Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04180/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20 December 2017	**On 21 December 2017**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

ROMA PAKHRAJ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Gajjar, Counsel, instructed by M-R Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal Carroll (the judge), promulgated on 12 June 2017, dismissing the appellant's appeal against the respondent's decision dated 10 April 2017 refusing her asylum and human rights claims.

Factual Background

2. The appellant is a national of Pakistan, date of birth 21 October 1984. The following is a summary of her protection claim. Following the death of her mother, on or around 29 June 2015, the appellant's brother, Ben Hur, became the family's 'decision-maker'. In February 2016 he decided that the appellant should marry his friend, Daniel Peter, and that the marriage should take place in August of that year. The appellant did not wish to marry Mr Peter as he was much older than her and had previously been married. After refusing to agree to the marriage the appellant was beaten by her brothers and cousins "on numerous occasions" and even locked in a room. On one occasion she was burnt with a heated life. The appellant's aunt eventually managed to persuade her brother to agree to allow her to leave the house and go to work, although her salary was retained by her brother and a "pick and drop service" was used to pick her up and drop her to and from work in order to control and monitor her routine. The appellant's mental state began to deteriorate and she began to self-harm. She eventually decided to leave Pakistan. She researched details of a religious seminar taking place in Poland. She used the Internet to make a visa application to the Polish embassy, gave all the relevant paperwork to the embassy and collected her visa on 26 July 2016. She left Pakistan on 29 July 2016. She spent 3 days in Poland before making her way to France. Shortly after arriving in France she lost her passport. She met a Pakistani man who got her a job caring for an elderly woman in Paris. She worked there for approximately 3 months before being given a United Kingdom passport to which she was not entitled, and advised to travel to the UK. The appellant was encountered in Belfast on 21 October 2016 in possession of this UK passport and claimed asylum.

3. While accepting that she was Pakistani, and that women in Pakistan constitute a particular social group, the respondent was not satisfied that the appellant's account was credible. The respondent identified inconsistencies in the appellant's account and did not accept that the appellant's brother had the influence she claimed.

The decision of the First-tier Tribunal

4. The judge did not find the appellant to be a credible witness. His adverse credibility findings are contained in paragraph 14 of his decision, at (a) to (e). the judge found there was no credible reason for the appellant's failure to claim asylum in either Poland or France. The judge also held against the appellant her failure to take any steps to obtain a new passport from the Pakistani embassy in Paris. The judge held against the appellant the absence of any medical evidence to support her claims to have been burned with a knife and to have self-harmed. The judge did not find it credible that the appellant would be allowed to go to work if her brother had a real interest in controlling her activities. The judge drew an adverse inference from an inconsistency in the appellant's asylum interview (questions 186 and

187) as she initially stated that she returned home on the day she left Pakistan, but then changed her evidence and claimed she went straight from work to the airport. The judge finally drew an adverse inference from the absence of any evidence from a man who accompanied the appellant to the hearing and who was described by the appellant's Counsel as her 'brother', but by the appellant as a 'friend', on the basis that, "whether the individual is a brother or a friend, he can reasonably be expected to know a great deal about the appellant situation but he has not submitted any evidence in support of the appeal."

5. Having concluded that the appellant was not credible, the judge did not go on to to consider whether the authorities would be able to offer a sufficiency of protection, or whether she would be able to avail herself of the internal relocation alternative.

The grounds of appeal and the error of law hearing

6. The grounds of appeal criticise the judge's credibility findings. They submit, *inter alia*, that the judge failed to have regard to the appellant's explanation for not claiming asylum in France or Poland, that the judge impermissibly required corroborative evidence in respect of the claimed beatings, that the judge failed to have regard to the appellant's description of the manner in which her brother controlled her activities despite allowing her to work, that the judge failed to put some of his adverse credibility findings to the appellant at the hearing, and that the judge impermissibly drew an adverse inference from the absence of any evidence from the person present at the First-tier Tribunal hearing.

7. Permission was granted with reference to the adverse inference drawn by the judge in respect of the attending male who gave no evidence. There was however no restriction on the grounds that could be argued.

8. At the error of law hearing Mr Gajjar, who represented the appellant in the First-tier Tribunal, stated that could not recall whether he described the man attending the hearing as the appellant's "brother". He submitted that, regardless of whether he (Mr Gajjar) misunderstood the relationship or whether the judge misunderstood him, this point was never put to the appellant and the man was never invited to clarify his relationship. There was insufficient information about the man's relationship with the appellant to entitle the judge to draw an adverse inference. Mr Gajjar expanded upon the other grounds of appeal, drawing my attention to the appellant's explanation, at questions 234 and 235 of her substantive asylum interview, for her failure to claim asylum in Poland or France, and submitting that the judge acted unlawfully by requiring corroboration

in the form of medical evidence. He confirmed that the appellant was not the recipient of legal aid.

9. Ms Isherwood drew my attention to those parts of the determination where the judge accurately recorded the appellant's visits to the Polish embassy, and submitted that it was for the appellant to prove that the man accompanying her was incapable of giving cogent evidence in light of the assertion by Counsel that he was the appellant's brother.

10. I indicated at the hearing that the First-tier Tribunal had materially erred in law and I gave a summary of those errors, which I now consider in greater detail. Having satisfied myself that the judge's adverse credibility findings were unsafe, neither party objected to the matter being remitted back to the first-tier Tribunal for a fresh hearing.

