



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

**Appeal Number: PA/03411/2017**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 May 2018**

**Decision & Reasons Promulgated  
On 25 May 2018**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**AF**

**(an anonymity order is in place)**

**Appellant**

**-and-**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr. P. Saini of counsel, instructed by Vision Solicitors Ltd

For the Respondent: Mr. L. Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, who was born on 24 February 1982, is a national of Pakistan. She moved to Dubai, having been sponsored by her father, on 21 August 2002 and started working there on 25 October 2004. Whilst she was there, she married her husband on 14 November 2008. He is an Indian national. She was detained in Dubai on 3 August 2015 and accused of providing

classified information to officials at the Indian and Pakistan consulates in Dubai. She was subsequently sentenced to six months imprisonment and then deported to Pakistan.

2. On her arrival there she was interrogated by the Federal Investigation Agency. She entered the United Kingdom, as a visitor, on 13 August 2016 and applied for asylum on 22 September 2016. Her application was refused on 23 March 2017 and she appealed. Her appeal was heard by First-tier Tribunal Judge Skehan on 22 January 2018 and dismissed in a decision, promulgated on 20 February 2018. She appealed against this decision and First-tier Tribunal Judge Shimmin granted her permission to appeal on 21 March 2018 on all grounds.

### **ERROR OF LAW HEARING**

3. I heard oral submissions from counsel for the Appellant and the Home Office Presenting Officer and have taken these submissions into account when reaching my decision below.

### **ERROR OF LAW DECISION**

4. At paragraph 12 of her decision, the First-tier Tribunal Judge accepted that the Appellant had been charged and sentenced in Dubai, as claimed. Therefore, as the court documents and the article, dated 1 March 2016, confirmed, she had been convicted of spying for foreign countries; namely both India and Pakistan. The Judge could not go behind the facts that underpinned her criminal conviction.
5. As the Appellant is a national of Pakistan, the First-tier Tribunal Judge had to decide whether the Appellant was at risk of persecution in Pakistan, which is her country of nationality, on account of her conviction for communicating with and providing information to intelligence officers at both the Indian and the Pakistani consulates in Dubai.
6. The First-tier Tribunal Judge did not directly address this factor but instead in paragraph 15 of her decision she found that “there is no suggestion within any of the documentation that the appellant is accused of passing information confidential to or of value to any Pakistani organisation to Indian contacts”. This was a speculative comment which begs the question of why the Appellant had been asked to provide information in the first place by intelligence officers at the Indian consulate.

7. In addition, persecution could arise from the fact that the Pakistani authorities imputed a political opinion to her which was supportive of Indian interests and this risk may be augmented by the fact that she was married to an Indian national. Her sentence was relatively short but there is no evidence to suggest that the crime of which she was convicted was “very much on the lower end of the scale that would be of continued interest to the authorities”. The court documents indicated that she had been accused of submitting confidential data to those who work for the benefit of two foreign countries.
8. The evidence relied upon by the Appellant to show that the authorities did impute such an opinion to her was contained in her own statement. In addition, at page 251 of the Appellant’s initial bundle, there was a copy of a complaint which she made to Gulstan-e-Johar police station about receiving telephone calls from specific telephone numbers, but from unidentified person in Pakistan, demanding money to stop enquiries about her husband or requiring him to attend different Government departments. When considering the Appellant’s case, the First-tier Tribunal Judge failed to take this evidence into account.
9. Furthermore, at paragraph 13 of the decision, the First-tier Tribunal Judge stated that there was no country information within the expert evidence to substantiate whether the reporting requirements to which the appellant and her husband claimed they were subjected to were part of the normal immigration requirements for the relevant country or not. Country or expert evidence can support an Appellant’s case but the absence of any such evidence does not mean that an application is not credible. The First-tier Tribunal Judge should have made findings on the evidence before her and she did not give any detailed consideration at all to the expert report from Minhas Law Association.
10. The First-tier Tribunal Judge also treated the possibility of the Appellant going to live in India as if it was an internal flight option, which it clearly was not. It was relevant as to whether family life could be continued other than in the United Kingdom. Therefore, she firstly had to consider article 8.1 and decide whether the Appellant would be admitted to India with her husband and children. When doing so the test was not whether it would be unduly harsh for the Appellant and her family to live there but whether any breach of their ability to do so would be proportionate. Again she failed to take into account relevant expert opinion.

11. In terms of internal flight within Pakistan, the First-tier Tribunal Judge also failed to take into account paragraph 4 of the expert report by Minhas Law Association which stated that secret (security) agencies in Pakistan were able to trace individuals throughout that country.

## DECISION

- (1) There were arguable errors of law in relation to First-tier Judge Skehan's decision and it is partly set aside.
- (2) There was no arguable error of law in relation to First-tier Tribunal Judge Skehan's findings in relation to the Appellant being convicted in Dubai or the charges which she faced and these findings stand and do not have to be addressed on remittal.
- (3) The appeal is remitted to the First-tier Tribunal for a rehearing on all other aspects of her case before a First-tier Tribunal Judge other than First-tier Tribunal Judge Skehan or First-tier Tribunal Judge Harris.

*Nadine Finch*

Upper Tribunal Judge Finch

Dated 18 May 2018