



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

Appeal Number: PA/03440/2017

**THE IMMIGRATION ACTS**

**Heard at Birmingham CJC  
On 1<sup>st</sup> October 2018**

**Decision & Reasons  
Promulgated  
On 26<sup>th</sup> October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**ZARDA [B]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Trevelyan (Counsel)

For the Respondent: Mrs H Aboni (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge E. M. M. Smith, promulgated on 10<sup>th</sup> January 2018, following a hearing at Birmingham on 2<sup>nd</sup> January 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a citizen of Pakistan, a female, and was born on 7<sup>th</sup> January 1964. She appeals against the decision of the Respondent dated 24<sup>th</sup> November 2016, refusing her claim for asylum and humanitarian protection pursuant to paragraph 339C of HC 395.

## **The Appellant's Claim**

3. The basis of the Appellant's claim is that she has been the victim of domestic violence at the hands of her husband and she is at risk of ill-treatment contrary to Article 2 and 3 of the Human Rights Convention.
4. The Appellant had come to the UK by virtue of an arranged marriage that took place in 1984 in Pakistan to a Mr [MA], who resided in the UK. Initially the Appellant's husband would visit the Appellant in Pakistan, when he went to see his own family. The Appellant claimed that during these visits her husband would try to abuse her, but at the time she was protected by her mother, who has now passed away. The Appellant states she has four sisters. These all live in the UK. She herself came to the UK on 29<sup>th</sup> June 2008, and initially lived in Leeds with her husband. However, she then discovered that he was in another relationship and had children through that relationship. She was mistreated by her husband. She remained virtually a prisoner in her home. She then moved to her sister's house, Mrs [KK], in Birmingham. Also living there was her younger sister, Miss [RK]. Her application to remain in the UK was made on 21<sup>st</sup> January 2015. Curiously, as the judge recalls, "This application was supported by her husband and encouraged by her sisters and maternal uncle" (paragraph 9). It was eventually refused on 3<sup>rd</sup> December 2015. Curiously also, in the application, "the Appellant claimed to be living with her husband which was untrue" (paragraph 9).

## **The Judge's Findings**

5. The judge observed how in 2015 the Appellant had made a false application for leave to remain in the UK upon the basis that she was still residing with her husband. That application was made at a time when she and her sisters and the maternal uncle knew that she had claimed to be a victim of domestic violence at the hands of her husband. As the judge observed, "There was an opportunity to have claimed asylum then but she failed to do so. To that extent I am satisfied that Section 8 applies to this Appellant and I will factor that into my overall assessment of her credibility" (paragraph 22).
6. The judge went on to recognise, and make allowance for, the fact that the Appellant was illiterate, and had little idea of the content of the early application, which the judge said had been created falsely to keep the appellant in the UK. However, the judge's view was that those who assisted her did know that it was false, and they were a party to the application, and her maternal uncle accepted during his evidence that the

family persuaded the appellant's husband to supply documentation to support the application "even though it was at a time when the Appellant had separated from her husband" (paragraph 23).

7. Thirdly, the judge observed that prior to evidence before the Tribunal the Appellant pleaded not to be sent back to Pakistan but that "at no time did she express in those pleas a fear of her husband or his relatives" (paragraph 24).
8. Fourth, at the hearing, her Counsel endeavoured to extract from the Appellant, whether her fear centred around her husband but as hard as he tried the Appellant repeated that "she wanted to stay in the UK" (paragraph 25).
9. The judge found [KK] to be credible but did not find [RK] to be credible (paragraph 26).
10. The decisive factor, against these circumstances, that swayed the judge to make a decision against the Appellant, was the fact that the Appellant had "at the least an uncle in Pakistan" (paragraph 27), as confirmed by Mr Ahmed, who lived in Leeds, and gave evidence. She could turn to this uncle and other relatives for support within her community.
11. To sum up, the judge concluded that,

