



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

Appeal Number: PA/08617/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 6th September 2017**

**Decision & Reasons
Promulgated
On 5th October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**SK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms D Revill instructed by AH Solicitors
For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Pakistan, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 10th August 2016 to refuse her application for asylum in the UK. In a decision promulgated on 20th February 2017 First-tier Tribunal Judge Talbot dismissed the appeal.

The Appellant now appeals with permission granted by Upper Tribunal Judge Southern on 24th July 2017.

Background

2. The background to this appeal is that the Appellant claims that she was educated to degree level in Pakistan and graduated with a degree in maths and began studying for an MSc in Pakistan. Her parents arranged a marriage between her and an uneducated man from the village but she was unhappy with this arrangement. With the support of her mother and maternal grandparents she applied to study in the UK and arrived in the UK on 23rd August 2011. However, a short time after she commenced the course the college closed. Before her leave to remain expired she applied to extend her stay on human rights grounds but that application was refused and an appeal against that dismissed.
3. The Appellant claims that on 15th January 2013 she met a man called Ali and they moved in together in March 2013. However, a short time after that Ali began to mistreat the Appellant; he sexually abused and raped her. The mistreatment continued over three years. She says that she sustained an injury to her head when he hit her on 1st March 2016 and that he left after she told him to go and threatened to call the police. She claims that on 20th March 2016 she got a phone call from her father saying that Ali was with him and that he had told him that she had been living with Ali and other men and that he had seen photographs of her. Although the Appellant denied this her father threatened to kill her and accused her of insulting him and Islam. Her brother also phoned her and threatened to kill her upon her return to Pakistan.
4. The Appellant claims that it was after this incident that she went to a solicitor and told him what happened but he did not take her seriously. She was arrested and detained but she claims that the barrister who represented her did not mention this issue in court. Removal directions were deferred after she made further representations and an application for judicial review. On 11th June 2016 she claimed asylum.
5. In the Reasons for Refusal letter the Secretary of State did not accept the Appellant's claim to have been threatened by her family in Pakistan due to her relationship with Ali nor that her parents had arranged a marriage for her. In any event the Secretary of State considered that there would be a sufficiency of protection for the Appellant in Pakistan and concluded that she did not have a well-founded fear of persecution.
6. The Appellant did not give oral evidence before the First-tier Tribunal Judge. She submitted a report from a consultant clinical psychologist, Dr Rachel Thomas, which concluded that the Appellant suffers from a major depressive disorder with a number of post-traumatic traits and that it would be psychiatrically dangerous for her to be required to give evidence at the Tribunal. The judge considered the evidence and concluded that the Appellant had not established that she is at risk of persecution in

Pakistan. The judge considered that the Appellant had not established a claim under Article 3 of the European Convention on Human Rights based on a risk of suicide. The judge considered Article 8 and concluded that the removal of the Appellant would not be disproportionate to the Secretary of State's legitimate aim in maintaining immigration control.

Grounds of appeal

7. The Appellant applied for permission to appeal to the First-tier Tribunal and that application was refused on 9th June 2017. In the renewed Grounds of Appeal to the Upper Tribunal the Appellant relied on three grounds.
8. The first ground contends that the First-tier Tribunal Judge failed to properly take account of the Appellant's mental health difficulties when assessing the credibility of her account. It is contended that, in finding the Appellant not credible, the judge provided three reasons for his conclusions, the first being the delay in the Appellant seeking asylum, the second being inconsistencies in the Appellant's evidence and thirdly the failure of the Appellant to produce corroborative evidence of her relationship with Ali in the UK. Whilst it is accepted that the First-tier Tribunal Judge turned his mind to Dr Thomas' evidence he did this only in the context of determining whether Dr Thomas' evidence confirmed that the mental health disorder the Appellant was suffering from was caused by the traumatic life events she claimed occurred. However, it is submitted that the judge failed to consider Dr Thomas' evidence about the likely impact of the Appellant's mental health difficulties on the matters that the judge ultimately found supported his conclusion that the Appellant's claim was not credible. It is contended that the judge failed to take account of the medical evidence when assessing the alleged inconsistencies in the Appellant's narrative of the mistreatment she had suffered and failed to consider whether the accepted fact that the Appellant had a disorder that impaired her memory, concentration and orientation to time and place would have an impact on her ability to give consistent evidence. It is further submitted that the judge failed to have regard to the Joint Presidential Guidance Note No 2 of 2010 on Children, Vulnerable Adults and Sensitive Appellants in assessing the Appellant's evidence. It is contended that the judge should have had regard to the potential impact of the Appellant's vulnerability on her ability to give a consistent account in support of her claim and on matters such as the timing of her claim and her inability to corroborate her claim.
9. In the second ground it is contended that the judge erred in his assessment of Article 3. It is submitted that, although the judge accepted that mental health services in Pakistan leave a great deal to be desired and described the lack of provision of such services as woeful and noted that mentally ill people are very much dependent on informal sources of support from family and the local community, the judge failed to give adequate reasons for concluding that he was not satisfied that the Appellant met the threshold for Article 3 protection on health grounds. In

