Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01754/2020

THE IMMIGRATION ACTS

Heard at Field House via Microsoft Teams	**Decision & Reasons Promulgated**
On 15th June 2021	**On 11th August 2021**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MS K S
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Ali, instructed by Zakk Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

The appellant appeals against the decision of First-tier Tribunal Judge Wood, dismissing her appeal against the Secretary of State's decision dated 17th February 2020 to refuse the appellant's application for international protection and protection on human rights grounds.

The First-tier Tribunal Judge set out the history in some detail such that the appellant was a national of Pakistan born on 30th June 1982 and she was married in August 2007 to Mr S D and shortly afterwards he left for the UK,

leaving her in Pakistan. In October 2009 she applied for entry clearance as a spouse, and she entered the UK in April 2010. Her leave expired on 9th June 2011. She subsequently failed to keep in touch with the immigration authorities between 2010 and 2017. In 2011 she returned to Pakistan to care for her sick mother and remained there for seven months.

It appears she subsequently separated from her husband in the UK and on 13th July 2017 made an application for leave to remain on Article 8 grounds which was refused and certified as having no prospect of success. She submitted a further Article 8 application for leave to remain on a similar basis, that is, she had no-one to return to in Pakistan and would experience societal disapproval, and that application was again refused and certified. Following judicial review proceedings on 2nd October 2019 the Upper Tribunal refused permission for such a challenge, directing that no First-tier Tribunal, properly directed, could allow an appeal against a refusal of the claim.

On 21st January the appellant was detained by the Home Office and she claimed asylum whilst in detention. In summary, she asserted she was afraid to return to Pakistan for fear of repercussions from someone named Mr Z, who had wished to marry her but was rejected in favour of her husband. It was suggested that as a single woman she would not have access to state protection. Further, she had developed both a family and private life in the UK in relation to the family of her estranged husband.

The grounds for permission to appeal set out as follows.

> Ground 1
>
> The judge did not adequately assess the appellant's mental health, vulnerability and its impact on return. The grounds stated that the judge accepted the appellant had a major depressive disorder and a post-traumatic stress disorder and she was vulnerable but that he failed to place sufficient weight on the appellant's mental health conditions and vulnerability which had a bearing on her risk on return. At paragraph 12 the grounds added that the judge did make reference to part of the claim regarding single women like the appellant not having access to state protection and at paragraph 59 the judge accepted there were "certain limitations to the effectiveness of police protection for women involved in honour-related violence. However, I note that the appellant is from Rawalpindi, which is an urban area not necessarily prone to these types of problems".

The grounds submitted that the appellant's circumstances would make her prone especially in the light of the fact that she had no father figure and her brother was a drug addict and her estranged mother was suffering from mental problems and the appellant was from a patriarchal tribe. Reference was made in the grounds to the report of Dr Mariam Kashmiri, a psychiatric report dated 2nd July 2020, and to the fact that the threat the appellant faced was from a member of the Pathan community and the judge appeared to have overlooked the comments made by the doctor, in particular at paragraphs 15.8, 15.9, 16.6

and 16.9, which referred to her bringing up memories of her loss, that Pakistan would be difficult in her current state, considering it would be an environment in which she had suffered trauma, that "further stress concerning her immigration issue was likely to exacerbate her distress and feelings of helplessness" and finally that further exposure to a stressful situation which she was likely to face on her return to Pakistan where she had no family or social support would aggravate her symptoms significantly.

It was also submitted that the appellant's mental health issues were identified prior to her asylum interview and the judge indeed made reference to her visit to the GP in 2017 regarding her mental health.

When the appellant was in Pakistan previously she was with her in-laws and the community knew she was married and had their support and she would be returning as a separated woman with no meaningful support and after a decade and her in-laws could not visit her owing to the COVID Rules and their respective medical conditions.

It was submitted that the judge failed to attach appropriate weight to her personal circumstances or take a holistic approach when considering her return to Pakistan. The COI Report dated February 2020 was referred to at paragraph 19 of the skeleton argument and highlighted the issues facing women in the same circumstances as the appellant and there had been no proper application of the appellant's situation or her personal circumstances.

