IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003812
First-tier Tribunal No:
PA/54518/2022 IA/10807/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 02 November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between

AN (PAKISTAN)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Appellant appeared in person without legal representation
For the Respondent: Ms Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 24 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and following the anonymity order made by UTJ Rimington on 20 September 2023, the Appellant is further granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

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Background

1. This matter concerns an appeal against the Respondent's decision letter of 6 October 2022 ("the Refusal Letter", refusing the Appellant's fresh claim for asylum and protection made by letter dated 18 November 2020.

2. The Appellant's claim is made on the basis that she is a member of a particular social group, being someone who is a potential victim of honour crime, fearing her own family in Pakistan on the basis of her refusal to enter into a forced marriage with a man, Mr Ali, who previously subjected her to sustained sexual abuse when she was a child living in Karachi.

3. The Refusal Letter accepted that the claimed particular social group exists in Pakistan and that the Appellant is a national of Pakistan. However, it refused the Appellant's claim. The main reason was that the claim remained substantially the same claim as that dismissed by First Tier Tribunal Judge Widdup in his decision promulgated on 6 November 2019, which found that the Appellant's credibility was damaged due to her immigration history and the fact that she did not raise the risk of an honour killing until after she had made four applications for leave to remain in the UK which were all refused. Her account having been so rejected previously, the Respondent considered the Appellant had not sufficiently proved that she would be a lone female on return to Pakistan or that she could not internally relocate or would not be able to seek effective state protection on return. It was also not accepted that the Appellant's depression, anxiety and suicidal thoughts met the high threshold for an article 3 claim nor were they considered to be a significant obstacle to return as Pakistan had a functioning healthcare system. Whilst it was accepted that she had a close relationship with her sister, brother-in-law and their children in the UK, this was not something exceptional warranting a grant of leave.

4. The Respondent undertook a review of the case on 21 April 2023 and maintained the reasons for refusal. The review stated that the credibility of the Appellant and her witnesses was at the heart of the appeal and that the Appellant had not provided further evidence sufficient to overturn the findings of First Tier Tribunal Judge Widdup.

5. The Appellant appealed the refusal decision.

6. Her appeal was heard by First-tier Tribunal Judge Chana ("the Judge") at Hatton Cross on 14 June 2023, who later dismissed it in its entirety in a decision promulgated on 24 July May 2023.

7. The Appellant applied for permission to appeal to this Tribunal on three grounds, namely that:

   (a) Ground 1: the Judge failed to apply the correct standard of proof and failed to make adequately reasoned findings in relation to Refugee Convention;

   (b) Ground 2: there was a material error in relation to the 'best interests' of relevant children; and

   (c) Ground 3: the Judge made inadequately reasoned conclusions in relation to Article 8 ECHR.

8. Permission to appeal was granted by First-tier Tribunal Judge Athwal on 7 September 2023, stating:

> "1. The application is in time.
>
> 2. The grounds assert that the Judge erred in that he failed to apply the correct standard of proof and failure to make adequately reasoned findings in relation to Refugee Convention and vulnerability; made a material error in relation to the 'best interests' of relevant children; and inadequately reasoned conclusions in relation to the Article 8, ECHR.
>
> 3. It is arguable that the Judge failed to adequately consider whether the Appellant was a vulnerable witness when assessing her credibility.
>
> 4. The other grounds also raise arguable errors of.[*sic*]"

The Hearing

9. The matter came before me for hearing on 24 October 2023. The Respondent was represented by Ms Ahmed. The Appellant attended in person along with her sister, and her sister's children. The children waited outside the courtroom. The Appellant confirmed that she did not have legal representation, her solicitors having written to the Tribunal on the previous day stating that they were no longer instructed. In the absence of legal representation, I had requested an Urdu interpreter attend the hearing. Ms Z Uddin therefore attended to assist the Appellant and her sister, both of whom confirmed they understood Ms Uddin and spoke through her in Urdu thereafter.

10. A preliminary discussion took place as to the Respondent's intention, or otherwise, to defend the Judge's decision.

11. Ms Ahmed candidly accepted the decision of the Judge was infected by a material error of law as discussed in ground 1, namely that the Judge had failed to record in her decision whether or not she accepted the Appellant was a vulnerable witness, and if she did, the effect which that vulnerability had in terms of the evidence. Ms Ahmed said that this was in clear breach of the "Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance" which stated at paragraph 15 that:

> "The decision should record whether the Tribunal has concluded the appellant (or a witness) is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and thus whether the Tribunal was satisfied whether the appellant had established his or her case to the relevant standard of proof. In asylum appeals, weight should be given to objective indications of risk rather than necessarily to a state of mind."

