IAC-AH-LEM-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08514/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 2 June 2015	**On 12 June 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

MALIHA NAEEM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Janjua, Morden Solicitors LLP
For the Respondent: Mrs Pettersen, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Maliha Naeem, was born on 14 March 1980 and is a citizen of Pakistan. She arrived in the United Kingdom in October 2005 and claimed asylum. That application was refused and she did not appeal the respondent's decision. She made a subsequent fresh claim to the Secretary of State on 30 May 2009 and further submissions on 25 January 2011. She claimed that she had converted from Sunni Islam to Shia and also that she would be a lone woman in Pakistan who was at risk from her husband, a prominent politician in his local area. The First-tier Tribunal

(Judge Dearden) in a determination promulgated on 23 March 2015, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Granting permission, Judge Deans found that the first ground of appeal (that the judge misunderstood the nature of the claim by assessing that she was at risk only as a lone woman rather than considering the risk of renewed violence from her husband) was not arguable. Judge Deans noted that Judge Dearden "did not believe that [the appellant] was at risk from domestic violence." He did, however, find it arguable that the judge's credibility findings may be unreliable because the judge may have misapprehended the appellant's evidence.

3. Ground 2 challenges the judge's findings on credibility. At [21], Judge Dearden recorded that,

> "The appellant said that she had never been to the police to report physical threats to her daughter because her husband was from an important political party and was very influential in Pakistan. Whilst the appellant acknowledged that she had produced no documents to show that her husband was high up in a political party, it was maintained that if she had complained about him it would have been fruitless because she would not have been believed."

4. The appellant asserts, contrary to the judge's finding, that the police would be likely to inform her husband of her complaint and her presence in Pakistan and that this would "make the violence suffered worse." [Grounds, 10].

5. The appellant was asked at her substantive asylum interview whether she had reported "threats to your daughter's life to the police." She had replied, "you don't know the police in my country. The husband's friend killed two people and my husband used his influence to get the case closed. The police in Pakistan are not like in this country. If you go to the police they will inform him [the appellant's husband]." It is clear that the judge's finding is not inconsistent with the answer which the appellant gave at interview. Her answer, however, went further than the finding of the judge and indicated that the appellant might be exposed to risk simply by reason of reporting violence to the police because they would, in turn, tell her husband. In his findings at [30], the judge stated that, "if, [the appellant's] husband was a powerful politician then other powerful politicians opposed to him would welcome his being investigated by the police for offences of violence against his wife." That observation was clearly open to the judge on the evidence. It is true to say that the judge has not made a finding as to whether the police would inform the appellant's husband of her presence and her complaint but, given that the judge went on to find that the appellant's evidence was generally unreliable, I do not consider that he has erred in law by failing to make a specific finding on that particular issue. The judge was well aware of what the appellant had said at interview because he refers to the interview elsewhere in the decision (for example, at paragraph 22). He has simply

made a different finding from that urged upon him by the appellant. He did not err in law by doing so.

6. The judge went on at [30] to find that there was "something not quite right about the appellant's account because if she was married on 1 January 1997 and left four months later when she was pregnant, the daughter could not have been born on 30 December 1998." The grounds of appeal complain that that observation by the judge had "completely overlooked important evidence". The appellant had supplied a statement before the Tribunal to say that her daughter had been born on 30 December 1997, not 1998. She stated that, "the year given in her screening interview was simply a mistake on her behalf at the time." [Grounds, 11].

7. I do not find the judge has misunderstood the evidence. As he recorded in his decision at [16], the appellant had stated in the screening interview for her 2005 asylum claim that her daughter had been born in December 1998. The appellant did not appeal against the decision of the respondent. I note from the refusal letter of 27 October 2005, at [20], that the respondent had drawn specific attention to the clear discrepancy in that part of the appellant's evidence. Moreover, as the judge noted at [16] because the earlier asylum decision had not been the subject of an appeal, the particulars of that claim could legitimately act as the "starting point" for his assessment of the evidence (*Devaseelan [2002]* UKIAT 00702 (Starred)). Furthermore, the most recent refusal letter of 1 October 2014 recorded that, when asked to explain the discrepancy in her evidence, the appellant had replied, "I'm confused about dates. My documents should be here Friday. I can check them." It seems extraordinary that the appellant would need to refer to documents in order to give the correct year of birth of her own daughter. I do not find that Judge Dearden erred by having regard to the discrepancy in the 2005 interview or by refraining from dealing with the appellant's subsequent correcting statement.

8. At [30], Judge Dearden also stated that he had never been,

> "… entirely clear as to whether the appellant was saying that she had been beaten by her husband or whether she left because she feared that her daughter was going to be beaten. What she said in answer to question 34 of the asylum interview conducted with her was that it was her daughter who was the victim of threats, not her, and yet she now says she has been the victim of violence as evidenced by the scar on her temple."

The grounds of appeal point out [12] that, in her 2009 representations to the respondent, the appellant had indicated that she had in the past been subject to violence at the hands of her husband. The appellant asserts that the judge misunderstood her evidence at the substantive asylum interview [question 34] where, in response to the question "When did [your husband] start to threaten to kill you?" the appellant had replied, "Not me, he said he will kill my daughter and then divorce me."

9. I agree that the appellant's answer to the question about her husband's threat to kill her is not obviously inconsistent with her claim that she had

been the victim of violence at the hands of her husband in the past. I also accept that Judge Dearden's observation (see above) would appear to suggest that there is an inconsistency. Having said that, I am not persuaded that the judge has erred in law such that his decision is unsafe. His observation about the medical evidence [30] is essentially that it is of neutral effect; he correctly noted that a number of the answers given by Dr Winspur were in response to questions the text of which had not been disclosed. It was also open to the judge to observe that the doctor had failed to follow the Istanbul Protocol and that it was "difficult" to accept the doctor's evidence attributing scars on the appellant's body to injuries sustained seventeen years earlier. Given the sound reasons the judge has provided for doubting the credibility of the appellant's evidence, I consider it was open to him to refrain from accepting that the appellant had been "abused by her husband" [31]. Indeed, the judge went on to make an alternative finding on the basis that the appellant *had* been abused. At [31], he writes that, "even if [the appellant] had [been abused by her husband] that is a very long time ago and, assisted by her parents and daughter, there is a sufficiency of protection available to her on return." I find, therefore, that, even if the judge was wrong to identify a discrepancy in the appellant's evidence between the medical report and her answer to question 34 of the asylum interview, his analysis is sufficiently comprehensive so as to avoid his perpetrating any legal error.

10. In conclusion, I find that it was open to the judge to attach little weight to the appellant's own evidence. He has given sound reasons for finding that evidence to be unreliable. His assessment of risk to the appellant upon return to Pakistan is also sound. He has, in a detailed and thorough decision, found, in the alternative, that, even if the appellant had been the victim of violence at the hands of her husband in the past, she would not be exposed to real risk should she return to Pakistan now. I am satisfied that the judge did not misunderstand the appellant's evidence such that his decision is flawed by legal error. I find that the appeal should be dismissed.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed Date 10 June 2015

Upper Tribunal Judge Clive Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 10 June 2015

Upper Tribunal Judge Clive Lane