



IAC-AH-SC-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02185/2020
[UI-2021-000862]**

THE IMMIGRATION ACTS

**Heard at Field House
On the 25 February 2022**

**Decision & Reasons Promulgated
On the 20 April 2022**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

**AM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. R Chapman, of Counsel, instructed by Wesley Gryk
Solicitors

For the Respondent: Ms. J Isherwood, Senior Presenting Officer

Anonymity Order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including her name or address, likely to lead members of the public to identify the appellant without her express consent. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant appeals against the decision of Judge of the First-tier Tribunal McIntosh ('the Judge'), sent to the parties on 20 September 2021, dismissing her appeal on international protection and human rights grounds.
2. The appellant was granted permission to appeal by Judge of the First-tier Tribunal Povey by means of a decision dated 28 October 2021.

Anonymity Order

3. The Judge issued an anonymity order, and no request was made by either party for this order to be set aside. I confirm the order above. I do so as it is presently in the interests of justice that the appellant is not publicly recognised as someone seeking international protection: Guidance Note 2022 No. 2: Anonymity Orders and Hearings in Private.

Background

4. The appellant is a national of Pakistan. She was born in March 1976 and is now aged 46. She was granted leave to enter the United Kingdom as a visitor from 20 January 2006, such leave expiring on 20 July 2006. She arrived in March 2006 and subsequently overstayed. She made a human rights (article 8) application for leave to remain in December 2011. The Secretary of State refused the application in January 2013. On 13 June 2013 the appellant was served with notice as an overstayer and on the same day she claimed asylum. Her asylum claim was refused on 25 June 2013. She appealed against this decision and her appeal was dismissed by Judge of First-tier Tribunal Black by means of a decision dated 28 January 2016. The appellant became appeal rights exhausted on 21 March 2016.
5. On 17 December 2018 the appellant made a fresh claim, asserting that she possessed a well-founded fear of returning to Pakistan on the ground that she faced persecution from various ex-husbands. In addition, she maintained that her personal circumstances as a lone female in Pakistan without means of accommodation or financial support would make her vulnerable to further abuse, threats of harm and even honour killing from her ex-husbands. Relevant to this aspect of her stated fear was that as a Shi'a Muslim she would not secure sufficient protection on her return.
6. The Secretary of State refused the application on 19 February 2020, and the appellant exercised appeal rights.
7. The appeal came before the Judge sitting at Taylor House on 22 January 2021. The Judge noted at [43] of her decision that Judge Black had previously found the appellant not to be an entirely credible witness, having exaggerated elements of her claim both in respect as to her personal circumstances in Pakistan and the circumstances of her family members. At [45] of the decision the Judge found an expert report to be

'inconclusive'. The Judge further observed at [45] that there was no evidence of the appellant's first husband having contacted her since 2006 or her second husband since 2008.

Grounds of Appeal

8. The appellant relies upon eight individual grounds of challenge authored by Ms. Chapman, who represented her before the First-tier Tribunal. The grounds can be succinctly identified as follows:
 - i) The Judge erred in failing to explain the substantial delay between the hearing held on 22 January 2021 and the promulgation of her decision on 20 September 2021, such delay casting doubt upon the safety of the findings of fact.
 - ii) The Judge erred in failing to determine (i) whether the appellant is a vulnerable witness, and (ii) if so, to treat her as such.
 - iii) The Judge generally erred in her approach to the appeal.
 - iv) The Judge erred in failing to determine the risk to the appellant as a Shi'a Muslim if returned to Pakistan.
 - v) The Judge erred in failing to take account of material considerations in respect of the fact that the appellant's brother was said to have been forced to leave Pakistan and relocate to the United Arab Emirates, and the impact of his relocation on the availability of family support in Pakistan.
 - vi) The Judge erred in her approach to the country expert evidence.
 - vii) The Judge erred in applying the wrong threshold when assessing article 3 ECHR in respect of the appellant's mental health and in entirely failing to refer to, or alternatively make findings on, the risk of suicide in light of her poor mental health.
 - viii) The Judge erred in completely failing to determine the human rights appeal advanced under paragraph 276ADE(1)(vi) of the Immigration Rules ('the Rules').
9. In respect of ground i) above, it is properly to be noted that the Judge signed her decision on 16 February 2021, a little over three weeks after the conclusion of the hearing.
10. In granting permission to appeal, Judge Povey observed, inter alia:
 - '3. The appellant's claim for international protection had previously been dismissed by the Tribunal. In her current appeal, she claimed to raise new grounds and relied upon changes regarding the protection of women and Shi'a Muslims in Pakistan. The Judge determined the appeal within a few weeks of the hearing but her decision was not promulgated for a further seven months. Contrary to the grounds, it was not arguable that this administrative delay gave rise to an arguable error of law nor did it appear material that the Judge did not record treating the appellant as a vulnerable witness (to the extent that it impacted upon the assessment of the appellant's own

evidence). However, it was arguable that the Judge failed to properly determine the risks claimed to be faced by the appellant by reason of her religion, her mental health or her gender or provide adequate reasons for any such findings (see, for example, at [49] and [51]). It was also arguable that the Judge failed to determine or adequately reason her findings regarding the appellant's private life claim under Article 8 of the ECHR (at [54]).

