



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

**Appeal Number: AA/06052/2014**

**THE IMMIGRATION ACTS**

**Heard at Columbus House, Newport  
On 3 April 2017**

**Sent to parties on:  
On 23 May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE L MURRAY**

**Between**

**MN  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr James, Counsel

For the Respondent: Mr Hibbs, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Pakistan. She claimed asylum on 17 June 2014 and her application was refused on 7 August 2014 and a decision was made to remove her as an illegal entrant under section 10 of the Immigration and Asylum Act 1999. The Appellant appealed this decision to the First-tier Tribunal and her appeal was dismissed on all grounds by First-tier Tribunal Judge O'Brien in a decision promulgated on 27 July 2016.

2. The Appellant was granted permission to appeal, on renewal, by Upper Tribunal Judge Kamara on 5 October 2016. The reasons for the grant of permission were that it was arguable that the Judge erred in concluding that the Appellant provided the same address in her screening interview as was provided in her visa application form for the reasons given in the grounds. It was further arguable that the Judge erred in stating that the Appellant had made no reference during the hearing to an accusation of adultery made by her husband when that matter formed part of her written evidence before the Tribunal.

### **The Grounds**

3. The first three grounds are drafted under the headings: failure to take account of a relevant consideration; absence of evidence to support a conclusion and breach of natural justice but boil down to an allegation that the Judge made an adverse credibility finding regarding the Appellant's address in her screening interview that failed to take into account her evidence, was unsupported by the evidence and failed to take into account relevant considerations. The fourth ground is headed 'procedural fairness' and asserts that the First-tier tribunal Judge erred in his assessment of the Appellant's evidence. He referred to her written evidence that her husband had reported her to the police for adultery and found that no mention of it had been made in the asylum interview and no evidence had been heard relating to it at the hearing. The evidence was contained in her witness statement and no further evidence was heard regarding her husband reporting it to the police because she was not cross-examined or asked any further questions. Her evidence was not challenged but the Judge concluded that she had embellished her account.

### **The Rule 24 Response**

4. The Respondent opposed the Appellant's appeal and submitted that the Judge directed himself appropriately and the findings in respect of the screening interview were open to him on the evidence.

### **The Hearing**

5. Mr James submitted that the screening interview was not signed by anyone and it was not known whether the visa was in front of the interviewing officer and her evidence was that it was not the address she gave and was not a record of what was said. In circumstances where it was signed neither by the Appellant nor the officer any weight to be attached was lessened. The fact that there was a similar amendment in a subsequent document ought to have given rise to a question on the part of the Judge which he failed to deal with and that it was a core finding that the Judge used in dismissing the appeal based on the address in one interview. The broader point was that it would seem unusual for the Appellant not to deal with that at the asylum interview and it was not clear on what basis that correction

was made. It was more likely that the address was taken from the papers and changed. He did not know whether she was provided with a copy of the interview, but that was not fatal as it was a document that had an incorrect address and there was an explanation as to why an address was found on the visa form and it did amount to an error of law. The final ground was the allegation of adultery to the police. The Judge relied on the fact that this was not mentioned. It was not put to her in cross-examination. It was in her written evidence and it was clear that the Judge relied on that as an adverse finding. She was not cross-examined on that point and it was not a matter that should have been held against her. Evidentially it did not undermine her claim as it was in her witness statement. He had missed that part of the witness statement. That taken together with the address formed the two key issues on which the Judge dismissed the claim and the way he dealt with this was erroneous.

6. Mr Hibbs submitted that she had claimed her husband made an allegation of adultery but the case was not argued on the basis that a false allegation of adultery would put her at risk. There was not the evidence. Her witness statement contained a last paragraph to that effect. The Judge could not be held at fault for the Appellant not putting forward more to her case and the objective evidence was not there. The grounds were a disagreement with the findings of fact. What was being asserted was that the Respondent had made something up in the screening interview and that was a bold assertion to make. She was asked at the asylum interview and she said the agent filled in the application form. She was cross-examined about the visa application. When it was pointed out that she made it in person she said she did go in and got documents with that address on. Without a clear copy of the record of hearing or witness statement from Counsel it was not a point that could be argued today.
7. Mr James submitted that what the Judge was doing at paragraph 40 was dealing with an overall credibility finding.

