



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/00932/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**On 19 January 2018**

**On 29 January 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**BQ (PAKISTAN)  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms H Masood, Counsel instructed by Synthesis  
Chambers Solicitors

For the Respondent: Mr D Milis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Khan sitting at Harmondsworth on 8 February 2017) dismissing her appeal against the decision of the Secretary of State to refuse to recognise her as a refugee as a lone woman who is estranged from her Pakistani national husband because of a false and malicious allegation that he did not father her eldest child; and whose alleged risk on return is compounded by the fact that her husband is not the father of her two younger children, who she says were fathered out of wedlock by another man who has abandoned her. The appellant's three children join in her appeal as her dependents: NU born in Pakistan on 30.11.07; SA born

in UK on 2 August 2012; and LA born in the UK on 14 January 2015.

### **The Reasons for the Grant of Permission to Appeal**

2. On 19 October 2017, Upper Tribunal Judge Pitt gave her reasons for granting the application for permission to appeal:

It is arguable (just) that the FTTJ took an incorrect approach to the entries in the visit visa applications which do not at first blush show that the appellant's husband made an application for entry clearance or came to the UK. It is also arguable that the FTTJ took an incorrect approach to the fatwa which was not "new" evidence and that, in combination with the previous ground, this could be material.

### **Relevant Background**

3. The appellant is a national of Pakistan, whose date of birth is 11 February 1982. She arrived in the United Kingdom on 2 August 2011 on a family visit visa which was valid from 6 July 2011 until 6 January 2012. She was accompanied by her then only child, who had been granted entry clearance in line with her.

### **The Initial Asylum Claim and Appeal**

4. The appellant made a claim for asylum on 10 November 2012, and her appeal against the refusal decision was heard by Judge Jhirad on 18 February 2013.
5. In her subsequent decision, Judge Jhirad summarised the appellant's claim at paragraphs [7.1] to [7.3]. She had married "AA" in Pakistan on 3 October 2001. She lived with her husband and his parents in Lahore. She had become friendly with non-Muslim neighbours. Her husband and his family alleged that the child born in 2007 was not in fact that of her husband, but had been fathered by a non-Muslim neighbour. Her husband apparently refused to undergo a DNA test to establish paternity. In January 2008 her husband's brothers attempted to kill her child. Her husband disappeared from home, and in January 2008 she reported his disappearance to the police. In April 2008 she complained to the police about her brothers-in-law. On 8 July 2008 she left home with her child to stay with a friend, N.
6. On 12 July 2008, her brothers-in-law lodged an FIR against her, alleging that she had given birth to an illegitimate child and accusing her of theft. In September 2008 she moved to the house of another friend, "Mrs S", in Rawalpindi. Mrs S's husband made improper advances towards her, so she moved to the house of "Mrs F" in February 2009. In July 2009 she moved to a women's shelter, which she later learned was a brothel. Later that month, she moved to a religious centre, where she stayed until February 2010. During her stay there, a friend told her that the police and "*moulvis*" were looking for her.
7. An agent lodged on her behalf an entry clearance application as a visitor in March 2010. The application was granted in July 2011 (after she had appealed against the initial refusal). When she came to the UK in early

August 2011, she made the acquaintance of “MA”, and moved in with him in September 2011. He abandoned her in January 2012, when she told him that she was pregnant by him.

8. Judge Jhirad dismissed the appeal, as she found that the appellant’s account lacked credibility “*in all material respects*”. She held that the appellant had failed to prove the core facts relied upon, including her claim that her second child had been fathered out of wedlock. Permission to appeal to the Upper Tribunal was refused on 26 April 2013.

