollen and she has joint pains. She has features of severe obesity. She has limited mobility. She has a combination of lipoedema and lympho-venous oedema.
24. Judge Bowler noted the contents of the report. Mr Cheng's criticism arose from paragraph 83 of the decision where the judge stated that Dr Mangion's opinion that the likelihood of replicating the current medical support given to the appellant in Pakistan was uncertain and it may be

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<sup>4</sup> See paragraphs 54 - 56 of the judge's decision.

<sup>5</sup> See paragraph 31 of Dr Wali's report.

<sup>6</sup> See paragraph 88 of Dr Wali's report

difficult to access treatment for future skin infections which are likely to occur. At paragraph 84, the judge said Dr Mangion's opinions were "guarded and reserved statements". Mr Cheng argued that the judge's approach was erroneous because her criticism of the report's findings showed that she was demanding evidence to a standard higher than a balance of probabilities.

25. I see no material error in the judge's approach. Firstly, I do not read the judge's decision as imposing too high a standard of proof. Secondly, it was for the judge to assess the evidence and her concerns about it are rational. Thirdly, it must be remembered that, having rejected the claim that the appellant's husband had perished in a fire, the judge inferred that he was alive and well and that the appellant could simply return home. Care would be provided to her.
26. Furthermore, it is clear that the claim was being put forward on the basis that there were very significant obstacles to the appellant's reintegration in Pakistan. The judge acknowledged the appellant has a number of health conditions which affect her mobility and ability to look after herself. If she is unable to lose weight, her prognosis is poor. However, these matters are not an obstacle to reintegration, as such. The test has been explained definitively by Sales LJ in *SSHD v AK (Sierra Leone)* [2016] EWCA Civ 813 as follows:

"... a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."
27. The judge's approach is sound.
28. As Mr Cheng made no submissions on the final ground, I can deal with it very shortly. It has no merit. According to the judge's summary of the appellant's case, as put forward by counsel, she did not pursue Article 3 on health grounds so the judge cannot have erred by failing to consider it. In any event, it is plain that the appellant's health conditions do not put her anywhere near the high threshold of "very exceptional circumstances", described in *N v SSHD* [2005] UKHL 31, confirmed in *PF (Nigeria)*.

### **Notice of Decision**

29. For these reasons the appellant's appeal is dismissed and the decision of Judge Bowler dismissing her appeal on all grounds shall stand.

Signed

Date 18 July 2019

A handwritten signature in black ink, consisting of a large, stylized 'N' followed by a smaller 'V' and a long horizontal stroke.

Deputy Upper Tribunal Judge Froom