Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02271/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 November 2019	**On 15 November 2019**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

BEENISH [B]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Raw, Counsel, instructed by Middlesex Law Chambers
For the Respondent: Mr T Lindsay, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan. Her date of birth is 26 January 1983. She made an application for asylum on 31 March 2009 claiming to have entered the UK on 16 July 2008. The application was refused by the Respondent on 31 July 2009. The Appellant appealed against that

decision. Her appeal was dismissed by the First –tier Tribunal ("the FTT") on 22 September 2009.

2. The Appellant continued to remain here in the UK. She made a series of further submissions and an application for judicial review which was unsuccessful. The final set of further submissions resulted in a decision of 25 February 2019 refusing the application but giving the Appellant a statutory right of appeal. The Appellant exercised this. Her appeal came before FTT Judge Chana on 9 April 2019. Judge Chana dismissed the appeal in a decision dated 3 May 2019.

3. Permission was granted to the Appellant by FTT Judge Andrew on 2 September 2019. The grant of permission reads as follows:-

> "2. I am satisfied that there is an arguable error of law in this decision. However, I do not find that the Judge was wrong when not considering Article 8 fully. It is plain from paragraph 16 of the decision the Appellant's representative acknowledged that the Appellant did not seek to rely on Article 8.
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> 3. Notwithstanding this the Judge considered the position of the Appellant's child but in doing so made no reference to the independent social circumstances report contained within the Appellant's Bundle when coming to his findings in relation to the best interests of the child, and did not consider whether the child would be able to return to Pakistan with the Appellant.
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> 4. For the reasons that she has given I am satisfied that the Judge made sustainable findings in relation to the Appellant's asylum claim, finding that the Appellant was not credible in her claims."

4. The matter came before me to determine whether the FTT made an error of law.

The decision of the FTT

5. The FTT heard evidence from the Appellant and a witness, Mr [B]. The judge set out the law and directed herself at paragraphs 10 to 13. At paragraph 16 the judge stated that she was informed by the Appellant's Counsel, Mr Raw, that the Appellant's son (I shall refer to the Appellant's son as AB), born on 17 October 2013, was not able to obtain documentation from the Pakistan High Commission with reference to a letter at page 5 of the Appellant's bundle from the High Commission for Pakistan of 10 January 2019.

6. The Appellant gave oral evidence which is recorded by the judge at paragraphs 17 to 27. The Appellant's case was that she was at risk from her ex-husband and family in Pakistan. This was the case that had been advanced before the FTT in 2009. However, the Appellant relied on evidence that was not before the FTT in 2009, namely threatening WhatsApp messages. These were sent to her ex-husband's sister-in-law

but according to the Appellant meant for her attention. She also relied on a letter from the Pakistan High Commission in support of AB not being able to travel to Pakistan and the evidence of a witness and friend, Mr [B]. None of this evidence was before the FTT in 2009. The Appellant's claim was that she was now at risk from her ex-husband and her family as a result of having a child outside of marriage. Mr [B] gave evidence which is recorded by the judge at paragraphs 28 to 31.

7. The judge made findings of fact at paragraphs 33 to 52. At paragraph 34 she directed herself in respect of the case of Devaseelan v Secretary of State for the Home Department [2002] UKIAT 00702. The judge recorded that the basis of the Appellant's claim was that she feared persecution and ill-treatment in Pakistan at the hands of her ex-husband and her family which was the very same claim that was made in her appeal in 2009, however the Appellant now has a child born outside of marriage and claims that her ex-husband and family will kill her because she has brought shame on them as a result of this.

8. The judge said that her starting point was the FTT in 2009. She said that she had considered all the evidence in the appeal including evidence to which she has not referred. She recorded that the judge in 2009 found that the Appellant had fabricated her account of being subject to domestic violence by her ex-husband in Pakistan and being at risk from honour killing. She recorded that the Appellant continued to allege that her ex-husband and family will kill her now because of the birth of her child. The judge concluded that she did not find the Appellant to be credible and nor did she find Mr [B] to be credible. She found, at paragraph 39, that there were inconsistencies in their evidence. She recorded that the judge in 2009 also found that the Appellant was not credible.