12. Ms Ahmed said she could not see any indication in the Judge's decision that any adaptations had been made in the hearing in light of the Appellant's vulnerability, for example, offering breaks and requiring non-confrontational questioning, despite the Judge recording in [30] and [31] oral evidence of the Appellant indicating she was agitated and distressed. Ms Ahmed noted that the medical expert report of Dr Katona had recommended that such measures should be put in place. Ms Ahmed also noted the Judge had failed to make an anonymity order, which had since been rectified by UTJ Rimington. Ms Ahmed considered that this failure compounded the Judge's failure to treat and record the Appellant as vulnerable.

13. Ms Ahmed conceded that the Judge's decision must be set aside and remitted, although she said she would have maintained opposition to the remaining grounds. A discussion followed as to what this meant for the Appellant in terms of next steps. I confirmed at the hearing that I would also have found ground 1 to have been made out, and would record both Ms Ahmed's concession and my reasons in writing, which I do herein.

Discussion and Findings

14. In her decision, the Judge states:

> "64. This is the same claim before me that the appellant's parents still want her to marry her father's friend and a much older man, Mr Ali who she claims abused her in Pakistan when she was a child and a teenager. I will however consider the additional evidence adduced which was not before the First Tier Tribunal and then consider all the evidence in the round.
>
> 65. The evidence which was not before the First Tier Tribunal Judge essentially is updated medical evidence. The appellant provided a medico-legal report by Prof Cornelius Katona dated 28 October 2020, the updated medical report by Prof Katona, the appellant's medical records, documents relating to the appellant sister's children, witness statement of the appellant, her sister and brother-in-law. The psychologist addendum report by Dr Rachel Thomas."

15. Whilst it was correct to say that the Appellant's account of historical events in Pakistan, and the threat from her parents as regards forced marriage, had not changed, this did not comprise the whole of the Appellant's fresh claim. The Appellant's skeleton argument at paragraph 9 stated that:

> "It therefore remains part of AN's case that she would not have any network of support in Pakistan, where she would be unable to return to her family in her 'home area' and faces internal relocation as a psychiatrically unwell and vulnerable lone woman, who has become increasingly reliant on her sister and family unit for support in the UK"

16. The Judge at [65] (set out above) cites the medical evidence adduced which had not been before Judge Widdup. Based on this and the skeleton, the Appellant puts forward an argument that, even if she were found not to be at risk of forced marriage or abuse from Mr Ali, she would nevertheless be at risk on return due to her mental health conditions and alleged lack of support. The Judge appears to have recognised this at [24] stating that:

> "The appellant says that she cannot return to Pakistan due to her fear of an honour killing by her family for refusing to marry Mr Ali who was 20-22 years older than she was. She also claims to be at risk in Pakistan as a single lone woman. She is suffering from mental health issues such as depression, anxiety and has suicidal thoughts and if she is returned to Pakistan she will kill herself in the United Kingdom".

17. Whilst the Judge was correct to say at [56] at the decision of Judge Widdup was her starting point pursuant to Devaseelan [2002] UK IAT 00702, the question of the Appellant's mental health and treatment (requiring analysis of the expert reports) was one which needed to be resolved before reaching any conclusions as to whether there were grounds for departing from that decision. This is because any findings as to the Appellant's mental health would have an impact on findings made concerning her credibility, and her credibility affected all aspects of her account. This is made clear by AM (Afghanistan) v SSHD [2017] EWCA Civ

1123, paragraph 22 of which was cited in the skeleton argument (approach confirmed in paragraph 23), as follows:

