



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

Appeal Number: PA/13852/2018

**Heard at Field House
On 16 December 2019**

**Decision Promulgated
On 13 January 2020**

THE IMMIGRATION ACTS

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SM

(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Litchfield instructed by Law Lane Solicitors

For the Respondent: Mr T Lindsay Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-Tier Tribunal Judge Wylie promulgated on 9 August 2019 in which the Judge dismissed the appellant's appeal on protection and human rights grounds.

Background

2. The appellant is a female citizen of Pakistan born on 10 January 1988.

3. The appellant's immigration history shows she entered the United Kingdom in 2008 as a visitor returning to Pakistan thereafter in accordance with the terms of the Visa. The appellant re-entered the United Kingdom on 2 March 2011 lawfully as a student with leave in that capacity being extended until 21 February 2015, although such leave was curtailed on 20 October 2014. An application of 6 October 2014 for leave to remain on the basis of family and private life was refused on 17 December 2014 and an appeal against that decision allowed to the extent the matter was to be reconsidered by the Home Office. The application was refused on 20 November 2015 against which the appellant unsuccessfully appealed, becoming appeal rights exhausted on 13 September 2017. An application for leave to remain on the basis of family and private life of 26 September 2017 was refused on 23 April 2018 with no right of appeal. The appellant contacted the respondent on 22 May 2018 and claimed asylum on 29 May 2018 leading to the refusal which was upheld by the Judge. The appellants status is the UK has, therefore, always been precarious.
4. The Judge considered the appellant's evidence before setting out findings of fact from [80], the relevant parts of which can be summarised in the following terms:
 - i. Account was taken of the evidence the appellant has been treated for mental health conditions and is prescribed medication for severe depression [84].
 - ii. Given the ages of the appellant's children their best interests are protected by being in the care of both parents. The parents are Pakistan nationals with no legal status in the United Kingdom [86].
 - iii. The Judge notes there had been previous appeals albeit on human rights grounds rather than protection grounds the last of which was taken as the starting point in the determination as per the *Devaseelan* principles [88].
 - iv. In the determination made after a hearing on 27 July 2015 the appellant and her husband were found to be credible and reliable witnesses [89].
 - v. Return to Pakistan was a live issue in that earlier appeal yet neither the appellant nor her husband made any comment about fear on part of the appellant from her family because of the secret wedding, whereas her evidence now is that her father had severed contact with her and her sister had stopped contacting her because of a secret wedding in 2013, when this was obviously before her father died in December 2014, and would have been known at the date of the appeal hearing in 2015 [90].
 - vi. In the original determination at [60] the judge hearing that appeal found "... I therefore do not accept her evidence as shown that it is inappropriate for the appellant to go and live with either her husband's family or indeed other members of her own family. She does not appear to have

asked any of them whether it was possible or not. If she has she has not provided any evidence to show that it is not possible. There do not appear to be any very significant obstacles to the appellant's integration into Pakistan..." [92].

- vii. The Judge expected the appellant would have disclosed concerns about family if she returned to Pakistan, relied upon this appeal, in the early appeals if she was genuinely aware of family concerns regarding her marriage [93]. The fact such issues were not raised in the early appeal is said to challenge the appellant's credibility [94].
- viii. The Judge did not find it credible that the appellant had not investigated the letter said to have been received from her sister or with her a friend, even having received the letter and a picture message from an unknown number of the FIR dated 18 February 2014 [96 - 102].
- ix. There is no explanation for how the appellant's friend obtained the documents and no explanation for how she would have been able to obtain either the Fatwa or the appellant's brothers ID and Residence Card [103].
- x. The Judge finds the FIR narrated false information, claiming to be from a person who claims to have married the appellant in 2013 before she married her husband in the presence of the family in 2014. It was found not credible, if the FIR was genuine, that the appellant's family would not have been made aware of it and that the appellant would not have known about it at the relevant time [104].
- xi. The Judge did not accept the FIR is genuine or that the appellant had anything to fear from it on return to Pakistan [105].
- xii. The Fatwa is dated 31 December 2018. The Judge finds it simply states that if information upon which it is based is true the appellant's marriage to SA was unlawful, but as the information is not true the conclusion is incorrect as the marriage is not unlawful [106].
- xiii. The Judge finds a newspaper advert stating the appellant is disowned from her inheritance is based upon false information about being married to another [107].
- xiv. The Judge gave little weight to the appellants documents and finds in any event they do not support the appellant's claim to be at risk to her life on return to Pakistan [109].
- xv. The Judge finds at its highest the appellant's claim is based upon a letter from her sister that her brother would kill her if she came to Pakistan [110].
- xvi. The Judge finds the appellant has no evidence to confirm her brother was back living permanently in Pakistan. His residence card originates from South Africa showing an entitlement to live there until 2026. The appellant's evidence is her brothers run a business in South Africa. The

