



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/08230/2017

THE IMMIGRATION ACTS

Heard at Field House

On 4 April 2018

**Decision &
Promulgated**

On 19 April 2018

Reasons

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**S S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Iengar, instructed by Malik & Malik solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Juss promulgated on 4 October 2017 dismissing her appeal against the decision of the respondent of 10 August 2017 to refuse to grant her leave and to refuse to recognise her as a refugee.
2. The appellant's case is that she arrived in the United Kingdom to join her husband who is a Spanish national, their having been married some years previously. She said she arrived on 7 April 2017 and after a week with her husband he left her in the house with somebody known as an Auntie

Kalsoom and shortly after that a friend of her husband by the name of Faisal came to visit her and they started an affair. This was later discovered by the husband and by that point the appellant was pregnant. It is her case that the child is not that of her husband's, that he has divorced her under Islamic law, that he is not named on the birth certificate of the child and that she faces difficulties on return to Pakistan on the basis of being a lone woman with a child the parentage of which is unknown.

3. The judge heard evidence from the appellant he also heard from submissions from both Counsel for the appellant and the Presenting Officer. These are set out in some detail in his decision.
4. The judge's decision on the facts is brief. He concluded first, that it was not plausible that the applicant did not know the father of her child given that she had entered on 7 May 2016. Second, that he did not accept that she had ever had a relationship with Faisal. Third, that he did not accept that there was any pact between herself and Faisal and this did not make sense. Fourth, he did not accept that there were interpreting difficulties during the interview which had given reason to confusion about her answers and fifth he considered it insignificant that the appellant and her husband were still married there being no explanation for that being offered. The judge concluded that he did not accept that the appellant was a lone woman who would be returning to Pakistan without any male protection. He also dismissed the appeal pursuant to Article 8.
5. The challenge is brought on a number of grounds. First, that there was a material error in that the applicant had clearly entered on 7 April 2016 and that this had infected the remainder of the conclusion arising from that. Second, that he had failed to give reasons as to why he did not accept that the appellant had never had sexual relationships with Faisal. Third, that he failed to give reasons for rejecting the account that there were interpreter difficulties and had failed to take into account the submissions upon that point. Fourth, that the decisions were perverse and fifth, he had failed to consider properly the position of the child having failed to give regard to her best interests.
6. I am satisfied that the judge did make a mistake of fact with regards to when the child had been born. That was accepted by Mr Walker on behalf of the Secretary of State. The difficulty that then flows from that, given the very limited reasoning in this decision, it that it is the only reason given why the judge did not accept that the child could not have been that of her husband. Indeed, her evidence had been that she did not know that however the date is the only reason given for rejecting that.
7. Second, there is no reasoning at all as to why the judge did not accept that there were interpreter difficulties. Whilst there are very limited details given at paragraph 14(d) of the appellant's witness statement the matter was clearly raised in cross-examination and was the subject of submissions by Counsel on behalf of the applicant. The judge should have

explained why he did not accept there were interpreter difficulties and said why he rejected the explanation given for the apparent inconsistencies as he had noted. Further, the reasoning in paragraphs 18 and 19 is such that it cannot be discerned why the judge reached his conclusions.

8. Taking these reasons together and bearing in mind that the entirety of the decision is based, it would appear, on an implicit adverse credibility, the conclusion that the applicant is not a refugee is unsustainable. In the circumstances it is unnecessary for me to consider whether the judge erred in failing properly to have regard to Section 55 of the UK Borders Act 2009.
9. It follows for the reasons I have given for finding an error of law that the decision must be set aside. It also follows that as the errors in this case go to the core of the claim and are such that the credibility finding is unsafe, it therefore follows that none of the findings of fact are safe or could be preserved and accordingly for these reasons I consider that it is appropriate, given that all the facts in this case would need to be remade, that the matter should be remitted to the First-tier Tribunal for a fresh decision on all issues to be heard by a judge other than Judge Juss.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remit the appeal to the First-tier Tribunal for it to make a fresh decision on all issues
3. The new appeal must not be before First-tier Tribunal Judge Juss.
4. The anonymity order made by the First-tier Tribunal is preserved

Signed

Date: 19 April 2018



Upper Tribunal Judge Rintoul