



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

Appeal Number: PA/09060/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 10 June 2019**

**Decision & Reasons Promulgated
On 21 June 2019**

Before

**UPPER TRIBUNAL JUDGE PERKINS
UPPER TRIBUNAL JUDGE O'CALLAGHAN**

Between

**A N
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss E Sanders, Counsel instructed by Duncan Lewis & Company

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 we make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. We make this order because the appellant claims to be a refugee and publicity could cause him harm.
2. This is an appeal by a citizen of Pakistan against a decision of the First-tier Tribunal dismissing his appeal against a decision of the respondent refusing to

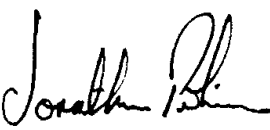
recognise him as a refugee and to give him leave to remain on human rights grounds.

3. There is a Rule 24 Notice from the Secretary of State seeking to defend the appeal but that was not prepared by Ms Everett who explained, in response to our invitation at the beginning of the hearing, that although there are certain points she would make and certain challenges in the grounds she would defend vigorously she would have difficulty overall expecting to persuade us that this was a satisfactory decision.
4. There are aspects of this Decision and Reasons that concern us. By way of example, there is a critical reference in the Decision to there being no witness statements from members of the appellant's family. However, as counsel's grounds of appeal point out, the appellant's relatives were said to be a source of opposition to the appellant. To suggest that they should have provided supporting evidence was as a rather surprising comment. We do not really know what the judge meant there and whilst it might have been possible to have ringfenced that point it concerns us that it was said at all.
5. We are also concerned about the judge's findings on the expertise of Dr Giustozzi. Dr Giustozzi has often given evidence in Afghanistan cases and has had his evidence accepted. Here he was offering himself as an expert on matters in Pakistan and although the judge is critical it is not clear to us quite what the judge accepted. One of the criticisms was that much of what Dr Giustozzi said was in publicly available documents but we are not clear about the judge's evaluation of the evidence in the publicly available documents that she said Dr Giustozzi had relied upon.
6. Fundamentally this case is about whether a Muslim man could take back to Pakistan his wife who does not follow the Muslim faith and there has been no clear finding on that fundamental point. Whilst it may be that the Decision is not as bad as the grounds suggest we agree that this is not a satisfactory decision.
7. We also agree with Miss Sanders that the findings go to the root of credibility which means there is nothing here that can be salvaged or preserved and the appellant has not had a proper hearing of his case. The proper remedy in these circumstances, as agreed by the parties, is that the case be heard again in the First-tier Tribunal.

Notice of Decision

8. We find that the First-tier Tribunal erred in law. We allow the appeal to the extent that we direct the First-tier Tribunal to hear the case again.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 18 June 2019