



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/08454/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
Reasons Promulgated
On 12 February 2016
February 2016**

Decision &

On 22

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

RS

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharma, counsel instructed by Adam Bernard Solicitors

For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of FTTJ Maka, promulgated on 2 December 2015. Permission to appeal was granted on 7 January 2016 by FTTJ Osborne.

Background

2. The appellant arrived in the United Kingdom on 11 August 2014 with leave to enter as a visitor. She attended the Asylum Screening Unit in April 2015, whereby she applied for asylum.
3. The basis of the appellant's asylum claim is that as a Sunni Muslim, she fears her family on account of her marriage to a Shia Muslim man, namely HS. HS was residing at the time in the United Kingdom where he was studying. In short, the appellant's family was not willing to allow her to marry HS and arranged for her to marry her cousin, KH, instead. When the appellant objected to marrying KH, her father assaulted her and her mother. Thereafter, the appellant resumed her work as a teacher and accountant and travelled to the United Kingdom. Upon arriving in the United Kingdom, the appellant learned that HS no longer had leave to remain. The appellant became pregnant and underwent a religious marriage with HS in November 2014.
4. The only aspect of the appellant's account, which was accepted by the Secretary of State, was her nationality and place of birth.
5. During the course of the hearing before the First-tier Tribunal, the FTTJ heard evidence from the appellant and from HS. The FTTJ found the appellant's claim to lack credibility owing to her inability to give details, inconsistencies in the oral evidence, as well as a number of implausible matters. In addition, the FTTJ noted that there was no documentary evidence before him to support the claim that HS was a Shia Muslim. The appellant's Article 8 claim was also rejected, both within and outside the Rules.

Error of law

6. Permission to appeal was sought, in essence, on the basis that it was arguable that the FTTJ misdirected himself in relation to the manner in which he arrived at his credibility findings.
7. The FTTJ granting permission did so on all grounds and commented as follows;

"In an otherwise careful and focused decision and reasons, it is nonetheless arguable that the judge erred in law at [65] where he did not accept that the Appellant would describe herself as single in her visa application if she was at that time engaged to be married. If the Appellant was engaged to be married then it is arguable that she was not at that time yet married. The finding of the judge is arguably material to his assessment of the Appellant's credibility and in that context is arguably material to the Appellant's appeal generally."

8. The Secretary of State's Rule 24 response of 13 January 2016 stated that the respondent opposed the appeal as it was considered that the FTTJ appropriately directed himself. In addition, the response made reference to

the numerous credibility findings made by the FTTJ other than those in the grounds. Reference was made to VHR (unmeritorious grounds) Jamaica [2014] UKUT 00367 (IAC);

“Appeals should not be mounted on the basis of a litany of forensic criticisms of particular findings of the First Tier Tribunal, whilst ignoring the basic legal test which the appellant has to meet.”

The hearing

9. Mr Sharma had not seen the Secretary of State’s Rule 24 response. I loaned him a copy from the file and gave him time to consider it before hearing from him. In summary, he submitted that there were a number of material errors in the FTTJ’s decision and reasons.
10. While indicating that he relied upon the grounds of appeal as a whole, Mr Sharma focused on just two matters. The first was what he described as the FTTJ’s conflation of religious and cultural matters at [60] of the decision. He submitted that the appellant’s evidence was that her family was not culturally strict, in that they allowed her to be educated and to work. In relation to the second matter, which concerned the FTTJ’s findings that there were inconsistencies between the evidence of the appellant and her husband as to how they met, Mr Sharma asked me to find that their accounts of the first encounter with one another were not mutually exclusive and that there was no real inconsistency.
11. Ms Fijiwala relied on the Rule 24 response as well as the decisions in VHR and VV(grounds of appeal) Lithuania [2016] UKUT 53 (IAC). She argued that the grounds did not show an error of law. Ms Fijiwala addressed each and every matter raised in the grounds and asked me to find that the FTTJ’s findings were sound. She also drew my attention to a number of core findings, which went unchallenged in the grounds. One of those matters concerned the complete absence of evidence to support the claim that the appellant’s husband was a Shia Muslim, at [70] of the decision and reasons. In addition, the FTTJ’s findings at [73]; that both the appellant and her husband were both Sunni Muslims and that they were already married in Pakistan with the blessing of their families.
12. In response, Mr Sharma argued that at [72] the FTTJ had noted the lack of evidence of cohabitation and questioned why he would need to see evidence of their relationship. He referred me to the grounds of appeal in relation to the oral evidence as to the appellant’s employment and the relevance of the address in the visa application. He maintained that the FTTJ’s decision was inconsistent as between [52] and [34/35]. Mr Sharma submitted that the FTT’s inference that one of the first questions the appellant’s parents would pose would be about religious background was incorrect and he asserted that the difference between Sunni and Shia Muslims would be more of caste than religion.

Decision on Error of Law

13. I upheld the decision of the FTTJ as I found he was entitled to conclude that the appellant's account was not credible. The FTTJ's alternative finding that the appellant could internally relocate with her husband was also sound. My reasons are as follows.

14. In reaching my decision, I have been guided by the decision in VV, with particular reference to the following part of the headnote;

"(1) An application for permission to appeal on the grounds of inadequacy of reasoning in the decision of the First-tier Tribunal must generally demonstrate by reference to the material and arguments placed before that Tribunal that (a) the matter involved a substantial issue between the parties at first instance and (b) that the Tribunal either failed to deal with that matter at all, or gave reasons on that point which are so unclear that they may well conceal an error of law."