the alternative it is contended that the judge reached an inconsistent conclusion based on the findings.

10. The third ground contends that the judge failed to give adequate reasons for concluding that there are not very significant obstacles to the Appellant's integration in Pakistan. Having found that there were obvious difficulties for the Appellant in readapting to life in Pakistan which would be exacerbated by her mental health problems the judge failed to explain why he concluded that he was not satisfied that there were very significant obstacles such as to meet the requirements of paragraph 276ADE.
11. In granting permission to appeal Upper Tribunal Judge Southern noted that it may well be that, on closer examination, the first ground amounts to no more than an expression of disagreement with adequately reasoned findings of fact made by the judge. However, as recognised by the judge, the psychology report was a centrepiece of the Appellant's case and in his view it is at least arguable that, in reaching adverse credibility findings based on a significant extent upon inconsistency and a lack of plausibility in the Appellant's account, the judge failed to have regard to the view expressed by Dr Thomas that the Appellant's psychiatric disorder renders her with impaired memory, concentration and orientation to time and place which would cause severe impairment to the ability to provide a coherent narrative of past traumatic life events. Permission was granted on this ground although Judge Southern did not refuse permission on Grounds 2 and 3 but doubted that they would survive scrutiny.

The submissions

12. In her submissions Ms Revill focused on Ground 1. She submitted that the judge accepted the findings of the medical report although he disagreed with the reasons for it, she pointed out that he accepted that the Appellant suffers from a major depressive disorder. In these circumstances, in her submission, it was incumbent upon the judge to adopt and apply the approach set out in the Joint Presidential Note. She relied on the case of **JL (medical reports-credibility) China [2013] UKUT 00145 (IAC)**, in particular paragraph 6, which referred to the situation where an Appellant was vulnerable and said that it was of particular importance to see what findings, if any, the judge made about the possible relevance of the Appellant being a vulnerable person to the credibility findings. At paragraph 27 of the decision in **JL** judges are reminded that applying this guidance entails asking whether any of the inconsistencies in the Appellant's account could be explained by her being a vulnerable person.
13. Ms Revill referred to the guidance at 10.3 at page 6, which gives guidance on assessing evidence, and paragraph 14, which says that where there were clear discrepancies in the oral evidence, consideration should be given to the extent to which the age, vulnerability or sensitivity of the witness was an element of that discrepancy or lack of clarity. Paragraph 15 states that the decision should record whether the Tribunal has

concluded that the Appellant is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and whether the Tribunal was satisfied whether the Appellant had established his or her case to the relevant standard of proof. It is noted that in asylum appeals weight should be given to objective indications of risk rather than necessarily to a state of mind.

14. Ms Revill submitted that the judge in this case had not followed this guidance. In her submission the judge only took account of the medical report in assessing whether the condition identified was caused in the way the Appellant says it was [27]. She submitted that the judge did not at any point consider whether the medical condition is relevant to her findings in relation to delay and inconsistencies. She submitted that this is material in this case because paragraph 92 of the medical report states:

“92. As can readily be seen from the above diagnostic assessment, [the Appellant’s] current psychiatric disorder renders her with impaired memory, concentration and orientation to time and place. She also experiences emotional hyper-arousal states (such as flashbacks and nightmares) and recurrent heightened anxiety and distress. It can readily be seen that such a complex diagnostic picture will cause severe impairment to the ability to provide a coherent narrative of past, traumatic, life events.”

