



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

Appeal Number: PA/52775/2020
(UI-2021-001159); LP/00293/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 26 August 2022**

**Decision & Reasons Promulgated
On 6 October 2022**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**H B
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Chaudhry ,Counsel instructed on behalf of the appellant

For the Respondent: Ms Young, Senior Home Office Presenting Officer

Anonymity :

Rule 14: The Tribunal Procedure(Upper Tribunal) Rules 2008:

Anonymity is granted because the facts of the appeal involve a protection claim. and 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal (hereinafter referred to as the "FtTJ") who dismissed the appellant's appeal against the decision of the respondent made on 25 November 2020 refusing her protection and human rights appeal.
2. The appellant is a citizen of Pakistan. She appellant entered the United Kingdom on 26 September 2018 having obtained a clearance as a partner of a British citizen. She made a claim for asylum on 17 December 2018.
3. The basis of her claim is set out in the decision letter and summarised in the decision of the FtTJ at paragraph 25. The central feature of the appellant's claim related to the fear of her former partner and his family. The factual history related to the appellant's family who were seeking to arrange her marriage. It was resolved in favour of the appellant's grandmother who arranged a marriage to a British citizen. Following a marriage that took place via a proxy in Pakistan, it was expected that the appellant would travel to the United Kingdom. However the appellant was separated from her family and taken to another address in Pakistan where the appellant stated she was held against her will and suffered ill-treatment and physical harm. The appellant was able to leave the property after she had been left unattended. She travelled to the United Kingdom following the notification that her visa had been prepared for travel.
4. When in the United Kingdom it was claimed that a phone call had been made to her family members in Pakistan by someone claiming to be a police officer investigating the persons involved in abducting the appellant. The appellant's father and overheard the conversation and she was subsequently informed that her father was very angry about the circumstances. The appellant asserted that she would also be at risk from her father as she had dishonoured the family.
5. The respondent in a decision taken on 25 November 2020 accepted that the factual claim made would fall within the category of a Convention Reason, based on her membership of a Particular Social Group. However for the reasons set out between paragraphs [26 and 37] the respondent did not consider that the appellant had given a credible, consistent and plausible account concerning the circumstances of the arranged marriage and the problems she claimed have experienced in Pakistan. The respondent additionally considered that her failure to claim asylum damaged her credibility. Consequently the decision was reached by the respondent that the appellant would not be at risk of persecution or serious harm if returned to Pakistan. As to article 3 based on medical grounds, the claim was considered between paragraphs [64 and 69] of the decision letter but for the reasons set out it was considered that the evidence did not cross the threshold of severity for a breach of article 3 based on medical grounds. Her claim was therefore refused.

6. The appeal came before the FtTJ on 16 September 2021. In a decision promulgated on 21 September 2021, the FtTJ dismissed the appeal on asylum grounds and on human rights grounds (Article 3). No Article 8 claim had been pursued (at [71]).
7. The FtTJ set out her factual findings and her analysis of the protection claim at paragraphs [28]-[54].
8. Whilst the FtTJ accepted that the appellant’s account of events of the problems in Pakistan had been reasonably consistent and detailed, the judge set out her reasoning as to why parts of her account were not plausible and therefore cast doubt on the overall credibility of the claim. At paragraphs [32]-[39] judge gave reasons as to why the appellant’s evidence as to who had the authority to make decisions about the arranged marriage had not been consistent or plausible. The FtTJ also found that the appellant had failed to identify the partner involved (at [42]) and also found the appellant’s account concerning the threats made by the appellant’s partner and mother-in-law which the appellant’s father was unaware of, to be implausible (at [44]). At paragraphs [45 - 49] the FtTJ set out her reasons why she did not accept the third-party evidence which the judge found to be “self-serving” and set out other general credibility points at [50], [51] and [52]. Consequently the FtTJ concluded that the appellant had failed to establish the core factual matrix of her claim and thus was not at risk of persecution or serious harm on return to Pakistan.
9. Permission to appeal that decision was sought. The grounds of challenge argued the following grounds:
 1. That the FtTJ erred in law in making inadequate credibility findings at paragraphs [31 - 42] of the decision.
 2. That it was wrong to hold against the appellant that she had not provided evidence of a relationship with her husband, and she had satisfied the respondent of that upon entry to the UK as a spouse.
 3. It was argued that the judge failed to apply the country guidance in SM and MH (lone women - ostracism) Pakistan CG when considering her account of mistreatment and escape in Pakistan, and her risk on return as a lone female.
 4. It was also argued that the FtTJ failed to apply R v SSHD (“self-serving” statements) at paragraph [48] of the decision is there was a failure to give adequate reasons for this designation of evidence.
 5. It was argued that the judge erred at paragraph [49] by giving inadequate reasons with respect to the communications with the police.
 6. It was argued that the judge erred at paragraphs [41 - 43] of the decision as the respondent had not contested the evidence in the newspaper.