- Judge finds there was no information to show why the brother would have returned to Pakistan [110].
- xvii. The Judge finds if the brother has returned to Pakistan, even if the appellant does not wish to return to her home area, she could internally relocate in Pakistan [112].
 - xviii. The Judge finds there was no reliable evidence the appellant's brothers have any influence with the authorities in Pakistan [113].
 - xix. One of the appellant's brothers [Z] is a police officer but the Judge did not find there was evidence he would have any power due to his position to enable him to trace the appellant if she was to return to Pakistan. Her brother had never made any threats against her [115].
 - xx. The Judge noted the appellant had previously stayed with her husband when he lived in Rawalpindi in a rented flat with his mother, in an area in which he has family, which is a considerable distance from the appellant's family home [117].
 - xxi. Issues appertaining to the appellant's husband's family do not appear to be obstacles to the appellant's own family remaining in Pakistan [119].
 - xxii. At [120 - 123] it is written:

120. It seems to me that the appellant can return with her husband and two children, all of whom are citizens of Pakistan, and live, if they choose, with her husband's mother. The appellant's husband has completed his education in the United Kingdom, and would be able to find employment commensurate with his training. It would have been his intention to return to Pakistan after completing his degree. He has had part-time work in the United Kingdom, and could utilise this experience as well as his education to obtain employment to support his family. He has qualifications to obtain reasonable employment, and would be able to pay for accommodation if they lived separately from his family home.

121. The appellant has been treated for depression, and was closely monitored during her recent pregnancy and after the birth of her second child. Prior to this pregnancy she had not seen a psychiatrist. She was admitted to hospital for five days in January 2019. She is prescribed medication. There was no medical report setting out to the current position, the last consultant report to her GP was dated prior to the birth of her daughter.

122. Antidepressant medication is available in Pakistan. She would be able to continue treatment there.

123. I am not satisfied, on the lower standard of proof, that the appellant is at risk of serious harm on return to Pakistan

124. Therefore, having considered all the evidence, including that not specifically mentioned in my decision, and taking into account the background evidence on Pakistan, I find the appellant has not establish that she is entitled to the grant of

asylum. I do not accept that the appellant has established that she is entitled to refugee status.

- xxiii. The Judge rejects the claim for humanitarian protection [125] and pursuant to articles 2 and 3 ECHR on protection grounds 'in line'.
 - xxiv. The Judge notes the appellant is being treated for her mental health condition but does not find that reaches the high threshold that may engage article 3 on medical grounds [126].
 - xxv. The Judge finds that although the appellant has been resident in the UK for 8 years, since 2011, there will be no very significant obstacles to the appellant and her family returning to live in Pakistan [128].
 - xxvi. The Judge finds there will be no breach of article 8 ECHR if the appellant is removed to Pakistan [129].
5. The appellant sought permission to appeal which was granted by another judge of the First-Tier Tribunal, the operative part of which is in the following terms:
- 3. The Judge's consideration of the best interests of the Appellant's children is restricted to three lines in paragraph 86. Given the appellant's history of serious mental ill-health, it is arguable that the Judge failed to give proper consideration to it when assessing the best interests of the children. It is also arguable that the Judge failed to give adequate consideration to the documentary evidence from Pakistan, especially the fatwa, rejecting it on the basis that the allegations therein was untrue. The Judge appears to ignore the claim that the Appellant's brothers had made false claims against her as they did not approve of her marriage. It is arguable that the Judge's findings on internal relocation ignore the requirement for landlords to provide details of their tenants to the police, and there is merit in the assertion that the Judge's consideration of the mental disorder is inadequate, given the background evidence of the paucity of mental health provision in Pakistan.

