



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

Appeal Number: PA/00403/2019

THE IMMIGRATION ACTS

Heard at Leeds Combined Court Centre **Decision & Reasons Promulgated**
On 17 July 2019 **On 15 August 2019**
Decision given orally at hearing

Before

THE HON. MR JUSTICE LANE, PRESIDENT

Between

**AS
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer, Legal Justice Solicitors

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of a First-tier Tribunal Judge who, following a hearing in Bradford on 15 February 2019, dismissed the appellant's appeal against the decision of the respondent to refuse her protection and human rights claims. The appellant asserted a fear of family members in Pakistan, if returned there, and also a fear of a person who is not only a family member but also someone who sought to marry her. The judge comprehensively disbelieved the appellant on all material matters.

2. Permission to appeal the judge's decision was based on nine grounds, although the judge who granted permission correctly observed that some grounds were stronger than others. Mr Greer helpfully has concentrated before me on those stronger grounds.
3. The first is that the judge made a mistake of fact and also misapplied section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 in making an adverse credibility finding in respect of the appellant. In short, the judge misconstrued the chronology in the case. The judge appears to have thought that the appellant could have put forward the assertion that she was receiving threats from Pakistan before the judge who had earlier heard and dismissed the appeal she had brought against an earlier decision of the respondent. In fact, that was incorrect, given the point in time in which the appellant became aware of the threats.
4. The judge also considered that the appellant's credibility was damaged because she had failed to make an asylum claim or a human rights claim before being made aware of an immigration decision concerning her. The judge considered the immigration decision in question to be the negative judicial decision in her earlier appeal. But, as is manifest from section 8, the definition of an immigration decision for the purposes of that section does not encompass a decision of the First-tier Tribunal. It is confined to decisions reached by the respondent.
5. The next ground relates to a finding that the judge made in paragraph 25 of his decision. In that paragraph, the judge was considering an email which said this:-

"The email makes no reference to her relationship with [H] despite the hostility it purports to show. The email she says was the catalyst for her claim. It was followed, or so it is claimed, soon after, on 9 June 2018, by [R] attending with armed men to the appellant's parents' house, that is to say, his mother's sister's house, and issuing threats. I consider this to be implausible - family disputes may involve heated arguments where the same point could have been made without the need to attend with armed men. I take judicial notice that families with traditional values in Pakistan would not countenance a younger member of the family disrespecting his elders particularly in this extreme way."

6. This finding is very problematic. Judicial notice involves something which is obvious to any judge hearing a case in this jurisdiction in the United Kingdom. We cannot take judicial notice of something that is not obvious in that way. It is certainly not obvious to me nor, I suspect, to a number of other judges, albeit practised in this jurisdiction, that families with traditional values in Pakistan would not countenance behaviour of the kind described by the judge. What the judge in this case was in fact doing was to apply some knowledge of his own about behaviour in a foreign country. There is nothing on the face of it which is wrong with him so doing. On the contrary, the higher courts have respect for decisions of specialist tribunals, including the First-tier Tribunal (Immigration and Asylum

Chamber), in part because of the knowledge that its judges build up over time about conditions and behaviour in foreign countries. However, as Mr Greer rightly submitted, if a judge is to apply his or her knowledge of such a matter, then procedural fairness requires the judge to make that plain to the parties at the hearing, so that submissions can be made upon it. This does not appear to have happened in the present case, and is a further reason why the decision is flawed.

7. The next ground particularly relied upon by Mr Greer relates to a failure on the part of the judge to make any reference at all to a witness statement of the appellant's brother, which on its face corroborated her account of difficulties with the family. As Mr Greer said, the judge would have been at liberty to have ascribed little or perhaps even no weight to that evidence. It did, however, require to be taken into account and require a finding to be made in respect of it.
8. In his submissions on behalf of the Secretary of State, Mr Diwnycz indicated that he was unable to defend the judge's decision. The respondent agreed with the submissions that Mr Greer had made and the decision of the judge could not stand.

Decision

9. For the reasons I have given, I find that this decision contains material errors of law. I therefore set it aside.
10. I heard submissions as to what should happen now. Given the nature of the errors of law, very regrettably this decision has to be set aside in its entirety with no findings of fact preserved. In all the circumstances, therefore, having regard to the nature and extent of the judicial fact-finding that would be necessary, the proper course in my view is for this case to be remitted to the First-tier Tribunal to be heard afresh on all issues.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed
Date: 05/08/19

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber

