



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/07471/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 18<sup>th</sup> January 2018**

**Decision & Reasons  
Promulgated  
On 1<sup>st</sup> February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**SM  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr H Bandegani of Counsel instructed by Wilson Solicitors  
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a decision of Judge Andonian of the First-tier Tribunal (the FtT) promulgated on 16<sup>th</sup> August 2017. The Appellant is a citizen of Pakistan who made an asylum and human rights claim which was refused by the Respondent on 5<sup>th</sup> July 2016. The Appellant feared her family in Pakistan as she had entered into a same-sex relationship with her aunt in the UK, and she did not wish to marry her cousin, and it was the wishes of her family that she should enter into that marriage.

2. The hearing before the FtT took place on 27<sup>th</sup> July 2017. The FtT refused the Appellant's application for an adjournment to obtain further documentary evidence. The FtT heard evidence from the Appellant and her aunt. The FtT did not accept the Appellant's claim to be a lesbian and did not accept that she had had sexual relations with her aunt. The FtT found that the Appellant had fabricated her claim. It was not accepted that she would be forced into a marriage if returned to Pakistan, and not accepted that she would be subject to honour killing. The FtT found that the Appellant had delayed making an asylum claim, and had failed to provide a satisfactory explanation for this delay, and this damaged her credibility.
3. The appeal was dismissed on all grounds. The Appellant then applied for permission to appeal to the Upper Tribunal and relied upon four grounds which are summarised below.
4. Firstly it was contended that the FtT had acted unfairly by refusing the adjournment request. The documents in question would have supported the Appellant's claim for protection on the ground that she was at real risk of serious harm from family members. It was contended that the FtT had failed to consider the relevant procedure rule, and failed to consider whether refusing an adjournment would result in unfairness. The FtT had refused the request on the basis that the Appellant and her representatives had had sufficient time to obtain the documentation. It was contended that this was an incorrect test.
5. The second ground was that the FtT erred by failing to take into account post-hearing evidence. Documentary evidence had been received from Pakistan after the hearing, and this was sent to the FtT by the Appellant's representatives and was received by the FtT prior to promulgation of the decision. It was contended that the FtT had jurisdiction to consider that evidence prior to promulgation, and erred by failing to consider whether to admit the further evidence pursuant to the principles in SD Russia [2008] UKAIT 00037.
6. The third ground contended that the FtT erred by failing to assess all relevant evidence in the round. Reliance was placed upon Mibanga v SSHD [2005] EWHC 367.
7. The fourth ground contended that the FtT erred by failing to provide reasoning on material matters. In particular at paragraph 22 the FtT identified an inconsistency in the Appellant's evidence regarding the chronology of events, but did not explain why this was found to be damaging to credibility. At paragraph 23 the FtT set out a core feature of the Appellant's claim, concluding that it was not credible but did not explain why. At paragraph 24 the FtT found part of the Appellant's account to be wholly inconsistent, but did not explain why.
8. Permission to appeal was granted by Judge Saffer of the FtT in the following terms;

“3. It is arguable that the judge may have materially erred in not adjourning the hearing to enable evidence from Pakistan to be produced, and may have materially erred in not considering it when it was produced shortly thereafter and prior to promulgation. All grounds may be argued”.

9. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. The Respondent indicated that the application for permission to appeal was not opposed. It was accepted that the FtT had materially erred in law by not applying the correct test as set out in Nwaigwe when deciding to refuse the adjournment request.
10. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside.

### **The Upper Tribunal Hearing**

11. Mr Walker, on behalf of the Respondent, adopted the rule 24 response and confirmed that the Respondent accepted that the FtT materially erred in law as contended in the grounds contained within the application for permission to appeal. It was accepted that the errors were material, and meant that no findings could stand.
12. I was asked by both representatives to set aside the decision of the FtT and remit the appeal to the FtT to be heard again.

### **My Conclusions and Reasons**

13. I set aside the decision of the FtT. I find that the FtT did not apply the principles in Nwaigwe [2014] UKUT 00418 (IAC) when considering the adjournment request. There is no evidence that the FtT considered whether refusing the adjournment would result in unfairness, and it is the fairness test that must be considered.
14. I also find that the FtT erred in not considering potentially material evidence which was supplied to the FtT prior to promulgation. No adequate reasons are given for declining to admit this evidence. The first two grounds submitted on behalf of the Appellant therefore disclose material errors of law. Linked to those two grounds, is the third ground which is a failure to assess all relevant evidence in the round. There was a failure to consider the post decision evidence which had been the subject of the adjournment request.
15. I agree with both representatives in that the errors of law mean that the findings made by the FtT are unsafe and cannot stand.
16. The decision needs to be re-made. I have considered the Senior President’s Practice Statements, paragraph 7.2 of which is set out below;

The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that;

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

17. This is a claim for international protection, and there is significant fact-finding to be made, and the refusal to grant an adjournment meant that the Appellant did not have a fair hearing, as there was potentially material evidence which was not considered. It is therefore appropriate for this appeal to be remitted back to the FtT to be considered afresh. There are no findings preserved. The appeal is to be heard by an FtT Judge other than Judge Andonian. Both parties will be advised of the hearing date in due course. Both parties should ensure that any documentary evidence to be relied upon is served upon the FtT and the other party at least fourteen calendar days before the next hearing date.

### **Notice of Decision**

The appeal is allowed to the extent that it is remitted back to the FtT to be heard again with no findings preserved.

### **Anonymity**

The FtT made an anonymity direction. That direction is continued pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008. Unless and until a Tribunal or court orders otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the Appellant or any member of her family. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

18<sup>th</sup> January 2018

Deputy Upper Tribunal Judge M A Hall

### **TO THE RESPONDENT FEE AWARD**

No fee award is made. The issue of any fee award must be decided by the FtT.

Signed

Date

18<sup>th</sup> January 2018

Deputy Upper Tribunal Judge M A Hall