



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

Appeal Number: PA/08781/2019 (R)

**THE IMMIGRATION ACTS**

**Heard at Birmingham CJC**

**On 1<sup>st</sup> September 2020**

**Decision & Reasons  
Promulgated**

**On 2<sup>nd</sup> September 2020**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**BN  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mrs S Ali, Counsel instructed by Legal Solutions Advocates & Solicitors

For the Respondent: Mr. D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS (R)**

1. An anonymity direction was made by the First-tier Tribunal ("FtT"), and as this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, the appellant is

granted anonymity. No report of these proceedings shall directly or indirectly identify her. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

2. The hearing before me on 1<sup>st</sup> September 2020 took the form of a remote hearing using skype for business. The appellant was present throughout the hearing and was represented by counsel. The respondent was represented by a Senior Presenting Officer. Neither party objected to a remote hearing, and I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.
3. The appellant appeals against the decision of First-tier Tribunal (“FtT”) Judge M A Khan promulgated on 2<sup>nd</sup> December 2019. The underlying decision that was the subject of the appeal before FtT was the decision of the respondent dated 23<sup>rd</sup> August 2019 to refuse the appellant’s claim for international protection.
4. The appellant is a national of Pakistan. She arrived in the United Kingdom in July 2009 with leave to enter as a student. She was subsequently granted further leave to remain as a student until August 2011. The appellant then made an application for leave to remain as a dependent of her mother and that application was refused by the respondent in August 2013. Nevertheless, the appellant remained in the UK unlawfully, and in October 2015, she made a claim for asylum. That claim was refused by the respondent for reasons set out in a decision dated 26<sup>th</sup> January 2016.

The appellant's appeal against that decision was dismissed by FtT Judge Moxon for reasons set out in a decision promulgated on 19<sup>th</sup> December 2016. Judge Moxon summarised the claim for international protection made by the appellant at paragraphs [14] to [20] of his decision. His findings of fact and conclusions are set out at paragraphs [61] to [93] of the decision. It serves no purpose for me to make any detailed reference to the findings in this decision. It is sufficient to note that Judge Moxon made a number of adverse credibility findings, and went so far as to reject the appellant's claim that she is married and in a genuine and subsisting relationship with her partner.

5. In June 2017 the appellant made further submissions to the respondent. The respondent, for reasons set out in a decision dated 23<sup>rd</sup> August 2019, considered the further material relied upon by the appellant and accepted that the appellant has been in a long-term relationship with her partner and that they were married by way of an Islamic marriage in 2015. Although the claim for international protection was refused by the respondent, the decision gave rise to a right of appeal before the First-tier Tribunal.
6. The appeal was heard by Judge Khan on 8<sup>th</sup> November 2019 and he heard evidence from the appellant and her partner. The core of the appellant's claim is summarised at paragraph [40] of the decision. At paragraphs [42] and [43], Judge Khan refers to the previous decision of Judge Moxon. He noted that the appellant has now provided evidence to establish the relationship between the appellant, her partner and their children. Judge Khan accepted that the appellant and her partner are in a genuine relationship and that they are the parents of two children. Having accepted that, at paragraph [43], Judge Khan stated "*.. The rest of (sic) credibility findings in Judge Moxon's decision stand and are the starting point for this Tribunal*".

7. Before me, Mr Clarke confirmed that having had the opportunity of considering the decision of Judge Khan, it is accepted by the respondent that Judge Khan erred in his assessment of credibility, upon the premise that the remaining findings made by Judge Moxon stand, and are the starting point for the Tribunal. He accepts, rightly in my judgement, that what is required is a holistic assessment of the claim and the credibility of the appellant, in circumstances where the credibility findings previously made by Judge Moxon, considered in the round, are potentially undermined by the material and evidence now available. Mr Clarke concedes, rightly in my judgment, that in the circumstances, the decision of the FtT cannot stand. He concedes that the decision of Judge Khan contains a material error of law and should be set aside. He accepts that none of the findings made by Judge Khan can be preserved, and the matter should be heard de-novo.
8. Having carefully considered the decision of the Judge Khan, I am satisfied that the FtT Judge fell into a legal error in the appraisal of the evidence. The principles set out in Devaseelan [2002] UKAIT 00702, applied to the appeal before Judge Khan and the determination of Judge Moxon stood as an assessment of the claim that the appellant was making at the time of the first determination. The relationship between the appellant and her partner is an important factor that goes to the core of the appellant's claim. The appellant had provided evidence regarding her relationship and Judge Khan accepted the appellant and her partner are in a genuine relationship. The assessment of such a claim is always a highly fact sensitive task. In view of the evidence now available and the findings made by him, Judge Khan was required to consider the evidence as a whole and to consider the extent to which the previous findings made by Judge Moxon were now undermined and could not be relied upon.
9. As the Judge failed to properly address the core of the appellant's claim, the matter will need to be heard afresh with no findings preserved. I have decided that it is appropriate to remit this appeal back to the First-

tier Tribunal, having considered paragraph 7.2 of the Senior President's Practice Statement of 25<sup>th</sup> September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive.

10. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

**Notice of Decision**

11. The appeal is allowed and the decision of FtT Judge M A Khan promulgated on 2<sup>nd</sup> December 2019 is set aside.
12. The appeal is remitted to the FtT for a fresh hearing of the appeal with no findings preserved.
13. I make an anonymity direction.

Signed **V. Mandalia**  
2020

Date: 1<sup>st</sup> September

**Upper Tribunal Judge Mandalia**

**TO THE RESPONDENT**

**FEE AWARD**

I have allowed the appeal and remitted the matter to the FtT for hearing afresh. In any event, no fee is payable and there can be no fee award.

Signed **V. Mandalia**

1<sup>st</sup> September 2020

**Upper Tribunal Judge Mandalia**