### **The First Fresh Claim and Appeal**

9. The appellant made further representations in support of her asylum claim on 30 July 2013, and a fresh decision refusing to grant her refugee status was made on 13 May 2014. Her appeal against this decision came before Judge Sweet, whose decision dismissing the appeal is to be found in the second supplementary bundle of documents relied on before Judge Khan.
10. At paragraph [40], Judge Sweet rehearsed the new evidence relied upon in the second appeal as justifying a departure from the conclusion of the Judge in the first appeal. He noted that the previous Judge had doubts about the veracity of a FIR of 8 July 2008. The further evidence provided in support of the fresh asylum claim included an FIR dated 17 May 2013, a letter from a friend of the appellant, N, stating that the police were still searching for her, and a statement from Bishop Azaria dated 28 May 2013, which had been prepared at the request of N.
11. Judge Sweet found at paragraph [41] as follows:

Following the principles in **Devaseelan** I must consider whether this further evidence assists the appellant in her claim or not. The fundamental issues as to her credibility remain, and I consider it implausible that the appellant’s brother-in-law would be pursuing a vendetta against the appellant some five years after the previous incidents in 2008 and more than eighteen months after she came to the UK in August 2011. There is no corroborative evidence that the photographs of [BL’s] house are of his house and it seems to me that the appellant has made these further submissions (in July 2013) immediately after her final rights of appeal were exhausted. As the previous judge had decided, it was implausible that the appellant, if she was really in fear of her life or the life of her daughter, would have stayed in Pakistan from 2008 and delayed her escape to the UK till August 2011. Whether or not the further documents produced are genuine, I do not think they assist the appellant in her claim, particular as her main account has already been rejected.

12. Judge Sweet went on to dismiss the appellant’s appeal, and his decision was upheld by the Upper Tribunal, following a hearing at Field House on 12 December 2015.

### **The Second Fresh Claim**

13. In a letter dated 24 November 2015, the appellant’s solicitors said that their client now had “*new information and evidence of vital importance*” to substantiate her asylum claim. The new information was that, on 3 May 2015 the appellant’s brothers-in-law (“R” and “Z”) had again fired on “BL”

(the Christian neighbour who was falsely accused of fathering NU). As a consequence of the attack, BL had sustained serious injuries to his legs. He was immediately taken to Rana Hospital in Lahore. The assailants had also threatened to kill the appellant. They left BL unconscious, believing him to be dead. The evidence to support the above was a FIR made by BL's brother on 3 May 2015, and documents from Rana Hospital that showed the treatment which BL had received at the hospital. Reliance was also placed on a letter from a Pastor, which had been issued at N's request.

### **The Reasons for Refusal of the Second Fresh Claim**

14. On 6 January 2016, the respondent gave her reasons for refusing the appellant's fresh claim for asylum based upon the new evidence. The letter cited a Country of Information Report on Pakistan, dated June 2012, for the proposition that in nearly all cases, the documents presented by asylum seekers for proof of persecution such as warrants for arrests, court judgments, and lawyers' correspondence, "*were falsified or of incorrect content*". In Pakistan, it was not, "*difficult to have a (simulated) criminal proceeding initiated against oneself, in order to get authentic documents*" such as a First Information Report or a decision to set the accused free until the date of trial. Accordingly, it was considered that the FIR and the letter from the Church were entirely self-serving and should not be accepted as independent corroboration of the appellant's claim.
15. It was noted that she had a third child in the UK. The father's details had not been mentioned by her, and were absent from the birth certificate. It was not known if her husband had visited her in the UK, or who the father actually was. Taken with the previous adverse credibility findings, it was not accepted that this child had been born out of wedlock.
16. In summary, based upon the evidence she had given, it was not accepted that she was accused by her husband and his family of adultery prior to her departure from Pakistan, as her account had been found to lack credibility and it was not believed that her second daughter was born out of wedlock.

### **The Hearing Before, and the Decision of, the First-tier Tribunal**

17. The appellant's appeal against this refusal decision came before Judge Khan by way of remittal from the Upper Tribunal, the previous decision of the First-tier Tribunal dismissing the appellant's appeal having been set aside as containing a material error of law. Both parties were legally represented before Judge Khan.
18. In paragraph [2] of his subsequent decision, he summarised the appellant's claim. After she gave birth to a daughter on 30 November 2007, she was accused by her husband and his family that the child was not his, and that she was having a relationship with a Christian neighbour by the name of BL, who she had befriended. (I note *en passant* that this is a different version of events from that given to Judge Jhirad, in which the appellant claimed that her husband was supportive of her on the issue of

paternity.) The appellant said that she was unable to return to her own family, because they believed the allegations made by her parents-in-law. She claimed that she had been beaten by her brother and told not to come to the family home again otherwise she and her daughter would be killed. She also claimed that her parents-in-law had decided to kill her and her daughter. She reported these matters to the police, but they took no action.

