Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA069952016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27 June 2017	**On 10 July 2017**

Before

UPPER TRIBUNAL JUDGE WARR

Between

RM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Butterworth of Counsel, instructed by Duncan Lewis & Co
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India born in March 1986. She first came to this country on 24 March 2007 as a student. Her leave was extended until 27 October 2014. She applied for asylum on 10 October 2014. This application was refused on 17 April 2015 and following judicial review

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proceedings the respondent maintained her decision to refuse the claim on 20 June 2016.

2. The appellant appealed and her appeal came before a First-tier Judge on 5 January 2017.

3. The judge summarised the appellant's claim in paragraphs 4 to 14 of her determination. The appellant's problems began in 2009 when she had married her ex-partner in this country without the consent of her parents. While he had told the appellant that he was Hindu it emerged after she had accepted his marriage proposal that he was in fact Sikh. He had said it would be quicker to get a Sikh wedding but the couple, he said, would have a Hindu wedding in due course. This had never happened and only on her wedding night had her ex-partner informed her that he was in the United Kingdom without leave. The appellant had not previously asked him about his immigration status.

4. The appellant's parents were against the marriage and would have nothing more to do with her and while she had maintained some contact with her mother her father had abandoned her altogether. There had been problems with the marriage from the outset and the judge describes the controlling and abusive behaviour which grew worse when pressure was brought to bear upon the appellant to have a baby. The appellant's daughter was born in July 2012. The abuse continued and following an incident in September 2014 the police were called and the appellant's ex-partner was taken away by the police. The appellant had made a witness statement but had taken no further action as she had told the police she was not willing to go to court to give evidence against him. The appellant's partner had threatened the appellant a week later and had telephoned her parents threatening to destroy the appellant's life. Her ex-partner's family members had also made threats. They were claimed to be very influential people. No further threats had been made since September 2014 and the appellant had not heard from her ex-partner since 2014. Her family continued to live in the family home. The appellant believed she was safe from her ex-partner in the United Kingdom as he was the subject of a non-molestation order issued by the family court. However, the appellant believed she would be at risk in India and her ex-partner's family were dangerous people who would have the ability to locate her. She suffered from depression and took antidepressant medication. Apart from the appellant the First-tier Judge heard evidence from Miss SS, who had travelled to India to attend her brother's wedding. She had offered to visit the appellant's family while she was there. However, the appellant's brother had closed the door in her face. Miss SS had said that her own brother had driven her to the appellant's family home on a three or four hour journey. The witness had seen the appellant's ex-partner in the street in Southall since the separation but they had never spoken.

5. The judge correctly addressed herself on the burden and standard of proof and confirmed that the order in which she had set out her reasons did not alter the fact that she had considered the whole of the evidence before reaching her decision.

6. The judge records her findings in relation to the appellant's credibility as follows:

> "32. I did not find the appellant to be a credible witness. I found a number of aspects of her account to be inconsistent, vague and implausible and, on the totality of the evidence before me, I concluded that she had fabricated her account in order to bolster a false claim for asylum. Whilst I accept that she may have been married to her ex-partner and that the marriage may not have been a happy one, she has failed to satisfy me that she has given a truthful account of the history of their relationship and the alleged threats that he and his family have meted out on her and her family.
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> 33. I find it unlikely that he would have been able to deceive her about his faith in the manner she alleges. As two educated people, it would have been apparent to the appellant that he was not Hindu. I do not accept that her ex-partner accompanied the appellant to Hindu temples prior to their marriage in some sort of effort to dupe her. In response to question 86 of her asylum interview, the appellant said she never asked him why he started practicing Sikhism and going to the Gudarwa. I find such a lack of curiosity in an educated woman such as the appellant implausible given that this was the man she had agreed to marry.
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> 34. The appellant also said that she had never asked her ex-partner what his immigration status was and whether he had leave to remain in the United Kingdom. Again, I find this incredible. As an educated woman who had made several immigration applications herself in the past, I do not believe that she would not have enquired of her husband-to-be what, if any, right he had to be in the country.
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> 35. The appellant describes being the victim of regular emotional, physical and sexual abuse during her marriage. She said that she never told anyone about this at the time. I note that it was less than a month before she attended the asylum screening unit to make her asylum claim that she first made a complaint to the police that she had suffered domestic abuse. The non-molestation order was issued just three days before the appellant attended the screening asylum unit. The appellant has failed to satisfy me that the alleged abuse took place at all and that her complaint was not instead motivated by a desire to bolster her

asylum claim. I take into account that non-molestation orders can be obtained on the word of a complainant alone and the issuing of such an order does not establish that the behaviour alleged in fact took place. The district judge issued the order without having had the benefit of hearing the appellant being cross-examined or of hearing any evidence at all from her ex-partner, who was not given notice of the hearing.

