



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002713
First-tier Tribunal No:
PA/54262/2023
LP/02380/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 22 August 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

SFS
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms M Foxley of counsel, instructed by Hanah Gold Solicitors Ltd
For the Respondent: Ms A Gilmour, Senior Home Office Presenting Officer

Heard at Field House on 9 August 2024

Order Regarding Anonymity

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 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

1. The Appellant is a citizen of Pakistan whose date of birth is recorded as 9th September 1993. On 25th February 2020 he made application for international protection as a refugee. On 3rd July 2023 a decision was made to refuse that application and the Appellant appealed.

2. On 19th April 2024, the appeal was heard by First-tier Tribunal Judge Norris sitting at Manchester, who in a decision dated 22nd April 2024, dismissed the appeal.
3. Not content with that decision the application, accompanied by grounds dated 5th May 2024, the Appellant sought permission to appeal to this Tribunal. On 6th June 2024 First-tier Tribunal Judge Saffer, noting that the application was made prior to 28th June 2022 [being material to the standard of proof to be applied (see section 31 of the Nationality and Borders Act 2022)] granted permission, thus the matter came before me.
4. Not in dispute is the basis upon which the Appellant advanced his case before Judge Norris nor that, which was not in dispute, it is convenient therefore to set out Judge Norris' introduction to his decision and reasons to give context to the appeal that is before me.

"3. The background to this appeal is set out in the documentation contained on MyHMCTS. The Appellant claims that:

- (a) When he was around 3 or 4 years old, the Appellant's late mother and paternal uncle had agreed that he should enter an arranged marriage with his cousin SB, who is around ten years older than the Appellant; the Appellant was not informed of the arrangement until he was visiting Pakistan in January 2019. SB and her parents lived in another part of the same house as the Appellant and his immediate family.*
- (b) The Appellant did not wish to marry his cousin and returned to the United Kingdom, promising to discuss the issue once his studies were completed.*
- (c) The Appellant went back to Pakistan for another visit in October 2019. He was again told he had to marry SB but refused once more and on this occasion was severely beaten and locked in a room by his uncle. With his cousin's assistance, the Appellant escaped and returned to the United Kingdom.*
- (d) His paternal uncle is an influential person with links to the authorities and would find and harm or kill him on return; he cannot seek the protection of the police, and he cannot relocate in Pakistan as a result. His uncle had submitted an FIR with the Peshawar police claiming that the Appellant has been harassing SB and the Appellant's uncle has also beaten and threatened the Appellant's brother."*

4. *The following material facts are not apparently disputed before the Tribunal and:*

- (e) The Appellant is a Pakistani national born in September 1993. He is a Pashtun from Peshawar and speaks Pashto, Urdu and English. He is educated to degree level, having obtained BA (Hons) in business administration and an MBA.*
- (f) The Appellant's mother died when he was young, and his father continues to be in Pakistan. The Appellant's brother is around eighteen months older than the Appellant and has studied in the United Kingdom and now lives in the United Kingdom States of America.*

- (g) *In September 2016 the Appellant came to the United Kingdom on a Tier 4 Student visa valid until August 2017, later extended to January 2021. The Appellant visited Pakistan in January 2019. In July 2019 his sponsorship was withdrawn as he had deferred his studies.*
- (h) *As claimed, the Appellant went to Pakistan again in October 2019, returning to the United Kingdom on 28th October 2019. His leave was curtailed in the United Kingdom on 10th December 2019 and expired on 11th February 2020.*
- (i) *The Appellant made his asylum claim on 25th February 2020."*
5. *The Appellant asserts that he would be at risk on return due to his membership of a particular social group (a Pashtu man who has refused to comply with an arranged marriage) or alternatively that he is entitled to humanitarian protection. The Respondent accepts that the particular social group exists in Pakistan but not that the Appellant is a member thereof."*
5. The grounds upon which permission was sought were twofold, being that the judge gave weight to immaterial considerations by judging credibility in part by reference to that which was said to be:
- (a) inherently implausible; and
- (b) by inappropriately drawing adverse inferences.
6. Although the grounds make general complaint, more particularly with reference to inherent plausibility, the grounds point to the judge:
- (a) Having found the Appellant's account, as to the age at which the Appellant found that his family had arranged for him be married, inherently implausible.
- (b) Did "not consider it likely" that the Appellant would be permitted to extend his studies abroad.
- (c) No general adverse findings at paragraph 18 of the decision and reasons by speculation as to what was or was not likely.
7. At paragraph 18 of the determination and reasons the reasons were as follows:
- "Nor do I consider it likely that the Appellant's mother would have arranged a marriage for him and not for his older brother. Indeed, I accept the Respondent's submission that given the patriarchal nature of Pashtun society, it is unlikely that the Appellant's mother would have been the one - rather than his father - to arrange a marriage for either of her sons. The Appellant also said in his interview that his uncle is very strict, enforcing a situation whereby the women in the house go to their rooms and hide when the men come in, to ensure that men and women 'do not mix up with each other'. In those circumstances, I find it unlikely that the Appellant's uncle would allow such an important decision to be made by the women of the family. (At one point the Appellant appeared to say that the decision had been made between his mother and his aunt, although he has otherwise said it was his mother and his uncle)."*

8. As to “adverse inferences” the grounds point to the judge drawing an adverse inference from the fact that:
- (a) the Appellant’s brother, who resides in an overseas jurisdiction was not called to give evidence before the Tribunal; and
 - (b) the Appellant did not provide a ticket, booking or credit card transaction in relation to the Appellant’s travel from Pakistan to the United Kingdom.
9. I have set out above, at some length, what brought this matter before the Upper Tribunal in order to avoid the same errors being made in the First-tier Tribunal because this matter is to be remitted, with the consent of both parties, because as Judge Saffer noted in granting permission, the application in this case was made prior to 28th June 2022. That date is material because thereafter the standard of proof to be applied in asylum claims in respect of past events was the balance of probabilities rather than the lower standard.
10. It is perfectly clear, reading paragraphs 10 and 11 of the decision and reasons, that at the very least, that the judge had not correctly self- himself, but of rather more concern is that throughout the decision and reasons, the judge has used the term “likely” or “unlikely”.
11. In these circumstances the determination and reasons are unsafe because one cannot know whether, if applying a different standard of proof, a different outcome would have resulted. It follows that the matter will be remitted to the First-tier Tribunal to be heard de novo. It is not possible, as both parties will appreciate, for any findings to be preserved in the circumstances.

Notice of Decision

12. The appeal to the Upper Tribunal is allowed. The decision of the First-tier Tribunal is set aside to be heard de novo in the First-tier Tribunal.



Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 August 2024