15. In terms of Ground 2 Ms Revill submitted that the judge did accept what the Dr Thomas said in relation to the diagnosis of a major depressive disorder. She referred to paragraph 31 of the First-tier Tribunal Judge’s decision, in which the judge accepted that the Appellant is suffering from a serious mental disorder in the form of a major depressive disorder with post-traumatic traits and that she suffers from regular suicidal ideation and has indulged in self-harming activities including some self-reported suicide attempts. The judge also accepted that the Appellant is desperate to avoid being returned to Pakistan and that it is reasonable to conclude that the Appellant’s removal would exacerbate the current symptoms, at least in the short term [31].
16. At paragraph 33 the judge went on to accept that the Appellant may well have little or no access to specialist support for her mental health problems in Pakistan. The judge went on to conclude that he was not satisfied that the high threshold required for Article 3 protection is met in the Appellant’s case [34]. However, in her submission, the judge failed to give adequate reasons for that conclusion in light of those findings.
17. In relation to Ground 3 Ms Revill submitted that at paragraph 5 the judge found that the Appellant would have “obvious difficulties” in readapting to life in Pakistan. These difficulties would be “exacerbated by her mental health problems and by a difficult relationship within her family”. However, the judge has failed to give adequate reasons why these do not amount to very significant obstacles under paragraph 276ADE.

18. In response Ms Willocks-Briscoe submitted in relation to Ground 1 that the judge has taken all factors into account including the medical evidence. The judge referred to the medical evidence before even considering the Appellant's evidence. In her submission the judge was under no obligation to quote all of the report but it is clear from the decision that he had in mind the report before reaching the findings on credibility.
19. Ms Willocks-Briscoe submitted that the judge's findings turn on paragraph 92 of the psychology report. In her submission paragraph 92 makes clear that the impairment is in relation to the Appellant's ability to provide "a coherent narrative of past traumatic life events". It does not say that the Appellant will be unable to give a coherent account in relation to all aspects of her claim. She submitted that it was clear, looking at the judge's decision, that the judge took into account a range of factors. The judge referred to the delay in claiming asylum at paragraphs 21 and 22. In her submission the conclusions in relation to delay were not relevant to the Appellant's narrative of past traumatic life events. She submitted that paragraph 23 looks at the Appellant's account of who she lived with and points to an inconsistency between her asylum interview, when she said that she had lived with her grandparents from the age of 2 or 3 and had not lived with her parents, yet later in the asylum interview she said that she had lived with her parents for four years following her graduation whereas she told Dr Thomas that she lived with her parents from the age of 17 or 18 after her grandfather died. The judge also notes that the first time the Appellant mentioned the allegation that she saw her father attacking her mother regularly and that she too was the victim of her father was at her asylum interview. Ms Willocks-Briscoe submitted that these inconsistencies refer to timeframes and whether the Appellant lived with her parents but did not specifically refer to a narrative of past traumatic life events.
20. Ms Willocks-Briscoe also submitted that at paragraph 24 of the decision the judge looked at the lack of supporting evidence in relation to the Appellant's claimed relationship with Ali. She notes that the judge properly directed himself that asylum seekers cannot always be expected to produce corroborative evidence [26] but the judge found that the Appellant's credibility was undermined by her failure to produce evidence which could have been available to her in the UK in relation to her claimed relationship with Ali. Given that the psychologist had made a qualified assessment of the Appellant's ability to give a coherent account at paragraph 92 the evidence taken into account by the judge was not damaged by that assessment. She submitted that looking at the findings holistically the judge's findings were in accordance with the Presidential guidance. She submitted that the medical evidence is referred to throughout the decision.
21. In relation to Ground 2 Ms Willocks-Briscoe submitted that the judge had properly directed himself at paragraphs 29 and 30 in accordance with the guidance in **KH (Afghanistan) v Secretary of State for the Home Department [2009] EWCA Civ 1354**. She submitted that the judge

looked at the lack of access to specialist support but noted that there would be access to emotional and practical support for the Appellant upon her return [33]. She submitted that the Article 3 conclusions are sustainable.