19. She claimed that her brother-in-law assaulted her daughter, and threatened to kill her. She said they had left her home area and stayed with a friend, taking all her jewellery with her on 8 July 2008. On 12 July 2008, a FIR was lodged against her, stating that she had a legitimate daughter born from a relationship with a Christian, and she was also accused of theft of jewellery.
20. One month after her arrival in the UK, she had begun a relationship with MA, and she had had two children by him.
21. In May 2013, BL's house was set on fire and he was attacked, and the incident was reported to the police. In May 2015, BL was again attacked and the matter was also reported to the police.
22. The appellant claimed that she could not return to Pakistan because two of her three daughters were illegitimate. Also, her life would be in danger from her own family and from her husband's family.
23. As is recorded at paragraph [11] of the decision, during his closing submissions, the Presenting Officer made reference to a printout from a Home Office database, pertaining to the appellant's visit visa application. The printout had not previously been disclosed to the appellant or to the Tribunal. The Presenting Officer submitted that it showed that her husband, AA, and their child were named on the application for a visit visa. The appellant was recalled to give further evidence on this issue. She said that her husband had never applied to come to the UK. She did not know "SJ", who was stated in the application form to be her sponsor -and her aunt - and she said that she had never been to [ ], which was the sponsor's stated address.
24. The Judge's findings were set out in paragraphs [14] onwards. At paragraph [20], he concluded that he did not find that the fresh evidence added anything to the appellants' case at all. He found that it was a somewhat desperate attempt by her to try and remain in the UK by introducing evidence which he could not regard as reliable to support her case that she was at a real risk on return to Pakistan and that she was wanted by the Pakistani authorities.
25. At paragraph [21], he embarked on a discussion of the visa application form, showing that the appellant had made an application for a family visit visa, "*and [that] the appellant's husband [AA] and her daughter ... were included on the application*".
26. He did not accept the appellant's evidence that she did not know who the

sponsor was. This was because the sponsor's address was in the same road where the appellant said that she had lived with MA.

27. At paragraph [23], the Judge held that it was simply unbelievable for the appellant, given her cultural background, to enter into a relationship with another man within one month of arrival in the UK on a family visit visa to see her family. There was no evidence that MA was the father of her second and third children, and he found that she had manufactured a story that she could not go back to Pakistan because she had a two illegitimate children and would be without support.
28. At paragraph [25], he said: "**SM** involved the question of whether there is a likelihood of ostracism on the basis of a lone mother with an illegitimate child." However, he did not accept that the appellant had had two illegitimate children from a mysterious MA who had disappeared off the face of the earth. Accordingly, he found that there would be no risk to her and her children upon return to Pakistan.
29. The Judge went on to make a positive finding that it was very likely that her husband also came to the UK on a family visit visa, "*either separately or with the Appellant*". He acknowledged that there was no evidence before him in relation to his specific arrival in the UK, but he entirely agreed with what had been said by the judge in the first determination:

It beggars belief that a Muslim woman with traditional values who has fled apparent ill-treatment at the hands of her husband and his relatives would risk her safety and move in to cohabit with a male stranger in the strange country within a brief period of arriving in the UK and become pregnant by him.

