



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/09940/2014

**THE IMMIGRATION ACTS**

Heard at Taylor House  
On 13 October 2015

Decision & Reasons Promulgated  
On 5 November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

N B  
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Khan, Counsel  
For the Respondent: Ms Brocklesby-Weller, Home Office Presenting Officer.

**DECISION AND REASONS**

1. Given the nature of the appeal and the appellant's claimed circumstances, the appellant is entitled to anonymity in these proceedings and I make a direction accordingly.
2. The appellant is a citizen of Pakistan born on 11 May 1981. She appealed against a decision of the respondent dated 4 November 2014 to refuse to grant her asylum. Her appeal was dismissed by Judge of the First-tier Tribunal Chohan ("the FTTJ") in a decision promulgated on 12 February 2015.
3. The appellant sought permission to appeal. It was granted by Judge of the First-tier Tribunal Simpson on 6 March 2015 who noted that the FTTJ was in error in stating that she had taken "judicial notice of the fact that in registering the birth of a child in this country there is no requirement that both parents had to be present". Arguable errors of law were also noted with regard to the credibility findings. Thus the appeal came before me.

## Submissions

4. Both parties' representatives agreed that the FTTJ had not addressed the best interests and welfare of the children, and that this was contrary to s55, Borders, Citizenship and Immigration Act 2009. Furthermore, both agreed that the FTTJ had not assessed or even mentioned the evidence of the appellant's cousin who attended the hearing and gave evidence with regard to the appellant's relationship with the father of her two children.
5. For the appellant, Mr Khan accepted there was little evidence with regard to the father of the appellant's two children. However, the appellant's cousin had given oral evidence of his first hand contact with the father. Despite this there was no analysis of that evidence. Instead the FTTJ had ignored it, neither making positive or negative findings on the issue. If the evidence had been rejected, the appellant was entitled to know why. If inconsistencies had been identified in the evidence, the FTTJ should have taken into account the appellant's explanation for them (such as her explanation for failing to register the name of the father of her children) before making an adverse credibility finding.
6. Ms Brocklesby-Weller, for the respondent, submitted that the analysis of the evidence, notwithstanding the lack of reference to the evidence of the appellant's cousin, was sufficient for the adverse credibility finding. The cousin would merely have confirmed the appellant's own evidence.

## Discussion

7. The FTTJ made adverse credibility findings, going so far as to find that "the evidence suggests that it is possible that the appellant was and still is married to [the father of her children]". This finding was directly contrary to the appellant's claim and in the face of contrary oral evidence given by the appellant's cousin to the effect that the appellant had never been married to the father of her children; nor was she still in a relationship with him. Despite this, the FTTJ makes no mention of the cousin's evidence in her decision.
8. I bear in mind the guidance in **Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC)** that reasons need not be extensive if the decision as a whole makes sense. However, in this case the fact-finding process is faulty. The findings of the FTTJ are directly contrary to the evidence of the appellant's cousin and there is no suggestion that that evidence had been rejected for any reason. Indeed the fact that the FTTJ has failed to refer to it at all leads me to conclude that it was not considered or taken into account.
9. The appellant's cousin's evidence goes to the nub of the appeal, addressing as it does the appellant's status as a single parent and the risk for her on return. The failure to refer to it in the decision-making process renders the findings of the FTTJ unsustainable. They are unsafe.
10. For these reasons, the decision of the First-tier Tribunal contains an error of law in the assessment of the evidence and the FTTJ's decision must be set aside in its entirety. The parties' representatives agreed that, in such circumstances, it was appropriate for the appeal to be decided afresh in the First-tier Tribunal.

## Decision

11. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be

dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunal Courts and Enforcement Act 2007 and Practice Statement 7.2(v), before any judge aside from FTTJ Chohan.

12. The anonymity direction made in the First-tier Tribunal is maintained.

**A M Black**

Deputy Upper Tribunal Judge

**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.

**A M Black**

Deputy Upper Tribunal Judge