Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05077/2014

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
On 5 January 2016	**On 8 January 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SILMAT SILMAT

Respondent

Representation:
For the Appellant: Mr M Matthews, Senior Home Office Presenting Officer
For the Respondent: Mr G P McGowan, Quinn Martin & Langan, Solicitors, Glasgow

DETERMINATION AND REASONS

1. The parties are as described above, but the rest of this determination refers to them as they were in the First-tier Tribunal.

2. The appellant is a citizen of Pakistan, born on 22 March 1986. The respondent refused her asylum application on 8 July 2014. Judge of the First-tier Tribunal J C Grant-Hutchison allowed her appeal by decision promulgated on 25 September 2015.

3. The SSHD sought leave to appeal to the Upper Tribunal on the following grounds:

"The Judge of the First-tier Tribunal has made a material error of law by failing to adequately consider the determination of the appeal of the appellant's husband ...

The FTTJ, at paragraph 13, concludes that [she] can come to a different conclusion to the findings in Mr Khan's (the appellant's husband's appeal which was based on exactly the same factors as the appellant's appeal), as the judge in that appeal would have been assisted by the appellant in this present appeal giving evidence.

... the FTTJ does not provide any reasons why the FTTJ in the appeal of the appellant's spouse would have been assisted by the appellant. The factors that led the appeal of the appellant's spouse to be dismissed were exactly the same as in this appeal. The FTTJ in the appeal of Mr Khan, as recorded in paragraph 12 of the determination, dismissed the appeal, *inter alia* on internal inconsistencies in Mr Khan's evidence. ... it was not open to the FTTJ to find that an internal inconsistency in an account could have been assisted by the evidence of another witness. The respondent relies on *TK (Consideration of Prior Determinations) Georgia [2004] UKIAT00149*, paragraph 19:

> "In these circumstances the Tribunal considers that not only was the Adjudicator entitled to read [the first] determination, notwithstanding the arguments to the contrary which have been considered and dealt with above, but was also entitled to conclude that it would be wrong to revisit [the first] decision in relation to the appellant's husband's evidence. Were the adjudicator note entitled to take this course, the following extraordinary circumstance would arise. The head of a family, call him X, claims asylum on the basis of his own account and loses on the grounds that his account is disbelieved. There follows thereafter a succession of separate members of X's family who each makes his/her own asylum application and each expressly accepts that the risks which they fear are based on the risks to X as head of family. If Miss Record's submissions were correct, then there could be a succession of hearings where a succession of Adjudicators, each deprived of all previous adjudicator's determinations, could be asked to reappraise over and over again the same basic account from X, being an account on which all the successive family members were relying as showing that they were at risk because X was at risk. Unless some very good reason was advanced to the contrary, for example, compelling new evidence to show that X's evidence (which originally had been disbelieved) was mistakenly appraised by the original adjudicator, a future adjudicator is, in the Tribunal's view, not merely entitled to read the determination in X's case but also to treat it as determinative as to X's account."

... contrary to the guidance above there was no "compelling" new evidence that could lead to the FTTJ in the appellant's case coming to a different conclusion.

... the FTTJ at paragraph 19 of the determination, has given inadequate reasons for rejecting the Home Office submissions in respect of evidence regarding the father of the appellant's spouse. The FTTJ finds that the appellant in this appeal could have no influence on how Mr Khan conducted his appeal, however this does not adequately address the submissions made, which were on a lower standard of proof, that it is not credible that Mr Khan, if his own father had been killed by those allegedly seeking

retribution against the appellant's, would have made no mention of this material change in his own appeal when he made a further submissions application.

The respondent respectfully submits that the findings of the FTTJ in respect of internal relocation and sufficiency of protection are therefore clearly tainted in light of the above material errors."

4. On 13 October 2015 a First-tier Tribunal Judge granted permission, on the view that it was arguable that the judge failed to give adequate weight to the findings on the husband's appeal and adequate reasons for reaching a different conclusion, which might have affected her findings on relocation and protection.

5. The appellant filed a Rule 24 response to the grant of permission, in these terms:

"…

The Respondent in the current part of the process, Silmat Silmat, provided a Skeleton Argument and written submissions which were fully taken into account by Judge Grant-Hutchison.

In essence Judge Grant-Hutchison agreed that had the judge who considered her husband's case head evidence from Silmat Silmat then the findings in fact may well not have been the same as they were. She came to this conclusion because she found the appellant to be a credible witness. Judge Grant-Hutchison had to assess the appellant's evidence because she had made a fresh claim based on the fact that she was now a victim of domestic violence and that were she to be returned to Pakistan it would be as a single female who, for the reasons given in the submissions, would not be ale to internally relocate or seek protection. The judge fully reasoned her decision.

The decision raises issues as to the nature of the new evidence which enabled the second First-tier Tribunal Judge to reach conclusions differing from those of the First-tier Tribunal Judge who heard the relatives' evidence. It is particularly cogent in circumstances where the Second Appellant is the wife of the First Appellant who hails from a patriarchal society where women are very much second class citizens and may not be aware of the husband's actions.

Judge Grant-Hutchison clearly had *Devaseelan* and *TK Georgia* in mind in paragraph 14 and the flexile approach required by judges where there is a material overlap of evidence. The need to secure a just outcome in the second appeal required an assessment of what evidence she might have given in the first appeal had she been called. At paragraph 15 she makes her conclusions.

Judge Grant-Hutchison's findings are clear in relation to why she concluded Silmat Silmat had no likelihood of succeeding with internal relocation or seeking protection.