22. In relation to the third ground Ms Willocks-Briscoe submitted that Article 8 cannot be looked at in a vacuum. The findings made in relation to Article 3 were relevant to the assessment as to whether there were significant obstacles to the Appellant returning to Pakistan. She relied on the case of **Nasim and others (Article 8) [2014] UKUT 00025 (IAC)** and submitted that limited weight could be attached to the Appellant's private life. In her submission the judge's findings here can be sustained.
23. In response Ms Revill submitted in relation to Ground 1 that just because the Appellant did not give evidence does not mean that the guidance is not applicable. She referred in this context to the case of **JL**. The judge was under a duty to have regard to the vulnerability of the Appellant and to consider to what extent, if any, that vulnerability affected the evidence. In her submission there was no consideration given to paragraph 92 of the medical report in the credibility findings. The only assessment of the medical evidence is at paragraph 27. She disputed that paragraph 92 was qualified, she submitted that it did not mean that the Appellant could not be coherent in relation to chronology. She submitted that it meant that the Appellant may not get things in the right order nor might she be able to be consistent. In any event she submitted that the finding at paragraph 23 in relation to where and when the Appellant lived with her grandparents or parents was in fact related to traumatic events.
24. In relation to Ground 2 she responded by saying that the judge made no clear finding at paragraph 33 as to whether the Appellant has family in Pakistan. She submitted that the case of **KH (Afghanistan)** is about PTSD not suicide risk. She submitted that the judge had not given sufficient reasons for the finding in relation to Article 3 given that the judge had accepted the account of the Appellant's suicide attempts.
25. In terms of Ground 3 Ms Revill submitted that part of the aspects of private life is a person's physical and emotional integrity and that the judge had failed to give sufficient reasons for finding that there would be no insurmountable obstacles to the Appellant returning to Pakistan.

Discussion and conclusions

26. The judge considered the report from the consultant clinical psychologist at an early stage in the decision. After having set out the Appellant's claim and the Home Office reasons for refusal letter the judge set out the contents of that report in detail at paragraph 15. It is clear, in my view, that the judge had this report at the front of his mind when considering the entirety of the Appellant's claim.

27. I accept Ms Willocks-Briscoe's submission that the conclusions at paragraphs 21 and 22, which relate to the timing of the Appellant's claim and to her failure to disclose the basis of her claim to the Home Office or to her own lawyers, do not necessarily link to the conclusion in the psychological report that the Appellant's ability to give a coherent narrative of past traumatic life events would be impaired by her condition.
28. In my view the judge was entitled to reject the explanation given by the Appellant for failing to raise the matter with the Home Office or her lawyers at an earlier stage, even taking into account the psychological evidence, and I find therefore that the judge was entitled to conclude at paragraphs 21 and 22 that the delay damaged the Appellant's credibility.
29. The judge dealt with some of the issues in relation to the Appellant's claimed account of events in Pakistan at paragraph 23. In my view it is clear that the inconsistencies referred to by the judge at paragraph 23 relate mainly to the Appellant's living circumstances in Pakistan, that is, whom she lived with and when, rather than to the details of the events she claims to have witnessed and experienced in Pakistan. In light of the medical report and the conclusions at paragraph 92 of that report it is difficult to see how her ability to give these details could have been impaired to the extent claimed on the basis of her psychological condition. It is difficult to see too how these details could have been inconsistent in the account given to the psychologist in her single interview. It appears from the past history at paragraphs 4 to 27 of the psychologist's report that the Appellant was able to give a coherent account to the psychologist. This somewhat undermines the assessment at paragraph 92 that the Appellant's ability to provide a coherent narrative would be severely impaired. In these circumstances, in my view, it was open to the judge to conclude as he did at paragraph 23 that there were inconsistencies in the Appellant's account of her living circumstances which undermined the credibility of her account.
30. At paragraph 24 the judge found that the Appellant's credibility was damaged by the lack of evidence as to her relationship with Ali. The judge referred to the lack of evidence from her landlords (including the landlord whom she described in her interview as having treated her like a daughter) or from her circle of friends (who she referred to in interview as including the friends who had been paying for her legal advice and her friend's husband who had stood as surety in her bail application). No explanation has been put forward as to why the Appellant failed to obtain this kind of evidence and no conclusion is reached in the psychological report that the Appellant would be unable to seek support of her friends and the community in presenting her case. Accordingly in my view the conclusions at paragraph 24 were open to the judge.
31. Additionally the Appellant failed to provide any medical report to evidence the claimed scarring from cigarette burns and no explanation has been put forward as to why the Appellant failed to obtain such medical evidence and there is no evidence in the psychology report as to her ability to seek

medical help. Therefore the First-tier Tribunal Judge was entitled to reach the conclusion he did at paragraph 25.

