



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

Appeal Number: PA/04531/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 November 2018**

**Decision and Reasons  
Promulgated  
On 20 November 2018**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**W T  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Anonymity**

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

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. 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.

**Representation:**

For the appellant: Mr T. Ley, instructed by Tower Hamlets Law Centre

For the respondent: Mr I. Jarvis, Senior Home Office Presenting Officer

## **DECISION AND REASONS**

1. The appellant appeals the respondent's decision dated 28 April 2017 to refuse a protection and human rights claim. The appellant fears that she will either be forced into an unwanted marriage by her family or that she will be at risk of serious harm for having refused to marry the person chosen by her father.
2. The respondent accepted that the appellant's family put pressure on her to marry the man chosen by her father. The appellant obtained a Forced Marriage Protection Order from an English court. The decision letter states that "forced marriage threat and subsequent events" were accepted. The respondent accepted that the appellant had a genuine subjective fear on return but concluded: "for the reasons given below it is considered that your fear is not objectively well founded because internal relocation is available to you." The respondent concluded that she was sufficiently well educated and had other family support available. He concluded that it would be reasonable to expect the appellant to move to another area of Pakistan.
3. First-tier Tribunal Judge Monson dismissed the appeal on Refugee Convention grounds finding that there was insufficient evidence to show that her family members intended to harm her if she returned to Pakistan. However, he allowed the appeal on human rights grounds because he was satisfied that the appellant would face 'very significant obstacles' to integration in Pakistan as a "psychologically vulnerable woman in an irregular situation" who had been ostracised from her family.
4. Both parties sought to appeal the First-tier Tribunal decision and were granted permission. The details of the First-tier Tribunal judge's findings are set out in more detail in the Upper Tribunal's initial error of law decision (annexed). The Upper Tribunal concluded that the First-tier Tribunal decision relating to the Refugee Convention appeal involved the making of an error on a point of law. However, the First-tier Tribunal decision relating to the Human Rights appeal did not involve the making of an error on a point of law. The Refugee Convention appeal was listed for a resumed hearing.

### **Decision and reasons**

5. It is not necessary for me to make detailed findings in relation to the Refugee Convention appeal in light of the concession made by Mr Jarvis at the hearing. The decision letter accepted the appellant's account of events. The only reason given for refusing the application was the availability of internal relocation. He accepted that the appellant described an escalating situation in which she eventually became ostracised from her family. The attitude of her siblings changed. He noted what the Upper Tribunal said in the error of law decision. The respondent could not legitimately argue that the appellant would not be at risk from her father if

she returned to her home area. The findings made by the First-tier Tribunal judge relating to 'very significant obstacles' to integration for the purpose of paragraph 276ADE altered the position in relation to the availability of internal relocation. He made clear that the respondent's general position is that the sole fact of being a lone woman is not sufficient to show that internal relocation would be unduly harsh. However, on the findings made by the First-tier Tribunal and the facts of this case he accepted that the appellant met the requirements of the Refugee Convention.

6. I am satisfied that the concession was properly made on the facts of this case. The appellant gave a credible account of pressure put on her by her father to marry. The appellant initially sought to avoid her father but as the pressure mounted the situation escalated. When she told her father that she did not want to marry the man of his choice, he began to make threats towards her. Eventually she became ostracised from her family. The appellant's account is detailed and consistent and is supported by evidence. I am satisfied that the threat of force marriage is sufficiently serious to amount to persecution and that the background evidence relating to Pakistan also supports her fear of the possibility of 'honour' based violence as a result of her having refused to comply with the wishes of her family. The reason why there is a real risk of serious harm is because she is a woman who has breached social mores by refusing to comply with her family's wishes. There is a real risk of serious harm to the appellant in her home area. Although the test under paragraph 276ADE(1) (vi) of the immigration rules is one that relates to an assessment under Article 8 of the European Convention on Human Rights, the test is sufficiently stringent to show that the same facts would render internal relocation 'unreasonable' or 'unduly harsh' for the purpose of the assessment under the Refugee Convention.
7. For these reasons I conclude that the appellant has a well-founded fear of persecution for reasons of her membership of a particular social group. The decision breaches the United Kingdom's obligations under the Refugee Convention.

## DECISION

The Refugee Convention decision is remade. The appeal is ALLOWED.

The Human Rights appeal was ALLOWED by the First-tier Tribunal. The decision stands.