9. The judge, at paragraph 39, recorded that the Appellant did not seek to rely on Article 8. Her appeal was based on return to Pakistan as a lone woman with a child born outside of marriage who was at risk from her family and her ex-husband.

10. The judge considered the evidence that was not before the FTT, including the WhatsApp messages. At paragraph 40 she concluded that she could not place reliance on those messages because the Appellant was unclear about who sent them and that there was a lack of clarity as to how the messages were sent to the Appellant, moreover there was no telephone number from where the text messages emanated. She said that the Appellant was not able to give a credible explanation explaining how the messages came to her and who sent them.

11. The judge made findings about the evidence of Mr [B] and the Appellant at paragraphs 41 and 42 which read as follows:-

> "41. The appellant and Mr [B] were totally inconsistent in their evidence about Mr [B]'s personal status. The appellant in cross-examination said that she lived with Mr [B] who had a partner

> and children who lived with him and where she also lived in a separate room. When it was put to the appellant in re-examination whether Mr [B] was married, she said that Mr [B] was not married. The appellant was asked whether she ever asked Mr [B] whether he was married or had children, she said that she did not want to ask him personal questions. Mr [B] however in his evidence said that he is married and his wife and children were in Pakistan when the appellant lived at his house and that when she returned he asked the appellant to leave. At the hearing when Mr [B] was asked why would the appellant think that he was not married, he had no credible answer. These inconsistencies in their evidence goes to the credibility of the appellant and Mr [B]. I also do not find it credible that the appellant would have lived with Mr [B], who she claims was a benefactor, for five months and not have known or not asked about this marital status. I find that the appellant and Mr [B] are not being truthful about the appellant (sic) circumstances.
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> 42. I find that the appellant has not been truthful about her circumstances so it is difficult for me to decipher her true story. The claim that she was subjected to domestic violence by her husband in Pakistan was not believed by the previous Judge. I do not find her credible and therefore I do not accept her claim about her previous circumstances in Pakistan either. The appellant has family in Pakistan although she claims that they will kill her. I do not accept that claim and I find that she will have family support on her return to Pakistan."

12. The judge concluded at paragraph 43 that she accepted the Appellant had a child outside marriage. She said in these circumstances, "I must consider whether this would put her at risk on her return to Pakistan with or without family support".

13. The judge at paragraph 44 considered the country guidance case of SM (lone women – ostracism) Pakistan [2016] UKUT 00067. She set out the head note of the case and she said at paragraph 45 as follows:-

> "I have taken account of these factors in deciding whether it is safe for the appellant to return to Pakistan as a lone woman with a child and without family support. The appellant can internally relocate within Pakistan and it will not be unduly harsh for her to do so. The case law demonstrates that a single woman or female head of household who has no male protector or social network may be able to use the state domestic or private shelters, who can provide the appellant with support while she regularises her social situation. The appellant has lived in this country by herself and displayed great resourcefulness and survived she can do the same on her return to Pakistan."

14. In relation to sufficiency of protection the judge said as follows:-

> "The appellant will also have sufficiency of protection to the **Horvath** standard in Pakistan. In **KA and others** it was held that the evidence fell well short of establishing that in general the police were fundamentally unwilling or unable to carry out law and order functions and ensure the protection of the public. I find that the appellant will have the protection of the authorities when living in Pakistan in any of the bigger cities."

The Grounds of Appeal

15. The grounds of appeal are unfocused. There is a challenge in the first ground which relates to a decision under paragraph 353 of the Rules.

16. The grounds assert that the judge did not consider the birth of the child which was a "very significant new feature to this case". It is submitted that the judge did not properly apply SM (lone women – ostracism) Pakistan CG [2016] UKUT 00067 which was not the country guidance when the case was before the First-tier Tribunal in 2009.

17. It is further asserted that the judge was wrong to say that there would not be significant obstacles to the Appellant's integration. It is also asserted that the judge failed to give weight to the "independent witness" who attended the Appellant's family home in Pakistan and the judge gave no reason not to accept his evidence as an accurate reflection of what happened in Pakistan. It is asserted that the assessment of the Appellant's son's best interests was "unlawful and unreasonable" because the judge failed to take account of the independent social worker report.

