Upper Tribunal

(Immigration and Asylum Chamber) **Appeal number: PA/13425/2018 (V)**

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC	**Decision & Reasons Promulgated**
On 16 July 2021	**On 11 August 2021**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

EAJ

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Ms G Patel, Eric Smith Law Ltd.

For the Respondent: Mr A Tan, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote

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hearing. At the conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a national of Pakistan with date of birth given as 16.12.99, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 12.11.210 (Judge Alis), dismissing on all grounds her appeal against the decision of the Secretary of State, dated 20.11.18, to refuse her claim for international protection made on 19.4.18, on the basis of being at risk on return as having abandoned Islam to become an atheist, and fear of her maternal uncle who had sexually abused her as a child.

2. The appeal was first heard and dismissed by First-tier Tribunal Judge Parker in the decision promulgated 15.1.19. However, that decision was found to be in error of law and set aside in its entirety by Upper Tribunal Judge Plimmer in the decision promulgated 16.8.19, which remitted the appeal to the First-tier Tribunal to be heard de novo, stating "this is an appropriate case to remit to the First-tier Tribunal to make completely fresh findings of fact."

3. Permission to appeal was granted by Resident First-tier Tribunal Judge Zucker on 15.12.20, considering it arguable that Judge Alis "materially erred in law in (i) failing to consider the report of Dr Latif dated 24 February 2020; (ii) applying country guidance relating to people born as Christians rather than considering the risk to a person who renounces Islam in favour of atheism; (iii) confused the reports of Dr Ahmed and Ms Hodgson; (iv) gave limited weight to the social worker's report arguably because of not having seen medical recorder which arguably had been seen; (v) misapplied the principles in Devaseelan; and (vi) made a flawed article 8 assessment."

4. The matter was first listed before the Upper Tribunal on 20.4.21 but was adjourned on the failure of any attendance at the remote hearing on behalf of the appellant. It transpired that the email notification of the date of hearing went into the solicitors' junk email box and was not seen.

5. The Upper Tribunal has received very late, only the day before the hearing, a bundle of lengthy documents, forwarded in four separate emails on 14.7.21, and forwarded to me on 15.7.21. However, these appear to be the appellant's bundle and supplementary bundle put before the First-tier Tribunal appeal hearing in October 2020.

6. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal.

7. The appellant's primary claim, first raised in the screening interview, is that she would be at risk on return to Pakistan because she has abandoned Islam and has

been an atheist since 2014. She also feared her maternal uncle, claiming that he sexually abused her in Pakistan, and that she would be forced into an arranged marriage, as had been attempted. The appellant's mother had her asylum appeal hearing in 2012, alleging risk on return from her former husband in Pakistan, who had threatened her on her proposed marriage to a husband in the UK.

8. As part of the decision, the judge considered that there was an inconsistency between the appellant's claim at the appeal hearing to have only told her mother about the sexual abuse by her uncle in 2018, after her asylum interview, and what she said in that asylum interview. Despite Ms Patel's arguments to the contrary, I am satisfied that the judge was reasonably entitled to conclude from the appellant's replies at Q100, read in context, that the appellant there stated that she told her mother about the abuse at or about the time of the abuse and whilst she was in Pakistan, but that her mother had told her she could not do anything about it. At the appeal hearing before Judge Alis, the mother supported the appellant's account that she was only told about the sexual abuse after the appellant's asylum interview.

9. At several points, the judge was satisfied that if the appellant had been threatened with forced marriage and in consequence estranged from her family, or been sexually abused, her would have mentioned this in her own appeal in 2012.

10. The first ground is the complaint that the judge appeared to have overlooked the report of Dr Latif. The judge refers in general terms to the appellant's bundles at [20] to [22] of the decision and at [56] stated that all the evidence had been considered before reaching any findings. However, I note that in referring to reports at [21], the judge mentioned only two, when there were three. In relation to one of the reports, at [68] the judge refers to Dr Ahmed's report when in fact the report in question was by Jenny Hodgson, a CBT counsellor. Nevertheless, the judge does address the contents of that report and the report of the independent social worker. The misnaming of the author of the counselling report, complained of in ground 2, is not material and the judge was entitled to observe at [69] that the report simply sets out what the author was told by the appellant. However, consideration of the contents of Dr Latif's report is entirely omitted from in the decision, which is the substance of ground 1. Mr Tan accepted that there is no direct or indirect reference to this report in the decision but submitted that the medical condition was taken at its highest for the purpose of considering return to Pakistan. However, that overlooks the purpose for which the appellant relied on this report. Ms Patel drew my attention to the significance of the judge's omission in that between 8.4 and 8.11 the author of the report specifically addresses in the issue of inconsistency, which is explained in terms of the appellant's PTSD and depression and in the author's own observation of the appellant's apparent inability to recall dates and some factual information. At

