



**UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

Appeal No. AA/10846/2013

THE IMMIGRATION ACTS

Heard at Field House

Decision and Reasons

Promulgated

On 01 June 2015

On 04 June 2015

Before

**Upper Tribunal Judge Pitt
Upper Tribunal Judge Blum**

Between

**AA
(ANONYMITY ORDER MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr A Slatter, instructed by A H Law Limited

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the determination promulgated on 19 January 2015 of First-tier Tribunal Judge Cope which refused the asylum and human rights appeal of the appellant.
2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we 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. We do so in order to avoid a likelihood of serious harm arising to the appellant from the issues put forward in AA's protection claim.

3. The appellant is a citizen of Pakistan. Her claim for asylum is made on the grounds that she fears harm from her family and others on return to Pakistan as a result of her sexual conduct in the UK, reported to the authorities in Pakistan by her family and resulting in an arrest warrant and her status as a single woman who has had a child outside of marriage.
4. It was part of the appellant's claim that whilst in the UK she entered into an Islamic marriage with a man who was physically and sexually abusive towards her and subsequently left her, denouncing her to her family in Pakistan.
5. First-tier Tribunal Judge Cope found that the appellant was not a reliable witness and that her account of her history in the UK and of the harm that would arise on return to Pakistan was not credible. Judge Cope draws a clear conclusion in this regard at [105] of the determination.
6. Part of the reasoning that led to the conclusion on credibility concerned a psychiatric report dated 6 October 2014 of Dr M F Hussain. At [42] and [43], the First-tier Tribunal stated that:

"42. There is a particularly significant matter that is only raised in the report from Dr Hussain. This is an allegation made by the Appellant that her husband had raped her and sexually abused her. In addition the assaults on her took place on multiple occasions, and he would lock her in the room when he went out.

43. This allegation of rape, and the degree and extent of the physical abuse, have not been raised elsewhere in the asylum application process."
7. At [44] - [45] Judge Cope found that it was not credible that the appellant would only mention these matters to Dr Hussain. She went on at [47] to find that it was "[e]ven more surprising" that the appellant had not disclosed this mistreatment to a worker from the HALO project who was female, spoke Urdu and where the HALO project focuses on assisting women involved in honour-based violence and forced marriage.
8. At [49], the judge states:

"I consider that the manner in which the Appellant disclosed the sexual and physical abuse to Dr Hussain and the lack of any further mention of it or previous referral during (sic) asylum application process raises very serious doubt as to whether the Appellant is being truthful even allowing for the difficulties that a woman might feel in disclosing such abuse."
9. Mr Walker conceded for the respondent that the First-tier Tribunal was in error in stating that the appellant only disclosed to Dr Hussain the abuse she suffered within her Islamic marriage. As set out in paragraph 4(b)-(d) of the appellant's grounds, she has disclosed it elsewhere, in the "Child at Risk" form dated 6 June 2014 and Children's Services Department Child and Family Assessment dated 14 May 2014 (both handed up at the hearing on 26 November 2013), the letter dated 27 May 2014 of Dr

Doukova (at 19-23 of the appellant's bundle) and in the medico-legal report dated 1 January 2014 of Ms Forbes (at 81-107 of the appellant's bundle).

10. Further, although the HALO Project letter dated 25 September 2014 (at 15-18 of the appellant's bundle) did not refer in terms to sexual abuse, it did refer at pages 15, 16 and 22 to violence having occurred within the appellant's marriage and previous relationships.
11. There is no dispute that these document were before the First-tier as indicated at [37] of the determination. We should point out, however, that it was not clear to us that the evidence of disclosure of the abuse to the appellant's GP on 10 April 2014 as contained in her GP records was before the First-tier Tribunal, a copy being attached to the grounds of appeal against the decision of Judge Cope and a loose copy on file, so we took paragraph 4(a) of the grounds no further.
12. Mr Walker did not go as far as to concede that the mistake as to the appellant disclosing abuse only to Dr Hussain was material, however. It was our view that this was so where the First-tier Tribunal placed particular weight on this mistaken finding, referring to it as "significant" and as raising "very serious doubt" about the appellant's reliability as a witness. This was additionally so given the positive findings at [32] and [33] that the appellant had been generally consistent across her various accounts and that this supported her credibility. Those matters being so we could not be certain that the outcome of the appeal would have been the same had the mistake as to the appellant disclosing her abuse within her marriage only to Dr Hussain not occurred.
13. We decided for these reasons that the decision of the First-tier Tribunal had to be set aside to be remade *de novo*. It was not necessary to consider the remaining grounds where that was so.
14. Where entirely new findings of fact had to be made it was our view that this should take place in the First-tier Tribunal in line with paragraph 7.2 of Part 3 of the Senior President's Practice Statement dated 25 September 2012.

DECISION

15. The decision of the First-tier Tribunal discloses an error on a point of law such that it is set aside to be re-made.
16. The appeal is remitted to the First-tier Tribunal to be re-made *de novo*.

DIRECTIONS

17. No later than 7 days prior to the hearing the appellant is to serve a consolidated, indexed and paginated bundle of all evidence relied upon.

Signed: 
Upper Tribunal Judge Pitt

Date: 2 June 2015