18. It is also asserted that the judge failed to take into account the background information on the persecution and discrimination that the AB would face on return to Pakistan as an illegitimate child. Large sections of background information are set out in the grounds. The grounds also rely on the unreported decision of the Upper Tribunal, AA/06732/2015 which is set out at length. It is asserted that the judge failed to take into account the background evidence relating to the child and that his mother would be at risk. If his mother was to go to a domestic violence shelter he would be taken away from her and placed in an orphanage or madrassa. The judge erred when concluding that shelters would be available to the Appellant because she failed to consider the situation for the Appellant whose child is born outside of marriage and who would not be allowed entry to a shelter.

19. The grounds go on to say that it could not possibly be in the child's best interests to return to Pakistan with his mother, especially "when he cannot even be registered with the Government agencies in Pakistan". It is asserted that the judge failed to consider the case properly under Section 55 of the 2009 Act.

Rule 24 response

20. Initially the Secretary of State served a response under Rule 24 stating as follows:-

> "The Respondent does not oppose the appellant's application to the limited basis has (sic) stated in the grant of permission. The findings regarding the asylum claim and credibility remain unaffected by the challenge. Also, it is clear from paragraph 16 reliance was not placed on Article 8".

21. There was an amended Rule 24 response which was received by the Tribunal on 6 November 2019. Mr Raw confirmed that he had received this the day before the hearing and had had time to consider it. He did not object to the Respondent withdrawing the earlier response. I conclude that no unfairness arises from this. The following is stated:-

> "4. It is accepted that the grant of permission to appeal issued by F-tTJ Andrew and dated 2 September 2019 is not strictly limited. However, it is clear that Judge Andrew considered that the only arguable errors committed by the Tribunal in dismissing the appeal are those identified at [3] of the reasons for the grant.
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> 5. Judge Andrew noted at [4] – it is submitted correctly – that sustainable conclusions were reached by the Tribunal both on the appellant's asylum claim and on the issue of credibility.
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> 6. The unchallenged finding of Judge Chana, recorded at [16] of her decision, is that the Appellant (who was represented by Counsel) did not rely upon Article 8 ECHR in her appeal. She relied solely upon protection grounds [39].
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> 7. Accordingly, Judge Chana's relatively brief consideration at [47] in respect of the best interests of the Appellant's child was wholly sustainable given the way that the case was put.
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> 8. Equally, there was no need for the Judge to make any findings on an Article 8 claim that was explicitly not pursued."

Oral submissions

22. I heard oral submissions from both parties. I asked Mr Raw to clarify the grounds on which he sought to rely because the grounds of appeal are unhelpful and unfocused. He identified two separate grounds. He explained that the first ground was a failure by the judge to give weight to Mr [B]'s evidence which he says was independent and consistent in respect of the visit he made to the Appellant's family in Pakistan in 2017. He said to me that this evidence was not challenged and it was overlooked by the judge.

23. Mr Raw identified a second ground which is that the judge overlooked evidence when considering whether AB could return to Pakistan because he was born outside of marriage. In support of this he relied on the letter

from the High Commission with specific reference to paragraph 3 which reads as follows:

> "To apply for your child's card as NADRA holders, you are advised to get your marital status updated on the cards. (NADRA) system will not allow that child's application processing if birth parent's status is mentioned as single/unmarried)."

24. Mr Raw submitted that the judge did not engage with the submission about the position of the child in the light of the evidence from the High Commission. He said that the judge did not consider the evidence of the social worker about what would happen to the child should he return to Pakistan and return to a shelter. He referred to the background evidence before the judge. He said that the unreported case cited in the grounds (whilst accepting he could not rely on it) supported conclusions that back-up the letter from the Pakistan High Commission.

25. Mr Lindsay made submissions. His first submission was that Section 55 is not a freestanding ground of appeal and must be a facet of a ground pleaded. The Appellant had not relied on Article 8. There was no properly articulated argument before the FTT that the child was stateless. The best interests of the child in this appeal will not be relevant unless material to a decision on protection grounds or on grounds of humanitarian protection. He said that there were evidential difficulties relating to the letter from the Pakistani High Commission. It does not say that a child will not be allowed to travel to Pakistan with his mother. He said there was no specific pleading about the letter from the High Commission in any event. He said that taken at its highest the letter does not assist the Appellant in respect of asylum or protection grounds. The judge was satisfied that there would be family support available to the Appellant. There is no authority that the Appellant or the child would be at risk on return in those circumstances. Mr Lindsay submitted that the guidance in SM plainly includes women with children outside of marriage. It does not distinguish between married and unmarried women.

