



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/04027/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 27 March 2014  
Decision given orally

Determination Sent

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

MS SANYA MUSHTAQ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms R Chapman instructed by Asylum Aid  
For the Respondent: Ms A Holmes, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. As conceded by Ms Holmes, I am satisfied that the determination of the First-tier Tribunal is infected by error in the following respects.
2. The first is because of procedural unfairness. The judge is stated to have indicated at the hearing that he was satisfied as to the appellant's credibility which was

challenged in the refusal letter but rejected her account as fabricated in his ultimate decision. This assertion is unchallenged by Ms Holmes

3. The second ground is because of a failure by the judge to reach conclusions on an expert's report relied on to meet the credibility concerns that had been addressed by the Secretary of State.
4. The third ground relates to the judge's finding on the reliability of a document which, on the face of it supported the negative credibility findings. This ground is best considered in the context of the first.
5. As to the history of this matter, the appellant who is a national of Pakistan born in 1990 appealed against the decision of the Secretary of State dated 12 April 2013 to remove her as an illegal entrant, the Secretary of State having refused to recognise her as a refugee and having refused to accept her claim that she had been trafficked. The appellant arrived here in 2009 to work for the Deputy High Commissioner at the Pakistan High Commission with a visa for that purpose. Her claim to asylum is based on a fear from her family of being forced to marry against her will and she fears also the influence of her former employer because of the allegations she has made that she had been trafficked in the context of her transfer to the United Kingdom from Pakistan for her continuing employment by the diplomat concerned.
6. The hearing before the First-tier Tribunal took place on two dates. The first was on 2 September 2013 and the second on 16 January 2014. At the first hearing the witness statements previously provided by the appellant were adopted and she was then tendered for cross-examination. That did not take place on that occasion but was deferred to a later date because the judge directed the Secretary of State to produce certain documents she relied on to support her case that the appellant had not been trafficked. There was a different Presenting Officer at the resumed hearing in January, a Ms Jones, who had no papers. There had been no compliance with directions. The judge did not permit his papers to be copied and in summary, as a consequence there was no cross-examination and the Presenting Officer's submissions were confined to reliance on the Reasons for Refusal Letter dated 12 April 2013.
7. According to statement from Ms Smith of counsel (she had appeared for the appellant on the first occasion), the Secretary of State was requested to make enquiries of those instructing her as to certain documentation which had been referred to in a supplementary decision rejecting the appellant's claim to have been trafficked. She states that the judge commented in open court that in the absence of such evidence by the Secretary of State to undermine her account he would "accept the appellant's evidence-in-chief and the submissions in the skeleton argument" and that there was "nothing to counter what she said" and that the "appellant's account was consistent on the whole".
8. Ms Smith's statement refers also to the events that took place at the January hearing. She explains that Ms Jones indicated she would not be cross-examining the appellant

after she had taken instructions from the Secretary of State. Ms Smith explains that the appellant relied on the evidence-in-chief given at the earlier hearing and tendered her for cross-examination. She was not cross-examined and she was not asked any questions by the judge. Ms Smith records in her statement further comments she had noted were made by the judge as follows:

“...The alleged counter story given by diplomat but not provided... appellant’s account consistent and falls within submissions of Ms Smith... may reach another decision but at the moment I am in her favour. The delay added anxiety to young woman alone in foreign country. I cannot tell you today what exact decision will be because her duty to look at evidence completely. At the moment the balance is in your favour. The Secretary of State for the Home Department has a right to appeal to the Upper Tribunal.”

9. The reasons given by the judge in his determination for his findings reveal that he clearly had a change of heart about the case. That can happen but in my view fairness demands that the party affected is given the opportunity of addressing the matters that led to that change. This is so, even if the reasons given for doubting the credibility appear to be cogently given. It is no answer to say that as credibility was under the spotlight by virtue of the refusal letter, it was open to the judge to proceed as he did. The reasons given by the judge for rejecting the claims may have been along the lines of those in the refusal letter but having indicated that credibility was not of concern or in terms that it was reasonable for Counsel to suppose that was the case, such an indication may well have shaped the way in which Counsel structured her submissions. If there were matters in addition to the reasons in the refusal letter that were of concern to the judge, the appellant or her representative through submissions should have been given the opportunity for comment or further questioning if that was considered desirable. The proper course would have been for the judge to reconvene to explain his concerns and for the appellant and her representatives to decide how to respond. The first ground is sufficient in itself for the decision to be set aside.
10. The judge referred to the expert’s report in his determination but it is correct that he did not explain how he factored it into his credibility findings. He was not required to reach a view on every aspect of the evidence but the report formed a major part of the evidence before him and it required more than simply a summary of its contents. As I have already observed the third ground is bound up with the first.
11. For these reasons I therefore find the determination is infected by error of law and set aside the decision. Having regard to the nature of the error and the extent to which credibility is a fundamental issue in this case, I propose that it be remitted to the First-tier Tribunal for the decision to be made pursuant to s.12 of the 2007 Act. None of the findings of the First-tier Tribunal Judge are preserved at what will effectively be a de novo hearing. As to the outstanding direction for the Secretary of State to produce the documentation that will be a matter for a judge of the First-tier Tribunal to address at a case management review but it appears to me that the Secretary of State should endeavour to produce that documentation in time for that case

management review. I direct that the appeal should not be heard by FtTJ Vaudin d'Imecourt.

Signed

Date 2 April 2014

A handwritten signature in blue ink, appearing to read "Dawson", with a horizontal line extending to the right.

Upper Tribunal Judge Dawson