Signed  Date 13 November 2018  
Upper Tribunal Judge Canavan

**ANNEX**



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

Appeal Number: PA/04531/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 03 July 2018**

**Decision Promulgated**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**W T  
(ANONYMITY DIRECTION MADE)**

Appellant/Respondent

**and**

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

Respondent/Appellant

**Anonymity**

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

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues and the appellant is a vulnerable witness. I find that it is appropriate to continue the order. 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.

**Representation:**

For the appellant: Mr T. Lay, instructed by Tower Hamlets Law Centre  
For the respondent: Ms A. Everett, Senior Home Office Presenting Officer

### **DECISION AND REASONS**

1. The claimant appealed the Secretary of State's decision dated 28 April 2017 to refuse a protection and human rights claim.
2. First-tier Tribunal Judge Monson ("the judge") dismissed the appeal on Refugee Convention grounds and allowed the appeal on human rights grounds.
3. Both parties have been granted permission to appeal to the Upper Tribunal. The claimant, to challenge the decision to dismiss the appeal on Refugee Convention grounds. The Secretary of State, to challenge the decision to allow the appeal on human rights grounds. For the sake of convenience, I will refer to the parties as they were before the First-tier Tribunal although technically they are both appellants and respondents in the cross appeals to the Upper Tribunal.
4. The judge outlined the appellant's account [13-21]. The appellant feared that she would be forced into marriage by her family if she returned to Pakistan. The judge noted that the East London Family Court issued a Forced Marriage Protection Order on 10 October 2016 [21]. The judge noted that the respondent recognised that the appellants' account was "internally consistent, sufficiently detailed and was supported by external evidence". The judge observed that the reasons for refusal letter accepted: "forced marriage threat and subsequent events" [24]. However, the respondent disputed that she would be at risk on return because sufficient protection would be available in Pakistan. In the alternative, she was educated and had work experience. It would be reasonable to expect her to relocate to another area away from her family [25-26].
5. The extent of the concession made in the decision letter relating to "subsequent events" was somewhat unclear. The judge found that "the concession clearly extends as far as accepting that, prior to the *ex parte* order, the Appellant's father had pressurised the Appellant into marrying someone of his choice." [40]. However, he concluded that there were discrepancies in the appellant's account relating to the extent of the threats made by her father [41-51]. He concluded:

"50. The evidence in her witness statement that her father began to make death threats against her prior to his visit to the UK in July was contradicted by the Appellant's oral evidence that her father was not made aware of her refusal of the proposal until August. Her account that her siblings supported the father's proposal, and encouraging her to accept it, is contradicted by what she told her GP in in October 2016. It is significant that in her oral evidence the Appellant said that she felt she could not trust the siblings who had supported her in the past, but she did not give any indication that this fear was well-founded. She has also not

produced any exchanges with her siblings to show that the fear is well-founded.

51. Having assessed the evidence in the round, I am not persuaded that the Appellant's father sought to coerce the Appellant into marriage through making threats against her life or person if she did not obey him (with the exception of the oblique threat at B63, which the appellant did not apparently perceived as a threat directed towards her at the time - given what she told the police in October 2016); or that, after the end of the disclosed exchanges - which cease in mid-September - he communicated directly or through the Appellant's siblings any threats to force her into marriage if she came back to Pakistan, or a threat to harm her in Pakistan for dishonouring him. I consider that if such threats had been made or intimated, the Appellant would have been able to produce documentary evidence of this, just as she was able to produce the evidence of "chat room" exchanges in August and September."
6. The judge went on to give reasons for rejecting the appellant's claim that she would be at risk because her father had filed a false FIR against her alleging that she was complicit in a robbery, primarily on the ground that it would be easy for her to refute the allegations because she could prove that she was in the UK at the time [60-63]. For these reasons the judge concluded that the appellant did not have a well-founded fear of persecution if she returned to Pakistan.
7. The judge went on to assess the case on human rights grounds:
  - "65. However, I accept that the Appellant is terrified of going back to Pakistan, and there is compelling evidence that a psychologically vulnerable woman in an irregular situation, as she would be - being completely ostracised by her family in Pakistan and having no male protector - would face very significant obstacles to reintegrating into life in Pakistan, wherever she went. Although her sister-in-law is an ally, I accept that it would not be a realistic option for the appellant to return to reside with her sister-in-law in the family home in Gujarat, as her sister-in-law could not go against the wishes of her father. In the 2016 Home Office country guidance at 7.5.1 a representative of the HRCP is quoted as saying in 2013 that it was "next to impossible" for a single woman to [live] alone in Pakistan due to prejudices against women and economic dependence. Accordingly, I allow the appellant's appeal on Article 8 grounds by reference to Rule 276ADE(vi)."