8.11 Dr Latif states that the appellant, "struggles with her memory and her ability to encode, manipulate, retain and retrieve information, particularly in relation to dates and events, as a result of her depressive disorder, this will place her in a compromising situation if weight is heavily placed upon her ability to recall specific dates in oral evidence." The significance is that whilst the judge was willing at [74] to treat the appellant as a vulnerable witness, the evidence described above does not appear to have been taken into account in assessing what to make of the apparent inconsistency between the appellant's interview account that she told her mother in Pakistan, at the time of the abuse, and the later claim to not have informed her mother until after the interview. At the end of [74], the judge found that "the conflicting evidence as to when this disclosure (the sexual abuse by her uncle) was made to her mother is not explained by these reports." Without being able to be satisfied that the judge's consideration of "these reports" included that of Dr Latif, that conclusion is undermined and unsustainable.

11. Contrary to the argument in ground 2, I am not satisfied that there was any failure by the judge to properly address the risk on return as an atheist or that there was any error on the part of the judge by referring to the principles in the country guidance of AK and SK (Christians: risk) [2014] UKUT 569 (IAC), where there is no country guidance on atheists returning to Pakistan. The judge adequately dealt with the issue, giving cogent reasons for findings made.

12. I also find no error of law in the limited weight given to the independent social worker report between [70] and [71] of the decision, the subject matter of ground 4, for the reasons set out at [71], namely that it was not clear what papers the author of the report had seen, making only an oblique reference to "medical reports" at [33] of the report.

13. In relation to ground 5 and the Devaseelan point, it is argued that it was procedurally unfair for the judge to use against the appellant what her mother did or did not say in her own asylum appeal in 2012.

14. I have carefully considered the submissions and looked very carefully at the impugned decision as a whole. For the reasons set out herein, I am satisfied that effectively, in relation to the issues of sexual abuse, attempts at forced marriage, and estrangement from her father in Pakistan, the judge erred in relying on findings made in an appeal hearing in which this appellant was not a party as undermining of the credibility of her present claim.

15. Whilst the judge recognised that the appellant cannot be blamed for what her mother did or did not say at her previous appeal, at [75] he was satisfied that had she told her mother in Pakistan about the abuse this was something that her mother would have mentioned at her own appeal hearing in 2012. Judge Alis found "the failure by her mother to mention the abuse significant." Similarly, in relation to attempts at forced marriage, at [80] the judge stated that the forced marriage attempts were not mentioned by the appellant's mother in her appeal in 2012. The judge then stated, "whilst the appellant cannot be blamed for what her

mother did or did not say at her previous appeal, I find the failure by her mother to mention the forced marriage attempts significant."

16. At [81] the judge spelt out that adverse findings against the appellant's mother do not mean this appellant is not truthfully recalling what she says happened but suggested that in assessing what is said, he had to have regard to all the evidence and as the mother gave evidence at the appellant's appeal hearing, he was entitled to consider how the Tribunal previously assessed the mother's credibility in assessing whether the appellant's own claim is credible. "The previous judge found the appellant's mother was not a witness of truth and found that she was evasive. This means the mother's evidence, where applicable, does not provide support for the appellant's claim."

17. Once again, at [82] the judge stated that had there been attempts to force the appellant to marry prior to her coming to the UK, he was "satisfied that the appellant's mother would have mentioned this earlier."

18. At [84] to [85] Judge Alis set out the findings made in the mother's appeal and, pointing out that they were never appealed, purported to apply the Devaseelan principle applies to them.

19. The judge was certainly entitled to make credibility findings against the appellant's mother, a witness in the appellant's appeal, and, therefore, to conclude that the appellant could derive no support for her account from her mother's evidence. The judge was also entitled to find an inconsistency in the appellant's case, between the interview and her later evidence in the appeal, as to when the sexual abuse was first disclosed to her mother.

20. However, the judge was not entitled to use against the appellant findings made in a previous appeal in which she was not a party. This the judge appears to have done at [86] where, in respect of the appellant's claim not to have spoken to her father since coming to the UK, he stated "that evidence must be considered against the findings of the previous judge." He cannot have been referring to the decision of Judge Parker, as that decision was set aside in its entirety for the findings to be made de novo.