"At the best, the Appellant's case is that it was not until 2014 that she mentioned domestic abuse, some six years after she had arrived in the UK. However, the fact that an application was made for her to remain as a partner undermines her claims. Further, it has not been disputed that when she spoke to the Respondent's officers in 2015 (RB at B1) there is no suggestion that she complained of any domestic violence. Indeed only complained her husband had another partner" (paragraph 29).
12. In considering the scenario that the Appellant would be returning back as a lone woman, the judge had specific regard to the country guidance case of **SM (lone women - ostracism) Pakistan [2016] UKUT 00067**. The judge observed that this Appellant was indeed "an unskilled and uneducated woman" who "will find it difficult to relocate within Pakistan".
13. However, the matter did not end there because,

"What is now clear from the evidence before me is that she has relatives at her home village and nearby in Pakistan and will be supported financially by her relatives in the UK. The Appellant has not discharged the burden of proof and established that she would be unable to access effective support and protection from her relatives. There is evidence before from the respondent that there is an effective support network for a lone woman including a 24-hour helpline" (paragraph 38).
14. The appeal was dismissed.

### **Grounds of Application**

15. The grounds of application state that the judge failed to take into account the fact that the Appellant had mental problems, lacked literacy, and also misinterpreted elements of the available evidence.
16. On 13<sup>th</sup> February 2018, permission to appeal was granted, with the observation that the grounds were prolix, and did not necessarily identify with any great clarity what the alleged error of law was. Even so, it was arguable that the judge's reasoning is insufficient in relation to humanitarian protection/Article 3 issues. This is because it is confined to simply three paragraphs (from paragraphs 37 to 39), and it is difficult to see from his reasoning throughout the decision, why it has been concluded that there is an effective support network for the Appellant in Pakistan.

### **Submissions**

17. At the hearing before me, Mr Trevelyan, appearing on behalf of the Appellant, as her Counsel, submitted that the judge's decision was insufficient with regard to humanitarian protection principally because of the paucity of consideration at paragraphs 37 to 39. At paragraph 37, the judge accepts that the Appellant is illiterate and a separated married woman, as well as being a person with no education skills. However, the judge then in the next paragraph goes on to say that, "I accept that this Appellant as an unskilled and uneducated woman will find it difficult to relocate within Pakistan ..." (paragraph 38), but fails, at this stage, to factor in the family background, that this was an Appellant who, following her marriage had moved from her parents' home to her in-laws and resided there. The husband's family had property. That property was then the subject of a family dispute. The father's nephews had stolen land from her. She could not in actual fact return back to her own community and face a hostile situation. The judge makes no reference to this. The judge simply assumes that just because there is an uncle back in the village that this would be sufficient basis upon which family support would be forthcoming.
18. Second, whereas reliance is placed upon the country guidance case of **SM [2016] UKUT 00067**, it actually does not apply to this particular case. That was a case where it had been stated that if a person relocated, as a lone woman to one of the major cities, there was evidence of effective support networks for lone women which included "a 24-hour helpline" (paragraph 38). Such a facility, however, was going to be singularly lacking in a village from the Appellant's community in Dadyal, or from her husband's village. What the country guidance case of **SM** stood for was that it would not be unduly harsh normally for an educated or a better off single woman to return. The Appellant's case was quite the contrary. She

was illiterate and without any skills. The judge had recognised this to be a feature in her case. That being so, a more particular assessment was required in the Appellant's case, as to whether she stood to gain from him humanitarian protection in her circumstances because of the violation of her Article 3 rights. The judge was obliged to do more than what he in fact did. It was not enough to draw attention to a 24 hour helpline which would not be available to this particular Appellant.

