



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

Appeal Number: PA/11583/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2<sup>nd</sup> February 2022**

**Decision & Reasons Promulgated  
On 30<sup>th</sup> March 2022**

**Before**

**UPPER TRIBUNAL JUDGE LESLEY SMITH  
DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**R K  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity order was made by the First-tier Tribunal. This is an appeal on protection grounds. It is therefore appropriate to continue that order. 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, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

**Representation:**

For the Appellant: Mr N. Garrod of Counsel

For the Respondent: Ms H. Gilmour (Senior Presenting Officer)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Karbani, promulgated on 28<sup>th</sup> June 2021 (“the Decision”), following a hearing at Hatton Cross on 11<sup>th</sup> June 2021.
2. By the Decision, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before us.
3. The appeal comes before us to determine whether the Decision contains an error of law and if we conclude that it does, to decide whether the Decision should be set aside in consequence and how it should be re-made.

### **The Appellant**

4. The Appellant is a female, a citizen of India, who was born on 3<sup>rd</sup> April 1988. She appealed against the decision of the Respondent dated 11<sup>th</sup> November 2019, refusing her application for asylum and humanitarian protection, on the basis that her marriage to a Mr [AS], had been an inter-caste marriage. She had been a person of low caste and he had been a person of high caste. That marriage, however, had now ended in divorce, with the resulting consequence, that she would now be returning back to India as a lone, divorced, single woman who would be at risk of ill-treatment, both from her own relatives, and from the society at large.

### **The Appellant’s Claim**

5. The essence of the Appellant’s claim is set out at paragraphs 25 to 31 of the Decision. The judge observes that the Appellant claimed that she is from the Ravidasia caste, but her former husband had been from the higher “Jat” caste. They had married on 19<sup>th</sup> July 2009 after a period of courtship while at college. Although their respective families were against the marriage, given the caste differences, her former husband had threatened to take poison and kill himself unless he was permitted to marry the Appellant.
6. After their marriage there had been a confrontation between the respective families who both disagreed with their marital union. After the Appellant received threatening telephone calls, and her husband’s friends stopped associating with him, they decided they could no longer live in India, and would travel to the UK.
7. The Appellant entered the UK on 25<sup>th</sup> September 2010 as a Tier-4 Student, and her visa was valid until 28<sup>th</sup> January 2012. In the UK, [AS] started spending more time away from her, and when her visa renewal application was rejected, he left her for good and then divorced her. She now brings a protection claim on the basis that she will face a risk of ill-treatment on return to India from her parents, as a lone female, and on account of her membership of the Dalit caste (paragraphs 3 to 4 of the Decision).

### **The Judge’s Findings**

8. The judge had regard to the fact that the Appellant in her screening interview had claimed that she had married out of her caste and that her parents did not approve of this. However, what she had said was that her husband was a “Majby Sikh caste, which is a lower caste” and that this “was a major problem” (paragraph 25). In her asylum interview of 12<sup>th</sup> June 2019, the Appellant had corrected this to say that she had married a non-Ravidasia (Dalit) person and that she had inadvertently given incorrect information about her husband’s caste earlier because he was “of a socially higher Jat caste” (paragraph 26). She had not applied for asylum upon arrival because she believed she would be able to get a further extension of her visa (paragraph 26). The judge concluded that the Appellant was married to [AS] and had since divorced and that “this reflected a genuine breakdown in her relationship” (paragraph 27).
9. However, on the question of whether she had married a person of the Jat caste, the judge was unpersuaded. She drew attention to the fact that the Appellant in her screening interview had described her husband as belonging to a category of a Dalit caste. The Appellant had subsequently maintained that she had given the wrong information because she was stressed at the time. However, the judge’s view was that

“The level of detail of actually providing a caste name which is completely contrary and of a different level to the one that she claims that her ex-husband now is a significant discrepancy and is not explained by the stress she claims to have been suffering at the time”.

Accordingly, the judge concluded that, “I do not accept that her husband was from the Jat caste” (paragraph 28).
10. With respect to whether the Appellant would be in fear of retaliation from respective family members on account of having undergone an inter-caste marriage, the judge was again unpersuaded. She held that the Appellant had stated that she had lived with her in-laws and that they supported her and her husband to come to the UK by assisting them with the visa fees, all of which suggested that there was no estrangement between the parents and the Appellant’s husband (paragraph 29).
11. In fact, the judge concluded that the Appellant had been secretly in touch with her mother all along because she had managed to obtain an agricultural certificate from her mother and that “this is a late embellishment to her account in order to explain how she was able to get a document from her family members when she claimed she had been disowned by them” (paragraph 30). Overall, the judge concluded that “she has never lost contact with her parents” (paragraph 33).
12. At the hearing before her, the judge also had expert evidence tendered on behalf of the Appellant. There was first a report from Ms Bilku, from the charity group Jeena, dated 19<sup>th</sup> June 2019. This repeated the Appellant’s claim that she had been involved in an inter-caste marriage. Upon return to India, she would be viewed negatively as a single, divorced female. The judge held that she could attach weight to this document (paragraph 34).