> "a. given the gravity of the consequences of a decision on asylum and the accepted inherent difficulties in establishing the facts of the claim as well as future risks, there is a lower standard of proof, expressed as 'a reasonable chance', 'substantial grounds for thinking' or 'a serious possibility';
>
> b. while an assessment of personal credibility may be a critical aspect of some claims, particularly in the absence of independent supporting evidence, it is not an end in itself or a substitute for the application of the criteria for refugee status which must be holistically assessed;
>
> c. the findings of medical experts must be treated as part of the holistic assessment: they are not to be treated as an 'add-on' and rejected as a result of an adverse credibility assessment or finding made prior to and without regard to the medical evidence;
>
> d. expert medical evidence can be critical in providing explanation for difficulties in giving a coherent and consistent account of past events and for identifying any relevant safeguards required to meet vulnerabilities that can lead to disadvantage in the determination process, for example, in the ability to give oral testimony and under what conditions (see the Guidance Note below and JL (medical reports – credibility) (China) [2013] UKUT 00145 (IAC), at [26] to [27]);
>
> e. an appellant's account of his or her fears and the assessment of an appellant's credibility must also be judged in the context of the known objective circumstances and practices of the state in question and a failure to do so can constitute an error of law;
>
> and
>
> f. in making asylum decisions, the highest standards of procedural fairness are required".

18. Also, as per paragraph 24 of the well-known case of Mibanga [2005] EWCA Civ 367:

> "It seems to me to be axiomatic that a fact-finder must not reach his or her conclusion before surveying all the evidence relevant thereto. Just as, if I may take a banal if alliterative example, one cannot make a cake with only one ingredient, so also frequently one cannot make a case, in the sense of establishing its truth, otherwise than by combination of a number of pieces of evidence. Mr Tam, on behalf of the Secretary of State, argues that decisions as to the credibility of an account are to be taken by the judicial fact-finder and that, in their reports, experts, whether in relation to medical matters or in relation to in-country circumstances, cannot usurp the fact-finder's function in assessing credibility. I agree. What, however, they can offer, is a factual context in which it may be necessary for the fact-finder to survey the allegations placed before him; and such context may prove a crucial aid to the decision whether or not to accept the truth of them. What the fact-finder does at his peril is to reach a conclusion by reference only to the appellant's evidence and then, if it be negative, to ask whether the conclusion should be shifted by the expert evidence."

19. And further, as per paragraph 31:

> "…if an expert's view is to be rejected in the conclusive terms adopted by the adjudicator in this case, then proper procedure requires that at least some explanation is given of the terms and reasons for that rejection".

20. At [79] the Judge finds that "I find that there is no evidence before me which will persuade me to upset the previous decision" and at [81] that "the appellant's claim is entirely without merit and an attempt to live in the United Kingdom". She makes these findings having considered the Appellant's witness evidence at [71]-[78]. It is only after making these findings that, from [83] onwards, the Judge turns to assess the evidence of the Appellant's mental health conditions.

21. In doing so she puts the proverbial cart before the horse because, as Ms Ahmed rightly stated, and as per the above caselaw, it was incumbent on the Judge to first make findings as to the state of the Appellant's mental health and potential impact of that upon her evidence, before assessing the evidence itself. The Judge having taken this incorrect approach is obvious from [90] when she says (my emphasis in bold):

> "The appellant's claim, for humanitarian protection, is intrinsically linked to her claim that she would be subject to persecution on account of her claimed fear of an honour killing from her family. I have found that the appellant is not credible or a genuine refugee and she has no fear of her parents. **The medical evidence is essentially based on what the appellant has told the experts about her circumstances and has been believed. I have found that the appellant is not credible**".

22. I appreciate that the matter is somewhat circular given the medical reports turned on the Appellant's account and vice versa. However this is precisely why it was important to look at all the evidence holistically. The evidence before the Judge also included GP records and the important concession by the Respondent recorded in paragraphs 7 and 71 of the previous decision of Judge Widdup i.e. that it was accepted that the Appellant had experienced sexual abuse as a child in Pakistan, perpetrated by Mr Ali.

23. It also appears that the Appellant's diagnosis of major depressive disorder, confirmed by the two experts, was not challenged by the Respondent, and neither were the qualifications or credentials of those experts. Whilst the Judge confirms in [68] that she has carefully considered all of the evidence in the round, I cannot see that she has stated what weight she has attached to, or how she has taken into account, the Respondent's concession and this lack of challenge in particular, despite the accepted abuse being said to be a contributing factor to the Appellant's poor mental health.

24. Given those facts accepted by the Respondent and the lack of challenge made to the diagnoses of the experts, I agree that the finding by the Judge in [81] that the Appellant's claim was "entirely without merit" is misconceived.