Ground 2

The second ground referred to the judge's lack of anxious scrutiny. At paragraph 59 the judge acknowledged the limitation of the effectiveness of the police but claims that the appellant would not be prone to these types of problems but the judge failed to take into account the perpetrators of the appellant's father, who was murdered in 1989, were never brought to justice. The appellant would be returning as a lone female of a failed marriage and would not have the support of her in-laws This was the only family she had known for a decade. The judge failed to take into account the lack of adequate male protection and the importance of male protectors and failed to consider how this would impact on her when finding employment or accommodation and the judge could not put her into the category of independent "socio-economic" female as she had never led an independent life. The psychiatric report had clearly stated the difficulties the appellant would face and it was submitted it was highly unlikely the appellant would be able to lead an independent life, based on her health and previous dependency.

At the hearing before me, despite the technical difficulties, both representatives confirmed that they could see and hear me. Ms Ali relied substantially on the extensive written grounds that submitted that the judge had failed to take into account fully the medical report, particularly at paragraphs 15.8 and 15.9 that the appellant's symptoms would worsen on return and that she had no family support and was at risk of suicide. The determination clearly accepted the limits to the police protection if she

returned, she had no father figure and it was noted that she came from the Pathan community, which was very patriarchal. When she went back for seven months she had been supported by her parents-in-law.

In relation to ground 2, again there had been insufficient scrutiny of the facts and that the appellant would be returning as a separated lone female. Her in-laws were now too ill to travel to Pakistan and too vulnerable. This appellant had never lived an independent life and the determination should be set aside.

It was confirmed that there was no challenge to the adverse credibility findings made with regard to the appellant.

Mr Melvin confirmed that there indeed were no credibility challenges in relation to the decision and the appellant's account was based on a fictitious character. She had family to support her in Pakistan and the psychiatric report was based fully on what she had been told.

Analysis

The judge's treatment and approach of the evidence in relation to credibility was not challenged in the grounds but focussed on the appropriate weight given to her personal circumstances or take a holistic approach when considering her return to Pakistan.

In the application for permission to appeal, the first challenge related to the judge not adequately assessing the appellant's mental health and vulnerability in relation to her return and noted that the judge accepted that she had a major depressive disorder.

At paragraph 22 First-tier Tribunal Judge Wood made clear that he had considered all of the documentation before him and during the course of the determination and noted that the appellant's solicitors had commissioned a psychiatric report dated 2nd July 2020 subsequent to her asylum interviews on 28th January 2020 and 5th February 2020. His references to the evidence underlined the point that anxious scrutiny of the case had been made. The judge referenced, and applied, the Joint Presidential Guidance Note No 2 of 2010 and the judgment **AM (Afghanistan) v Secretary of State for the Home Department [2017] EWCA Civ 1123** and confirmed that he had regard to her mental health condition when assessing the credibility of the appellant's evidence. That is evident on a careful reading of the decision.

The judge detailed the mental health evidence including the visit to the GP (where she did not mention Mr Z). As can be seen from the determination, the judge was well aware that the appellant asserted mental health difficulties prior to the psychiatric report and her asylum interview. The judge at paragraph 64 specifically identified that the appellant began *'to experience symptoms shortly after her encounter with Mr Zada …she did not see her GP until 2017'*. The grounds disclose in effect a challenge to the weight to be accorded to the evidence by the judge. Having factored in the mental health

condition the judge made a series of adverse credibility findings for cogent reasons.

At paragraph 67 the judge stated:

> *"However, looking at the evidence in the round, it is my view that the appellant is not a credible witness. The inconsistencies which I have set out are, in my judgment, impossible to reconcile, even having regard to the fact that she is obviously a lady who has mental health issues. It is my view that the appellant has repeatedly altered her evidence to fit the evolving nature of her immigration situation. It was only when detained that she claimed asylum on the basis of threats from Mr Z. It is my judgment that this is inexplicable in the context of the case as a whole. I would add that I also found her presentation as a witness at the hearing to be unsatisfactory. On a number of occasions, Mr Beer was required to repeat or rephrase simple but important questions which I felt the appellant sought to avoid answering in a straightforward manner. In my judgment, this was plainly not the result of any vulnerability, but a reluctance on her part of address problematic parts of her claim"*,

and at paragraph 68 the judge stated:

> *"… However, it is the irreconcilable nature of the evidence which came before which fundamentally damages this lady's credibility.*

And at paragraph 69

> *"Accordingly, I cannot find, even to the low standard of proof, that there is a real risk that the appellant has a genuine and well-founded fear of return to Pakistan I do not accept that Mr Z exists, or that there is an ongoing risk posed by him. If the appellant really did refuse Mr Z's marriage proposal (which I do not accept) and did make threats as alleged (which I also do not accept), then I find that he does not pose a continuing threat to the appellant or her family in 2020. I therefore refuse the asylum claim on this basis."*

The reference to suicide was fleeting only and in the light of the credibility findings the approach of the judge was open to him when finding there would be treatment in Pakistan and her family would be there to support her. The judge had overall given the appeal full and anxious scrutiny in the light of the previous Article 8 claims.

Ms Ali submitted that the psychiatrist had not simply followed what the appellant had stated but put in her own observations and comments such that the appellant had mental health symptoms. The judge, however, did not find that the appellant had no mental health difficulty. It is clear that on reading the determination as a whole the judge factored in the psychiatric report and the assertion that the judge failed to place sufficient weight on the appellant's mental health condition and vulnerability is not borne out by a careful reading

of the determination. The judge carefully assessed the mental health of the appellant and accepted at paragraph 65 that the appellant presented with a major depressive disorder and post-traumatic stress disorder. In that paragraph the judge acknowledged that this was a result of stressful and traumatic events "in her life". He was clearly aware that there were events which caused her mental health issues prior to the claim for asylum and indeed made reference to the murder of her father at a young age and separation from her family in Pakistan. The judge states in terms that he had "placed some weight on the medical findings whilst being *conscious* of the extent of the reliance on the account provided by the appellant's post-asylum claim". The medical conditions were reported prior to the asylum claim but the judge does not state that her mental health condition was limited to the post-asylum claim but it was the *extent of that reliance* on the account provided by the appellant that was relevant. There is a nuanced difference.

The judge had already recorded in the decision that the appellant had previously made two human rights claims both of which had been refused and on a different basis from that on which she later claimed asylum. At paragraph 56 the judge stated:

> "*It is only with the claim for asylum that any difficulties with Mr Z are mentioned or any dispute with her mother arising out of her marriage to her estranged husband. Reference is made to it only when she is detained."*

The judge carefully analysed the reasons for delay in the claiming of the asylum but found that

> *"in making three different immigration applications, in which she was required to think about and discuss potential difficulties associated with going back to Pakistan, it was inevitable that she would have to recall events connected to Mr Z, if they occurred"*

He concluded that by the time she had come to her second human rights application and her status was precarious, to say the least, she must have appreciated the need to explain her claim in full. In effect she did not.

The judge found the appellant to be a vulnerable witness but looking at the evidence in the round found her not to be credible, not least because of omissions in the documentation in the form of the mother's declaration of disowning, and the witness statements which omitted any reference to Mr Z. He took into account that she had "repeatedly altered her evidence to fit the evolving nature of her immigration situation". The judge also found that the appellant evaded cross-examination and "*in my judgment this was plainly not the result of any vulnerability but a reluctance on her part of (sic) address problematic parts of her claim*". He was unarguably entitled to draw that conclusion.

Crucially, there was no challenge to the judge's treatment of the evidence on the adverse credibility findings. The judge considered the medical report when

assessing the credibility of the appellant. The weight to be given to various reports is a matter for the judge. Mere disagreement about the weight to be accorded to the evidence, which is a matter for the judge, should not be characterised as an error of law, **Herrera v SSHD** [2018] EWCA Civ 412. The judge rejected the "disown declaration" from the mother and that rejection was not challenged and the judge also considered the witness statements from the other family members and noted that they did not give evidence and thus could not be cross-examined despite the fact that two of the potential witnesses were present in the Tribunal and chose not to give evidence.

The judge considered that the medical report was based on the personal history and background evidence given by the appellant herself but as referenced above gave some weight to the report. The point was made by Ms Ali that the doctor gave independent observations of the appellant's health, but the judge was aware and found that this could also be the result of the death of her father at a young age, separation from her family and/or '*being involved in a protracted immigration process which culminated in long term detention*'.

