



IAC-AH-KEW-V1

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

Appeal Number: AA/09203/2014

THE IMMIGRATION ACTS

Heard at City Centre Tower, Birmingham
On 14th January 2016

Decision & Reasons Promulgated
On 15th February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MS RABIA SHAIKH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Mahmood (Counsel)

For the Respondent: Mr I Richards (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Asjad, promulgated on 6th January 2015, following a hearing at Sheldon Court Birmingham on 22nd December 2014. In the determination, the judge dismissed the appeal of the Appellant, who subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female citizen of Pakistan, who was born on 3rd January 1986. She appealed against the decision of the Respondent Secretary of State, refusing her application for asylum dated 22nd October 2014, and for humanitarian protection.

The Appellant's Claim

3. The Appellant's claim is that her family are at risk due to her father's activities against the Taliban, that she has a child born to her outside wedlock, and that her father's activities in the UK place them at risk of ill-treatment and persecution, such that they cannot return back to Pakistan.

The Judge's Findings

4. The judge observed that the Appellant had consistently changed the basis of her claim such that it was extremely difficult to know the proper basis of her claim for asylum. In her Asylum Screening Interview (ASI) she had explained (at 4.1) that, "I came to the UK because my father's life was in danger from the religious extremists he has been living in the UK for the past ten years." The Appellant then arrived in the UK as a student with entry clearance to study. She subsequently said that she had come to the UK for the purpose of furthering her study.
5. In her asylum interview, she states that the Taliban made a fatwa against her father stating that he should be killed. However, her witness statement makes no reference to any of these events.
6. In what is a thorough and meticulously compiled determination, the judge recounts the evidence of the various witnesses who gave evidence on the Appellant's behalf before concluding that:

"I find that the Appellant has come to the UK for the express purpose of settling here. She had no intention of studying in the UK, her application for further leave to remain was refused, and she was unsuccessful as a dependant on her father's asylum claim (according to her own evidence). I find that the Appellant's asylum claim is fabricated and it is highly likely that her father is complicit in this lie. I accept that the Appellant has a child - but I do not accept that this child puts the Appellant at risk of any harm in Pakistan. Given my findings about the Appellant's father, it is likely that the Appellant has the full support of her family. If she were to return to Pakistan she would be protected by them and would not be put at risk." (See paragraph 47)

7. It is noteworthy here that in relation to the Appellant's claim that she has a child born out of wedlock the refusal letter dealt with this contention on the basis that,

"There are inconsistencies in your account. It is noted that in your screening interview you have stated that you became pregnant and your fiancé left you (SI 4.2). However, you made no mention of Mohammad Imran in your screening interview who you claimed to be your partner in your Asylum Interview Record (see AIR Q.55). Nevertheless, in your witness statement you claim that you broke off the engagement, after which you became pregnant by

another man, who has left you (see witness statement at pages 40 to 43). [See paragraph 21 of the refusal letter].”

The judge dealt with this particular aspect of the claim with the observation that,

“I doubt that Mohammed Imran exists, as there is absolutely no evidence apart from the Appellant’s own account, to show that he does. Her account cannot be relied upon as she has repeatedly given inconsistent evidence. It carried little or no weight” (see paragraph 47).

8. The judge went on to consider the Article 8 claim (see paragraphs 52 to 56) and rejected this claim as well.
9. The judge further gave express consideration to the best interests of the child (see paragraph 54) and gave due attention to the relevant case law and proceeded to reject this aspect of the claim as well.

Grounds of Application

10. The grounds of application make two basic criticisms. First, that there was an expert report from Dr Livia Holden which was before the judge, but no real consideration was given to this expert report, which was essential given that part of the claim was in relation to a child being born out of wedlock, and Dr Holden makes reference to the cultural considerations which will place the Appellant at considerable jeopardy were she to return to Pakistan, and yet her report was not considered.
11. Second, the judge’s approach to the screening interview was flawed because too much weight was placed upon what was never intended by either party to be a full explanation for the reasons for the asylum claim.
12. On 27th January 2015, permission to appeal was granted on both these grounds. It is important to note that the grant of permission was subject to the significant observation by the judge that, “how material the error is will have to await the party’s arguments, and will have to be assessed cumulatively with any error of law found in the light of the first criticism.”
13. On 6th February 2015, a Rule 24 response was entered. First, it was said that the judge does expressly refer to the report at paragraph 2 of the determination and refers to the report by Dr Livia Holden in name. It is also further said at paragraph 12 that the judge had considered all the evidence that had been placed before her. Furthermore, at paragraph 51 of the determination, the judge states that she accepts the objective evidence about Pakistan.
14. Second, the determination is comprehensive and the judge conducted a careful analysis of the evidence with regard to credibility and concluded that the Appellant was not a credible witness. In these circumstances, “the expert report could only have had a material impact if the Appellant was found to be credible” (see paragraph 5).