### **The Refugee Convention appeal**

8. The claimant appeals the First-tier Tribunal decision relating to the Refugee Convention appeal on the following grounds:
  - (i) *Irrational findings* - The First-tier Tribunal findings relating to risk on return were irrational in light the concession and the background evidence showing that it was at least reasonably likely that the appellant's fear of forced marriage or retribution by her father for refusing to marry was well-founded. The report made to the police in

October 2016 clearly indicated that she was reporting threats made by her father.

- (ii) *Failure to give adequate reasons* - The First-tier Tribunal failed to give adequate reasons to explain what the “fundamental discrepancy” was in the nature of the threats made by her father. In requiring the appellant to produce documentary evidence to show that he continued to make threats, the judge failed to take into account the appellant’s oral evidence that threats were communicated to her in telephone conversations.
- (iii) *Failure to give appropriate weight to expert evidence* - The First-tier Tribunal failed to place sufficient weight on the expert report of Dr Uzma Moeen, who concluded that her fears were not speculative. The First-tier Tribunal also failed to give adequate weight to the medical evidence, which was supportive of the appellant’s claim to have been threatened.
- (iv) *Mistake of fact / misapprehension of the evidence* - The finding at [50] misunderstood the evidence given by the appellant in her witness statement.

### **The Human Rights appeal**

9. The Secretary of State seeks to appeal the First-tier Tribunal decision relating to the human rights appeal on the sole ground that the judge erred in failing to take into account the public interest considerations contained in section 117B of the Nationality, Immigration and Asylum Act 2002 (“NIAA 2002”) when deciding the appeal under Article 8.

### **Decision and reasons**

#### *The Refugee Convention appeal*

10. Although some of the judge’s findings relating to the likelihood of risk on return were open to him to make, I find that there is merit in the claimant’s submission that the judge failed to take into account evidence that was material to a proper assessment of risk on return.
11. The respondent accepted the claimant’s account of the pressure that her father put on her to marry although the judge quite rightly pointed out that the extent of the concession relating to “subsequent events” was somewhat unclear. The First-tier Tribunal findings make clear that the concession went as far as to accept that, before the Forced Marriage Protection Order, the claimant’s father had pressurised her into marrying someone of his choice.
12. The order made by the East London Family Court was relevant to a proper assessment of the likelihood of forced marriage and/or a risk of serious harm, but the import of this decision was not given adequate consideration by the First-tier Tribunal. On 07 November 2016 the court found that there was evidence to show that the claimant’s parents “may

have used or threatened violence against the person being protected or otherwise in connection with the matters being dealt with by the order and that there is a risk of significant harm to a person, attributable to conduct of the respondents if the power of arrest is not attached to the provisions immediately.” The order went on to prohibit the claimant’s parents from (i) forcing her into marriage; (ii) using or threatening violence; or (iii) intimidating or harassing the claimant.

13. The police reports outlined mixed reports of her father making ‘threats’ against her, but at one point stating that “no actual threats of violence have been made” (22/10/16).
14. Given the terms of the order it seems unlikely that her father would risk making direct threats against her in writing. No findings were made as to whether, having accepted the credibility of the core element of her account, the appellant’s evidence that she was threatened on the telephone was capable of belief.
15. There is merit to the argument that the judge failed adequately to place his findings in the context of the background and expert evidence relating to forced marriage and ‘honour’ violence against women in Pakistan. The expert report was considered but rejected in brief terms because the judge was “not persuaded that there is a real risk of the Appellant on return to Pakistan being targeted by her father, or by her cousin’s family, or by any other male members of the family.”[56]. The expert report should have formed part of the overall assessment of whether the claimant’s account of the threats made by her father was likely to be credible.
16. However, given that it was accepted that the appellant faced a risk of force marriage sufficient to justify the making of a Force Marriage Protection Order, no consideration was given to the principles outlined in Article 4(4) of the Qualification Directive:

“The fact that an applicant has already been subject to persecution or serious harm or to direct threats of such persecution or such harm, is a serious indication of the applicant’s well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.”
17. The judge’s findings appeared to focus on whether the appellant was at risk of physical harm from male members of her family for having refused to marry the person chosen by her father. No consideration was given to whether the risk of forced marriage, even absent physical violence, was sufficient to amount to a gender-specific form of persecution (Article 9(2) (f) Qualification Directive) if she returned to Pakistan. A court in the UK found that there was sufficient risk of forced marriage to justify making an order to protect her from serious harm. The First-tier Tribunal failed to consider whether there were good reasons to consider that the threat of forced marriage would not be repeated. In focussing on discrepancies as to whether the threats made by the claimant’s father extended to threats



of physical violence and/or death threats, the First-tier Tribunal failed to make findings on a material matter, which was whether there continued to be a risk of forced marriage in Pakistan in the absence of the kind of restraining orders that had been put in place in the UK.

18. I give due weight to the fact that the judge heard and assessed the evidence of the claimant, but given the concession relating to the Force Marriage Protection Order, and the importance of the issues involved in a protection claim, I conclude that the findings made by the First-tier Tribunal were lacking in some important respects. It is necessary to set aside that aspect of the decision for findings to be made on those issues.
19. For the reasons given above, I conclude that the First-tier Tribunal decision relating to the Refugee Convention appeal involved the making of an error on a point of law. It is normally appropriate for the Upper Tribunal to remake the decision even if it involves making some further findings of fact. In this case it is not appropriate to remit the Refugee Convention appeal to the First-tier Tribunal for a fresh hearing because the judge's findings relating to the human rights appeal are sustainable and need to be preserved (see below).

#### *The Human Rights appeal*

20. I indicated that the hearing that there was no error of law in the First-tier Tribunal decision relating to Article 8. The Secretary of State's grounds of appeal do not particularise any challenge to the judge's findings relating to paragraph 276ADE(1)(vi) of the immigration rules. The judge's findings were within a range of reasonable responses to the evidence relating to the conditions for lone women in Pakistan and were generally consistent with the principles outlined by the Court of Appeal in *SSHD v Kamara* [2016] EWCA Civ 813 in so far as a similar test was considered in the context of a deportation appeal.
21. GEN.1.1 of Appendix FM of the immigration rules states that the rules reflect the Secretary of State's position as to where a fair balance should be struck in assessing private and family life issues under Article 8. GEN.1.1 specifically states that the rules reflect the public interest considerations contained in Part 5A of the NIAA 2002.
22. Section 117A of the NIAA 2002 states that Part 5A applies where a court or tribunal is required to determine whether a decision breaches a person's right to respect for private and family life under Article 8. Section 117A(3) makes clear that the 'public interest question' reflected in the factors outlined in section 117B "means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2)".
23. The immigration rules are said to reflect the public interest considerations set out in Part 5A of the NIAA 2002. The only stage at which the Tribunal

might need to consider the traditional Strasbourg approach balancing the individual's rights under Article 8(1) with public interest considerations under Article 8(2) would be when the tribunal moves on to an assessment of Article 8 outside the rules.

24. In this case the judge gave sustainable reasons, which have not been impugned or appealed, to say why the appellant met the private life requirement contained in paragraph 276ADE(1)(vi) of the immigration rules. The rules are said to reflect the Secretary of State's position as to where a fair balance should be struck and are also said to reflect the public interest consideration outlined in Part 5A of the NIAA 2002. Having found that the appellant met the private life requirements of the immigration rules it was not necessary for the judge to go on to consider Article 8 outside the rules, at which point express findings might need to be made with reference to section 117B NIAA 2002. The judge's failure to expressly consider section 117B was not material to a proper determination of the human rights appeal.
25. For these reasons I find that the First-tier Tribunal decision relating to the human rights appeal did not involve the making of an error on a point of law. The decision in respect of the human rights appeal shall stand.

## **DIRECTIONS**

26. The appellant's representative shall confirm the number of witnesses (if any) to be called at the resumed hearing and whether they require the assistance of an interpreter by **21 September 2018** at the latest.
27. Permission is given to file up to date evidence. Any further documents relied upon in support of the Refugee Convention appeal should be filed at least **7 days** before the next hearing.

## **DECISION**

### *The Refugee Convention appeal*

The First-tier Tribunal decision involved the making of an error on a point of law

The decision will be remade at a resumed hearing

### *The Human Rights appeal*

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

The decision in respect of the human rights appeal shall stand

Signed  Date 03 September 2018  
Upper Tribunal Judge Canavan