26. In respect of the evidence of Mr [B], Mr Lindsay submitted that the judge found that the Appellant and Mr [B] were not credible. She found that it was difficult to decipher the Appellant's true story. It is not the case that a Tribunal has to accept all evidence that is not inconsistent. What is required is that the evidence is considered in the round. The judge gave cogent reasons for not believing the witnesses. The judge was entitled to find that there would be support available to her in Pakistan.

The Evidence of the Independent Social Worker

27. The independent social worker, Nikki Austin, prepared a report comprising fourteen pages having had sight of the Appellant's personal statements, letter of support, a letter of complaint to Middlesex Law Chambers, a photographic copy from the Hillingdon Hospital and a photographic copy of the child's birth certificate.

28. Ms Austin met with the Appellant and AB on 3 November 2017 and was with them for two hours. She recorded that the child attended pre-school for sixteen hours a week. She recorded the Appellant's account relating to her ex-husband in Pakistan and that her family would not support her and had disowned her following the birth of her son. The social worker said that it was clear that the child had settled into his extended support network here in the UK where he was born and that the support network and friendships would all be lost should his mother be forced to relocate, and that it would be detrimental to separate the child from the support network he has here and the bonds and links that he has established here. She concludes that forced relocation would not be in the child's best interests. She concludes, having accepted what the Appellant told her about her family in Pakistan, that they would not have support should they relocate. She concludes on this basis that he should not be relocated there where he would be at risk of "significant harm". She recorded that she had been informed that should he relocate to Pakistan he would live in contrast to his current conditions and would be at risk of being taken into care and separated from his mother.

The 2009 decision

29. In the Respondent's bundle there is a copy of the determination of Immigration Judge Crawshay who heard the Appellant's appeal in 2009. The Appellant advanced an account of domestic violence and that she would be at risk from her husband should she return to Pakistan. The judge found that the Appellant was married but was at that time separated and has a child in Pakistan (see paragraph 39). She found that the Appellant lacks credibility and that she fabricated her account of being subjected to domestic violence and at being at risk of falling victim to honour killing.

Background evidence

30. The Appellant relied on the Country Information and Guidance Pakistan: Women fearing gender-based harm/violence Version 3.0 of February 2016. Mr Raw drew my attention to parts of the evidence in the report in submissions.

SM (lone women – ostracism) Pakistan CG [2016] UKUT 00067

31. The Upper Tribunal in SM made the following findings contained within the head note as follows:-

> "*(1) Save as herein set out, the existing country guidance in SN and HM (Divorced women – risk on return) Pakistan CG* [2004] UKIAT 00283 *and in KA and Others (domestic violence – risk on return) Pakistan CG* [2010] UKUT 216 (IAC) *remains valid.*
>
> *(2) Where a risk of persecution or serious harm exists in her home area for a single woman or a female head of household, there*

may be an internal relocation option to one of Pakistan's larger cities, depending on the family, social and educational situation of the woman in question.

(3) It will not be normally be unduly harsh to expect a single woman or female head of household to relocate internally within Pakistan if she can access support from family members or a male guardian in the place of relocation.

(4) It will not normally be unduly harsh for educated, better off, or older women to seek internal relocation to a city. It helps if a woman has qualifications enabling her to get well-paid employment and pay for accommodation and childcare if required.

(5) Where a single woman, with or without children, is ostracised by family members and other sources of possible social support because she is in an irregular situation, internal relocation will be more difficult and whether it is unduly harsh will be a question of fact in each case.

(6) A single woman or female head of household who has no male protector or social network may be able to use the state domestic violence shelters for a short time, but the focus of such shelters is on reconciling people with their family networks, and places are in short supply and time limited. Privately run shelters may be more flexible, providing longer term support while the woman regularises her social situation, but again, places are limited.