### **The Error of Law Hearing**

30. At the hearing before me to determine whether an error of law was made out, Mr Milis produced further evidence relating to the visa application which was not before Judge Khan. This comprised the missing pages from the printouts from the Home Office database (Judge Khan had only been given the odd-numbered pages), and, of much greater materiality, the notice of refusal of the appellant's visit visa application dated 31 March 2010. It was apparent from the refusal notice that the understanding of the Entry Clearance Officer was that the appellant proposed to travel to the UK without her husband. However, the Entry Clearance Officer was not satisfied that the appellant was a genuine visitor.
31. Mr Milis submitted that the Judge had not made a clear mistake of fact in his decision, as his findings were broad enough to cover the actual scenario disclosed by the refusal notice. So there was no material error, and the same applied to the Judge's observations about the fatwa.
32. Ms Hasood developed the arguments advanced in the grounds of appeal, and she also addressed me on the implications of the additional disclosure made by Mr Milis. She submitted that the errors made by the Judge were material, and that there needed to be a complete re-assessment of the appellant's credibility.

## **Discussion**

### **The Fatwa**

33. It is convenient to deal with the issue of the fatwa first. The Judge made a mistake of fact in treating the “*fatwa*” claim as a new claim. Although it does not feature in the summary of the evidence given by Judge Jhirad, it is mentioned in Judge Sweet’s rehearsal of the claim. The appellant said that when she went to a house of a friend in February 2009, “*she was told that Moulvi had given a verdict (fatwa) against her because of her alleged relationship with a non-Muslim and giving birth to an illegitimate child with a Christian*”.
34. Ms Masood submits that Judge Khan’s error is material, as he treated its late introduction as being part of a “*somewhat desperate attempt by her to try and remain in the UK by introducing evidence which I cannot regard as reliable*”: see paragraph [20].
35. However, I do not consider that the error is material, for a number of reasons. Firstly, the fatwa claim never had any independent credibility, as it was not supported by documentary evidence and the only source for the claim was the appellant. Moreover, she only claimed to have been told of the fatwa by someone else. Secondly, the fatwa claim was caught by the earlier adverse credibility findings made by both Judge Jhirad and Judge Sweet. So it was not a piece of evidence which Judge Khan could regard as advancing the appellant’s case. Thus, the Judge was right to treat this piece of evidence as “*evidence which I cannot regard as reliable*”, albeit that he gave the wrong reason for so doing. Thirdly, the comment which the Judge made in paragraph [20] of his decision clearly applies to, and holds good for, the new evidence which the Judge discussed at paragraph [18] of his decision, and in respect of which he made specific and sustainable findings to the effect that they were not transformative of the landscape, and hence they were not reliable to support her case that there was a real risk of her returning to Pakistan, or her case that she was wanted by the Pakistani authorities.

### **The Visit Visa Application - The evidence before the First-tier Tribunal**

36. In her witness statement of 3 February 2017 which she adopted as her evidence in chief before Judge Khan, the appellant said that the agent had procured her passport and other required documents using her in-laws address because her National ID card was registered to their address. The agent paid PKR 15,000 to the postman to give him all the post that was being sent to the in-laws address in her name and her daughter’s name. The arrangement continued for the appeal against refusal: the postman gave all the documents to the agent that came from the Tribunal and UKBA.
37. The documentary evidence relating to the contents of the visit visa application which was placed before the Judge showed on the front page the name of her husband alongside the name of her daughter, followed by the words: “*Waiting for VAF*”. This was under the heading of Additional

Information.