13. However, the Judge attached no weight to a second report from Kiranpreet Kaur, dated 11<sup>th</sup> March 2020 (paragraph 35). This was a report, allegedly based on Ms Kaur's expert knowledge and experience of life in Punjab. The judge rejected this as not being a report from an expert on inter-caste marriages.
14. The Appellant also relied on her ill health. During her time in the UK, on 22<sup>nd</sup> March 2017, she was diagnosed with breast cancer. A week after that diagnosis the Appellant claimed asylum. This was after being told that she would not be entitled to any treatment on the NHS (paragraph 36). The Appellant was now under treatment with Tamoxifen, which she would need for a further period of five years. The Appellant suggested that this treatment would not be available in India and would not be accessible to her, given that the availability of free cancer treatment in India was limited (paragraph 42). However, the judge's view was that this was overstated, and that treatment would be available. She concluded that it was not the case, "that the medications will cost as much as she has claimed because there is no objective evidence in support of this" (paragraph 43).
15. The Appellant had been in the UK for five years without any leave and seven years after her entry in the UK, and yet she had not indicated a genuine fear on return to India (paragraph 36). The judge therefore considered that this undermined the Appellant's general credibility under section 8.
16. Finally, with respect to Article 8 and the application of paragraph 276ADE, the judge considered the argument that the Appellant would face "very significant obstacles" when reintegrating back into life in India. She concluded that the Appellant had been in the UK for over ten years, but her status has always been precarious. She could return to India where she will be able to continue having access to treatment as well as having the support of her family and friends (paragraph 50). On a balance of all the considerations, and bearing the public interest in mind, the refusal was not a disproportionate interference with her private life rights (paragraph 51).
17. The appeal was dismissed.

### **Grounds of Application**

18. The Grounds of Appeal are extensive and detailed. In short, they make the following points. First, the judge at no point considered the impact of the Appellant being a single female and a Dalit collectively. This was a significant flaw given that at paragraph 37, the judge had accepted both that the Appellant was a Dalit and was divorced. Second, the Appellant's claim that her husband was of the Jat caste had never been directly challenged by the Respondent (even in the refusal letter of 42 pages). The Appellant herself had made good this claim by addressing it in her witness statement of 12<sup>th</sup> June 2019 (at paragraph 109) where she had referred to him as a Sidhu caste and to herself as belonging to the Mehmi caste of the Ravidasia family surname.

19. Permission to appeal was granted on all grounds by Judge Boyes on 4<sup>th</sup> October 2021.

### **Submissions**

20. At the hearing before us on 2<sup>nd</sup> February 2022, Mr Garrod, appearing as Counsel on behalf of the Appellant, emphasised two aspects to this appeal.
21. First, the judge had referred to the expert report of Ms Bilku dated 19<sup>th</sup> June 2019, which recorded how the Appellant had been involved in an inter-caste marriage, which had then resulted in a divorce, such that she would now be a single, divorced female returning alone to India. The judge had ended her consideration with the statement, "I find that I can attach weight to this document" (paragraph 34). Yet, submitted Mr Garrod, there was no holistic assessment of the impact of the Appellant being a single, divorced woman from an inter-caste marriage, upon her return to India. The judge accepts that, "the Appellant is a member of the Dalit caste and is divorced" (paragraph 37) but does not go on to consider the cumulative impact of that finding. She does not refer to the evidence about that impact. Nor does she refer to the lower standard of proof being applicable, the burden of proof, and the threshold requirements of the evidence being considered. The question was how society would see the Appellant as a divorced woman from an inter-caste marriage and this is simply not considered by the judge. At paragraphs 19 to 30 of the report of Ms Bilku (which the Judge accepted could be given weight), she referred to the dangers that the Appellant would face upon return to India on this account. The judge, however, did not consider this in her assessment.
22. Second, there was the issue of the Appellant's cancer diagnosis. Mr Garrod submitted that the finding by the judge at paragraph 33 that, "it is not credible that she was given a life-threatening diagnosis in the UK yet did not seek to make contact with her parents again", was entirely speculative. The statement "I find it reasonably likely that she has never lost contact with her parents" (paragraph 33) was not based on evidence and not open to the judge to make.
23. Mr Garrod also submitted that the Appellant now faced a risk of an infringement of Article 3 ECHR if returned to India in circumstances where proper breast cancer treatment was not available. This is because there was a letter from Dr Guppy dated 20<sup>th</sup> June 2019 (see page 94) which did not conclude that the withdrawal of her treatment in the UK would have no impact on her. The judge concluded that the Appellant was expected to continue with Tamoxifen treatment for five years (see paragraph 41). However, Mr Garrod submitted that the judge was wrong to conclude that treatment in India remained accessible to her, regardless of the costs of medication, because of "the availability of free cancer treatment in India" (paragraph 42).
24. For her part, Ms Gilmour relied upon the Rule 24 response of the Respondent Secretary of State. She made the following submissions. First, the Appellant had made a significant mistake in relation to the caste

of her husband, whom she had previously described as being from the low caste “Mazhabi caste, a category of Dalit” (see paragraph 28). Even if the judge was wrong about the husband’s caste membership (based on his name), the question was whether any error in this regard was material. It was not. The Appellant was divorced, as the judge recognised, and it is this which is a material fact. Her inter-caste marriage is not material.

25. Second, the criticism by Mr Garrod of the judge having referred to a late embellishment of the evidence of the Appellant in relation to whether she was in contact with her mother, was again irrelevant and not material. The judge was entitled to make a finding that it was “reasonably likely that she has maintained contact with her family members in India” (paragraph 39) when referring to the Appellant.
26. Third, the judge was entitled to conclude that the Appellant’s general credibility was impugned under Section 8, given that the Appellant had only claimed asylum, “a week after her cancer diagnosis and being told that she would not be entitled to any treatment on the NHS” (paragraph 36).
27. In reply, Mr Garrod submitted that the application of Section 8 was misconceived because it is not clear how the facts arising in this case meet the threshold requirements of Section 8. In this respect he relied upon his Grounds of Appeal. Second, the Appellant had never said that her mother came to visit her, and therefore the suggestion by the judge that they were in contact was not based on the evidence.

### **Discussion and Conclusions**

28. We have considered the entirety of the grounds of appeal and submissions made but we do not need to refer to these in detail. We refer only to those grounds which we consider central to our findings whether there is an error of law in the Decision.
29. First, we can say straightaway that the suggestion that the Judge erred in relation to the claim that the Appellant would be at real risk of a breach of her Article 3 rights on medical grounds is unsustainable. The judge gives proper regard to the letter from Dr Guppy dated 28<sup>th</sup> June 2019, and to the ongoing treatment that the Appellant was likely to receive in the UK (which we note was due to end in February 2021 in any event). The judge recorded the content of Dr Guppy’s letter that, “the endocrine treatment is internationally available including in India ...” (paragraph 41). In relation to accessibility, the judge had regard to the suggestion that the cost would be prohibitive for the Appellant but preferred the evidence put forward by the Respondent that such treatment was freely available (paragraph 42).
30. The judge correctly directed herself to the authority of AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17. The threshold for an Article 3 breach is a very high one involving not simply a worsening of a pre-existing medical condition but “a serious, rapid and irreversible decline in ...state of health resulting in intense suffering” or “a significant reduction in life expectancy”. Based on all the evidence, the

Judge was entitled to conclude that the Appellant (on whom the burden lay to establish a “prima facie” case) had not discharged the burden.

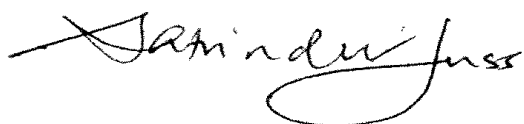
31. Second, however, we do accept that there is an error made by the judge in failing to consider the cumulative impact of her findings that the “the Appellant is a member of the Dalit caste and is divorced” (paragraph 37) when assessing the risk on return. If the Judge was wrong to find that the Appellant’s ex-husband was not a member of the Jat caste (as it was suggested his name would imply he was), then that factor also had to be considered alongside the other factors. This is so even if the judge was entitled to come to the conclusion that the Appellant would not be returning as a lone female because “she has maintained contact with her family members in India” (paragraph 39).
32. Having found an error of law on that basis, we conclude that the errors made are material. We therefore set aside the Decision. Although we have rejected in quite strident terms the Appellant’s case based on Article 3 ECHR in relation to her health, we do not consider it appropriate to preserve any findings in case there has been any deterioration in the Appellant’s medical condition or there has been any change in the position in India for treatment. We underline though what we have said above about that part of the case on the evidence as was before the judge on this occasion. Since the error found relates to the Appellant’s credibility and the overall consideration of risk on return, we consider it appropriate to remit the appeal to the First-tier Tribunal so that the appeal can be heard afresh.

### **Notice of Decision**

**The decision of First-tier Tribunal Judge Karbani promulgated on 28 June 2021 involved the making of an error of law. We set aside the decision of Judge. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Karbani on a de novo basis with no findings being preserved.**

Signed

Date



Deputy Upper Tribunal Judge Juss

18<sup>th</sup> March 2022