36. Furthermore, the appellant said that she would not agree to give evidence against her ex-partner in the criminal courts because she believed that her daughter needed both parents. Given that her ex-partner is someone who she says beat and raped her throughout their marriage, who had threatened to kill her, and who had tried to 'sell' their daughter to a friend, I find it implausible that the appellant would wish this man to play any future role in her daughter's life and that she would refuse to give evidence against him for this reason. I also find her claim that her daughter needed the ex-partner to be in her life to be at odds with her claim that at around this time she was reporting him to the immigration authorities for allegedly attempting to enter into a sham marriage with a Polish lady in order to secure leave to remain here. If the appellant was, bizarrely, of the view that her daughter needed her ex-partner in her life, she would hardly take steps to get him removed from the country by reporting him to the immigration authorities.

37. The appellant claims that the person she and her daughter are at risk from is her ex-partner. However, he is in the United Kingdom, not India. In these circumstances, she would surely feel safer returning to India than living a relatively short distance from him in Slough. The appellant suggested that she feels safe in this country because her ex-partner is the subject of a non-molestation order which was issued by the family court on 7th October 2014. However, at question 153 of the asylum interview, the appellant said that the order had not yet been served upon her ex-partner. Furthermore, if the appellant genuinely believed that her ex-partner wished to kill her and had the capability to do so, and to locate her, the existence of a non-molestation order would not afford her sufficient protection. If he were determined to murder her, the existence of a court order that might result in a mere five years' imprisonment if breached would not deter him."

7. The judge considered a psychiatric report by Dr T George, who had examined the appellant on 7 December 2016. The doctor had concluded that the appellant was suffering from PTSD and depression. In relation to this report the judge stated as follows:

> "Medical evidence such as this must be considered in the round. In determining how much weight to attach to this report, I bear in mind that Dr George has based her findings on a single meeting with the appellant and that she did not have before her the appellant's GP records. She also appears to have based her findings on the assumption that the appellant has been truthful about her personal circumstances although I note the remarks made by Dr George at paragraph 16.11 of her report, in which she states that her findings are also based upon her observation of a patient's demeanour and body language."

8. The judge also took into account that the appellant had not previously sought help for any mental health issues from her GP and the fact that the report "was prepared privately for the specific purpose of supporting her asylum claim". The judge further noted that as at the date of the appeal hearing the appellant had not furnished her GP with a copy of the report or sought any further medical help.

9. Although the appellant had claimed that her ex-partner's family were people of influence with the means to trace her throughout India she had not been able to give any specific details of what the family did and had simply said at interview: "I do not know about details but his father got his own business and his brother works somewhere." The judge explains why she found it difficult to reconcile the appellant's evidence with the evidence of Miss SS in paragraph 39 of her decision. Miss SS had been unable to throw any light on the question of the alleged influence of the appellant's ex-partner's family.

10. The judge makes it clear that she did not accept that Miss SS had given a truthful account, finding it most unlikely that she would undertake a six or eight hour round trip to the appellant's family home where it was claimed the appellant's brother "had already allegedly indicated to her in a phone call that they would not engage with her." Furthermore she had never chosen to confront the appellant's ex-partner when she had seen him in Southall and the judge also commented that it would seem to be unnecessary for Miss SS to undertake "such a long and predictably unfruitful journey when the appellant herself was in touch with her family." The judge found that the witness had fabricated her evidence "in a misguided effort to support her friend's asylum claim."

11. The judge considered that the appellant's claim to be at risk from her ex-partner was undermined by the fact that he had not in fact harmed her and nor had his family. The appellant had confirmed that her ex-partner's family had never visited the appellant's family home despite knowing where they lived and having previously visited them when the appellant's daughter was born.

12. The determination continues as follows:

"42. For all the reasons set out above, I am not satisfied that the appellant is at risk of harm from her ex-partner or from members of his family. Nevertheless, I have considered whether she may be at risk of persecution or serious harm by the mere fact that she would be returning to India as a single mother. I find that she would not be. I do not accept that the appellant would be returning to India without any family support. I find that the appellant has been untruthful over the nature and degree of the contact that she has had with her family since coming to the United Kingdom. On the one hand, she says that her father abandoned her as a result of her decision to enter into an inter-faith marriage with her ex-partner in 2009. On the other she states that her father financially supported her studies and provided her with an affidavit in November 2014 to support her asylum claim. I note that in her witness statement the appellant claims that her father only supported her studies between 2007 and 2009. However, she had not adduced any evidence to corroborate this assertion or to show how she was able to support herself and satisfy the strict requirements for obtaining student leave after this time without her father's help.

