



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

Appeal Number: PA/04353/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 19 December 2016**

**Decision &
Promulgated
On 4 May 2017** **Reasons**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**TGA
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Ms J Isherwood, Home Office Presenting Officer
For the Respondent: Ms A Jones, Counsel, instructed by Farani Javid Taylor
Solicitors LLP

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Loughridge promulgated on 21st October 2016. The appellant before me is the Secretary of State for the Home Department and the respondent to

this appeal, is TGA. However, for ease of reference, in the course of this determination I shall adopt the parties' status as it was before the First-tier Tribunal. I shall in this decision, refer to TGA as the appellant, and the Secretary of State as the respondent.

2. An anonymity direction was made by the First-tier Tribunal and is continued by me. 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. Failure to comply with this direction could lead to contempt of court proceedings.
3. The appellant is a national of Pakistan. She first entered the UK as a student on 31st July 2013 with leave to enter until 5th April 2015. She was granted further leave to remain until 30th March 2016. The appellant returned to Pakistan between 12th March and 7th April 2015. Almost six months after returning to the UK in April 2015, the appellant claimed asylum. The appellant's husband and daughter (*both of whom are Pakistani nationals*) are dependants of the appellant. The asylum claim was refused by the respondent on 14th April 2016, and it was that decision that was the subject of the appeal before the First-tier Tribunal.

The decision of the First-tier Tribunal ("FtT")

4. The decision of the FtT Judge, is lengthy and spans some 117 paragraphs over 21 pages. The background to the appeal is set out at paragraphs [1] and [2] of the decision of the FtT. The appellant's claim is summarised by the Judge at paragraphs [8] and [9] of his decision, and at paragraphs [10] to [45], the Judge sets out the evidence that he received from the appellant and her husband. At paragraphs [46] to [53] of the decision, the Judge refers to the other evidence set out in the appellant's bundle. The parties' submissions are recorded at paragraphs [63] to [70] of the decision.

5. The Judge rejected, at [73], the respondent's submission that the appellant's account of events is inherently implausible. At paragraph [76] of his decision, the Judge states:

"It is undoubtedly true that there are numerous discrepancies in the evidence. The Appellant herself has said different things at different times about some of the key issues; and she has, on numerous occasions in my view, fundamentally failed to answer questions accurately and with the degree of thought and care required. ABA has contradicted her, and was unable to answer many of the questions put to him in cross-examination. Furthermore, the affidavit evidence obtained in Pakistan is, in significant respects, fundamentally different from the account given by the Appellant. It seems to me that the Appellant has embellished her claim which, whilst perhaps understandable if her circumstances are indeed as she says, is ultimately unhelpful to the process of determining her appeal. It leaves the Tribunal in the unenviable position of sifting through the mass of evidence to decide what is, and what isn't, accurate..."

6. The Judge was satisfied, at [82], that the appellant and her husband did indeed undergo a forced marriage in December 2012 in consequence of a feud between the two families and as part of the solution imposed on the families by the local Jirga. The Judge also found that a second marriage; between the appellant's brother and her husband's sister, was also part of the solution, albeit that marriage had to be deferred because of the age of ABA's sister. The Judge states at paragraph [85]:

"However, in respect of the Appellant's visit to Pakistan in March/April 2015 the discrepancies and inconsistencies in the evidence are far more notable, and potentially damaging to the credibility of her account."

7. The Judge accepted that when the appellant left the UK to travel to Pakistan, neither she nor her husband knew about her father-in-law's decision not to go through with the second marriage that was to have taken place between ABA's sister and the appellant's brother. At paragraphs [87] to [96] of his decision, the Judge identifies a number of

concerns that he has about the appellant's account of events and at paragraph [97] he states:

"Overall, therefore, I conclude that there are many aspects of the Appellant's version of events relating to her visit to Pakistan in March/April 2015 which do not make logical sense, or are inaccurate, and indeed are misleading."

8. The Judge then considers, at [98] to [102], the inconsistencies and discrepancies in the evidence surrounding the text messages and the video said to have been received from the appellant's brother after the appellant returned to the UK. At paragraph [103], the Judge states:

"So, what factual findings can I sensibly make in relation to the events of March/ April 2015, and thereafter? It is not easy to know, and I must say that the discrepancies in the evidence push the Appellant's account close to the limit of credibility."