4. For those reasons, the grounds disclose arguable errors of law and permission to appeal is granted. Despite my misgivings in respect of Grounds 1 and 2, all grounds may be pursued.'

11. The Secretary of State filed a Rule 24 response authored by Ms Willocks-Briscoe, dated 2 December 2021.

Decision

12. At the hearing before me Ms Chapman confirmed that the appellant did not pursue grounds 1, 2 and 3.
13. Ms Isherwood, with her usual candour, accepted on behalf of the Secretary of State that grounds 4 to 8 identified material errors of law and consequently the decision of the Judge should properly be set aside. Having considered the papers in this matter with care, I have reached the conclusion that the Secretary of State was correct in adopting such approach.
14. In respect of ground 4, it is clear that the appellant identified a fear of persecution as a Shi'a Muslim woman in her fresh claim. This element of the claim was addressed by the Secretary of State in her refusal decision. This issue was also addressed by the appellant's expert, Dr Gil Daryn, in his report dated 17 August 2018. Before the Judge, Ms Chapman relied upon the Court of Appeal judgment in *WA (Pakistan) v. Secretary of State for the Home Department* [2019] EWCA Civ 302, which concerns the religious persecution of Ahmadis in Pakistan. Ms Chapman contended that if the appellant wished to continue to practice her Shi'a faith upon return to Pakistan, and so not conceal her faith, it would be evident that she was not a Sunni Muslim, and this would exacerbate her vulnerability to persecution given the absence of any male protector. Despite clear reliance upon this element of the appellant's claim at various stages, the Judge made no findings of fact and failed to determine whether the appellant would be at risk upon return to Pakistan as a lone Shi'a Muslim woman. Such failure is a material error of law.
15. I also find that the Judge erroneously failed to take account of material considerations and such errors were material. She relied upon Judge Black's determination, dated 17 December 2015. She was permitted to adopt this decision as a starting point, as confirmed in the decision of *Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka** [2002] UKIAT 00702, [2013] Imm AR 1. However, the appellant placed great reliance upon the fact that her younger brother was required to relocate to the United Arab Emirates with his family in 2018 consequent, it

is asserted, to having been subjected to serious threats. She further relied upon the poor health of her elder brother. It was her case that her family in Pakistan have no income and this would impact upon their ability to support her. This evidence was not expressly addressed by the Judge in her finding. I note that at [19] of her judgment, the Judge erroneously observed the evidence presented as being that the younger brother was facing problems in the United Arab Emirates consequent to his being a Shi'a Muslim, rather than having had to relocate from Pakistan for that reason. This is a significant mistake of fact, and in the context of this appeal such error constitutes a material error of law: *R (Iran) v. Secretary of State for the Home Department* [2005] EWCA Civ 982, [2005] Imm AR 535.

16. As to ground 6, the appellant relied upon Dr Daryn's report. The Judge found it to be inconclusive, but in reaching such conclusion only referred to the expert's opinion as to the risks flowing to the appellant from her former husbands and not to other material aspects covered by the report including her position on return as a divorced Shi'a Muslim woman. I observe that when the Judge considered sufficiency of protection at [49] of her decision, she failed to expressly consider Dr Daryn's opinion. Indeed, in light of the existence of Dr Daryn's report, the conclusion at [49] that 'there is no new evidence to depart from the findings of Judge G A Black' is untenable. Dr Daryn's report was new evidence; the Judge was required to lawfully consider it. The judicial approach to Dr Daryn's evidence is fatally flawed and materially erroneous in law.
17. The appellant relied upon article 3 and the risks flowing from suicide ideation. This issue was addressed in the refusal letter and relied upon by Ms Chapman both in her skeleton argument and orally at the hearing. The Judge failed entirely to determine this aspect of the appellant's appeal. Such failure is of significant concern and establishes a material error of law.
18. The appellant relied upon article 8, in particular upon paragraph 276ADE(1)(vi) of the Rules. This paragraph of the Rules was addressed by the Secretary of State in her refusal letter and subsequently relied upon by the appellant at the hearing. It was argued on the appellant's behalf that being a divorcee without a husband or familial male protector, being a Shi'a Muslim, her lengthy absence from the country, her fragile mental health and her lack of employment for some fifteen years, the appellant would be subject to very significant obstacles affecting her capability to integrate into the community upon her return to Pakistan. Concerningly, the Judge failed to consider the appellant's case on this issue. Such failure is a material error of law.
19. In the circumstances, the only appropriate course to be taken by this Tribunal is to set aside the First-tier Tribunal's decision for material errors of law and confirm that no findings of fact are to be preserved.

Remaking the Decision

20. Both parties agreed that the matter should properly be remitted to the First-tier Tribunal for the decision to be remade and I conclude that such course of action is appropriate. I am satisfied that the nature or extent of any judicial fact-finding which is necessary in order for the decision in this appeal to be remade is such that, having regard to the overriding objective in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008, it is appropriate to remit this case to the First-tier Tribunal.

Notice of Decision

21. The decision of the First-tier Tribunal promulgated on 20 September 2021 involved the making of a material error on a point of law and is set aside pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.
22. The decision is to be remade by the First-tier Tribunal with no findings of fact preserved.
23. The anonymity order is confirmed.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: 7 March 2022