Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/12029/2015

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke-on-Trent	**Determination & Reasons**
On 24th April 2016	**On 26th July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MISS FAIZA YOUSAF
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Camille Warren (Counsel)
For the Respondent: Mr Andy McVeety (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Bird, promulgated at Taylor House on 25th January 2016. In the determination, the judge dismissed the appeal of Faiza Yousaf, who 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 female, a citizen of Pakistan, who was born on 29th August 1984. She appealed against the decision of the Respondent Secretary of State dated 9th September 2015, refusing her application for asylum and to recognise her as a refugee with a well-founded fear of persecution "on the basis of her membership of a particular social group as a woman in Pakistan" (see page 1 of the refusal letter).

The Appellant's Claim

3. The Appellant's claim is that she was drugged and raped by a spiritual healer in Pakistan, and that in order to have an abortion, she then married her friend, Shiraz, because for an abortion it was necessary to provide a certificate from a male member of the household who approved of the abortion, and he arranged for the abortion approximately a week after their marriage. Subsequently however, her marriage broke down with Shiraz on account of the domestic violence suffered.

The Judge's Findings

4. In her findings, the judge set out, "the basis of the Appellant's claim for asylum" and observed that, "around 2009 she was raped by a man who had been treating her father but also treated her" (paragraph 7). The Appellant found out she was pregnant. One of her colleagues had taken to pick up her test results and he saw the results. She spoke to her colleague, Shiraz, and told him about the rape and asked for his help. He suggested that they marry and then this could be organised. "She knew that he was already married and had children but she did not know what else to do. Her family would not help her and her life would be in danger if she told her parents" (paragraph 8). In order to get married to Shiraz he would need to get the consent from his first wife. His parents came to her parents and asked for the hand in marriage. The parents did not know, "that he was already married and they had given their consent" (paragraph 9).

5. Their marriage was arranged, but a week before the marriage ceremony Shiraz's mother said that she would not attend the wedding, but the marriage went ahead anyway (paragraph 9). Once the Appellant had married she could not go and live in Shiraz's family's house until his mother consented and, "it was at this time that her partner said that it would be better if they left it for a while" (paragraph 10). The Appellant remained in her own parents' home for over a year. Thereafter, "as things were getting difficult it was decided that she should come to the United Kingdom as a student and that her husband would come as her dependant" (paragraph 11). He made all the arrangements and they came to the United Kingdom. The Appellant said that shortly after arriving here, "her brother got married in Pakistan in June 2011 but the Appellant did not attend" (paragraph 11).

6. Thereafter the Appellant did become pregnant but miscarried in October 2011. The Appellant said that about a year after their marriage their relationship deteriorated and that, "after her miscarriage she wanted to return to her see her family but her husband was against this". Nevertheless the Appellant did return, "but then wanted to return to the UK after about ten days" but that, "when she came back he was annoyed and they argued" and his mother was not accepting her and her own brother got divorced in April 2012 and his ex-wife telephoned the Appellant to say that she knew about the abortion and the fact that her husband had a first wife (paragraph 12).

7. A few days later her mother had telephoned to say that they knew everything and asked why the Appellant had not said anything to her parents. The Appellant's mother said she did not want anything further to do with the Appellant (paragraph 13). The Appellant then said that following the birth of her daughter in November 2012 she had emailed her father telling him about the truth. He telephoned her and told her that the family did not want to have any contact with her (paragraph 14). In early 2013 her husband suffered from financial problems and he could not support her and the child and finally left her. The Appellant said that her husband "had returned shortly but there had been ill-treatment and he left again. The Appellant feared that if she returned to Pakistan her parents will ill-treat her or seek to take her life. There were also threats from her husband's first wife's family" (paragraph 15).

8. The evidence was set out extensively by the judge and the judge also observed how,

> "The Appellant's claim to have married Mr Shiraz Jangua was then considered at paragraphs 22 to 30. It was accepted that the Appellant was married to Mr Jangua but it was not accepted that this relationship had broken down because of domestic violence. No evidence had been provided to substantiate this claim" (paragraph 17).

9. The judge went on to describe how she heard evidence from witnesses (see paragraphs 22 to 23).

10. The judge then gave reasons for her decision and set out the facts in summary (see paragraph 28). The judge observed that, "at the hearing I asked the Appellant how was it possible that her parents had not initiated any enquiries to find out a little more about this family. The Appellant said that they have not" (paragraph 28) when the judge began considering the question about the marriage of the Appellant to Shiraz. The judge went on to explain how "the Appellant was unable to explain why her husband's mother had not said anything".