9. At paragraph [104] of his decision the Judge states that he has considered various possibilities. He states:

"One scenario is that in March 2015 the Appellant returned to Pakistan to visit ABA's family, and her own family, and the visit went according to plan; that she returned to the UK in April 2015; and that by October 2015, she had less than six months left on her student visa, she had stopped studying because of her difficult third pregnancy, and there was no obvious route by which she and ABA would be able to remain in the UK; and that, accordingly, they decided to make an asylum claim against the background of her difficulties in Pakistan prior to leaving in July 2013, embellished by her account of ABA's father withdrawing from the proposed second marriage between her brother and ABA's sister, and the feud beginning again as a consequence. This scenario is consistent with the absence of corroborating evidence (other than by ABA) regarding the text messages and the video. It is also consistent with what I have been told about everyone having to abide by the decision of a Jirga, meaning that it would be rather odd for ABA's father simply to be able to decide to withdraw from

the second marriage. As for the video footage on the Appellant's phone at the asylum interview, footage of decapitations is widely available on the internet and it would be relatively easy to download a short clip."

10. At paragraph [105] of his decision, the Judge states that on the lower standard of proof, he is unable to persuade himself with a sufficient degree of certainty that this scenario is accurate. The Judge finds that the core facts are as set out at paragraphs [106] to [109] of his decision. I do not repeat those findings in this decision. At paragraph [110] of his decision, the Judge concluded that on the basis of his factual findings, the appellant has discharged the burden of proving a well-founded fear of persecution for a Convention reason. The Judge then considered whether there is a part of Pakistan where the appellant's life would not be under threat.
11. The Judge found at paragraph [112] of his decision, that the appellant genuinely has the paternal relatives described in paragraphs 29-35 of her witness statement. He also accepted that it would be relatively straightforward for the appellant's father and brother to ask any of these relatives to check official records to see whether the appellant is in Pakistan and, if so, her address. At paragraph [114] of his decision, the Judge considered the risk posed by the appellant's father and brother. He states:

".... I do have some doubt as to whether they would be likely to harm the Appellant particularly if she were to relocate to a city such as Karachi in southern Pakistan, many hundreds of kilometres from Peshawar. However, I do not feel that I can rule out the possibility with a sufficient degree of confidence to be able to say that her life would not be under threat..."

12. The Judge concluded at paragraph [115] of his decision that he was not satisfied that there is any part of Pakistan to which the appellant could safely relocate, in the sense of her life not being under threat. The appeal was allowed.

The appeal before me

13. The respondent notes that the Judge has made extensive findings on the evidence but submits that the Judge erred in his approach when making the findings as to the core of the appellant's account at paragraphs [106] to [109] of his decision. The respondent submits that the findings are based upon speculation rather than the evidence that was before him.
14. Permission to appeal was granted by FtT Judge Woodcraft on 14th November 2016. The matter comes before me to consider whether the decision of the FtT involved the making of a material error of law, and if so, to remake the decision.
15. Before me, Ms Isherwood relies upon the grounds of appeal and submits that although the decision of the FtT Judge is detailed, the Judge erred in his approach when reaching his findings. The Judge repeatedly refers to the gaps and inconsistencies in the evidence relied upon by the appellant, and failed to make findings upon the account given by the appellant. She submits that the Judge failed to say whether he accepts or rejects the account of the appellant, but instead, at paragraphs [106] to [109] of his decision, found that the core facts were as set out by him. She submits that the core facts as found by the Judge were not an account advanced by the appellant, but was a speculative account reached by the Judge that had no proper evidential foundation. She submits that it was entirely irrational and perverse of the Judge to reach an account of events that was not in fact, in some material respects, an account relied upon by the appellant.
16. In reply, Ms Jones submits that the decision of the FtT Judge is one that is very thorough and carefully considered. She submits that the respondent seeks to criticise the Judge for making clear findings having, as he states at [76], considered and gone through the evidence carefully. She submits that at paragraphs [85] to [114] of his decision, the Judge has carried out a careful analysis of the evidence, giving it anxious

scrutiny and reaching findings that were open to him. The Judge has borne in mind throughout that there were discrepancies and gaps in the evidence, but the findings made at paragraphs [106] to [109] cannot be viewed in isolation. She submits that it was open to the Judge, on the evidence, to conclude that was what had occurred, even though that was not necessarily the account being advanced by the appellant in some respects.

