



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

Appeal Number: PA/06497/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25<sup>th</sup> January 2018**

**Decision & Reasons  
Promulgated  
On 28<sup>th</sup> February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**MK  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Hooper of Counsel instructed by Birnberg Peirce & Partners

For the Respondent: Ms K Pal, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of Judge Twydell made following a hearing at Taylor House on 14<sup>th</sup> December 2016.

**Background**

2. The appellant is a citizen of India. She fears returning there owing to domestic violence from her husband and his family. The respondent accepted her account of domestic violence during her marriage, broadly,

but did not accept that she would be at risk on return from either her husband or his family or her own family. The judge agreed with the respondent and dismissed the appeal.

3. The appellant sought permission to appeal against her determination on a number of grounds but was refused both in the First-tier and in the Upper-tier. She then sought a judicial review of the Upper Tribunal's decision to refuse permission to appeal and, on 21<sup>st</sup> June 2017 Mr Justice Collins granted permission.
4. On 25<sup>th</sup> October 2017 the Vice President of the Upper Tribunal granted permission to appeal against the decision of the Immigration Judge.
5. At the hearing the principal ground upon which it was argued that the Immigration Judge had erred in law was that the judge had made a material mistake of fact as to whether the screening interview was conducted in the appellant's mother tongue or not. The judge rejected the appellant's claim, made at the hearing, that she had sought a change of interpreter during the interview and that on several occasions during the interview her answers were incorrectly recorded. She said that she proceeded with the appeal on the basis of that finding.
6. With the grounds seeking judicial review is a statement from the appellant's support worker who was present at the interview. In her statement she said that the caseworker had told them that a Punjabi interpreter was not available and the interpreter spoke to the appellant in Urdu. She herself understood Urdu and observed that the interpreter was not translating word for word the answers given. She could tell that the appellant was distressed. After a while the interview was continued in English and when she tried to intervene, the caseworker told her that she would not be allowed to.
7. I heard oral evidence from the support worker, Ms V, who confirmed that the contents of her witness statement were true. She said that she reported the difficulties with the interview to the immigration caseworker at the women's refuge where the appellant was staying and she believed that the support worker had forwarded that information to the solicitors. However she learned relatively recently, although probably before the hearing before the First-tier Judge, that the support worker had not in fact done so.

### **Submissions**

8. Ms Pal defended the Immigration Judge's determination and pointed out that the difficulties with the interpretation had only been raised at the hearing, well after the screening interview had taken place in December 2014. The appellant had had plenty of opportunity to raise the issue of unfairness. She observed that it would have been helpful if the solicitors had been able to confirm the account given by the caseworker.

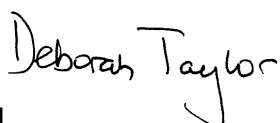
9. Ms Hooper relied on her original grounds but in particular submitted that the decision ought to be set aside on the grounds that the judge had made a mistake of fact resulting in unfairness, by rejecting the appellant's account of the difficulties which she had had at the interview, which had tainted her findings on the substance of the claim.

### **Findings and Conclusions**

10. I am satisfied that the evidence given by Ms V is credible and that, whilst there have clearly been administrative difficulties at the women's refuge centre and possibly at the solicitors, those difficulties do not undermine the strength of the evidence given today.
11. I accept that there were serious issues with interpretation at the screening interview. The judge rejected the appellant's account of those difficulties and said in terms that he proceeded with the appeal on the basis of that finding.
12. In MM (unfairness; E & R) Sudan [2014] UKUT 00105 it was held that a successful appeal is not dependent on the demonstration of some failing on the part of the original judge. Material evidence has now been produced which was not before her and which demonstrates that she made a material error of fact in concluding that the appellant's account of interpretation difficulties at interview was not true. This credibility finding was relied upon by the judge in part to undermine the appellant's credibility generally.
13. Ms Pal did not argue that there was any other proper course open to me than remitting the appeal to be reheard by a different Immigration Judge other than Judge Twydell at Taylor House. This appellant has had difficulties with male interpreters in the past and requests a female interpreter.
14. An anonymity direction is made.

### **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 24 February 2018

Deputy Upper Tribunal Judge Taylor