



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

Appeal Number: AA/05653/2015

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment Decision & reasons Promulgated  
Centre**

**On 8 March 2016**

**On 21 March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE McCARTHY**

**Between**

**AAK  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms A White, instructed by Rashid & Co Solicitors  
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Preliminary**

*The First-tier Tribunal made an anonymity direction in relation to the appellants because of the nature of the case. I consider it appropriate to make a similar order in the Upper Tribunal under Procedural Rule 14(1) to prohibit the disclosure or publication of any matter likely to lead members of the public to identify the appellant. To give effect to this order the appellant is to be referred to by the initials above.*

1. The appellant has been granted permission to appeal against the decision and reasons statement of First-tier Tribunal Judge Parkes that was

promulgated on 23 August 2015. Judge Parkes dismissed the appellant's appeal because he did not believe she was a refugee or otherwise in need of humanitarian or article 3 protection. His reasons were that her account was not credible and in any event it was possible for her and her husband (who was dependent on her refugee claim) to live safely in another part of Pakistan.

2. The central issue raised in the ground of appeal and at the hearing was whether the judge had made adequate credibility findings. Having discussed the arguments for and against with Ms White and Mr Mills, I have decided that the decision is legally flawed for a number of interwoven reasons.
3. At paragraphs 16 and 20, the judge correctly identified that it was necessary for him to apply paragraph 339L of the immigration rules to decide if the appellant's statements that were not supported by documentary or other evidence were credible.
4. Paragraph 339L contains the following provisions.

339L. It is the duty of the person to substantiate the asylum claim or establish that he is a person eligible humanitarian protection or substantiate his human rights claim. Where aspects of the person's statements are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:

  - (i) the person has made a genuine effort to substantiate his asylum claim or establish that he is a person eligible humanitarian protection or substantiate his human rights claim;
  - (ii) all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;
  - (iii) the person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;
  - (iv) the person has made an asylum claim or sought to establish that he is a person eligible for humanitarian protection or made a human rights claim at the earliest possible time, unless the person can demonstrate good reason for not having done so; and
  - (v) the general credibility of the person has been established.
5. There was agreement between the parties regarding factors (i), (ii), (iv) and (v); so much is clear from the reasons for refusal letter. In the same letter, the Home Office argued that the appellant's account was not credible regarding the date the Jirga (tribal meeting) took place or what happened at that meeting. This was central to the appellant's claim to have a well-founded fear of persecution because the threats against her and her husband are said to have originated from that meeting.
6. I am satisfied the judge was aware of the significance of this event to the appellant's case because he refers to it in paragraph 6 of his decision, albeit obliquely, by referencing the Home Office's own summary of the

appellant's claim. More importantly he deals with the evidence at paragraph 14.

14. There is no written evidence of the Jirga, that is apparently the nature of the meeting and decisions taken. The only evidence is that of the Appellant's husband from what he had been told. Whilst it is possible that such a meeting took place, there is some confusion over the involvement of the Taliban and no independent evidence of the realistic reach of the meeting within Pakistan.

7. In essence, the appeal to the Upper Tribunal turns on this paragraph because Ms White and Mr Mills could not agree as to what findings had been made. Having analysed the passage in light of their submissions I can see why they cannot reach agreement; the judge failed to make clear findings on a material issue.
8. Ms White explained that the first sentence of paragraph 14 sets out the judge's acceptance that there is no record of a Jirga. The evidence from this was from the appellant herself and was not supported by independent evidence. It is evident, therefore, that the judge implicitly accepted the appellant to be credible on this aspect even though there was no documentary evidence to support her account. The next sentence in paragraph 14 adds nothing; it merely records the source of the evidence about the Jirga being from the appellant's husband.
9. The third sentence is more complicated. The first clause indicates that the judge found it was possible that a Jirga took place as claimed. The second and third clauses indicate that there was some confusion as to who took part and the extent to which the appellant and her husband would be at real risk of serious harm elsewhere in Pakistan.
10. Mr Mills suggested that in the second clause the judge had found that the account given by the appellant was not consistent. I am not satisfied this is the correct interpretation because a finding that evidence is confused requires a judge to resolve the confusion through other evidence or to make a finding that the confusion cannot be resolved, in which case there needs to be a finding that the evidence is inconsistent. As the judge did not make a clear finding about consistency of the evidence, I cannot accept what Mr Mills suggested.
11. I will deal later with the issues arising from the third clause of the third sentence of paragraph 14. At this juncture it is apparent that the decision is unsustainable because the judge has not made a finding about whether the statements of the appellant's accounts are coherent. Without such a finding he could not say that paragraph 339L was not satisfied. It is not possible to infer such a finding because the conclusions in paragraph 14 are mixed. Therefore, this failure is fatal to the judge's assessment of credibility and requires the decision to be set aside.
12. As this is at the heart of the case, none of the findings can be preserved and it is appropriate to remit the appeal to the First-tier Tribunal for a fresh decision. Although none of the findings are preserved, the Tribunal will assume that the concession given in the reasons for refusal letter will be maintained as to the agreed facts. If that is not the case, then it will be for

the parties to put each other and the Tribunal on notice well ahead of any rehearing date.

13. I return to the last clause of paragraph 14, where the judge said there was no independent evidence of the realistic reach of the meeting within Pakistan. This is a factor which only becomes relevant if the appellant and her family have a well-founded fear of persecution only in their home area. At the moment, therefore, it is not a matter for the Upper Tribunal since there has yet to be a sound finding as to the risk of persecution.
14. If the First-tier Tribunal were to find that the appellant and her family faced such a risk in their home area, then it will have to consider whether the appellant and her family could live in another part of Pakistan. In such circumstances, the First-tier Tribunal, like the parties, will have to consider the provisions of paragraph 3390 (internal relocation) of the Immigration Rules.
15. I mention this simply because this is the second ground of appeal to the Upper Tribunal and is one that I have not had to consider given the findings I have already made. However, as set out in the grounds of appeal to the Upper Tribunal, it is far from clear that Judge Parkes had proper regard to the law on this issue or to the facts presented. But as I say, there has been no need for me to examine those issues or make a decision on them.

## **Decision**

The decision and reasons statement of First-tier Tribunal Judge Parkes contains an error on a point of law and is set aside.

The appeal is remitted to the First-tier Tribunal to be heard afresh by a judge other than Judge Parkes.

The parties are directed to file and serve all documents on which they will seek to rely at least seven calendar days before the next hearing. The parties are at liberty to submit any additional evidence they wish to submit but do not have to resubmit any document submitted in connection with the previous hearings in either Tribunal.

Signed

Date

Judge McCarthy  
Deputy Judge of the Upper Tribunal