17. The issue for me to decide is whether or not the Judge was entitled, on the evidence, to make the core findings of fact that are set out at paragraphs [106] to [109] of the decision. In that respect, I follow the guidance of the Court of Appeal in **R & ors (Iran) v SSHD [2005] EWCA Civ 982**. The Court of Appeal drew together the threads of the approach to be adopted in cases where it is claimed that there is an error of law in the Tribunal's approach to the evidence. The Court of Appeal held that a finding might only be set aside for error of law on the grounds of perversity if it was irrational or unreasonable in the *Wednesbury* sense, or one that was wholly unsupported by the evidence. A finding that is "perverse" embraces findings that are irrational or unreasonable in the *Wednesbury* sense, and findings of fact that are wholly unsupported by the evidence. I apply that guidance to my consideration of the decision in this appeal.
18. In reaching his decision the Judge was required to assess the credibility of claimed facts about past and present events, that go to the core of the claim. To do so, the Judge was required to assess whether the appellant's material factual claim is internally coherent and consistent with past written and verbal statements, and consistent with claims made by dependants and/or witnesses and with any documentary evidence submitted in support of the claim. It was for the Judge to assess how well the evidence submitted fits together, and whether it contradicts itself.

19. In assessing the evidence a great many cases provide guidance on how the risk is to be assessed. In **Karanakaran [2000] Imm AR 271**, Brooke LJ, noted that a decision-maker in an asylum claim will be faced with four kinds of evidence: First, evidence whose validity they are certain about; Second, evidence they think is probably true; Third, evidence to which they are willing to attach some credence, but would not go so far as to say that it is probably true; and fourth, evidence to which they are not willing to attach any credence at all.
20. I recognise that the assessment of an asylum claim is not simply a matter of fact finding, but crucially, an evaluation of the need for international protection. However, the evaluation involves the application of a single test. That is whether, on the evidence, a fear of persecution or ill-treatment is well founded. The evaluation must in my judgement begin with an assessment of the subjective account of events advanced by the appellant. A Judge must seek to establish the past and present facts of a claim, by assessing the internal and external credibility of each material claimed fact, applying the principle of the benefit of the doubt where appropriate.
21. It is right to say that the decision of the FtT is detailed. However, the task of the Judge was, as the Judge himself notes at paragraph [76] of the decision, made all the more difficult because he was left in the unenviable position of sifting through the mass of evidence to decide what is, and what isn't, accurate.
22. In my judgement, at paragraphs [106] to [109] of his decision, rather than focus upon the evidence before him and determine whether he accepts or rejects the core of the appellant's account, the Judge sought to construct his own theory of how events had unfolded, in part, on a basis not advanced by the appellant, her husband or in the witness evidence. He fell into error in doing so. In constructing his account of events the Judge also fails to address how that account sits with the

account given by the appellant, her husband, and set out in the other evidence relied upon by the appellant, all of which it seems, the Judge accepted to be internally inconsistent and littered with gaps.

23. The error infects not only the Judge's conclusion as to whether the appellant has established a well-founded fear of persecution for a Convention reason, but also his assessment as to internal relocation.
24. The decision needs to be re-made and both parties submitted that if the decision of the FtT is set aside, the most appropriate disposal of this appeal is for the matter to be remitted back to the FtT for hearing afresh. I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. In my view the requirements of paragraph 7.2(b) apply, in that the nature and extent of any judicial fact-finding necessary, make it appropriate to remit the matter. The parties will be advised of the date of the First-tier Tribunal hearing in due course.
25. For the avoidance of doubt, none of the findings of the FtT Judge are preserved. The re-hearing of appeal before the FtT shall, if listing permits, be heard at Newport, but I do not direct that the appeal must be heard at Newport.

Notice of Decision

26. The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeal is remitted to the First-tier Tribunal for hearing afresh.
27. No anonymity direction is made.

Signed

Date

21st April 2017

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

I set aside the fee award made by the First-tier Tribunal. I have remitted the appeal back to the First-tier Tribunal. No fee award is made by the Upper Tribunal. This is to be considered by the First-tier Tribunal.

Signed

Deputy Upper Tribunal Judge Mandalia