19. For her part, Mrs Aboni submitted that the findings made by the judge were entirely open to him. The judge had concluded that the relatives had played a particular part in this case to put forward an application which was untenable, because at the time she was supported by her husband, and she had drawn no attention to any domestic abuse even when being interviewed by the Respondent authority. The judge had made allowance for the fact that the nephews had been involved in family property. But the fact was that even the Appellant's own Counsel had failed to elicit any fear on the part of the Appellant of anyone in Pakistan, and the judge expressly pointed this out (at paragraph 25). The judge had concluded effectively that there was no need for the Appellant to relocate to a city because she had her own relatives, in the form of an uncle and others, who were there to provide her with assistance. It was not irrational for the judge to say that the Appellant's UK relatives would also provide her with financial support (at paragraph 38). It was not the case that the strictures of **SM (Pakistan) [2016] UKUT 00067** had not been followed.
20. In reply, Mr Trevelyan submitted that the judge relied on the assistance of an uncle in Pakistan, without knowing whether that uncle was even in a position to assist the Appellant, or willing to do so. It was not clear whether he was rich or poor. It was not clear whether he had the means or lacked the means to provide support. This was something that the judge had to evaluate and assess before a decision could be made with respect to a possible violation of the Appellant's Article 3 rights. Insofar as there had been credibility findings, this was "something of a red herring" because whereas credibility was relevant to whether the Appellant had suffered domestic abuse at the hands of her husband or not, it was not relevant to the question of whether the Appellant could return back to Pakistan as a "lone woman", it being accepted by the judge that the marriage of the Appellant had broken down with her husband. The only other relatives that the Appellant had was the father's nephews and they had sold the land and would be hostile to the Appellant's return. This was a matter that had simply not been proved by the judge.

### **No Error of Law**

21. I am satisfied that the making of the decision of the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
22. In what is a comprehensive and careful determination, the judge concluded that the Appellant was at no risk at all, whether in the UK from

her previous husband, or from relatives in Pakistan. The Appellant did not say to the Respondent's officers that she had suffered domestic violence (see paragraph 29). The appellant did not say to her own Counsel, when giving evidence, that she had suffered domestic violence and that was the reason why she could not go to Pakistan, insisting simply that she wished to stay in the UK (paragraph 25). Mr Ahmed, when giving evidence did not say that the Appellant was a victim of domestic violence (paragraph 27). The husband had in fact indicated to support the Appellant's application. The Appellant had an uncle in Pakistan, and this was accepted by Mr Ahmed, and he did not say that the uncle would be unable to support the Appellant in any way whatsoever. As the judge concluded, not only was there no suggestion of the Appellant suffering domestic abuse, and no evidence of any injury, there was no evidence of any suicidal thoughts either (paragraph 28).

23. On the question of the Appellant being exposed to ill-treatment and various other vulnerabilities as a lone woman, the judge was clear that "There are several close relatives in Pakistan that she can turn to for help if needed" (paragraph 37). He was clear that she was unable to show that she would be destitute in Pakistan and had nobody to turn to (paragraph 39). It may well be that this analysis is undertaken in three paragraphs (paragraphs 37 to 39), but that does not in itself show that the analysis was for that reason alone deficient.
24. The crucial issue here is that the Appellant herself did not say that she wished to remain in the UK because she would not be supported by any relatives in Pakistan. What she had said was that "She had nowhere to live and nothing to live on" (paragraph 25). The judge's view, as explained above, was to the contrary. He had made it clear that the Appellant could live with the uncle, or with the other relatives, and there was also the possibility of financial help arising from the UK relatives.
25. Accordingly, whilst Mr Trevelyan has sought to persuade me on the basis of well-constructed and measured submissions, it is simply not legitimate to assume more than the evidence actually suggested, and the evidence did not suggest what I have been asked to assume, and that being so the judge was not required to make findings, of the kind that have been impressed upon the Tribunal today. It is as well to recognise that, "‘perversity’ represents a very high hurdle" see paragraph 1 of **R (Iran) [2005] EWCA Civ 982** per Brooke LJ. That hurdle has not been met in this case.

### **Notice of Decision**

26. There is no material error of law in the judge's decision. The determination shall stand.
27. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

22<sup>nd</sup> October 2018