11. The judge did not regard the explanation as to why she did not attend the wedding to be a credible one. The conclusion reached by the judge was that,

> "The Appellant's account of the reasons for the marriage, namely in order to obtain a marriage certificate, does not sit well with the involvement of the family into the matter. It appears that the marriage was arranged fairly traditionally with the husband's mother coming to her parents to ask for the

> Appellant. The Appellants consented and there was an engagement as well as a marriage ceremony" (paragraph 30).

Ultimately, the judge had little doubt that,

> "On the whole I did not find this Appellant to be credible in the evidence that she gave. I could not accept her explanation that her parents failed to make any enquiries about her husband's family. She was unable to explain why her husband would marry her, being a married man with two children, just so that she could have a marriage certificate in order to get an abortion" (paragraph 31).

The judge went on to also observe that there was no "objective evidence to show that this was a requirement". Furthermore, the judge also found it extraordinary that the Appellant "was unable to explain why her husband, who was a professional man, would not obtain consent from his wife if that was a legal requirement and would need to be put on the form" (paragraph 31). Finally, the judge held that "if the whole reason for this marriage was for the Appellant to get an abortion, the Appellant has been unable to obtain any evidence to substantiate this" (paragraph 32).

12. In relation to the Appellant producing the evidence from the United Kingdom that she had been the victim of rape, the judge observed that there was a letter from the West London Rape Crisis Centre from Miss Foziha Hamid,

> "... who describes herself as a clinical manager. She states that the Appellant's symptoms are consistent with a diagnosis of complex traumatic stress disorder. It is not clear whether Miss Hamid had the medical expertise to form such an opinion. There is no evidence of her qualifications" (paragraph 36).

13. The judge dismissed her appeal observing how the Appellant was a well-educated lady with an MBA from a university in Pakistan (paragraph 41) and the entire claim based upon bringing dishonour to the family was untenable (see paragraphs 42 to 43).

14. The appeal was dismissed.

Grounds of Application

15. The grounds of application state that the judge erred in concluding that the Appellant was being returned as a single woman with a child, whereas in reality her case had been that she had been raped and risked ill-treatment at the hands of relatives of hers in Pakistan.

16. Secondly that the judge did not in any event consider the associated risks set out in the subjective country guidance material in relation to the case of **SM (lone women – ostracism) Pakistan CG [2016] UKUT 000067**. Third, the judge disregarded or misstated the evidence. For example, if the judge held that the Appellant was not

credible, she did not explain why the Appellant was not credible. This was particularly so given that the rape was unchallenged by the Respondent.

17. Third, the Appellant was someone who "the Respondent accepts is destitute, without support from her family" and the judge failed to record the Appellant's examination-in-chief and submissions, which in combination included the fact that, as someone supported by asylum support, she had established that she was destitute".

18. Finally, there was also the Article 8 and Section 55 BCIA claim which the judge had not considered.

19. On 23rd March 2016, permission to appeal was granted by the Tribunal.

Submissions

20. At the hearing before me on 24th May 2016, Ms Warren, appearing on behalf of the Appellant, submitted that the judge had misunderstood the basis of the claim, and focused on the fact that the Appellant was a lone woman with a child rather than the fact that she had been raped and feared reprisals from her family. This was an entirely different claim from that of a lone woman. Moreover, the rape was only referred to by the judge at paragraph 28. Yet, the judge had accepted that the Appellant had been the victim of rape, which led to her becoming pregnant, and this resulted in her seeking an abortion. More particularly, Ms Warren referred to the fact that the written submissions, which are detailed and lengthy, were submitted before the judge and these fundamentally addressed the true nature of the claim that was before the judge. It was also explained in the written submissions (see paragraph 14.7) that the Appellant needed to have the "consent of a guardian" if she was unmarried, if she were to have an abortion, failing which this would not be available to her. In the circumstances, the judge should not have taken the view that the requirement of a certificate of marriage or a male's consent was a requirement.

21. For his part, Mr McVeety submitted that this was simply an attempt to reargue the case.

22. First, it was simply not the case that the judge had misunderstood the nature of the claim. The judge had been perfectly aware throughout the determination that the essence of the claim emanated from the Appellant's claim that she had initially been raped, had fallen pregnant, and had to abort her baby (see paragraph 28).

23. Second, the judge had also then had regard to the fact that the Appellant additionally claimed that there was a risk to her from members of her family (see paragraphs 13 to 14). The judge expressly considered then the position as to whether the Appellant would be at risk as a member of a particular social group, namely, a lone woman with a child (paragraph 27). Accordingly, the entire nature of the claim, in the various ways in which it had been put, had been considered by the judge.

