Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00515/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 10th June 2014	**On 21st July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

A M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Wells (LR)
For the Respondent: Mr S Whitwell (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge M A Khan promulgated on 13th March 2013, following a hearing at Hatton Cross on 24th February 2014. In the determination, the judge dismissed the appeal of the Appellant, who subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

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The Appellant

2. The Appellant is a citizen of Pakistan who was born on 31st December 1982. She appealed against the decision of the Respondent Secretary of State dated 10th January 2014, refusing her application for refugee status in the UK or for humanitarian protection in accordance with paragraph 339C of HC 395, or for a grant of permission to remain in the UK on the basis of her human rights claims.

3. The Appellant's claim rests upon her case that if she is made to return back to Pakistan, then her family, and in particular her uncle, M A B, will kill her, throw acid on her, or chop her into pieces, because she had a relationship in the UK with a person by the name of I H. She said her uncle is a police officer in Pakistan.

The Judge's Findings

4. The judge did not accept the Appellant's version of events (para 48). He did not accept that she was at risk in Pakistan. He did not believe her when she said that the threats from her family were going to be made (para 48). His firm finding was that the Appellant's claim has "no reality about them whatsoever" (para 48).

5. In coming to these conclusions, the judge had regard to the fact that the Appellant maintained that she came from a very strict upbringing in Pakistan. However, she had been educated to the highest levels and had been to a private school. She had worked there as a teacher. The judge did not accept the claim that the Appellant was strict at face value in the light of three particular circumstances. First, that the Appellant had been educated to a high degree.

6. Second, that she had been allowed to travel overseas, thousands of miles away, on her own, in order to further her studies (see para 38). Third, that she had then gone on to have a relationship with I H in the way that she maintained (para 41). However, there was also a fourth reason as far as the claim, as alleged, was made by this Appellant. This was that, after the Appellant moved out of her home to another address, she maintained that she continued to receive threatening phone calls, that she was scared that her family in Pakistan may find someone in the UK to harm her, but the police had then offered her refuge, which she did not accept.

7. The judge held that, "I find that had the Appellant been afraid as claimed, she would have accepted the refuge offered by the police or at the very least moved out of the address where she felt threatened" (para 43). Despite finding that the Appellant's credibility had been rendered nugatory, the judge went on to consider the possibility of risk of persecution to the Appellant in Pakistan in the light of the judgment of Lord Justice Buxton in **GM and YT (Eritrea) [2008] EWCA Civ 833**, on the basis as to whether there was a reasonable likelihood of persecution on return, notwithstanding the Appellant's damaged credibility (see para 47 of the determination). The judge rejected that there was any possibility of such likelihood of persecution.

Grounds of Application

8. The grounds of application state that the judge failed to give adequate reasons for the conclusion, and failed to consider the Appellant's circumstances upon return, having had an abortion, and failed to give proper weight to the material factors.

9. On 2nd April 2014, permission to appeal was granted on the basis that, whilst the judge found the Appellant to be an unreliable witness, it was not clear what facts were found, or whether there had been consideration of the Appellant's circumstances upon return.

10. On 2nd May 2014, a Rule 24 response was entered in a robust manner, to the effect that the grounds amounted to a mere disagreement with the negative outcome of the appeal. In particular, the judge had given his reasons at paragraphs 38 to 47 of the determination, for making negative credibility findings, and had in particular stated (at para 47) that,

> "I do not accept she will be at risk on her return to Pakistan. I do not accept that the threats from the Appellant's family in Pakistan are genuine or that they will be carried out as claimed by the Appellant. I find that these claimed threats have been generated by the Appellant for the purpose of this asylum claim and have no reality whatsoever."

11. The Rule 24 response went on to say that the judge was entitled to conclude that, as a highly educated woman, and a teacher, the Appellant could not be believed when she said that she did not know about the asylum process, despite having been in the UK since 2009 as a student, and that is why the judge applied Section 8 of the Immigration and Asylum (Treatment of Claimants, etc) Act to make an adverse credibility finding against the Appellant.

The Hearing

12. At the hearing before me on 10th June 2014, Mr Wells, appearing on behalf of the Appellant, argued that the judge had fundamentally erred in failing to give adequate reasons for the decision reached at. For example, the judge had stated (at para 40) that the photographs adduced at the hearing "cumulatively add to the Appellant's credibility" but then went on to reject the Appellant's relationship with I H (at para 41). In fact, it was not clear what finding the judge had made in respect of the Appellant's relationship with I H. There were also no findings whatsoever in relation to the miscarriage of the Appellant's baby, which the Secretary of State had accepted at paragraph 28 of the reasons for refusal.