In relation to the alleged tainting of Judge Grant-Hutchison's assessment of the evidence quoad relocation and protection, the Secretary of State for the Home Department's grounds … are factually inaccurate. Mr Khan did attempt to bring in the issue of his father's murder by the Taliban (Silmat's father) in the Upper Tribunal application. Paragraph 27 of the Upper Tribunal decision refers to the newspaper article of 12 July 2011 in which this is reported. Accordingly at the date of the Upper Tribunal hearing on 30

April 2012 not only the Tribunal but also the Secretary of State for the Home Department was aware of this issue.

It is quite clear that the judge gave consideration to the issues surrounding the death of Mr Khan's father (paragraph 19 of her determination). She properly assessed Silmat Silmat's evidence in relation to domestic violence at paragraph 20, that of her witnesses at paragraphs 21 to 24, and the behaviour of her husband at paragraph 25.

Whilst the appellant does not agree with Judge Grant-Hutchison's conclusions in relation to the inability of anyone wanting to find her in Pakistan because of the computerised nature of the National Identity Cards, it is clear that the judge gave considerable reasoned consideration to the questions of relocation and protection over 4 pages of the determination. It is submitted that she has given adequate reasons for rejecting the respondent's submissions and reaching a different conclusion to that of the judge in the husband's appeal.

Esto, errors have been made by Judge Grant-Hutchison, which is denied. They are not material to the outcome of her case based on the risk on return to Pakistan effectively as a single female."

6. Mr Matthews submitted further to the grounds as follows. He referred to the First-tier Tribunal determination of the appeal of the appellant's husband (Annex E of the SSHD's bundle in the First-tier Tribunal, pages 15-16, paragraphs 47 and 49). He said that there were significant problems with his account on crucial matters which were common to both appellants. While it was open to another judge to reach different conclusions in an appeal by another family member, that judge had to take account of such significant previous adverse findings. The determination now appealed against at paragraph 13 disclosed an inappropriate approach. The appellant had not given evidence in her husband's appeal, although she might have done. The person who did give evidence had been disbelieved for a variety of good reasons. There was no justification for departing from them. At paragraph 19 of her decision Judge Grant-Hutchison accepted that the appellant had no input into further submissions made by her husband in August 2012. That might be a good point if this was the first time that such matters could have been raised, but there was no reason for the husband not putting these matters forward in further submissions, which he would surely have done if they had any basis in fact. His failure to do so was material. The case required a fresh hearing. It was accepted that the grounds did not seek to overturn the determination on the basis only of internal relocation and/or sufficiency of protection, and that these issues were to be revisited only if the favourable credibility findings were found to be legally flawed.

7. Mr McGowan relied upon the Rule 24 response and submitted further as follows. Document G in the SSHD's bundle on the First-tier Tribunal is the decision of the Upper Tribunal, finding no error of law in the First-tier Tribunal determination dismissing the husband's appeal. Paragraph 27 of that decision showed that the appellant's husband did then seek to tender new evidence, a newspaper report and a copy leaflet purportedly from the Taliban. The Upper Tribunal judge did not admit that evidence but this did show that the appellant's husband had sought to rely on new matters. If

so, the SSHD's point that he would surely have mentioned that his father had been killed [by the appellant's father] fell away. Judge Grant-Hutchison had accepted from the appellant that she had not been asked to give any evidence in her husband's case. The judge was entitled to look at the circumstances under which the evidence was absent from the earlier proceedings. The appellant was entitled to consideration of her case separately and to have her account preferred over evidence given by her husband who had subsequently been shown to be the perpetrator of domestic abuse. The judge was permitted but not bound to follow the findings in the previous determination. The appellant's account itself was compelling new evidence. There was no error which required the determination to be set aside.

8. In response, Mr Matthews referred to Item H in the SSHD's bundle in the First-tier Tribunal, which comprises the fresh claim made by the appellant's husband and its rejection by the respondent. He observed that it did not appear to include the materials mentioned in the Upper Tribunal, that it had not been found to disclose anything fresh and that after that decision both he and the appellant had absconded. Nothing further was known about him, although the appellant appears to have been detained in November 2013 and then made a claim in her own right.

9. I reserved my determination.

10. It is not clear from the materials available that the appellant's husband did ever put forward the allegation that his father had been killed by the appellant's. It is certainly a matter which might have been expected to emerge. However, on the limited information available and without knowing exactly what was sought to be relied upon in the Upper Tribunal previously, I do not think this point can be disentangled any further.

11. There is a clear and sensible doctrine against family members being permitted to re-run a claim without account being taken of its previous failure. However, I do not think that the SSHD's grounds and submissions show that the present determination falls into that category. Reading paragraph 13 in context of the rest of a very thorough determination, the judge was entitled to find that a different decision might have been reached with the assistance of the appellant's evidence and in the light of she and her husband having entered into "a love marriage without the consent or knowledge of the respective families who were at opposite poles with the appellant's father being a local Taliban commander and Mr Khan's father being a local police officer." This is not the case such as feared in *TK*, where successive family members simply seek to run a claim if it had not been run unsuccessfully by the head of the family. The judge was entitled to find that there was compelling new evidence, namely that of the appellant. The appellant explained why that evidence had not been forthcoming in the first place, and was believed on the significant change of circumstances between her and her husband leading to the emergence of her evidence. The determination sets out that the appellant's evidence was thoroughly tested in cross-examination, and the judge makes it very clear why she found it to pass that test.

12. Contrary to the SSHD's grounds, it was open to the judge to find that internal inconsistencies in the account previously given might have been and in fact were now resolved by the evidence of another witness. There is nothing in *TK* which shows that it was an error of law so to find. The judge's conclusions were open to her for the reasons given. The determination shall stand.

13. No anonymity order has been requested or made.

Upper Tribunal Judge Macleman

7 January 2016