25. I cannot see, having recognised it as an aspect of the Appellant's claim at [24], that the Judge properly addresses the question of whether the Appellant would be at risk due to her health conditions even if her account of risk from her parents and Mr Ali is rejected.

26. Overall, the Judge needed to make explicit findings concerning what the Appellant's health conditions are and what, if any, treatment and support she is getting in the UK, whether similar or equivalent support could be secured in Pakistan and overall, what the likely impact of return on the Appellant would be. It would also have been important to make findings concerning what the position with family support was in Pakistan and whether the family in the UK could provide any remote support. Findings on these matters are inextricably linked to

whether or not the Appellant's evidence could be accepted as credible which, again, is impacted by an analysis of her mental health. The findings in [80] are particularly affected by the lack of consideration of mental health, as there is no analysis of what impact this would have on the Appellant's ability to find work and/or support herself. The claims made in respect of asylum, humanitarian protection and articles 2 and 3 were all affected as a result.

27. The same is true of the claims made under immigration rule 276ADE and article 8, which largely turned upon the (credibility of the) Appellant's evidence concerning her relationship with her sister's family in the UK, and the children in particular.

28. Overall, given the Appellant's credibility was key to all aspects of her claim, the Judge's failure to properly heed and address the question of the Appellant's mental health both at the hearing and at the outset of her decision, is a material error which infects the Judge's decision as a whole. The Judge should have assessed the medical evidence before making findings as to the impact, if any, on her ability to provide credible coherent evidence, before going on to assess the evidence against that background.

29. I find there is also cause for concern as regards the Judge having put her own questions to the Appellant, as detailed in [39] – [42]. I find those questions detailed in [40] in particular go beyond seeking clarification of evidence and appear to show the Judge pursuing her own line of cross examination as to the bank statement evidence provided with the Appellant's application for study leave. This was inappropriate for several reasons: i) the Respondent was represented, ii) the Respondent does not appear to have raised this issue herself, iii) as such, it would not have been a challenge expected by the Appellant, and iv) there were reasons to have recorded the Appellant as being vulnerable and therefore to have avoided subjecting her to extended questioning, especially on unexpected topics. This concern is compounded by the Judge later using the Appellant's answers to these questions to make findings against her in [78], which findings feed into the overall findings on credibility. This was procedurally unfair.

30. As regards the standard of proof, I agree there is doubt as to whether the Judge fully understood and applied the correct standard to each aspect of the Appellant's claim. The Judge discusses standard and burden of proof in [20] – [23] in a way which is problematically phrased and thereafter does not mention or make clear which standard is being applied to which aspect of the Appellant's claim, even when moving from discussing asylum, to humanitarian protection, to the immigration rules. Having said that, and whilst the Judge clearly expresses some scepticism as to several aspects of the Appellant's account, I cannot see anything particularly indicative of the Judge applying something more than the lower standard to the protection elements of the claim.

31. I note paragraph 34 of the grounds of appeal asserts that the Judge challenged the Appellant as to why she needed an interpreter. I do not have a record or transcript of the proceedings in front of me to be able to make a finding on this, but will say that if correct, this would have been appropriate; it is for each Appellant to decide for themselves in which language they feel most comfortable and most able to give their best evidence. Even someone fluent in a second language may prefer to use their mother tongue in such situations as a hearing, to ensure understanding and confidence. Due to the lack of recording/transcript, I also make no comment as to the accuracy of the Judge's description of the oral

evidence. Given I have already found a material error above, I see no need to request a recording of the hearing before the Judge as it would be disproportionate to do so in these circumstances.

32. As ground 1 has been made out and conceded, grounds 2 and 3 are academic. I simply say I find them less meritorious on the face of it.

33. Overall, I find the errors found infect the decision as a whole such that it cannot stand.

Conclusion

34. I am satisfied the decision of the First-tier Tribunal did involve the making of errors of law.

35. Given that the material errors identified fatally undermine the findings of fact as a whole, I set aside the decision of the Judge and preserve no findings.

36. In the light of the need for extensive judicial fact-finding, I am satisfied that the appropriate course of action is to remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than Judge Chana.

Notice of Decision

37. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

38. I remit the appeal to the First-tier Tribunal for a fresh decision on all issues. No findings of fact are preserved.

39. Given the claim concerns issues of protection, the anonymity order made on 20 September 2023 is continued.

L.Shepherd
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
26 October 2023