13. Moreover, the Appellant had expressed a fear of her other uncle, A B, and the judge had made no findings with respect to this uncle. The judge had also speculated in concluding that, just because the Appellant had

achieved a high degree of education, that this was inconsistent with her having had a very strict upbringing. This is because it could just as easily be argued that a person who had such a high level of education had also a strict upbringing alongside it. The findings at paragraph 38 were flawed.

14. Furthermore, the judge had failed to consider the Appellant's position as a member of a particular social group, which was accepted to be the case, as far as women in Pakistan were concerned, ever since the House of Lords ruling in **Shah and Islam [1999] UKHL 20**.

15. The Appellant was a lone female returning back to Pakistan, following a miscarriage in the UK, and the findings made at paragraph 43 that, "the Appellant continued to live amongst the community from her area in Kolti, where it would be obvious that someone would see her actions and report to her family" were inadequate. This is because they would not follow through logically in terms of their natural conclusions.

16. No consideration or assessment was made by the Tribunal of the fact that the Appellant was returning as a lone woman to Pakistan. Finally, there was a reference to immaterial matters at paragraphs 39, 40 and 41, which led the judges astray.

17. For his part, Mr Whitwell relied upon the Rule 24 response. He submitted that the Grounds of Appeal amounted simply to a mere disagreement. The judge had handled the credibility issues perfectly correctly. This was clear with his treatment of the evidence at paragraphs 40 to 41, where he had accepted there had been a relationship with a Mr I H by the Appellant.

18. The Appellant's case was that she came from a family so conservative that they would not let her go to work and the judge rejected this. He was entitled to do so. The judge had accepted that the Appellant belonged to a particular social group but that did not mean to say that he had to also conclude that she would be at risk upon return.

19. He had not found her credible and he did not find that she would be at risk. He had come to the firm conclusion that her asylum claim was deliberately constructed in a way as to give her the right to remain in the UK.

20. In his reply, Mr Wells stated that essentially what the judge was saying was that because the Appellant came from a conservative background, she could not have entered into a relationship with I H, even if she was educated. There was no basis for such a conclusion.

No Error of Law

21. I am satisfied that the making of the decision by 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 this decision. This is because the judge had given a comprehensive consideration to all the evidence before him (see paras 38 to 45).

22. He had particularly observed that the Appellant had been offered a refuge by the police, after claiming that she was receiving threatening telephone calls and feared that harm would come to her, but had rejected this offer of help.

23. The judge had expressed his reservations about the evidence given at paragraphs 38 to 39. The judge considered the photographs and observed that, “the only people in the photograph at the party are the Appellant and I H eating a cake at a table, and there is no one else in the pictures” and found that “this event is not a party, as claimed by the Appellant” (para 40). The judge also found that the Appellant was in any event a highly educated lady.

24. Ultimately, however, what this appeal before this Tribunal amounts to is whether, such errors as they may or may not be in the Tribunal below, amount to a material error. There is no material error because the judge concluded that, as a highly qualified person, and a person who had teaching experience in Pakistan, the Appellant could find reasonable relocation possibilities open to her in a country of 180 million people and could live away from her family.

25. As the judge held, “she also failed to explain as to how her family would find out that she has returned to Pakistan” (para 44). The judge also was not impressed by the fact that the Appellant did not claim asylum until 22nd November 2013, even though she had received threats at first as long ago as March 2013, some eight months earlier.

26. It was open to the judge to conclude that he could not believe the suggestion that the Appellant was not aware about the asylum process (para 46). It has to be remembered that “perversity” or “irrationality” is a high threshold for an Appellant to surmount. The Appellant has to show that on any reasonable view the findings made by the judge were not open to the judge as a decision maker.

27. This was not such a case. As the Rule 24 response states, these are mere disagreements with the negative findings of fact made by the judge in this appeal. I have no hesitation in rejecting the appeal.

Decision

28. There is no material error of law in the original judge’s decision. The determination shall stand.

Anonymity order made.

Direction Regarding Anonymity – Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005

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

Deputy Upper Tribunal Judge Juss 21st July 2014