Error of law

- 6. The medical evidence before the Judge included a letter dated 22 March 2019 from the Perinatal Parent Infant Mental Health Services at Goodmayers Hospital showing a diagnosis of severe depression and a risk of postnatal relapse. A letter of 27 February 2019 from the same source states the appellant suffers from hallucinations and a letter of 6 March 2019 showed the appellant being admitted to hospital with severe depression and suicidal thoughts after which she was discharged with the Perinatal Mental Health Care Plan which includes reviews by a perinatal practitioner, weekly contact with the perinatal mental health practitioner and perinatal consultant review every 4 - 6 weeks.
- 7. It was argued on the appellant's behalf that her mental health problems present in the United Kingdom are despite her husband's

support and that if she were to live in Pakistan with her husband this will be not be a protective factor against relapse.

8. The Judge noted the reports provided were from the perinatal team with no report setting out the appellant's current position. There had been nothing in particular since the birth the appellant's daughter on 7 April 2019. The Judge clearly noted the appellant had been diagnosed with a serious mental health condition specifically finding at [121]:

121. The appellant has been treated for depression, was closely monitored during a recent pregnancy and after the birth of her second child. Prior to this pregnancy she had not seen a psychiatrist. She was admitted to hospital for 5 days in January 2019. She is prescribed medication. There was no medical report setting out the current position, the last consultant report to her GP was dated prior to the birth of her daughter.

9. The Judge specifically finds that antidepressant medication is available in Pakistan which is said to give rise to the error of law as what the appellant requires his antipsychotic medication. I do not find it made out the Judge did not understand or appreciate the full extent of the appellant's mental health difficulties. The medication the appellant claimed to be taking in her asylum interview, Sertraline and Sumatriptan are an antidepressant and tablet for the treatment of migraine respectively. It was not made out that similar drugs will not be available to the appellant in Pakistan. It is also the case that antipsychotic medication such as Risperidone and Olanzapine is available in Pakistan with more limited use of other typical and atypical antipsychotics.
10. Whilst the mental health services in Pakistan may be more limited than those in the United Kingdom the Judge's conclusion that treatment is available and that the appellant had not established a breach of article 3 on medical grounds if returned, has not been shown to be a finding outside the range of those available to the Judge on the evidence.
11. The appellant asserts error in the manner in which the evidence was considered by the Judge. It is specifically suggested the Judge erred in law by finding because the appellant did not mention something in her 2015 claim that she now seeks to rely upon, this damages her credibility. The Judge was aware that the appeal in 2015 was not a protection claim and was a human rights claim, but one in which the appellant had claimed she could not return to live with family in Pakistan yet failed to make mention of issues she now seeks to rely upon which would have been material and relevant to her claim to be unable to return or the existence of insurmountable obstacles and which, if credible, would have been known to her at the time.
12. The Judge does not find against the appellant on the basis these were issues not raised in a protection appeal although human rights appeal can include articles 2 and 3 ECHR and facts that could establish both an entitlement to protection and the existence of insurmountable obstacles to return and reintegration. The assertion the Judge erred in failing to refer to any evidence giving in the 2015 appeal which was

inconsistent with the later asylum claim has no merit. The Judge's criticism is that matters that could have been raised were not raised. This is the inconsistency between the claims.