(7) Domestic violence shelters are available for women at risk but where they are used by women with children, such shelters do not always allow older children to enter and stay with their mothers. The risk of temporary separation, and the proportionality of such separation, is likely to differ depending on the age and sex of a woman's children: male children may be removed from their mothers at the age of 5 and placed in an orphanage or a madrasa until the family situation has been regularised (see KA and Others (domestic violence risk on return) Pakistan CG [2010] UKUT 216 (IAC)). Such temporary separation will not always be disproportionate or unduly harsh: that is a question of fact in each case.

(8) Women in Pakistan are legally permitted to divorce their husbands and may institute divorce proceedings from the country of refuge, via a third party and with the help of lawyers in Pakistan, reducing the risk of family reprisals. A woman who does so and returns with a new partner or husband will have access to male protection and is unlikely, outside her home area,

to be at risk of ostracism, still less of persecution or serious harm."

Conclusions

32. I engage with the grounds as articulated by Mr Raw. He did not specifically challenge the decision on Devaseelan grounds. It is unarguable that the judge misapplied Devaseelan which does not appear to be the subject of a challenge in any event. The first judge rejected the Appellant's claim on the basis that she is at risk from her ex-husband and family. The judge acknowledged this was the starting point, however, she also acknowledged that the Appellant now had a child and considered whether this fact and the further evidence that was not before the FTT Tribunal undermined the findings of the first judge. She considered the evidence in the round (see paragraph 39). Whilst the aspect of the claim relating to the birth of the Appellant's son outside marriage, is capable of being a self contained reason for persecution, there is no assertion that the judge did not understand this.

33. The first challenge is effectively a challenge to the weight given by the judge to the evidence of Mr [B] and an assertion that she overlooked his evidence. Mr [B]'s evidence contained in his witness statement was that he had visited the Appellant's family home in 2017. He said that he went there under pretence to give condolences following the death of the Appellant's mother. Her family became angry. Her father denied knowing the Appellant and said that she was dead to him. He was asked by her father whether he was the Appellant's lover. He was sworn at and told to get out. The Appellant's brother pushed him and swore at him. He was accused of being the Appellant's boyfriend and the father of her child. Mr [B] was physically assaulted and the Appellant's brother threatened to kill AB. The family said that the Appellant deserved "only death".

34. The judge set out Mr [B]'s evidence about the visit at paragraph 30 of the decision. At paragraph 41 where she considered the credibility of Mr [B] and the Appellant, the judge did not make specific reference to the part of his evidence referring to the 2017 visit to Pakistan. There was in my view no need for her to do so. The judge emphatically rejected the Appellant and Mr [B]'s evidence concluding that they were "totally inconsistent in their evidence about Mr [B]'s personal status". The inconsistency which she goes on to describe is significant (see [41]). The judge said that the inconsistencies in their evidence "goes to the credibility" of the Appellant and Mr [B] and she concluded at paragraph 42 that the Appellant had not been truthful about her circumstances. The judge's findings were sufficient and a proper reading of the decision indicates that she rejected the totality of Mr [B]'s evidence. There is no substance in the first challenge as articulated by Mr Raw.

35. The second challenge refers to AB. Mr Raw raised an issue that was not raised in the grounds of appeal and that was that the judge did not make findings in relation to the letter from the Pakistani High Commission.

However, I accept that the grounds challenge the findings in respect of the AB which would include this challenge.

36. In relation to the social worker's report there is no reference to this within the decision of the judge. In any event, the judge concluded at paragraph 47 that the child was very young and it was in his best interests to be with his mother wherever she lives. This in my view was a rather simplistic assessment of his best interests and there was no reference to the evidence of the social worker or the letter from the High Commission. However, this is not a material error for the following reasons.

37. The social worker's report was premised on the basis of an account which was given by the Appellant of persecution in Pakistan; an account which was emphatically rejected by the FTT. Thus, the thrust of the social worker's conclusions are undermined. The judge found that the Appellant would have family support on her return to Pakistan and therefore she would not be returning as a lone woman without support. Mr Raw in oral submissions stated that the finding was not adequately detailed because the judge did not identify what family support would be available to the Appellant on return such as whether or not that support would include accommodation. This submission is misconceived and is premised on the judge being obliged to find an alternative scenario because she did not accept the Appellant's account. The evidential value of the social worker is limited because its conclusions are based on a narrative rejected by the judge. There is no challenge of substance to the findings of the judge that the Appellant (and therefore AB) would have family support on return to Pakistan. Thus, it was reasonably inferred by the judge that she would not have to look for accommodation in a shelter.

