



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/02937/2014**

**Appeal Numbers:**

**THE IMMIGRATION ACTS**

**Heard at Birmingham**

**Decision & Reasons  
Promulgated  
On 16 June 2017**

**On 10 May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**MJ  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Z Jaferjee of Counsel instructed by Royal Solicitors

For the Respondent: Mr A. McVeety, Senior Presenting Officer

**DECISION AND REASONS**

The Anonymity direction made by the First-tier Tribunal shall continue. No report of these proceedings shall directly or indirectly identify the Appellant.

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Herlihy who had dismissed the Appellant's appeal based on asylum, humanitarian protection and human rights grounds.

2. The basis of the Appellant's claim was noted by the Judge to be one whereby the Appellant feared a return to Pakistan relating to her having had an affair and being divorced. The Appellant had claimed to be at risk from her father, her parents-in-law and society. The Appellant's case was that she had been forcibly married to a British national. The union led to the birth of a British citizen.
3. The grounds of appeal to the Upper Tribunal had contended that the Judge should have taken the broader definition of domestic violence into account, which includes, controlling conduct. The Respondent had failed to comply with directions in respect of a passport. It was contended that the Judge had failed to consider what the Appellant could or should do if removed to secure her child's passport given that the attempts in the UK had been unsuccessful. In addition, what consequences the Appellant might suffer if she sought redress from her husband's family and whether the ongoing controlling behaviour without redress was causing the Appellant serious and emotional or psychological harm.
4. In his submissions before me, Mr Jaferjee informed me that he had discussed the matter with Mr McVeety and that it was conceded that there was an error of law in respect of Article 8. The only issue was whether the matter ought to be remitted to the First-tier Tribunal or retained and decided with the current findings at the Upper Tribunal. Mr Jaferjee said that the situation of the child was central to the Article 8 claim but also to the refugee claim.
5. Mr McVeety said that he was happy to accept that there was an error of law in respect of the British child and its effects on the Article 8 aspect of the claim. He said that the difficulty was how to dispose of the matter noting that the Judge had found against the Appellant on a raft of issues. It was submitted that the Judge had given good reasons for doing so and the findings could stand. Not all of the findings were infected. Mr McVeety also said that he would contact the nationality team at the Home Office to assist in due course.
6. I heard from Mr Jaferjee in reply and had reserved my decision.
7. In my judgment, the Judge materially erred in law in failing to deal with a central aspect of the case, as noted by the grant of permission by Upper Tribunal Judge Bruce. The concession on behalf of the Respondent has been properly made. As was noted in the grant of permission, the Appellant's primary fear was being stranded in Pakistan whilst her ex-husband might bring their British child to the United Kingdom, thus denying her any future contact.
8. It is quite clear that the findings and matters are so intertwined that it is not possible to decipher which can really only be said to relate to the Article 8 aspect and which to the Protection claim. Attempts to do

so require undertaking mental gymnastics of almost impossible levels. Therefore, despite Mr McVeety's persuasive submissions, I conclude that he is right to concede that there is a material error of law but that the whole decision has to be set aside. There will be rehearing on all issues. None of the findings shall stand. The appropriate venue for that is at the First-tier Tribunal.

### **Notice of Decision**

There is a material error of law in the decision of the First-tier Tribunal. The decision is set aside.

An anonymity direction is made.

Signed

Date: 11 May 2017

Deputy Upper Tribunal Judge Mahmood