IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08447/2015

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 16 March 2016	**4th May 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

LAYLA ALIKHEL
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mrs Pettersen, a Senior Home Office Presenting Officer
For the Respondent: Ms Anderson, Manuel Bravo Project

DECISION AND REASONS

1. The respondent, Layla Alikhel, was born on 1 January 1991 and is a female citizen of Afghanistan. I shall hereafter refer to the appellant as the respondent and to the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). By a decision dated 30 April 2015, the respondent issued to the appellant a notice of decision to remove her by way of directions having refused her asylum claim. The appellant appealed to the First-tier Tribunal (Judge Saffer) which, in a decision promulgated on 5 November 2015, allowed the appeal on asylum

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and human rights (Article 3/8 ECHR) grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The Secretary of State argues that the judge by making no reference to Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The appellant had failed to claim asylum *en route* to the United Kingdom in particular, in Italy. At [25], the judge had found that the "damage to her credibility by her failure to claim asylum *en route* is minimal as I accept that the draw of family is a powerful incentive against claiming it *en route*". The finding ignored the fact that the appellant met with her family in Italy. Further, the judge had found a "material discrepancy" [22] concerning the date upon which the appellant's husband had allegedly been killed. As the judge noted, "[the appellant] initially said it was three years ago, then vigorously denied that in her substantive interview insisting it was (then) thirteen months ago and then at the hearing twelve months later equally vigorously reverted back to it being (now) four years ago ...". Later in the decision [27] the judge found that it was likely that the appellant had "just got confused regarding when [her husband's death] happened". Further, the judge accepted that the appellant is pregnant [26] by a Mr Shaida with whom she now lives. The judge found that, "they did have an Islamic marriage as I do not accept [the appellant] will have entered a bigamous relationship or had sexual intercourse with another man unless her husband was dead given her communities cultural norm (*sic*)". The grounds argue that the judge has failed to explain why having a child by a man who is married to another woman (the judge refers to this fact at [22]) would also appear to be contrary to the appellant's community's "cultural norms". The judge's findings are described as "irrational".

3. I find that the judge has erred in law such that his decision falls to be set aside. I have reached that decision for the following reasons. I accept that the judge's failure to make any reference to Section 8 is not, in itself, necessarily a material error in law but, on the particular facts of this case, it is significant that the appellant had travelled through Iran, Turkey, Italy and France before entering the United Kingdom illegally in December 2014 and, as she points out in her Asylum Interview Record, she met with family living in Italy. At question 38, the appellant is asked, "Where are your brother-in-law's children now?" The appellant replied,

> 'On the way we had separated from his children. Now he is with his children in Bulgaria. I believe they are in Italy now and they have received documents from Italy because in Bulgaria they were not given any place to live and were not granted (sic). He was deported from here to Bulgaria and he had known where to stay then he went to Italy (*sic*).'

Later in answer to question 44 ("So where are the people who brought you up?") the appellant replied, "I do not know where they are now. The father who had raised me, my father he had come to Italy after my marriage and had Italian documents. My father had raised me in Jalalabad". It is clear from the appellant's own evidence that Italy was not

simply another country to which she had no connection whatever and through which she had simply passed *en route* to her intended destination, the United Kingdom. Indeed, the judge's very reasoning for attaching minimal weight to her failure to claim asylum in Italy (the "draw" of family) appears to have operated more strongly in Italy than in any other country through which she passed. I accept that the judge has dealt with the Section 8 issue and I acknowledge also that the Upper Tribunal should hesitate before finding a judge's reasoning inadequate or irrational, but I find that the judge has failed to engage with an important issue in this appeal, an issue to which specific reference had been made in the refusal letter [28].

4. I am also concerned that the judge accepted that the appellant was from Afghanistan because "she has consistently said she is from there and she speaks a language used extensively there". The language in question (Pushtu) is also spoken extensively in Pakistan. It is not clear why the appellant should necessarily be believed as to the question of her nationality simply because she has consistently asserted that she is from Afghanistan. Once again, I find that the judge has failed to engage with important issues which had been raised in the refusal letter.

5. I also agree with the respondent that the judge has failed to satisfactorily resolve in the appellant's favour the "material discrepancy" regarding the date of the death of her husband. The appellant did not simply make a single error regarding the date of her husband's death; rather, as the judge pointed out at [22], she gave a series of completely discrepant answers over a period of time. I also agree with the respondent that the judge's reasoning for finding that the appellant's husband was dead (that she had chosen to enter a sexual relationship with another man) does not really stand up, given that the appellant has apparently contravened "culture norms" by having a sexual relationship with a man whose wife is still alive.

6. The judge's reasoning is certainly concise but it leaves begging as many questions regarding the appellant's account as it seeks to answer. Viewed as a whole, I am not satisfied that the decision can stand. I therefore set it aside. None of the findings of fact shall stand. There will need to be a further fact-finding exercise which the First-tier Tribunal are better equipped to carry out. I therefore return the matter to the First-tier Tribunal for that Tribunal to re-make the decision following a hearing *de novo.*

Notice of Decision

7. The decision of the First-tier Tribunal which was promulgated on 5 November 2015 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge Saffer) for that Tribunal to re-make the decision.

8. No anonymity direction is made.

Signed Date 29 April 2016

Upper Tribunal Judge Clive Lane