



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

Appeal Number: PA/04494/2019

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice
Centre
Via Skype for Business
On 11 September 2020**

Decision & Reasons Promulgated

On 10 November 2020

Before

UPPER TRIBUNAL JUDGE LANE

Between

**HK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holmes, instructed by Parker, Rhodes Hickmotts

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

DECISION AND REASONS

1. The appellant was born on 19 October 1998 and is a female citizen of Pakistan. She appealed against a decision of the respondent dated 30 April 2019 to refuse her international protection. The First-tier Tribunal, in a decision promulgated on 28 October 2019, dismissed her appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. The issue in the appeal is so distinctly summarised by the grant of permission by Upper Tribunal Judge Stephen Smith:

“Arguably, it was an error of the judge to hypothesise that the appellant’s brother’s asylum claim would be unsuccessful and that, accordingly, the brother would be able to accompany the appellant in Pakistan and act as her male guardian. Arguably, this was a finding based on speculation and unsupported by evidence, as the judge was seized only of the appellant’s appeal, and not of her brother’s. Arguably, the position as at the date of the hearing was that the appellant’s brother *could not* be returned to Pakistan as his asylum claim was pending and a statutory bar would prevent his removal until it had been finally determined.”

3. I heard oral submissions from the representatives of both parties at the remote hearing which I conducted at Manchester on 11 September 2020. I invited the representatives to submit further written submissions. Mr Lindsay, who appeared for the Secretary of State, wrote on 24 September 2020 accepting that the judge had erred in law such that his decision should be set aside. The Secretary of State now considers that the First-tier Tribunal should not have taken ‘into account the likely outcome of the separate appeal (that of the appellant’s brother, [HK]) which had not yet been heard or decided.’
4. I agree with both representatives that the First-tier Tribunal erred in law for the reason given by the Secretary of State. I therefore set aside the decision. None of the findings of fact shall stand. Given the difficulty which arose on the previous occasion, I consider that it is of utmost importance that the decision is remade by the same judge in the First-tier Tribunal who hears the appeal of the appellant’s brother (HK) which bears the reference **PA 506892020**. I therefore direct that both appeals shall be listed to be heard together by the same judge.

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 (**not First-tier Tribunal Judge Kelly; Bradford; first available date; face to face hearing**) for that Tribunal to remake the decision at or following a hearing *de novo*. **I direct that the hearing shall be listed on the same day and before the same First-tier Tribunal Judge who also hears the appeal PA 506892020.**

Signed

Date 30 October 2020

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the

appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.