38. Ms Masood pleaded in the grounds of appeal that the findings which the Judge made on the basis of this evidence were perverse and/or irrational, as they were wholly unsupported by the evidence. The findings which were said to be perverse were (a) that the appellant's husband was "*included*" in the application; and (b) the finding that it was very likely that her husband came to the UK on a family visit visa "*either separately or with the appellant.*"
39. On the evidence that was shown to the Judge, it would not have been perverse or irrational for him to draw the inference that the husband was included in the application in the sense of him applying at the same time for a visit visa alongside the appellant and their daughter (Contingency A) – as distinct from the husband being included in the application in the alternate capacity of an important family member whom the appellant and her daughter ostensibly proposed to leave behind in Pakistan, and hence in respect of whom they would have a strong incentive to return to Pakistan before the expiry of their visas to reconstitute their nuclear family unit (Contingency B). I consider that the words on the front page are reasonably susceptible of both constructions. I also consider that, taken in isolation, it would be reasonable to construe them in the first sense in preference to the alternate sense.
40. However, insofar as it is material, I am not persuaded that the Judge unequivocally committed himself to Contingency A. I consider that the Judge deliberately reflected the ambiguity inherent in the words on the front page by his phraseology, which is apt to cover both contingencies. In addition, whereas he flatly rejected the appellant's oral evidence that she did not know the UK sponsor, he did not reject the appellant's oral evidence that her husband did not apply for a visit visa at the same time as she did. He accepted that she might be telling the truth on this point, as he held that the husband may have come to the UK separately.
41. As the Judge acknowledged, he had no specific evidence of the husband's arrival in the UK. Accordingly if his only reason for finding that the family unit had been reconstituted in the UK was what was said on the front page of the database printout, his positive finding of fact would have been unsustainable. But this finding also rested on: (i) the appellant not telling the truth about her knowledge of the sponsor; (ii) the sponsor and MA living in the same street; (iii) the surname of MA was virtually identical to the surname of AA (pointing to the fact that they were in reality one and the same person), and (iv) his agreement with Judge Jhirad that her account of becoming impregnated by MA was wholly incredible, and that it was very likely that she had been impregnated by her husband, who must have been in the UK nine months before the appellant gave birth to their second child.

## **The Visit Visa Application - The additional evidence before the Upper Tribunal**



42. I ask myself whether there is a real possibility that the outcome would have been different if the Judge had been shown the visit visa refusal decision. I am not persuaded that there is a real possibility that the outcome would have been different. I accept that there would have been no evidential basis for the Judge drawing the inference that the husband had applied at the same time for a family visit visa. However, the additional evidence would not have negated Contingency B – indeed, it would have fortified it – and it would not have negated the husband coming to the UK separately. In the light of the other reasons he gave for inferring family reunion in the UK, I consider that the Judge would still have made a positive finding to this effect. He certainly would not have found that the effect of the additional evidence was to engender a real risk that the second and third children were illegitimate.
43. Ms Masood submitted that the additional evidence is helpful to the appellant's case as it is consistent with, and supportive of, the account of the making of the application which she gave in her witness statement.
44. But on the account given by the appellant, the application was fraudulent, as she was not a genuine visitor and she falsely represented that she was residing at her in-laws address, which was also, on her account, the last known address of her husband. The additional evidence does not assist the appellant on the issue of her general credibility, as it only serves to highlight the extent of the fraud that must have been perpetrated, on the appellant's account, in order for her to succeed in her visit visa appeal. In theory, the application might only have been refused on financial grounds. The production of the refusal notice shows that it was refused on the grounds that the appellant was not a genuine visitor. So in order to succeed in her appeal, the appellant must have provided false assurances about her family ties to Pakistan. It is possible, as Ms Mahmood submitted, that she only relied by way of appeal on wider family ties, and not on her marital tie to her husband. But this does not change the fact that, on her account, the appellant was still being highly dishonest about enjoying settled family circumstances in Pakistan, and having a familial incentive to return to Pakistan.
45. An additional consideration on materiality is that the Judge's positive finding of fact on family reunion in the UK was unnecessary. The Judge had already given adequate reasons for dismissing the appellant's core claim before he went on to consider the implications of the visit visa documents and the appellant's oral evidence about them. The appellant's core claim included the claim that she would be returning to Pakistan with two illegitimate children. This claim had been rejected by both Judge Jhirad (after the birth of the second child) and by Judge Sweet (after the birth of the third child). Judge Khan's positive finding of fact on family reunion in the UK was advanced by him as an additional reason for dismissing the appeal over and above the reasons he had already given for dismissing it. Since the earlier reasons are sufficient, it does not matter if his finding on family reunion was tendentious and/or partially based on a mistaken interpretation of the documentary evidence relating to the visit visa application.

**Notice of Decision**

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

**Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**

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.

Signed

Date 20 January 2018

Judge Monson

Deputy Upper Tribunal Judge