### **Discussion**

8. I deal with grounds 1-3 together as they relate to the same evidence. It was the Appellant's case that she was at risk of persecution on return to Pakistan because her husband had physically abused her and her children and threatened to kill her if she returned. The Respondent had raised in the reasons for refusal letter that the Appellant had declared an address in her visa application form in Lahore which was consistent with the bank statement for her husband provided with her visa application form and given by her in her screening interview. The Respondent therefore did not consider that the Appellant had been truthful in her asylum interview when she said that she had no idea who lived at the address.
9. The Appellant stated in her witness statement dated 8 July 2015 that she did not fill in her application form herself and some of the information was definitely untrue, such as her having two more sons. She said that her visa

was arranged by a friend of her father's and she just signed it when someone, who she thought might be an agent, brought the paperwork to her.

10. The Judge recorded the Appellant's evidence in relation to this issue in cross-examination at paragraphs 12 and 13. She is recorded as saying that she had applied for her visit visa through an agent, although when challenged that the record of application showed that it had been made in person, she said that the agent had given her the documents, showed her where to sign and she had taken them to the British High Commission. She denied having lived at the address given in her screening interview or knowing anything about it, and said that she had given the same address as at the asylum interview. She thought that the immigration officer had gleaned that address from her visit visa application and not written down what she said.
11. The First-tier Tribunal's findings are at paragraphs 37 to 43 of the decision. The Judge found at paragraph 39 that her account that the address on her screening interview would have been filled in by the interviewing officer from the information on her visa application was untrue. He came to this conclusion on the basis of her evidence that she had given an address at the screening interview. The address on the asylum interview record was crossed through and he found that if the Appellant's account were accurate, the address on the screening interview would have similarly been crossed through.
12. The grounds assert that it was the Appellant's evidence that she was never given a copy of her screening interview. I asked Mr James where this evidence was to be found as it was not recorded in the Judge's decision nor was it in the Appellant's statement of July 2015 which Mr James confirmed was her only one. He confirmed that counsel before the First-tier Tribunal had not provided his own note of proceedings. The Judge in contradiction to the assertion in the grounds of appeal notes at paragraph 18 that it was the Appellant's evidence that she had been given a copy of the screening interview record but had not read it and had not signed it because she had not been asked to. The factual basis for the assertion in the grounds has not been made out.
13. Further, I find that the Judge gave adequate reasons grounded in the evidence for his finding that her account in relation to the screening interview was untrue, namely that the Appellant had said in evidence that she had given an address at the screening interview. In the circumstances he found it not credible that the address would have been amended. That finding was open to him and adequately reasoned.
14. Ground 4 asserts that the Judge's finding that the Appellant was embellishing her account was procedurally unfair. The Judge stated at paragraph 40 of the decision that the Appellant's claim that her husband had reported her to the police for adultery was of concern, firstly, because

as found in **KA**, it was no longer a straightforward matter for a husband to accuse his wife of adultery. He then says that no mention of this was made in the Appellant's interview and no mention of it was made at the hearing. Instead he was told that her mother had said that he was looking for her like a 'mad dog'. He states that he is drawn to the conclusion that she is "embellishing her account, in particular given that she accepts that she has had no direct contact from her husband in at least a year, probably considerably longer."

15. The Appellant's statement was dated 8 July 2015 and at paragraph 8 she asserted that since coming to the UK her husband had reported her to the police for committing adultery with a man she had never heard of. It is not in issue that she neither was she examined in chief about this nor was she cross-examined. The Appellant was interviewed in July 2014.
16. I do not find that this a fair finding in all the circumstances. The Appellant had provided this information in July 2015 and it was in her witness statement. I do not consider that an adverse inference can be drawn from the fact that she was not additionally examined in chief in relation to this or cross-examined. Further, she did not claim in her witness statement to have this information directly from her husband and the source of the information was not explored in evidence. In the circumstances I find that it cannot be reasonably classified as an embellishment of her account entitling the Judge to make an adverse credibility finding.
17. This finding led the Judge to reject the Appellant's case on credibility grounds. The findings on credibility therefore cannot stand and on reading the reasoning as a whole I am unable to conclude that he would have reached the same conclusion but for this finding.

### **Notice of decision**

18. The First-tier Tribunal's decision to dismiss the Appellant's appeal on asylum grounds involved the making of a material error of law.
19. I set the decision aside and the appeal will be determined *de novo* having regard to paragraph 7.2 of the Senior President's Practice Statements due to the nature and extent of fact finding required by a Judge other than Judge O'Brien.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 14 MAY 2017

Deputy Upper Tribunal Judge L J Murray