IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001361

First-tier Tribunal No:
PA/04585/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 11 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MS RUKSANA KAUSAR
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person
For the Respondent: Mr Tan, Senior Home Office Presenting Officer
Interpreter: Mr Asghard

Heard at Manchester Civil Justice Centre on 25 July 2023

DECISION AND REASONS

1. The Appellant is a national of Pakistan, date of birth 15 April 1980, who on 15 January 2016 was granted for leave to remain on human rights grounds until 4 July 2018. On 19 June 2018 she applied for leave to remain on private and family grounds.

2. On 21 January 2019 the Appellant was convicted after trial of jointly causing or allowing a child to suffer serious physical harm and she was sentenced to thirty months imprisonment which resulted in the deportation procedure being invoked.

3. The Appellant claimed asylum and the Respondent refused her claims on 15 October 2020 and in doing so certified her asylum claim under section 72 of Nationality, Immigration and Asylum Act 2002.

4. The Appellant appealed this decision and the case was listed before Judge of the First-tier Tribunal Hosie (hereinafter referred to as the FTTJ) on 13 September 2021 and in a decision promulgated on 15 October 2021 her appeal was dismissed.

5. Permission to appeal was sought on behalf of the Appellant by her representatives on 28 October 2021. These grounds argued firstly, the FTTJ erred by not having regard to the later OASyS report dated 15 July 2021 and secondly, the FTTJ erred by relying on previous adverse findings even though ultimately the Appellant had been granted leave.

6. Permission to appeal was granted by Judge of the First-tier Tribunal Murray on 17 January 2022 who found it arguable there was an error in law because:

> "The grounds of appeal assert that the First-tier Tribunal Judge failed correctly to apply the Tanveer Ahmed principles in that the Judge failed to consider a recent OASYS report.
>
> It is also argued that in the Judge took account of adverse credibility findings in a previous appeal when these had been overcome as Appellant had subsequently been granted leave.
>
> It is arguable that in upholding the certificate under section 72 of the 2002 Act the Judge only considered the OASYS report dated 9 September 2020 in the Respondent's bundle and failed to consider the OASYS report dated 15 July 2021 in the Appellant's bundle. The former assessed the risk of serious harm as high in the community (p430 and 468 R's bundle) and the later as medium (p166 A's bundle). Whilst the other ground of appeal is less arguable I do not refuse permission."

7. The Appellant was unrepresented at today's hearing and an application to adjourn for new solicitors to be appointed had already been refused.

8. Other than to maintain she would be at risk of persecution were she returned to Pakistan the Appellant adopted the grounds of appeal.

9. Mr Tan adopted the Rule 24 response in which the Respondent opposed the granting of leave arguing that the grounds of appeal were utterly misleading in their portrayal of the latest OASYS report as support for a premise that the Appellant's assessed risk has significantly reduced. The

sole reason for the reduction of future risk was that the Appellant no longer had any contact with children and it was not, as the grounds misleadingly stated, due to any reduction in her risk to children. A careful reading of section 10.3 of the July OASyS report made it clear that the risk was reduced from high to medium because the Appellant was not allowed contact to children. Ironically, the OVP risk had actually increased in the July report and Mr Tan submitted there was nothing in the 2021 report which would have altered the Section 72 assessment as the FTTJ had concluded, with detailed reasoning, why the Appellant remained a risk to society.

10. Mr Tan submitted that other than a very brief claim that the FTTJ erred in considering the issue of delay the grounds simply argued that the FTTJ should have found in favour of the Appellant and failed to demonstrate any error of law especially as the grounds of appeal did not actually challenge any of the findings of the FTTJ from paragraphs 96-114 of the decision where the FTTJ dismissed the Appellant's asylum appeal.

11. Mr Tan submitted that even if, which was not accepted, the FTTJ erred in failing to consider the more recent OASYS report, there was no material error as the Appellant's appeal would still fall to be dismissed due to the unchallenged negative credibility and internal relocation findings.

12. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (512008 /269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

DISCUSSION AND FINDINGS

13. Having considered the respective submissions, I confirm there is no material error in the FTTJ's decision.

14. Whilst the FTTJ did not refer to the July OASyS report in the decision in order for that to be an error in law the content of that report must be capable of materially affecting the outcome of the decision.

15. Having read the July OASyS report I am satisfied there is nothing in that report which suggests the Appellant no longer posed a risk to known children. The original assessment in September 2020 was that this risk was high, but the assessment carried out in July 2021 report placed that risk as medium. However, this risk was only reduced because she was being prevented from having any contact with known children.

16. The Appellant argued that the FTTJ erred by not having regard to this reduction but as Mr Tan submitted the risk altered because it was 9 months post the original assessment and although she was back in the community she was still prevented from having contact with known children. If she had contact the risk would be higher.

17. The FTTJ assessed her risk under section 72 having concluded the offence she was convicted of engaged section 72. The presumption under section 72 was rebuttable and the FTTJ considered whether she no longer presented a present danger to the community. The FTTJ did not consider the July 2021 report but given the content of the report I have to ask myself whether this omission would have materially altered the FTTJ's conclusions. The same concerns highlighted in the earlier report remained and nothing contained in the grounds of appeal point to anything positive in the Appellant's favour and would have led the FTTJ to reach a different conclusion. The conclusion of the July report was the risk was not as high but the risk still remained.

18. The OVP assessment in the July report confirmed there remained a concern in relation to her and children (page 243 para R2.2) and her scores were 7% year 1 and 13% year 2. The original OVP assessment confirmed the same concerns with OVP scores of 5% in year one and 10% in year 2 thereby showing an increase in risk albeit small. The original report (page 912 at para R7.1) makes no reference to her being a risk to identifiable children but states she is a risk to her own children in care. The July 2021 report (page 248 para R7.1) identifies her as a risk to identifiable children as well as being a risk to her own children in care. The assessment of future risk is detailed in both reports and remains a concern.

19. The FTTJ undertook a very detailed examination of all the evidence before finding the section 72 decision had not been rebutted by the Appellant. There is nothing in the decision which suggests this finding was not open to the FTTJ. Whilst the FTTJ omitted to examine the conclusions of the July 2021 I am satisfied that even if the report had been considered the FTTJ's conclusion would have been the same.

20. It should also be noted that the FTTJ went on to consider her asylum claim and rejected it so even if the omission had been material the fact remained the FTTJ had examined all the evidence and made findings, including the option of internal relocation, that have not been challenged in the grounds of appeal.

21. I am satisfied that the FTTJ has properly dealt with the issues and there was no error in law by the FTTJ's failure to refer to the July 2021 report.

Notice of Decision

There is no error in law. The First-tier Tribunal's decision shall stand and the appeal is dismissed.

Deputy Judge of the Upper Tribunal Alis
Immigration and Asylum Chamber

27 July 2023