



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: AA/04848/2013**

**THE IMMIGRATION ACTS**

**Heard at Manchester Piccadilly  
On 12 December 2014**

**Decision Promulgated  
On 02 January 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**FARKHUNDA KAMRAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms N Ahmad for Denning Solicitors

For the Respondent: Mr A Mc Vitie Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this

Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Simpson which dismissed the Appellant's appeal on all grounds.

### Background

3. The Appellant was born on 26 October 1963 and is a citizen of Pakistan. The Appellant entered the UK as a student on 2 February 2008 and had leave to remain until 31 March 2009. She applied for further leave to remain on 27 March 2009 but her application was refused on 10 December 2009. She made a further application as a spouse on 3 February 2012 and this was refused on 9 April 2012. On 19 October 2012 she applied for leave to remain under the domestic violence concession and this was refused. She then claimed asylum on 19 April 2013 and this was refused in a letter dated 1 May 2013 and the reasons can be summarised as follows: it was acknowledged that sectarian violence was an ongoing problem in Pakistan but neither her nor any member of her family had been targeted as Shia Muslims; it was not accepted that she was the victim of domestic violence; it was not accepted that her husband's family had any interest in her or her daughter given the lack of any contact and her claim that they believed she was divorced 5 years ago; internal relocation was an option

### The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Simpson ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found that the Appellant's evidence was disjointed and vague; she did not accept that the Appellant was the victim of domestic violence and found that she had fabricated the claim to justify her asylum claim; she found that the Appellant was not at risk from her husband's family in Pakistan and therefore could return to her family in Karachi or she could relocate if she wished; she looked at the Appellant's case under Article 8 together with that of her child and found that they could return to Pakistan together.
5. Grounds of appeal were lodged and on 2 May 2014 First-tier Tribunal Judge Page gave permission to appeal.

6. At the hearing I heard submissions from Ms Ahmad on behalf of the Appellant that :
  - (a) The judge was wrong to dismiss the suggestion that the Appellant was a victim of domestic violence. The husband's acquittal at the Crown Court was not determinative of the issue.
  - (b) The medical evidence supported her assertion in that she was on anti depressants and had back pain which was consistent with her account that her husband caused her an injury.
  - (c) The weight given by the Judge to the Appellant's account was irrational.
  - (d) The Judge failed to take into account, in stating that her account was confused, that as the Appellant was on anti depressants this may have impacted on the quality of her evidence.
  - (e) The judge had failed to look at the country evidence in relation to risk on return.
7. On behalf of the Respondent Mr Mc Vitie submitted that :
  - (a) This was an attempt to reargue the appeal.
  - (b) The Appellant's husband was acquitted of any offence in relation to her after a trial: the Judge was entitled to take that into account while recognising that the standard of proof was different.
  - (c) The medical evidence did not support the Appellant's account as it all post dated the history complained of: there was no contemporary evidence to suggest that she had a miscarriage as a result of an assault and the fact that she had depression was equally consistent with her status.
  - (d) The fact of depression without more was not enough to explain the confused nature of her evidence.
  - (e) In relation to risk on return to the Judge did not accept that she was at risk and at paragraph 51 gave her reasons.

## The Law

8. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
9. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigration Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration. In Mibanga v SSHD [2005] EWCA Civ 367 Buxton LJ said this in relation to challenging such findings:

*“Where, as in this case, complaint is made of the reasoning of an adjudicator in respect of a question of fact (that is to say credibility), particular care is necessary to ensure that the criticism is as to the fundamental approach of the adjudicator, and does not merely reflect a feeling on the part of the appellate tribunal that it might itself have taken a different view of the matter from that that appealed to the adjudicator.”*

### **Finding on Material Error**

10. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
11. In relation to the first ground that the Judge failed to give sufficient weight to the medical I am satisfied that the Judge did take the medical evidence into account in her overall assessment of credibility but gave it little weight and she was entitled to do so. She makes reference to taking into account evidence in the Appellant's bundle at paragraph 3 and then specifically refers at paragraph 11 to medical issues and at paragraph 25 and 50 to her medical records.
12. However at its highest the medical records contained an account of her claim to her GP that she was a victim of domestic violence some years after the events in issue, confirm that she had a miscarriage without ascribing it to her claim that she was assaulted and confirm that she suffers from depression which again is not uncommon amongst those whose status is precarious. The suggestion that her claimed back pain (page 24B) is supportive of her account of him causing injury to her back in 2012 is clearly unfounded given that her oral evidence as recorded by the Judge at paragraph 26 was that she already 'had a bad back' in 2008. I am therefore satisfied that the Judge has taken the medical evidence into account such as it is but she was entitled to take the view that where the medical evidence simply recounts a history which she was minded to reject and contains nothing which did not depend on the truthfulness of the Appellant, the part which it could play in the assessment of credibility was negligible.
13. The suggestion that the Judge failed to take into account the medical evidence when making her finding that the Appellant's evidence was vague and confused is without merit as there is nothing in the medical evidence to suggest that confusion is a symptom of the medication she was taking and to reach that conclusion would have required the Judge to make clinical findings that were not open to her.
14. It is suggested that the Judge misdirected herself when taking into account that the Appellant's husband was acquitted in his trial at the Crown Court of

assaulting her. I reject that suggestion: it was a fact that the Appellant's husband was acquitted and the Judge was entitled to take that into account but the Judge at paragraph 50 clearly recognises that the standard of proof in criminal proceedings is 'considerably higher' than that which applies in immigration matters.

15. In relation to the argument that the Judge failed to take into account the best interests of the Appellant's child I am satisfied that having made a finding that she did not accept the Appellant's account that she was the victim of domestic violence or was of interest to her husband's family she directed herself accordingly taking into account Zoumbas v SSHD [2013] UKSC 74 . Given her findings in relation to the mother and the fact that the child was not a British citizen it was open to the Judge at paragraph 54-55 to find that the Appellant and her daughter could return to her family in Pakistan together. This was a finding that was open to her and one she explained with sufficient detail.

16. I am therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning and the grounds are merely an attempt to reargue the appeal.

## **CONCLUSION**

**17. I therefore found that no errors of law have been established and that the Judge's determination should stand.**

## **DECISION**

**18. The appeal is dismissed.**

Signed

Date 1.1.2015

Deputy Upper Tribunal Judge Birrell