13. On 27 July 2015 the appellant maintained she could not return to Pakistan, as she did in the later protection claim, but apparently not seeking to rely upon evidence at the heart of her current claim which, on the chronology identified by the Judge, would have been known to the appellant prior to her father's death in 2014.
14. The grounds assert the Judge failed to make adequate findings on whether the appellant was married in secret in 2013 failing to consider the marriage certificate of that marriage provided in the bundle. The Judge accepts the person to whom the appellant is currently married is her lawful husband and also finds the claim to have been married to another person before she married her current husband in the presence of the family in January 2014 is false. This Judge did not find the appellant's claim to face a risk credible is made out for which adequate reasons are provided in the determination.
15. The Judge is criticised for failing to deal with the submission made at the hearing that if the appellant were to relocate she would have to make herself known in the local community and that if she ever needed the help of the police there was a real risk the previous FIR, fatwa, a newspaper notice will come to the attention of the authorities which would cause to be investigated and the brothers notified of her whereabouts. The actual finding of the Judge is that the appellant can return with her husband and stay with his family or relocate together elsewhere. Pakistan is an intensely patriarchal society with the male being the head of the household and it therefore more likely that it will be the appellant's husband who would have to give notice to a landlord or deal with the authorities. The Judge finds the FIR, fatwa, and related documents warrant no weight being placed upon them as they are based upon information that is not true and that the documents are therefore themselves not credible. It was not made out the appellant would face a real risk as a result of any steps that she may have to take if such things came to light.
16. The Judge's view on the merits of the appellant's claim is that even taken at its highest the claim is based upon a letter from her sister that her brother would kill her if she came to Pakistan. This is a clear indication all other aspects of the appellant's claim were rejected as not being credible.
17. It is not made out it is not a finding available to the Judge on the evidence that the appellant had not established that her brother who she fears has returned to Pakistan. He was clearly living South Africa where they have established their business and the reasons the appellant states they may have come to Pakistan and issued threats against her are those reasons the Judge found, sustainably, lack credibility. It is not made out because an advertisement had been placed a brother was required to physically be present in Pakistan to do so. The Judge considered the documents in the round and in light of the lack of credibility in the core the appellant's protection claim

- the Judge was arguably entitled to place little weight upon the documentary evidence she was seeking to rely upon.
18. In relation to the reasonableness of internal relocation, the Judge was aware of the extent of the appellant's mental health. The Country Guidance Information Note for Pakistan stated mental health is one of the most neglected fields in Pakistan with limited services, but it was not established before the Judge that those services that are available will not be sufficient to meet the appellant's needs. Perinatal mental health (PMH) problems are those which occur during pregnancy or in the first year following the birth of a child which ties in with the material considered by the Judge. It was not made out with the treatment that is available that the appellant will experience problems or issues sufficient to breach the article 3 threshold.
 19. The appellant, her husband, and children will be returned as a family unit. The Judge's finding that it had not been made out there were very significant obstacles to return and integration has not been shown to be a finding not available to the Judge on the evidence. The appellant will not be returned alone, and treatment will be available both within the United Kingdom, in transit, and when she arrives back in Pakistan. The issue of internal relocation was raised by the respondent and the appellant failed to provide sufficient evidence to show it would be unreasonable in all the circumstances for her to relocate if she was unable to return to her home area. The evidence before the Judge did not establish that the best interests of the children can only be met if they are allowed to remain in the United Kingdom with their parents. Family life will continue in Pakistan with the children being cared for within the family unit with appropriate support. Any interference with the appellant's private life or those of the family in the United Kingdom has not been shown to be disproportionate in light of section 117B of the 2002 Act on the facts of this appeal.
 20. I find the appellant fails to make out that the decision under challenge is flawed for the reasons set out in the grounds seeking permission to appeal or at all. The Judge considered the relevant issues in the appeal with the appropriate degree of care and has provided adequate reasons in support of the findings made. The weight to be given to the evidence was a matter for the Judge.
 21. Whilst the appellant disagrees with the outcome and seeks a more favourable conclusion to enable the family to remain in the United Kingdom the grounds fail to establish arguable legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter.

Decision

22. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

23. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson
Dated the 6 January 2020