24. Third, in so far as the country guidance case of **KA (domestic violence, risk of return) Pakistan CG [2010] UKUT 216** was concerned (as affirmed by **SA**), that

particularly educated women, such as the Appellant who has an MBA, would be able to access social facilities and would not be at risk of ill-treatment and persecution. In this respect paragraph 12 of the Grounds of Appeal is entirely misleading when it states that, "the Appellant is someone who the Respondent accepts is destitute .....", because this is predicated on the basis that just because the Appellant has been given asylum support in the United Kingdom, that for this reason alone, she is going to be destitute upon return to Pakistan, which does not follow at all, and is certainly not accepted. The Appellant is a middle class lady who would have facilities available to her on account of her education and her family background.

25. Fourth, it is simply not the case that the judge has accepted that the Appellant had been raped. The contrary is her position. The judge addresses the question of rape at paragraph 36 when the Appellant "produces a letter from the West London Rape Crisis Centre from Miss Foziha Hamid who describes herself as a clinical manager" and the judge observes that, "it is not clear whether Miss Hamid has the medical expertise to form such an opinion. There is no evidence of her qualifications" (paragraph 36). Accordingly, if anything, the claim is rejected that she was raped.

26. Finally, as far as Article 8 and Section 55 of the BCIA is concerned, these aspects are dealt with in the refusal letter. The Appellant has to show why the assessment in the refusal letter is wrong. The plain fact is that if the Appellant can return back to Pakistan then her child can go with her because a young child's proposition is to remain united with the caring parent. As far as the Immigration Rules were concerned, the Appellant could not succeed under paragraph 276ADE because there were no serious obstacles to her reintegration in Pakistan as she could find a job and be socially integrated as she had only been in the UK for a short period of time. As for freestanding Article 8 jurisprudence, the result here would be rather different.

27. In reply, Ms Warren submitted that if one has a look at the established cases on gender persecution such as Lord Bingham's statement in **Forna**, or Lady Hale's statement in ex parte **Hoxha**, it is clear that the Appellant qualifies as a member of a particular social group and is therefore subject to the risk of ill-treatment and persecution. She has already suffered past persecution and this is highly indicative of the treatment that she would receive in the future. For these reasons, the appeal should be allowed.

No Error of Law

28. 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 the decision. My reasons are essentially those given by Mr McVeety in his forthright submissions before me. Ms Warren, who has presented the case of the Appellant in measured and careful terms has not been able to demonstrate that the judge fell into error.

29. First, the judge was right to conclude that, "the Appellant could not explain why her parents who were traditional people had made no enquiries through the community

or the relations about this family their daughter was to marry into" (paragraph 22). Second, the judge was entitled to conclude that,

> "The Appellant's claim that the reasons for the marriage, namely in order to obtain a marriage certificate, does not sit well with the involvement of the family into the matter. It appears that the marriage was arranged fairly traditionally with her husband's mother coming to her parents to ask for the Appellant" (paragraph 30).

30. Second, the judge was right to conclude that, "I could not accept her explanation that her parents were able to make any enquiries about her husband's family".

31. Third, the judge also observed that, "the Appellant was unable to explain why her husband would marry her, being a married man with two children, just so that she could have a marriage certificate in order to get an abortion".

32. Fourth, the Appellant was unable to point to any objective evidence to show that this was a requirement.

33. Fifth, the Appellant herself was unable to explain why her husband, who is a professional man, "would not obtain consent from his wife if that was a legal requirement and would need to be put on the form" (see paragraph 31).

34. Finally, the judge was entitled to take the view that, "if the whole reason for this marriage was for the Appellant to get an abortion, the Appellant has been unable to obtain any evidence to substantiate this" (paragraph 32). I bear in mind Ms Warren's noteworthy submission before me that the written submissions make it clear (at paragraph 14.7) that the "consent of guardian" is required for an abortion. However, this does not mean, and the judge did not so find, that the Appellant had to marry in order for such a consent to be forthcoming in one form or another.

35. In fact, the judge took a jaundiced view that it was highly improbable that a person such as Shiraz would marry the Appellant just in order to allow her to have an abortion. In essence, the claim put forward by the Appellant was comprehensively rejected, including the claim that she had been raped (see paragraph 36) and that she would be at risk as a lone woman returning with a child.

36. The case of **Zoumbas [2013] UKSC 74** is authority for the proposition that the proper position of children is with their parent, and a child as young as Umainah Janjua in this case would not risk suffering adverse affects to his or her "best interests" by being required to be with the mother when she goes back to Pakistan. In short, the determination is detailed and comprehensive and devoid of any error of law.

Notice of Decision

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

38. No anonymity order is made.

Signed Date

Deputy Upper Tribunal Judge Juss 25th July 2016