32. At paragraph 27 the judge took into account the evidence in the report of Dr Thomas in making the overall assessment of credibility. The judge accepted the psychological report. The judge accepted the diagnosis but did not accept the Appellant's account of her circumstances, or that she had given a credible or reliable account of her family history and circumstances in Pakistan or of her experiences in the UK, in particular in relation to her claimed relationship with Ali.
33. I do not accept the criticism that the judge took into account Dr Thomas' report only in the context of credibility. In fact, it is clear from reading the decision as a whole that the judge took into account other factors in assessing credibility.
34. I accept, as set out in paragraph 26 of the case of **JL**, that the guidance applies to all of the evidence, not just oral evidence. The criticism in **JL** was that the judge there had not considered whether discrepancies in the Appellant's account could be explained by the Appellant being a vulnerable person.
35. I do not accept that the judge failed to follow the Joint Presidential Guidance Note No 2 in dealing with this Appellant. The judge did not hear oral evidence from the Appellant because of her mental health issue. The judge did not take into account the failure of the Appellant to give oral evidence as damaging her credibility. In fact, the judge took into account other factors in assessing credibility and he attached particular weight to delay, to the Appellant's description of her living circumstances in Pakistan and to the lack of supporting evidence as significant. These issues do not go specifically to a demand for a coherent narrative but go instead to the wider circumstances surrounding the Appellant's case. It is clear that in assessing these matters the judge gave sufficient consideration to the Appellant's circumstances and mental health. In my view there is no error and Ground 1 has not been established.
36. In terms of Ground 2 the judge made clear at paragraph 27 that he did not accept that the Appellant has given a credible or reliable account of her family history and circumstances in Pakistan or of her experiences in the UK. The judge did not accept that she has given a truthful account as to why she fears returning to Pakistan. The judge accepted that the Appellant is suffering from a major depressive disorder and that the Appellant suffers from regular suicidal ideation and has indulged in self-harming activities including some self-reported suicide events although the judge noted that none of these appear to have resulted in admission to A&E. The judge accepted that the Appellant is desperate to avoid being returned to Pakistan as is borne out by her repeated attempts to resist the Home Office attempts to remove her. The judge therefore thought it reasonable to conclude that the Appellant's removal would exacerbate her current symptoms at least in the short term.

37. However, the judge did not accept that the implications for the Appellant's health would be "as catastrophic as was indicated by Dr Thomas, as her conclusions are very much predicated on the truth of the Appellant's account of her experiences in the UK, her family circumstances and the resulting consequences on her return to Pakistan" [31]. The judge did not accept that the results for the Appellant would be so catastrophic given that the Appellant has been in an extremely precarious immigration position for a considerable time and particularly since April 2016 when she was in immigration detention until July 2016. The judge considered her medical records for this period and noted that, whilst there is reference to her suffering symptoms of anxiety and depression, there is no reference to any suicide attempts despite the obvious stresses of such an extended period of detention. The judge also noted that the Appellant has never been admitted to a psychiatric hospital ward and was only referred to community health services in December 2016.
38. I consider that the findings at paragraph 31 are key to the conclusions the judge went on to reach in relation to Article 3. The judge accepted that there is limited support in the form of mental health services in Pakistan, noting that people with mental illnesses are very much dependent on informal sources of support from family and local community. He noted that the Appellant may have little or no access to specialist support in Pakistan. However, this is in the context of the judge's earlier findings that the Appellant appears to have had little or no access or has little or no recourse to specialist support in the UK even under circumstances of extreme stress. Although the judge said at paragraph 33 that it was difficult to say whether or not there were family members or close friends in Pakistan, I consider that this is a sufficiently clear finding in the context of the judge's doubts as to the Appellant's credibility, that the judge believe that there were in fact family members and sources of support in Pakistan given that he did not accept the Appellant's description of her circumstances in Pakistan.
39. In terms of Ground 3, again, in my view, it is clear that the conclusions at paragraph 35 are based on all of the previous findings. The judge did accept that there would be difficulties for the Appellant in re-adapting to life in Pakistan which would be exacerbated by her mental health problems and difficult relationships with her family. However, when the judge referred at the end of paragraph 35 to the evidence before him, it is clear that this refers to the evidence and conclusions made previously in the decision, in particular, the conclusions at paragraphs 31 to 33. The conclusion that the circumstances did not amount to very significant obstacles were open to the judge on the basis of the evidence and the findings previously made.
40. In these circumstances I am satisfied that the judge made findings open to him on the basis of the evidence before him. The judge took proper account of the psychological evidence and conclusions in that report in assessing and considering the evidence.

Decision

There is no material error of law in the decision of the First-tier Tribunal.

The decision of the First-tier Tribunal shall stand.

The anonymity direction is continued.

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 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.

Signed

Date: 4th October 2017

Deputy Upper Tribunal Judge Grimes

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed and there can be no fee award.

Signed

Date: 4th October 2017

Deputy Upper Tribunal Judge Grimes