43. During her oral evidence, the appellant said that she no longer had any contact at all with her own family and that this was as a result of her father's death. She said that since he died, her brother had become head of the family and he had prohibited her mother and other family members from contacting her. The appellant has provided a death certificate which states that her father died on 30th August 2016. I am not satisfied that this document can be relied on. The appellant claims to have had no contact with her family since September 2014. When asked how she obtained this certificate, she said that she had a friend who was close to her family and this friend had obtained it for her. I find it unlikely that her family would agree to give a copy of the death certificate to assist the appellant if they had severed contact with the appellant. Under the principles established in the case of Tanveer Ahmed it is for the appellant to show that this document can be relied on. She has failed to do so. I consider it likely that the appellant has fabricated details of her father's death and her brother's response to it in an effort to support her untruthful claim that she no longer has any contact with her family.

44. The appellant said in her asylum interview that she maintained contact with her mother throughout her stay in the United Kingdom albeit that she says that their contact was limited to enquiring after each other's well-being. For reasons given above, I do not accept that the appellant has told the truth about her inter-faith marriage with her ex-partner and therefore I do not accept that her relationship with her parents soured as a result of

this event. Furthermore, as stated above, I am not satisfied that the appellant's father is in fact deceased. However, if he is so, I am not persuaded that the appellant's mother and brother have severed contact with her. I find that she and her child would be able to turn to rely on them for support and accommodation just as she has done in the past.

45. I have read with care the expert report of Dr Gil Daryn dated 9th February 2016. However, much of the contents of the report are generic in nature and do not specifically address the appellant's circumstances. Furthermore, the report is premised on the basis that the appellant would be returning to India with no family to support her on her return and that she has told the truth about the circumstances leading up to the making of her asylum claim. But I do not accept this to be the case. I find that she remains in contact with her family and that they continue to support her and would do on her return. I also take into account the fact that she is an educated woman who has undertaken employed work in both this country and in India. I also take into account that although she is a single woman the appellant has not been accused of adultery.

46. In light of her circumstances as a whole, I reject any suggestion that the appellant and her child would be destitute or would suffer discrimination in India reaching persecutory levels or serious harm."

13. The judge then found that the removal of the appellant would not be disproportionate, taking into account Section 117B of the Nationality, Immigration and Asylum Act 2002. There were no very significant obstacles to her integration into India for the purposes of paragraph 276ADE(vi).

14. In relation to the medical issues the judge stated as follows:

> "Whilst she may suffer from depression, I find that the severity of any mental health problem falls far short of that required to amount to a 'very significant obstacle' or to engage Articles 3 or 8. She is not currently taking any medication or receiving any counselling or other input from any mental health specialist. For the purposes of Section 55 of the Borders, Citizenship and Immigration Act 2009, it is in the best interests of the appellant's young child to return with her to India where she can enjoy the full rights of her Indian citizenship and the benefit of growing up close to other extended family members."

15. The judge accordingly dismissed the appeal on all grounds. Grounds of appeal against the decision were settled by Counsel who had represented the appellant before the First-tier Judge (not Mr Butterworth). In ground 1 it was argued that the judge had erred in finding in paragraph 33 that the

appellant's claim that she did not know her husband's status in the UK was implausible whereas in the appellant's witness statement she had said that her ex-partner had "also misled me about his immigration status in the UK. He led me to believe that he was here legally and only told me he was not on our wedding night." The evidence that the appellant did not know her husband was not lawfully in the UK was evidence she had always maintained throughout.

16. In ground 2 it was argued that the finding in paragraph 37 that the appellant's husband could still kill her if he wished to was of no assistance and was an indication of the judge's position on the appeal. The judge was to assess the appeal based upon the evidence before her and not based upon what had not yet happened. The finding was irrational and unreasonable. The judge had failed to take into account the medical evidence and reference was made to paragraph 16.11 of the psychiatric report. The grounds state:

> "Whilst any assessment of credibility is in the domain of the judge hearing the appeal, the judge can be assisted in the consideration of this question, in part, or not, by the examination of the evidence from an expert witness. It is clear the judge did not consider a significant part of the report, as part of the evidence, to the extent the determination is flawed and ought not to stand."