10. Permission to appeal initially refused but was granted by Upper Tribunal Judge Lindsley on 1 February 2022 for the following reasons:

“The grounds relating to the assessment of the credibility of the appellant are arguable, and it is also Robinson obvious arguable that there was a failure to factor in the mental health evidence set under the heading article 3 into consideration as to whether the history was credible applying Mibanga. All grounds may be argued.”
11. At the outset of the hearing, Ms Young on behalf of the respondent conceded that the decision of the FtTJ involved the making of errors of law as set out in the appellant’s grounds and invited the tribunal to remit the appeal to the FtT for a fresh hearing. She invited the tribunal to preserve the findings made on the stand-alone Article 3 based on medical grounds.
12. Ms Chaudhury on behalf of the appellant stated that she was in agreement and that the correct disposal would be for the decision to be set aside and for the appeal to be remitted to the FtT.
13. The parties are in agreement that the FtTJ erred in the assessment of the credibility of the appellant’s account and that in particular there were no clear findings made as to the risk on return in the context of her own family members, including her father and that the factual matrix advanced on behalf of the appellant included a consideration of the decision in SM based on that risk and not just that relating to her partner and his family members.
14. It was also agreed by the advocates that the “Robinson obvious” point identified by UTJ Lindsley demonstrated the making of a material error on a point of law.
15. I am satisfied that the submissions as set out above demonstrate a material error of law. The appellant had relied upon medical evidence which the FtTJ recorded at paragraphs [56 - 66] having been referred by her GP to specialist services. The reference is made that the appellant had presented at that time with symptoms of psychological trauma, including extreme anxiety and fear, hypervigilance, panic attacks and insomnia. There were references made to her presentation being consistent with symptoms of post-traumatic stress disorder and that were significant safeguarding concerns regarding safety and well-being and that she was particularly vulnerable to further exploitation and/or domestic abuse.
16. Whilst the FtTJ considered the medical evidence in the context of the article 3 claim based on her mental health issues, as UTJ Lindsley observed, there was no assessment of that evidence when reaching conclusions on the credibility of the appellant’s account itself or any clear findings made by reference to the appellant’s general presentation and the diagnosis made by those who were involved in her medical care. In the appellant’s skeleton argument at point (b) entitled “the appellant’s narrative events in Pakistan”, it was stated “in coming to a conclusion whether the appellant’s account is reasonably likely to be true, the

tribunal will be guided by the approach suggested by the Court of Appeal in MN v SSHD [2020] EWCA Civ 1746. Reference is also made to MS (Pakistan) [2020] UKSC 9.

17. The decision of MN gave useful guidance not only on the approach to be taken to expert evidence from doctors and physicians but also restated the important principle in Mibanga v SSHD [2005] EWCA Civ 367 and that the decision whether the account given by the appellant is in its essential respect truthful has to be taken by the tribunal or decision maker on the totality of the evidence heard holistically. In Mibanga it was found that a judge considering the appellant's appeal at tribunal level only addressed the medical evidence relied upon by Mr Mibanga after articulating that the central allegations made by the appellant were not credible. Buxton LJ at paragraph [30] stated as follows:

"30. The adjudicator's failing was that she artificially separated the medical evidence from the rest of the evidence and reached conclusions as to credibility without reference to that medical evidence.."
18. As can be seen from the decision, the FtTJ did not adhere to this approach and demonstrates that the medical evidence was not considered as a composite part of her assessment of the credibility of the claim. As Ms Young conceded in her submissions, the credibility assessment undertaken by the FtTJ did not factor in the medical evidence and thus was considered in isolation rather than in the light of that medical evidence.
19. For those reasons, I am satisfied that those points establish legal errors in the approach of the FtTJ and that as a result were material to the outcome. Consequently the decision shall be set aside.
20. Having regard to paragraph 7.2 of the Senior President of the Tribunal's Practice Statement for the Immigration and Asylum Chamber, and the extent of the fact finding, which is required, I accept the submissions made by both advocates at the hearing. Both advocates agreed that as the errors of law relate to the credibility findings made and which are flawed, none of the findings of fact made are sustainable. Accordingly I am satisfied that it would in all circumstances be appropriate to set aside the decision and for it to be remitted to the First-tier Tribunal to be heard afresh. Ms Young invited the tribunal to preserve the assessment made under article 3 on medical grounds. I have considered that submission but as the decision is to be heard afresh by a different FtTJ and that consideration will be given to the medical evidence that is presented as at the date of the hearing, I do not seek to bind the FtTJ at this stage without knowledge of the up-to-date medical evidence relating to the appellant. I therefore do not preserve any findings of the FtTJ.

Decision

21. The decision of the First-tier Tribunal involved the making of an error on a point of law; the decision is set aside and shall be remitted to the First-tier Tribunal to be heard afresh.

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

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Signed Upper Tribunal Judge Reeds
Dated : 26/8/ 2022