



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/07725/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-on-Trent
On Thursday 5 May 2016**

**Determination Promulgated
On 16 May 2016**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

**MRS S I (AND DEPENDENTS)
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Moksud, Legal Representative

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

No anonymity order was made by the First-tier Tribunal. However, as this is a protection based claim and in light of my decision, I consider it appropriate that an anonymity direction is made.

DECISION AND REASONS

Background

1. The Appellant appeals against a decision of First-Tier Tribunal Judge J D L Edwards promulgated on 28 January 2015 ("the Decision") dismissing

the Appellant's appeal against the Secretary of State's decision dated 11 September 2014 to remove the Appellant and to Pakistan and rejecting her protection claim.

2. The background facts are set out in the Decision at [2] and the Appellant's and her husband's evidence is recited at [17] to [25] of the Decision. The Appellant and her family are Christians. That is not disputed by the Respondent. It is not disputed by the Respondent that, as Christians in Pakistan, they face some discrimination but she says that this does not reach the level of persecution. That is in any event not the basis of the Appellant's claim although it is relevant to the problems which she says she faces on return and she says that her claim is consistent with the background material which exists in relation to the plight of Christians in Pakistan.
3. The Appellant says that she was stalked by a Muslim man, Mr K. He proposed marriage to her notwithstanding she was already married and proposed that she convert to his faith. When she refused, she says that Mr K and his associates attacked her house. Mr K is said to be a member of Sipah-e-Sabaha ("S-e-S"). The Appellant says that when she and her husband reported the attack to the police, although the police made a report, they did not follow it up and she says that this is because of Mr K's position and his membership of S-e-S. She also says that she has now been accused of blasphemy as a result of comments she made to Mr K about his religion during his phone calls to her.
4. The Judge rejected the Appellant's protection claim on the basis that he did not find the Appellant credible. He did not accept that the Appellant would be at risk in Pakistan because he did not believe her claim. He did not accept that the treatment of Christians in Pakistan amounted to persecution. Even if her account were credible, the Judge found that she could internally relocate within Pakistan to avoid being found by S-e-S.
5. Permission to appeal was granted by Upper Tribunal Judge Perkins on 28 May 2015 on the basis that whilst the Judge indicated that he considered all evidence before him, he made no findings on the evidence of the Appellant's husband. The Judge did not limit the grounds of the Appellant's appeal. This matter comes before me to decide whether the Decision contains an error of law and if so to re-make the Decision or remit the appeal to the First-Tier Tribunal for re-hearing.

Decision and reasons

6. Mr Moksud focussed his submissions on the reason for the permission grant. He did however deal briefly with the other grounds concerning the credibility of the Appellant's account. He also noted the Judge's refusal to hear evidence from a number of witnesses who support the Appellant and who are members of her church in the UK. He also noted the Judge's failure to deal with the background material produced by

the Appellant and the Respondent when reaching his conclusions about safety on return.

- 7.** In relation to the witnesses from the Appellant's church, a challenge to the Judge's treatment of that evidence is not strictly part of the Appellant's grounds. There are though a number of letters from the witnesses complaining that the Judge would not permit them to be heard. There were about ten such witnesses. The Judge indicated at [25] of the Decision that he would not have found it helpful to hear from them. He indicated however that he has taken their evidence in the form of their testimonials into account.
- 8.** I pointed out to Mr Moksud that the evidence of these witnesses could only be of limited value in supporting the Appellant's account. They support her assertion that she and the family are genuine Christians but that is not in dispute. They also point to various press articles and other media accounts of the plight of Christians in Pakistan. No doubt they are genuinely concerned about that issue as committed Christians themselves but they do not live in Pakistan and cannot give evidence first hand as to the treatment suffered by those Christians who do live there. The Judge had background evidence before him as to the difficulties faced generally by Christians in Pakistan which is the sort of material on which these witnesses have formed their view. It was for the Judge to form his own view on that same material.
- 9.** If the Respondent's representative had no questions for those witnesses, their evidence stands unchallenged and the Judge says that he has taken that into account. The Appellant does not point to specific evidence which it is said that the Judge did not take into account from those witnesses. Insofar as it is asserted that there is an error of law by the Judge in refusing to hear from those witnesses, I am not satisfied that there is. For the foregoing reasons, the evidence which those witnesses could give is of limited value in relation to the issues which the Judge had to consider.
- 10.** The evidence of the Appellant's husband though falls into a different category. Although much of the evidence which he was able to give is, as the Judge records at [24], similar to that of the Appellant, his evidence supports the Appellant's account in two crucial aspects. Firstly, he confirms that Mr K phoned his wife at home. Secondly, he was present when Mr K and his associates are said to have attacked his and the Appellant's home.
- 11.** Although the Judge has noted as I have indicated the general nature of the evidence which he received from the Appellant's husband, he has not made any findings about that evidence at [32] where he sets out his reasons for rejecting the Appellant's account as not credible.
- 12.** Mr McVeety accepted that the Judge should ideally have made a finding on this issue but said that any error of law in that regard is not material. Mr Moksud submitted that it is material when viewed in the

context of the other credibility findings which the Judge made and which Mr Moksud criticised. I was unpersuaded by his submissions in relation to some of those criticisms. For example, he criticised the Judge's comments about the FIR at [32(e)] but could not explain why there was any error of law in the Judge's finding. The Appellant said that the police did not record Mr K's name in the FIR because he was a member of S-e-S whereas the translation very clearly shows that the police did include his name albeit they said that the attacker was unknown but the Appellant named him as Mr K. That surely reflects only the general principle that a person is entitled to be treated as innocent until proven guilty. That finding also overcomes the Appellant's ground that the Judge failed to make a finding about the FIR. It is clear from [32(e)] and [32(f)] that the Judge there implicitly accepts the FIR but does not accept that it shows that the Appellant is at risk on account of her religion or that she would continue to be at risk on return, particularly when the police had made a report of the complaint (and would be unable to pursue it due to the departure from Pakistan of the Appellant and her husband who were the main if not the only witnesses).

- 13.** Nor is there any substance to the complaint that the Judge held against the Appellant her failure to claim asylum on arrival. Mr Moksud submitted that the delay was only of one day and that the Judge should not have viewed that as detrimental to the Appellant's credibility. However, firstly, the delay was not of one day only. As the chronology at [2] of the Decision shows the delay was over two weeks (the Appellant and her dependents having arrived as visitors). Secondly, the Judge did not hold the delay against the Appellant. He noted that she had failed to complain to her employers about Mr K. Her employers are a large US based company who might well have taken an allegation of stalking seriously. He also noted that she and her dependents arrived as visitors and noted an inconsistency in her and her husband's evidence at [32(h)] about when they decided to claim asylum. Those were findings open to him on the evidence however and there is no material error of law disclosed in that section.
- 14.** I am however concerned that the failure to make any finding on the Appellant's husband's evidence is a material error. His evidence is capable of corroborating two main planks of the Appellant's case namely Mr K's pursuit of the Appellant and her rejection of him which she says led to the blasphemy allegation and the attack on their house which, if accepted, may also show the targeting of the Appellant and the reasons for that allegation.
- 15.** I am therefore satisfied that there is a material error of law made by the Judge namely his failure to make any findings about the evidence of the Appellant's husband. I am fortified in my decision by Mr McVeety's very candid acceptance that if the Appellant's husband's evidence is capable of corroborating the Appellant's (as opposed to simply reciting what he was told by her) then the error is material.

- 16.** I record for completeness that I am also satisfied that there is a material error of law in the Judge's treatment of the background material. Although the material on which the Appellant relies is limited to the risk to Christians generally in Pakistan and some of it is clearly unrelated to the Appellant's case, it does form the background to why the Appellant says that she was targeted by Mr K. It was therefore incumbent on the Judge to deal with it.
- 17.** I was also told by Mr Moksud that the Country of Origin Information Report was before the Judge but is not mentioned (although it is fair to note that it does not appear to be on the file). I accept in any event Mr Moksud's submission that the one sentence at [33] of the Decision that the Appellant could internally relocate to avoid the attention of S-e-S required further reasons to be given as to why this was so based not only on the background material but also taking into account whether it would be unduly harsh for the Appellant and her family to move elsewhere in Pakistan.
- 18.** Mr Moksud and Mr McVeety were agreed that, if I found there to be a material error of law in relation to the credibility findings, the appeal should be remitted to the First-tier Tribunal with none of the credibility findings preserved. Having regard to the Practice Direction and since the issue in relation to which I have found an error of law undermines the credibility findings at first instance, I am satisfied that this is the appropriate course.

DECISION

I am satisfied that the Decision contains an error of law. The Decision of First-Tier Tribunal Judge J D L Edwards is set aside. The appeal is remitted to the First-Tier Tribunal for re-hearing by a different Judge.

Signed



Date 11 May 2016

Upper Tribunal Judge Smith