I note the report itself details the history of presenting complaints, a description from the appellant of the complaints and a record that the appellant broke down in tears during the interview and that objectively the appellant appeared "low" but absent further detailed observations the judge was entitled to take the approach that he did to the medical report and put the weight on it which he did.

Crucially, at paragraph 73 the judge found that the appellant had conditions which were primarily treated by commonly available medication and those treatments would be available in Pakistan, albeit not without problems but the judge stated:

> *"I accept that if she is returned to Pakistan without treatment that her conditions will deteriorate. But she would not be in danger of imminent death. I find that she will have access to appropriate treatment and to social support from her family. I do not accept that she is estranged from some or all of her family."*

In effect, the judge considered that she would not be returning as a lone independent woman. He rejected the fact that her mother had disowned her as drafted by the "disown declaration" dated 20th November 2018. The information in relation to the appellant's brother being a drug addict stemmed from the appellant herself and the judge specifically found her not to be credible.

The grounds make reference to the judge accepting that there were "certain limitations to the effectiveness of police protection for women involved in honour-related violence" but, for sound reasons, the judge did not accept the credibility of the appellant, did not accept Mr Z existed and did not accept that her mother was estranged. The judge clearly found that the appellant had access to her family in Pakistan and noted that she had returned and lived in Pakistan in 2011 and remained there for seven months, living "with or in close

proximity to her family home", at paragraph 58. Indeed, it was for this reason that the judge did not accept her asylum claim. The judge was also cognisant of the fact that Mr Z did not actually harm her at that point and had previously in the determination recorded that the appellant had remained in Pakistan for 'the best part of three years' after she was married and then returned to Pakistan.

In terms of returning as a lone woman, it was the appellant's own claim that her brother was a drug addict and I repeat that the judge disbelieved the appellant's evidence. The medical report, at paragraph 16.9 stated that the appellant would have her symptoms aggravated significantly "on her return to Pakistan where she had no family or social support" but the judge rejected that account.

The grounds maintain that the appellant's in-laws would not be available to her should she return to Pakistan but once again, the judge had found that her own family were available to assist her with her mental health condition and to support her generally.

In relation to ground 2, I do not accept that there was a lack of anxious scrutiny. The findings of the judge clearly took the case at its highest and this was a college-educated woman, albeit with no employment history, with a background of two previous failed Article 8 claims based a protection claim on entirely new grounds. The appellant would not have need of police protection because not least the judge did not accept that she was at risk from her former husband or family or tribe on her return and would not be a lone female.

As she had access to her family, as found by the judge, that would not place her in the category of an independent socio-economic female regardless of whether she had led an independent life or not and indeed, it was noted that she was college-educated. The psychiatrist also approached the report on the basis of not only her evidence but on the basis that she legitimately feared "further persecution" and she has "no family or social support". Neither of those were accepted by the judge. For sound reasons the judge found the circumstances of the appellant were not as presented and as such the Country of Origin Information Report dated February 2020 on Pakistan does not assist. The appellant had lived in Pakistan for a number of years following the death of her father.

1. The Upper Tribunal is cautioned to exercise restraint when considering appeals against First-tier Tribunal decisions, **UT (Sri Lanka) v Secretary of State** [2019] EWCA Civ 1095. McCombe LJ in **Lowe v SSHD** [2021] EWCA Civ 62 at paragraph 29 cited paragraphs 114 and 115 of **Fage UK Ltd. v Chobani UK Ltd**. [2014] EWCA Civ 5 as follows:

> '*At [114] – [115], Lewison LJ explained the caution to be exercised by appellate courts in interfering with evaluative decisions of first instance judges*'

Lewison LJ in particular reasoned

> '*In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping*'.

And

> *'The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence)'.*

The judge had the benefit of taking oral evidence from the appellant in question, considered the medical evidence as a whole and arrived at findings which were undoubtedly open to him.

The grounds of challenge are not made out and I find no error of law and the decision of the First-tier Tribunal will stand.

Notice of Decision

The appellant's appeal is dismissed, and the First-tier Tribunal decision will stand.

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

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 or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Helen Rimington Date 2nd August 2021

Upper Tribunal Judge Rimington