38. The problem with the Appellant's grounds is that they do not take into account that her account was rejected by the judge who said at paragraph 42 that it was difficult to decipher the Appellant's true story. There is no obligation on the judge to identify the true narrative. The burden of proof is on the Appellant. She failed to discharge it. It was sufficient for the judge to conclude, having rejected the Appellant's evidence, that she would have family support available to her in Pakistan and on this basis she would not have to internally relocate or find accommodation outside the family. The judge was entitled to conclude that she has nothing to fear as from her ex-husband or family. In these circumstances the case of SM is not material to the Appellant's case because she would not have to internally relocate. She is not returning as a lone female. She has the support of her family. There is no support for the assertion that a single, unmarried mother and child would be at risk on return if there is family support available.

39. Should the evidence be that the Appellant could not register her son through the NADRA system as a single unmarried mother, it is possible that the Appellant would not be able to avoid enquiry into the background of her children which would reveal that he was born outside of marriage. There was no evidence before me or the FTT about the situation for a child

returning from the United Kingdom without being formally registered by the Pakistan High Commission. Mr Raw stated that he would not be able to travel to Pakistan with his mother; however, the evidence does not establish that.

40. From the Country of Origin Information Report (see section 9) the Appellant may have committed a criminal offence which is punishable by imprisonment and it may not be possible for the Appellant to register her son before returning to Pakistan and it may be that she will have difficulty registering him given her unmarried status. There is an issue about how the child will be treated on his return to Pakistan, possibly in the absence of an ID card. The case was not put to me in this way and I am not sure how it was advanced before the FTT. What is clear from the judge's lawful findings is that the Appellant and her son are not directly at risk of violence from the Appellant's family or the Appellant's ex-husband. They would be supported on return. Furthermore, the country guidance case of KA & Ors indicates that in general persons who face prosecution will not be at real risk of a flagrant denial of their right to a fair trial, although it will always be necessary to consider the particular circumstances of the individual case. The judge did not consider the issue concerning the registration of the child and difficulties that may arise. However, there was no evidence before her that would indicate that AB or his mother would be at risk of persecution or serious harm arising from his birth outside marriage. In respect of his best interests, the judge should have considered this in the context of registration and the circumstances of his birth; however, on the evidence before the judge, this would not have undermined the finding that it would be in his best interests to return with his mother. There was no evidence before the judge of discrimination arising from the circumstances of his birth that it would have made any difference to the outcome in this case. Whilst the child has been here all his life and has support here, his private life is limited as a result of his age. He is young and has extended family in Pakistan. In any event, the Appellant did not rely on Article 8 at the hearing. This was readily accepted by Mr Raw. Moreover on the evidence and the findings made by the judge the Appellant is not able to meet the Rules. Had the judge considered proportionality, taking into account the social worker's evidence and the letter from the High Commission (and any discrimination that can be inferred from the letter and the background material), it is not arguable that the decision breached the Appellant's rights under Article 8.

41. Mr Raw drew my attention to the background evidence which is capable of supporting claims of honour killings and domestic violence in Pakistan. However, it was not clear how this submission tied in with the two grounds on which he sought to rely in oral submissions. In any event, there is no substance in a claim that the judge did not factor the background evidence into the assessment of credibility. The problem with the Appellant's account is that her claim to be at risk had already been rejected in 2009. The further evidence that she now relied on was problematic for the reasons properly identified by the judge.

Notice of Decision

42. In the light of the way that the appeal was advanced before the FTT and the limited grounds of appeal upon which Mr Raw relied, I conclude that there is no error of law capable of making a difference to the outcome in this case. The decision of the FTT to dismiss the Appellant's appeal is maintained.

43. No anonymity direction is made.

Signed Joanna McWilliam Date 11 November 2019

Upper Tribunal Judge McWilliam