



IAC-AH-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12279/2019**

THE IMMIGRATION ACTS

**Remote Hearing via MS Teams
On the 28 October 2021**

**Decision & Reasons Promulgated
On the 17 November 2021**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

**IA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Eaton, counsel instructed by Duncan Lewis & Co Solicitors

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Mill, promulgated on 13 March 2020. Permission to appeal was granted by First-tier Tribunal Judge Foudy on 14 May 2020.

Anonymity

2. An anonymity direction was made previously and is reiterated below because the appellant has an outstanding protection claim as well as mental health concerns.

Background

3. The appellant is a national of Pakistan aged 59. She arrived in the UK during March 2003 and applied for asylum in May of the same year. That application was refused on 9 July 2003 and the appellant's appeal was dismissed on 6 October 2003. The appellant's case was unsuccessfully reviewed under the Legacy programme on 1 October 2013. The appellant lodged further submissions on 27 November 2017. It is the refusal of those submissions on 14 November 2019 which is the subject of this appeal.
4. The appellant's protection claim concerns her fear of violence at the hands of her husband whereas her Article 8 claim was based on her long residence in the UK as well as the contribution she had made to this country. In rejecting the appellant's fear of her husband, the Secretary of State noted that the appellant was disbelieved by the Tribunal in 2003. The new supporting evidence was considered to add very little weight to her claim. It was further considered that the appellant could relocate within Pakistan, that she was unable to meet the Rules in relation to her private life and that there were no exceptional circumstances.

The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the appellant was treated as a vulnerable and sensitive witness owing to the evidence of her poor mental health. The appellant gave evidence before the Tribunal. The First-tier Tribunal found that the appellant's case lacked credibility, her documents were unreliable, she was not suffering from a serious mental health problem and that she had not spent her time in the UK usefully.

The grounds of appeal

6. The grounds of appeal were twofold. Firstly, that the judge erred in his treatment of the medical evidence and secondly, that the judge reached perverse conclusions as to the weight to be given to material evidence in several respects.
7. Permission to appeal was granted on the basis sought.
8. No Rule 24 response was received from the respondent.

The hearing

9. Mrs Aboni confirmed that there was no Rule 24 response, however she indicated that the appellant's appeal was opposed.
10. Mr Eaton relied on the grounds and took me through the evidence before the First-tier Tribunal in relation to the medical issues as well as the other

relevant documents relied upon by the appellant. To summarise, he argued that the judge's criticism of the psychiatric evidence was unfounded, in that the observations made were simply incorrect. In addition, the judge had failed to consider the post-mortem of the appellant's brother-in-law which corroborated her account; had wrongly found there to be a discrepancy in the FIR, failed to take into consideration that the appellant provided the original documents relating to two out of three of the letters from her sister and made a perverse finding regarding an apparent discrepancy as to the location of the appellant's bullet wound.

11. Mrs Aboni put forward a robust defence of Judge Mill's decision and reasons but did not fully engage with the Mr Eaton's submissions and/or the grounds of appeal. Nonetheless, she accepted that the judge had erred in his finding that the appellant's diagnosis of severe depression was not supported by the other medical evidence and had also erred in failing to consider the post-mortem document. Mrs Aboni contended that these were not material errors. I nonetheless took her detailed submissions into consideration including her argument that the judge was entitled to find that there was an inconsistency regarding the appellant not having mentioned being shot or raped to her GP prior to 2019.
12. In response, Mr Eaton clarified that the appellant had mentioned the shooting injury in consultations prior to 2019 and that while the rape was not mentioned, it was not relevant to the asylum claim. In any event, the judge had not found there to be an inconsistency, rather a failure to mention.

Decision on error of law

13. At the end of the hearing, I informed the representatives that I was satisfied that the decision of the First-tier Tribunal contained the material errors of law complained of in the grounds of appeal and that the decision was unsafe and set aside in its entirety. I set out my reason below.
14. At [48] the judge concluded that the appellant did not have a serious mental health condition notwithstanding the expert opinion of a consultant psychiatrist to the contrary. The judge, at [47], rejected the medical findings because the psychiatrist had not seen the 2003 determination which contained negative credibility findings. This was an improper basis for rejecting the diagnosis because the respondent's reasons for refusal letter was provided to the psychiatrist (the appellant did not attend the 2003 hearing) and therefore the writer of the report was not kept in the dark about issues as to the veracity of the appellant's account.
15. The judge, at [48] wrongly rejected the diagnosis of severe depression on the basis that it was not supported elsewhere and noted that the appellant had not been referred to mental health services. The appellant provided her medical records which show that as far back as 2009 her GP diagnosed her as suffering from severe depression and furthermore, Mr Eaton was able to point out two occasions when the appellant was referred to mental

health services, in 2016 and 2020. In short, the judge was wrong to say that the psychiatric report was not corroborated by other evidence.

16. This error is material because the medical evidence provides corroboration for the treatment the appellant states she suffered in Pakistan, her actions in not attending her 2003 appeal and the manner in which she gave evidence before the judge in 2021.
17. The above-mentioned material error suffices to set aside the decision of the First-tier Tribunal however I will briefly address the second ground. The appellant provided the post-mortem relating to her brother-in-law at pp53-59 of the appellant's bundle. This provided corroboration for the appellant's account that her relative was killed by gunshot wounds as well as corroborating the FIR. The judge erred in not considering this item at all. The judge further erred in identifying a discrepancy in the translation of the FIR regarding the name of the appellant's husband. There were two certified translations of the same document with a partially different name given for the husband on just one occasion in one of the documents. The judge's description of this matter as being "highly suspicious" is perverse given the evidence that this was a mistake by the translator and that in any event the content of the document was corroborated by the post-mortem document. It also raises the question as to why the judge did not simply ask the Urdu interpreter present at the hearing to read the relevant part of the FIR if any further clarification were required. The judge rejected the appellant's letter from her sister as it was not an original but did not take into consideration that this was just one of a series of letter and that originals had otherwise been provided.
18. I considered whether to retain this appeal in the Upper Tribunal for remaking. Mr Eaton informed me that further medical evidence would be required and that following the judgment in *AM (Zimbabwe)* [2020] UKSC 17, submissions were likely to be made in relation to Article 3 health grounds for the first time. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, the nature and extent of the findings to be made as well as that the appellant has yet to have an adequate consideration of her protection and human rights appeal at the First-tier Tribunal, it would be unfair to deprive her of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Hatton Cross, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Mill.

An Urdu interpreter is required.

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 her 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:
2021
Upper Tribunal Judge Kamara

Date: 4 November