Submissions

15. At the hearing before me on 14th January 2016, Mr Mahmood, appearing as Counsel on behalf of the Appellant, made the following submissions. First, he stated that the expert report should have been considered within the body of the determination. This was particularly given that from page 83 onwards the report is detailed and expressly targets the various circumstances of the Appellant herself. In particular, at page 83 the judge observes that, "... the Appellant says this is a cultural issue" and the expert then deals with what the cultural implications are of the Appellant having had a child outside wedlock. What the judge ought to have done, for the decision to be free from criticism, was to treat the expert report as an aide to her findings. Then the judge could have said whether she disagreed with a particular aspect of it or not. As it is, she has said nothing about the report at all.
16. Second, the Rule 24 response states that the judge made an express reference to the report at paragraph 2 at the outset. However, what the judge had done here was simply to set out the documentation that was before her. This does not mean to say that the expert report had actually been considered with any particularity.
17. Third, there is a possible criticism of the judge's approach in that she launches into an analysis of the credibility of the witnesses at the outset, without placing such criticism in the context of the expert report which highlights the cultural circumstances that the Appellant would face if she has to go back given her condition.
18. In relation to the second point upon which permission had been granted, namely, the screening interview, when the Appellant had been asked at 4.2 of the screening interview, she had actually said that, "... my father arranged for me to be engaged to a man who was five years older and already married before" and that she was not happy with this. This meant that she had referred to the fact that there were difficulties in relation to her possible marriage to a person whom she did not want to marry.
19. For his part, Mr Richards submitted that there was no error of law whatsoever. The judge did not mention the expert report because the essential matter before the judge was that of the credibility of the witnesses and of the Appellant, and having found that the evidence was simply lacking in all credibility, the judge did not find it necessary to look at the expert report in any great detail than was otherwise necessary. There is nothing in the report which, in these circumstances, would have allowed for the appeal of the Appellant to be granted. It would be otherwise if that were the case. In the circumstances, there was no materiality to any error that might have transpired. In fact, if the Appellant's claim was a good claim it would have been allowed without the expert report because she would be able to show that she was at risk simply on the basis of the facts found in her favour.
20. In reply, Mr Mahmood submitted that the expert report needed to be assessed to assist the judge with the credibility findings. It ought not to be forgotten that at page 103 of the bundle and at paragraph 36 and then at page 94 at paragraph 25, the

expert had dealt with the cultural aspects of the claim. The judge herself made a decision on the cultural aspects, but did so without any reference to the expert report, and so this must at the very least be a material error of law.

No Error of Law

21. I am satisfied that the making of the decision by the judge does not involve the making of an error on a point of law (see Section 12(1) of **TCEA [2007]**) such that I should set aside that decision and re-make the decision. I come to this conclusion notwithstanding Mr Mahmood's measured and carefully constructed submissions before me. First, the judge refers to the evidence that she has before her at the outset of the determination and expressly refers to "... an expert's report from Dr Livia Holden" (paragraph 2). At paragraph 12 of the determination she states that, "I have looked at the evidence in the round taking account of all the evidence both oral and written." At paragraph 51 of the determination, she states that, "... for the sake of completeness, I add that I accept the objective evidence about Pakistan."
22. However, in the same breath and the next sentence she also immediately adds that,

"But I take into account that I must apply to the Appellant's individual case. Having made my findings about this case, I determine that the objective evidence about Pakistan has no bearing on this Appellant's claim for international protection because I do not find it to be true" (paragraph 52).
23. What then are the reasons for the rejection of the Appellant's claim? These were set out very carefully by the judge at paragraph 47 (which has already been referred to above) where the judge states that there has been collusion between family members, and in particular the father, in the Appellant putting forward a claim that can be described as nothing short of a lie. The judge not only dismisses the claim, but she also dismisses any suggestion that a man by the name of Mohammed Imran exists who is the father of this child.
24. But most importantly, in the same paragraph, the judge states that, "... if she were to return to Pakistan she would be protected by them and would not be put at risk." Any suggestion that the Appellant risks ill-treatment or persecution is simply untenable on this basis. Not only is it rejected that the Appellant has borne a child the father of whom is a man by the name of Mohammed Imran.
25. It is also said that the Appellant will have complete protection from family members, who have been complicit in her fabricated claim before the UK authorities, if she were to be returned to Pakistan. Added to this, is the judge's very thoughtful statement that in coming to her conclusions she has taken into account the report on "... refugee status determination and limits of memory" (see paragraph 50).
26. Second, as far as the screening interview is concerned, whereas the established jurisprudence plainly is that the screening interview is simply the first step to the Appellant putting forward the nature of his claim, which is then further elaborated upon in a more detailed Asylum Interview Record, it is not a licence for suggesting that a party to an asylum claim can put forward a particular basis for the claim in the

screening interview, and then put forward an entirely different claim in the asylum interview, such as to completely alter the basis of the protection claim that is being made.

27. In short, the way in which the claim has been put forward, rather than assisting the Appellant, does her no credit whatsoever, because as the judge makes clear at the outset of her determination, there are three different accounts that have been put forward, and none of them can be believed. What transpired before the Tribunal was an elaborate scheme, with the complicity of family members, to raise a claim that was utterly lacking in any credibility whatsoever. The judge was fully entitled to come to the conclusions that she did.
28. The determination is detailed, thorough, and a complete answer to the claim made. Neither the failure to give detailed attention to Dr Livia Holden's report, which was in the event found to be of limited assistance given the findings of the judge on the facts, nor the reliance upon the screening interview, which was taken out of context in the appeal subsequently before this Tribunal, deserve the criticism that has been levied against them. The application before this Tribunal has no realistic prospect of success and I so hold.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

10th February 2016