



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

Appeal Number: AA/00235/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 19 April 2017**

**Decision & Reasons Promulgated
On 10 May 2017**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**AR
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Jones of Counsel, instructed by Duncan Lewis & Co
Solicitors

For the Respondent: Mr P Armstrong, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision promulgated on 19 October 2016 of First-tier Tribunal Judge Coaster which refused the appellant's asylum and human rights claim.
2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I continue the anonymity order made by the First-tier Tribunal. Unless the Upper Tribunal or a Court directs otherwise, no report

of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of the protection claim.

3. The appellant's claim for protection was made on the basis of her relationship with another Pakistan national whom she met after coming to the UK. The relationship was not authorised by members of her family in Pakistan and, as a result, she maintained that she and her partner would face harm on return to Pakistan.
4. Part of the appellant's claim was that she had been the victim of negligence by the first advisers she went to when she realised that she had to claim asylum. Her immigration history is that, after coming to the UK in June 2011 as a student her leave was curtailed in April 2012. She has been an overstayer since then. She underwent an Islamic marriage with her partner in August 2012. He is also an overstayer. It is their claim that in 2012 they went to a solicitor, Blakewells, where they were advised by a Mr Osman Sadiq on their concerns about returning to Pakistan. This person is referred to in the materials as "Mr Osman" and as "Mr Sadiq". I use the name "Mr Sadiq" in this decision. Instead of making an asylum claim, Mr Sadiq advised them to make an application for leave outside the Immigration Rules (the FLR(O) application), with the partner as the applicant and the appellant as his dependant. As he was a legal adviser they thought that making the FLR(O) application must be the correct course of action. The adviser did not keep the appellant informed of what was happening over a two year period. When the appellant contacted Blakewells in 2014 she was informed that the application outside the Immigration Rules had been refused in 2013 and also that Mr Sadiq no longer worked for the firm. The applicant then made an asylum claim on 3 February 2015 which was refused by the respondent on 12 February 2016.
5. Permission to appeal against the decision of First-tier Tribunal Coaster was granted on one ground only. This was as follows, taken from the permission decision dated 22 November 2016:

"... it is clear from paragraph 86 that the Judge found that the delay in making the claim for asylum seriously damaged the credibility of the appellant. The Judge considered the firm to be Blackwells rather than Blakewells and this was an error of fact which raises an arguable error of law. It is clear from paragraph 90 that the Judge gave the matter of delay considerable weight in rejecting the appellant's credibility overall. The Judge arguably fell into error in making this delay largely determinative of the overall credibility of the appellant's account. These grounds are arguable and permission is granted on this basis solely."

6. It was argued before me that the judge's finding on delay was a "strong finding" and that the mistake about the name of the firm of solicitors tainted the entire credibility assessment.

7. I did not find this ground was made out. Firstly, it is the appellant's case that she cannot be fixed with delay in claiming asylum because that was the responsibility of Mr Osman Sadiq, a negligent adviser, shown to have been fraudulent in his dealings with other clients. However, the materials before the First-tier Tribunal did not show that the appellant and her partner had told Mr Sadiq or other legal advisers at Blackwells Solicitors of the facts of their asylum claim and wish to claim asylum. Their evidence on the point is recorded at [29] of the decision, as follows:

"The appellant and Mr J were afraid for their lives and did not know what to do. They therefore went to see Blackwells Solicitors in September 2012 about their circumstances. The solicitor they spoke to, a Mr Osman, advised them to submit an FLR(O) application to the Home Office on the basis of their circumstances. They submitted an application on 27 September 2012 on behalf of Mr J only for further leave to remain."

8. This record of the evidence is consistent with the witness statements of the appellant and her partner. The witness statements refer, mistakenly, to Blackwells Solicitors, which is presumably led Judge Coaster to the mistake as to the advisers who made the FLR(O) claim in 2012. The witness statements also do not indicate that the appellant and her partner told Mr Sadiq or anyone else that they had been threatened by relatives in Pakistan and feared mistreatment on return; see paragraph 55 of the appellant's witness statement and paragraph 7 of the partner's statement. The witness statements indicate only that they approached an adviser and were advised to make an FLR(O) application "on the basis of our circumstances".
9. The evidence before the First-tier Tribunal was the same, paragraph [34] of the decision recording as follows:

"The Appellant and Mr J contacted Blackwells in September 2014 to enquire about their application for FLR(O) made in September 2012. They were informed that the previous solicitor Mr Osman was no longer working there as he had been convicted of fraud and that their FLR(O) application had been refused more than a year ago. This was the first time the appellant and Mr J had been notified of the Home Office refusal of the FLR(O)."

10. It was therefore open to First-tier Tribunal Judge Coaster to find at [83] and [84] as follows:

"83. The appellant and Mr J do not expressly state that they told the solicitor of the violent threats. They refer to their 'circumstances' which could have related to their overstaying their student visas. It is noteworthy that the appellant and Mr J did not state in either their witness statements, nor in oral testimony that they expressly told the solicitor they visited, Mr Osman, about the appellant's family making threats to kill them both because they had entered into a love marriage whilst the appellant was engaged in Pakistan which included a period of living together before the marriage.