21. The Devaseelan principle does not apply to this case in respect of this appellant. The mother's appeal was decided as long ago as March 2012 and, as is clear from the above, the factual basis of this appellant's appeal is very different to the issues raised by this appellant, although the mother was claiming that she could not return because of hostility by her former spouse. This is not a second appeal by this appellant and the findings of fact in her mother's appeal cannot be relied on in determining this appellant's credibility. In any event, given the different bases of the appeals, I am not satisfied that the judge was entitled on the evidence

to conclude that had the appellant disclosed the sexual abuse to her mother in Pakistan that her mother would necessarily have mentioned this at her own appeal. Similarly, I am not satisfied that the judge was entitled to conclude that had there been attempts to force the appellant into marriage this would also have been mentioned by mother in 2012.

22. I have carefully considered the way in which the judge set out the decision, in which he purported to distinguish between credibility findings in relation to the mother from those in relation to the appellant. However, in relation the allegation of sexual abuse, I note that whilst rejecting the credibility of the appellant's mother, the judge does not make a finding either that the appellant did tell her mother in Pakistan, or that she didn't tell her mother in Pakistan, only that the sexual abuse did not happen. Furthermore, as Ms Patel pointed out in submissions, the appellant was never challenged in her own evidence before the First-tier Tribunal about her interview account as to when she told her mother. For that reason, it was procedurally unfair for the judge to reply on this point in assessing the appellant's credibility. More significantly, if one excludes reliance on what was said or not said by the appellant's mother at her previous appeal, the finding appears to be inadequately reasoned; the only possible reason that I can identify is reliance on the apparent inconsistency between what was said in the asylum interview as to telling her mother in Pakistan and the appellant's claim to have only told her mother after the interview. However, whilst that is relied on, it appears from the decision that despite purporting not to blame the appellant for what her mother said or did not say, the judge did in fact conflate issues in relation to the mother's credibility with that of the appellant's credibility. This is demonstrated when considering [84] to [86] of the decision. There was no adequate reasoning provided for rejecting the appellant's claim to be estranged from her father's side of the family whether because she was in danger of being forced into marriage, or any other reason. The judge appeared to rely for this conclusion entirely on the findings in the mother's appeal, set out in detail at [84], with the judge concluding at [85] that as they were not challenged, they must stand on Devaseelan principles. That finding was made in error of law by an improper application of Devaseelan.

23. Mr Tan submitted that even if the above concerns amounted to errors of law, they were not material, as the judge also rejected the appellant's claim to being at risk on return as an atheist. He also submitted that the findings at [86] that she was not estranged from her father or his side of the family and would not be returning as a single woman at risk were not challenged. However, in making this submission, Mr Tan overlooked the fact that findings in relation to the appellant's family are indeed challenged at [17] of the grounds. As stated above, I am satisfied that the judge was not entitled to rely on those findings in rejecting this appellant's claim in relation to the alleged estrangement from family, only in

relation to the credibility of the appellant's mother and the extent of support she could provide to the appellant's case. As the judge repeatedly stated, the appellant is not to blame for what was said or not said by her mother in her previous appeal. The findings of the previous Tribunal in relation to the family circumstances were neither binding on the First-tier Tribunal in 2020, nor the correct starting point for assessment of this appellant's claim. Furthermore, it is impossible to untangle the findings as to risk on return as an atheist from the apparent errors in relation to family support and the allegation of sexual abuse, as they are based on interlinked credibility findings. In the circumstances, I am satisfied that the errors identified above are material to the outcome of the appeal.

24. In relation to ground 6, I am not satisfied that there was any error of law in relation to the article 8 ECHR assessment; the ground is no more than a disagreement with the assessment and an attempt to reargue the matter.

25. In the circumstances and for the reasons set out above, I find such material error of law in the decision of the First-tier Tribunal as to require it to be set aside to be remade.

26. Given the extent of evidence required, the appropriate course, as Ms Patel submitted, is to remit this to the First-tier Tribunal to be remade with no findings preserved, in accordance with the Senior President's Practice Direction, as the findings will need to be remade following further evidence.

Decision

The appeal of the appellant to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside to be remade de novo with no finding preserved.

The remaking of the decision in the appeal is remitted to the First-tier Tribunal at Manchester.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 16 July 2021

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

> "*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 to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings.*"

Signed: DMW Pickup

Upper Tribunal Judge Pickup

Date: 16 July 2021