Discussion

11. In her asylum interview, at questions 234 and 235, the appellant was asked why she failed to claim asylum in Poland and France. She claimed that the language barrier prevented her from claiming asylum in either country. In response to question 236 the appellant claimed that she heard that the UK is "the most powerful", and reiterated that she could speak neither Polish nor French and did not know anyone in those countries, whereas she had a friend in the UK. In her statement, at paragraph 9, the appellant reiterated once again that she did not claim asylum in Poland or France due to the language barrier and she felt it would be in her best interests to seek protection in the country where language would not be an obstacle in getting her story across. At 14(a) the judge fails to engage with this explanation. Although the judge sets out paragraphs 4, 5 and 6 of the appellant's statement, there is no reference to the explanation given by the appellant in her asylum interview, or to the explanation given in her statement. While the judge may have been entitled to reject this explanation, in the absence of any engagement with the reasons proffered by the appellant, it cannot be said that he would have been bound to reject this explanation.

12. At 14(b) the judge draws an adverse inference based on the absence of any medical evidence in support of the appellant's claim to have been burnt with a knife and to have self-harmed. While a judge is entitled to draw an adverse inference from the absence of evidence that one would reasonably expect to be provided, I am satisfied, on the particular facts of this case, that there was no reasonable basis for the judge to expect the provision of medical evidence, such as a scarring report. There is no requirement within the immigration rules that, in assessing a claim of ill-treatment, medical evidence must be provided. There may be valid reasons for the absence of such

evidence. For example, an appellant who is not legally aided may not be able to afford a medical report, or the acquisition of such a report was never suggested by the legal representatives. There is no indication that this judge ever enquired as to the reasons why there was no medical evidence. Nor has the judge given any consideration to the appellant's interview where she twice refers the interviewing officer to scarring on her body she claims was caused by her brother (at questions 90 and 129). In the absence of any attempt by the judge to ascertain why there was no medical evidence he was not lawfully entitled to hold this against the appellant.

13. At 14(d) the judge draws an adverse inference based on the appellant's answers to questions 186 and 187 of her asylum interview. At question 186 the appellant was asked what happened after she resigned from work and returned home. She said that when she got home everyone was busy. It was then put to her (question 187) that she went home after resigning from work, to which she answered, "I was in office, I got the ticket and straight away I went to the airport. No one knows that." The judge found that the appellant's answers to questions 186 and 187 were inconsistent because she initially said that she went home after resigning from work on 29 July 2016, but then said she went straight to the airport. The questions must be considered in their full and proper context. This inconsistency was put to the appellant by the interviewing officer at questions 189 and 190. Following further clarification, at questions 191 and 192, the appellant explained that she returned home on the day that she collected her visa (26 July 2016), but did not return home on the day that she resigned from work (29 July 2016). The interviewing officer appeared satisfied with the appellant's explanation as no further clarification was sought. In her Reasons For Refusal Letter the respondent did not rely on this alleged inconsistency in finding the appellant incredible. Nothing on the face of the judge's decision indicates that the Presenting Officer ever relied on this alleged inconsistency. Having carefully considered the full context of the interview questions, from questions 181 to 192, I am satisfied that the appellant did offer an explanation for what initially appeared to be an inconsistency, and that the respondent appeared to accept this explanation. In the circumstances, there was no reason for the appellant to believe that her answers to questions 186 and 187 would be held against her. The judge failed to raise this alleged inconsistency at the hearing. I am satisfied that the failure to give the appellant an opportunity to deal with this perceived inconsistency amounts to a procedural impropriety.

14. Finally, at 14(e), the judge drew an adverse inference from the failure of the individual accompanying the appellant to the hearing to submit any evidence in support. It remains unclear how this individual is related to the appellant. Mr Gajjar could not recall informing the judge that the man was the appellant's brother, although I have no reason

to doubt the accuracy of the judge's recording. Mr Gajjar indicated that his own record of proceedings reflected that recorded by the judge of the appellant's explanation that the man was somebody she met via Facebook and with whom she had been staying for 7 or 8 months. The judge stated, "whether the individual is a brother or a friend, he can reasonably be expected to know a great deal about the appellant's situation but he has not submitted any evidence in support of the appeal." I accept that, if the man was the appellant's brother, he could reasonably be expected to have knowledge of the appellant's situation. But the judge did not resolve the conflicting accounts of the man's relationship with the appellant. It does not appear that the judge invited the man to declare his relationship, or that the parties were invited to make submissions on this point. With respect, the question whether the individual was a brother or a friend does make a considerable difference in determining whether it is appropriate to draw an adverse inference from his failure to give evidence. If, as the appellant maintained in her evidence, the individual was a only a friend, there was an insufficient factual basis entitling the judge to assume that he would "know a great deal about the appellant's situation." No information at all was provided as to the scope of this man's knowledge of the appellant's account. The judge was not consequently entitled to draw an adverse inference without clearly resolving the issue of the man's relationship with the appellant.

15. I am satisfied that the above errors of law, individually as well as cumulatively, render unsafe the First-tier Tribunal's decision. As there have been no sustainable factual findings it is appropriate for the matter to be remitted back to the First-tier Tribunal, to be considered afresh, all issues open, before a judge other than judge of the First-tier Tribunal Carroll.

Notice of Decision

The First-tier Tribunal decision is vitiated by a material error of law. The case is remitted back to the First-tier Tribunal for a fresh (de novo) hearing, before a judge other than judge of the First-tier Tribunal Carroll.

20 December 2017

Signed
Upper Tribunal Judge Blum

Date