



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

Appeal Number: PA/04475/2018

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 14 September 2018**

**Decision & Reasons  
Promulgated**

**On 05 October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE PEART**

**Between**

**MRS M J  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Allen of Counsel, Hubers Law Partners

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

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan. She was born on 12 August 1984. She appealed against the respondent's refusal to grant her asylum dated 20 March 2018.
2. Judge M A Khan (the judge) dismissed the appellant's appeal against the respondent's refusal to grant her asylum, humanitarian protection and on

human rights grounds because he found that the appellant was not a credible witness with regard to her claim, that she was not at risk on return and that the respondent's decision was proportionate in terms of Article 8.

3. The grounds claim the judge erred as follows:
  - (a) Refusing the adjournment request. See **Nwaigwe (adjournment: fairness) [2014] UKUT 418 (IAC)**;
  - (b) Rather than treating the previous determination as the starting point of his analysis, the judge considered the same conclusive of the appellant's credibility.
  - (c) Failure to give adequate reasoning for his decision. See **MK (duty to give reasons) Pakistan [2013] UKUT 641 (IAC)**.
  - (d) Failure to adequately evaluate the risk of suicide.
  - (e) Failure to adequately engage and reach findings on **Paposhvili 41738/10 [2016] ECHR 1113** in light of **AM (Zimbabwe) [2018] EWCA Civ 6**.
  - (f) Failure to consider and reach adequate findings on relevant considerations under Article 8, in particular 276ADE(1)(vi) and failure to treat the best interests of the children as a primary consideration including failure to adequately consider S.117B(6) of the 2002 Act.
4. Judge Andrew granted permission on 26 July 2018. She said inter alia:
  - "2. *I am satisfied, given the mental health of the appellant and the nature of the claims made by the appellant that it may well have been in the interests of fairness to adjourn the appeal and to allow the matter to be heard by an all-female court. In saying this I have noted that the appellant's representatives had not asked for such a court at CMR and they had instructed male Counsel to represent the appellant. However, the application at the hearing was clear.*
  3. *I am further satisfied that there are arguable errors of law in the decision in that the judge may not have considered all the evidence before him and fails to reach findings in respect of the documentary evidence that was before him.*
  4. *It is arguable that the judge's findings in relation to Article 3 are inadequate in that they have not considered the risk of suicide. Further, the judge fails to engage with the evidence that the appellant's family and that of her husband may not be available to them on return to Pakistan.*

5. *The judge has not considered paragraph 276ADE. He has not applied the principles in Section 117A and B. This is also an arguable error of law”.*

5. The respondent’s Rule 24 response was dated 13 September 2018. The judge considered the adjournment request at [9]–[11] of the decision. As observed by the judge, there was no previous request for an all-female court either at the CMR or prior to listing of the appeal. Further, there was no complaint made by the appellant or her Counsel at the hearing that the questions put in cross-examination were in any way inappropriate or could have affected the evidence.
6. The judge said at [13] that he had considered all of the evidence including the appellant’s appeal bundle which included further witness statements from the appellant, her husband and Doctor Stallworthy. He said again in [26] what he had taken into account. The judge considered Dr Stallworthy’s evidence at [37]–[39] and [55]–[57].
7. S.117 and 276ADE were adequately addressed on the evidence provided.
8. Read holistically and taking the previous determination as a starting point, the judge found there was no new evidence that caused him to be persuaded to overturn the decision of Judge Webb. At the core of the claim was the appellant’s incredible account regarding events in Pakistan. The appellant could expect family support. Her medication would be available there.
9. Any error on the part of the judge was not material.

### **Submissions on Error of Law**

10. Ms Allen relied upon the grounds. The judge’s approach to the application for an adjournment was at odds with Joint Presidential Guidance Note at [5.1.7]. The appellant needed to feel comfortable and at ease. She was denied a fair hearing.
11. In any event, the judge carried out no analysis of his own, rather, he relied upon previous findings made by Judge Webb.
12. Mr Melvin relied upon the Rule 24 response. This was a long-running appeal lacking credibility. The last minute application before the judge was a cynical ploy to avoid the hearing, which the judge was right to disregard.

### **Conclusion on Error of Law**

13. This was a fresh hearing before the judge involving a vulnerable witness. The judge clearly took a view regarding the merits of the adjournment request which failed to take into account the Joint Presidential Guidance

Note and **Nwaigwe**. It might well have been that the judge took a cynical view of the application bearing in mind that those instructing Mr Solomon had not previously requested an all-female court but given the nature of the application, the judge could hardly have taken “... *all precautions to accommodate the appellant as a vulnerable witness*”.

14. Judge Webb had previously dismissed the appellant’s appeal and the judge drew upon his findings. At [45] the judge correctly referred to the **Devaseelan** principle in terms of the previous decision being a starting point but then went on to quote at length Judge Webb’s reasoning without making his own analysis. All the judge said at [48] was that he did not find the appellant or her husband to be credible consistent witnesses. He said that they both avoided answering questions put to them in cross-examination or by the judge and that at times they were extremely vague and evasive in answering the simplest of questions. At [53] the judge said that the core of the appellant’s and her husband’s account had been previously disbelieved by Judge Webb and the fresh medical evidence did not overcome or change those previous findings without explaining his reasoning with regard to the same.
15. The judge acknowledged the appellant was a vulnerable witness at [47] but failed to take into account such vulnerability in his adverse credibility findings at [48].
16. The appellant’s claim was that since Judge Webb’s decision she had obtained further evidence which included an FIR dated 21 March 2013 and new medical evidence addressing Judge Webb’s criticisms but the judge failed to engage with the same in terms of any analysis of the appellant’s credibility. The failure to address these issues is a material error of law.

### **Notice of Decision**

17. I have found that the judge materially erred. The remaking of the appeal will require significant fact-finding. Having regard to [7.2] ([of the practice statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal]), I consider this is an appeal which is appropriate to be remitted de novo to the First-tier Tribunal.

### **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 him or any member of their 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  
2018

Date                      14                      September

Deputy Upper Tribunal Judge Peart