84. Mr Osman advised them to submit an FLR(O) based on their 'circumstances' and the FLR(O) application was made on 27 September 2012 on behalf of Mr J only. No reference was made to any claim being made on the appellant's behalf despite her being in the United Kingdom without leave."

11. The First-tier Tribunal was not obliged to accept the evidence of the appellant and her partner that they had tried to make an asylum claim in 2012 but been thwarted in that attempt by Mr Sadiq. He gave cogent reasons in [83] and [84] for not doing so.

12. It was also open to the First-tier Tribunal Judge on the evidence before him to find that the appellant and her partner did not actively pursue the application made through Mr Osman, [85] of the decision stating as follows:

"The appellant and Mr J then waited for two years until September 2014 before contacting Blackwells again. Although the appellant says she and Mr J did contact Mr Osman to find out what was happening with the application, he had merely said it was still pending. The appellant does not say when she contacted Mr Osman; nor is it evident when Mr Osman left the employment of Blackwells. Because the appellant is now claiming that she has been in fear of her life since 2011 and Mr J is in fear of his life since 2012, with the threats from Mr A and Mr B being at their height in about November 2013, it is not credible that the appellant and Mr J waited for two years."

13. The appellant objects to this finding as she was not requested to give details of when she contacted the solicitor. It was an important part of her case which had the potential to undermine her credibility, however, and she had legal advisers in this matter. She could be expected to put forward her evidence about what happened with Mr Sadiq and Blackwells fully and the judge was not obliged to seek further information from her. The finding in [85] was one that was open to the judge on the evidence before him.

14. Further, although it is the appellant's case that Mr Sadiq made an incorrect application and caused a delay of two years in her asylum claim being made, the judge states, correctly, at [89]:

"There was no evidence that the appellant and Mr J had complained to Blackwells, the Solicitor Regulation Authority or the Legal Ombudsman of wrong advice on the basis of their circumstances as they had imparted at the time to Mr Osman."

15. Other than the evidence of the applicant and her partner, therefore, there was nothing before the First-tier Tribunal judge that obliged him to find that in this matter, albeit shown to be involved in immigration fraud in other cases, Mr Sadiq was negligent or fraudulent in making an FLR(O) claim rather than an asylum claim. The appellant did not make a complaint to that effect. Where such negligence or fraud could only have been a serious issue for the appellant, it was open to the judge to find that

she would have made such a complaint and draw an adverse credibility finding from her not having done so.

16. The same reasoning applies to the judge's finding at [91] that the appellant has not only not made a complaint of negligence against Mr Sadiq or Blakewells/Blackwells but also had not obtained her client file from that time showing what her instructions were at that time and what advice she was given. Without documents from the file showing what instructions she and her partner gave to Mr Sadiq it was open to the judge to find that he had not been instructed to make an asylum claim as the appellant maintained.
17. There was therefore a sound basis for the First-tier Tribunal to find that the appellant had not shown that she had been misadvised in the past and that the delay in claiming asylum could be taken to be her responsibility and to undermine her credibility. The appellant argues that the reasons for so finding are materially undermined by the confusion between Blackwells/Blakewells or, as at [88], the judge conducting personal research into the wrong firm, Blackwells. As above, the materials before the First-tier Tribunal refer to Blackwells but give an address for Blakewells. The judge was misled by this and compounded this by conducting personal research into Blackwells, drawing further adverse credibility findings from their being a firm of good-standing. That aspect of the decision is clearly in error but does not, in my judgement, sufficiently undermine the shortcomings in the appellant's evidence about Mr Sadiq. There was an absence of evidence on the instructions provided in 2012, of attempts to contact Blakewells during a period of two years in the context of the couple being in fear of their lives if returned to Pakistan, of any kind of complaint concerning misconduct by Mr Sadiq being made and of the file from Blakewells having been requested. The findings made on those matters are not materially tainted by the mistake as to the name of the firm and the finding at [88] about Blackwells being a reputable firm.
18. In addition, even if this ground were made out, the First-tier Tribunal Judge makes sustainable and unchallenged findings that the country evidence indicated that the appellant and her partner would be able to relocate internally or seek sufficient protection against retribution from her family. At [72], Judge Coaster indicated that:

"The Appellant claims that because her four remaining uncles who are alive, are well connected with powerful politicians and the police she would obtain no protection from the State against her relatives. She does submit that through their criminal connections The (sic) Appellant's uncles would be able to find her anywhere in Pakistan. However her claims of her uncles being well-connected are not supported by at least two of her uncles being killed by the police or the State. In the case of Mr S, the uncles' alleged powerful connections with police and politicians did not ultimately rescue him from the death penalty in 2006 for committing murder."
19. The judge also made a finding at [96] that internal relocation was open to the couple.

20. For these reasons, I did not find that the decision of the First-tier Tribunal disclosed a material error on a point of law such that it should be set aside.

Decision

The decision of the First-tier Tribunal does not disclose an error on the point of law and shall stand.

Signed 
Upper Tribunal Judge Pitt

Date: 9 May 2017