15. I consider the grounds of appeal to be a challenge to some of the reasons given by the FTTJ for finding the appellant's account to be lacking in credibility. It is abundantly apparent in this case that the FTTJ considered all the evidence before him in his carefully drafted and detailed decision and reasons. His findings of fact are set out over 5 pages of the decision, between paragraphs [59] and [78].

16. The grounds criticise the FTTJ's findings at [60] of the decision, where he commented as follows; *"I do not accept that the Appellant came from an extremely religious family. If that were the case, I do not find credible the fact her family allowed her to live and work away by herself for at least 2 years."* The grounds argue that the FTTJ's assumption that the commitment of the appellant's parents to their Sunni religious views meant that they were repressive or misogynistic was a material misdirection. I have had regard to the FTTJ's record of the oral evidence, which was set out in his decision between [34] to [57]. At [36] the appellant agreed, during cross-examination that *"she was religious and her parents were strict."* It was therefore the appellant's own evidence that her parents were strict and not an assumption made by the FTTJ.

17. The grounds dispute the FTTJ's finding that the appellant and her husband had given inconsistent evidence regarding their first encounter. Rather than directly address the inconsistencies referred to in the decision, the grounds focus on the consistent aspects of the oral evidence. The grounds amount to no more than further submissions on the issue and do not argue that the FTTJ failed to deal with the issue or made unclear findings. Nonetheless, I have carefully considered the issue of the first encounter and whether the FTTJ erred in finding that there were inconsistencies.

18. According to [35] of the decision, during her oral evidence before the FTTJ, the appellant stated that the first time she spoke to her husband, he telephoned her and asked to speak to *"some woman called Sanja."* The appellant had then hung up and *"told him not to phone again."* The account of the appellant's husband is at [51] and he told the FTTJ that he had called the appellant accidentally and asked to speak to a man called *"Asif Rashid."*

He further stated that the appellant said that she could not hear him and *"told him to call back later."*

19. In these circumstances, the FTTJ did not err in concluding that the evidence of the appellant and her husband as to their first encounter was contradictory and according to the record of the hearing set out in the decision and reasons, no adequate explanation was put forward for this. I therefore do not accept Mr Sharma's submission that the two accounts were not mutually exclusive.
20. The grounds assert that the FTTJ gave inconsistent findings regarding HS's studies. A casual reading of the decision shows this not to be the case. At [62], the FTTJ was focusing on the appellant's vague evidence regarding her husband's studies. While at [70], the FTTJ noted the absence of evidence regarding the husband's studies. The FTTJ did not reject the claim that the husband was studying, after all he was known to have been granted leave to enter under Tier 4; it was more that the FTTJ was commenting on the less than transparent immigration history of the husband as a somewhat minor part of his conclusion that he was not a witness of truth.
21. The grounds disagree with the FTTJ's reluctance to accept that the appellant's parents would not have enquired of HS as to his religious background when they spoke to him on the telephone. I find that it cannot be said that the FTTJ misdirected in this regard in view of the appellant's evidence that her family were religious and strict. Mr Sharma's submission, or perhaps unsupported opinion, as to Shia and Sunni being caste issues rather than religious issues does not assist in this matter.
22. It was also open to the FTTJ to conclude that it was not reasonably likely that the appellant would be able to return to working away from home after being beaten, forcibly engaged and considered to have dishonoured the family by wishing to marry a Shia Muslim.
23. There is at first glance, some merit in the argument regarding the FTTJ's mention of the appellant's marital status on the visa application form, where she described herself as single. If the appellant's account were true, this indeed would have been the case. However, the FTTJ concluded that the appellant had not provided an honest account of her circumstances in Pakistan and he found that she had, in reality, married her husband in Pakistan and came to the United Kingdom with the blessing of her family. In which case, the appellant ought to have given her marital status as married. The FTTJ was correct to further note that the appellant's father had provided up-to-date bank documents as well as a supporting letter in order to support the visit visa application and that her husband's cousin had sponsored her visit (not her own cousin as she had claimed on the VAF). Those findings indicate that the appellant did not flee a violent family in Pakistan but misused the visit visa route in order to be reunited with her husband in the United Kingdom.
24. As identified by Ms Fijiwala, there was no challenge to the FTTJ's findings at

[70] that there was no evidence before him regarding HS's claimed Shia beliefs or at [73] that both parties to the marriage were Sunni Muslims.

25. The grounds argue at [71] that the FTTJ fell into speculation in rejecting the appellant's account of having undergone a telephone marriage. However, the FTTJ was told of no reason for not having an Islamic marriage in the United Kingdom. He was not told that this was even attempted.
26. There was no evidence from the Imam in Pakistan who was said to have conducted the Nikah. The grounds themselves fall into speculation in providing an explanation, which was not put forward at the hearing.
27. At [76], the FTTJ put aside his conclusions on credibility and considered whether an internal relocation alternative existed. He concluded, in view of the fact that he rejected the claim that the appellant's relatives were influential that she could return to Pakistan without her family's knowledge in the same way she claimed she left. There is no error in the FTTJ's approach to this issue
28. The appellant's appeal is dismissed.
29. An anonymity direction was made by the FTTJ. I consider it appropriate that this be continued and therefore make the following anonymity direction:

"Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. "

Conclusions

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I uphold the decision of the FTTJ.

Signed

Date: 14 February 2016

Deputy Upper Tribunal Judge Kamara