It was argued that the judge had not considered the objective evidence about marriage and divorce and it was clear that divorce was not recognised in the Sikh religion in India. The appellant could not escape from her abusive ex-partner and his family and there had been no real consideration of this aspect of the objective material. The decision was irrational.

17. Permission to appeal was granted by the First-tier Tribunal. The respondent filed a reply on 30 May 2017 in which it was submitted that the grounds were no more than an expression of disagreement with the judge's decision. The appeal rested on credibility and the judge had given adequate reasons for the findings. The finding that the appellant could return to her family and not be at any risk of reprisals from her in-laws was fatal to the claim.

18. Counsel relied on his skeleton argument lodged on the date of hearing. Apart from the appellant's original bundle before the First-tier Tribunal a supplementary bundle was lodged but It was not argued that the determination was flawed in law by reference to that bundle.

19. Counsel submitted that it was clear that the appellant had discussed her ex-husband's immigration status with her husband and he had lied to her regarding his status. The judge had made a mistake which amounted to a mistake of fact. The judge had made no conclusions about the findings by Dr George. She had made no findings as to whether the appellant

suffered depression or any psychiatric illness or whether she was a vulnerable witness. Counsel acknowledged that the vulnerable witness point did not feature in the grounds. Dr George had diagnosed PTSD and had applied the Istanbul Protocol. The doctor had considered the possibility that the appellant might have been feigning her symptoms. While there was no need to give reasons on every point the report had been a lengthy one. Reference in the skeleton argument was made inter alia to **Mibanga v Secretary of State [2005] EWCA Civ 367** – the medical evidence should not artificially be separated from the rest of the evidence. Conclusions should not be reached as to credibility without reference to the medical evidence.

20. Counsel focused heavily on paragraph 37 of the decision. He referred to the report of Dr Daryn where it was stated that the police and other state authorities actually engaged in sexually assaulting those who had sought their protection. In the UK she would be protected and the judge had erred in taking matters against her in paragraph 37. There were no divorce provisions for Sikhs. If returned customary laws would apply and the judge had failed to consider the expert report. Domestic violence was treated as a private family matter. The Indian police tended to promote reconciliation and failed female victims of violence. While she had the benefit of a non-molestation order in the United Kingdom she feared she could not escape in India where attempts would be made to reconcile her. The judge had misunderstood the appellant's case in paragraph 37.

21. Mr Bramble submitted that the judge had not materially erred in law. She had heard evidence at the hearing and had considered the evidence in the round. Her decision had been founded on a number of matters and it had not been accepted that the appellant was a victim of domestic violence. The timing of the claim had been found to be implausible. What the judge had said in paragraph 37 needed to be seen in the context of the findings in the preceding paragraphs.

22. The judge had considered the medical evidence and while she had not made an express finding in relation to whether the appellant suffered from PTSD the determination needed to be considered in the round. There had been no GP records. The judge was best placed to consider credibility. No further medical help had been sought. The appellant had not taken matters further. Reference was made to **BK (Risk, Adultery, PSG) India CG [2002] 03387**. The appellant would be returning with the support of her family as the judge had found in paragraph 42. The expert report had been premised on the understanding there would be no family to support the appellant. However, the appellant had been found not to be credible and she had the support of her family.

23. At the conclusion of the submissions I reserved my decision. I remind myself that I can only interfere with the judge's determination if it was materially flawed in law. I also remind myself that the judge had the benefit of assessing oral evidence and made clear credibility findings.

24. The first complaint in the grounds was that the judge had erred in finding that the appellant had never asked her ex-partner what his immigration status was. This concerns paragraph 34 of the decision. I note that in the preceding paragraph the judge had referred to question 86 of the appellant's asylum interview and it may be the judge had in mind the answer the appellant gave to question 58. In that question the appellant was asked whether she had asked her husband about his immigration status in the UK prior to the conversation they had on their wedding night and the appellant had replied "no". The statement that she had been misled about her ex-partner's immigration status and that he had led her to believe that he was here legally does not amount to the appellant stating in terms that she had asked her ex-partner about his immigration status. The appellant goes on to say at interview that she was given the impression by the friend who had introduced her that he had status – see questions 61 and 62. The judge was entitled to conclude that it was not credible that she had never asked her ex-partner what his immigration status was. It was not incumbent on the judge to make express reference to what the appellant said in her witness statement. She does not say in the excerpt from the witness statement relied upon that she had directly asked him. If she had done it would have been difficult to reconcile with what she had said at interview.

25. I do not find that what is said in paragraph 34 amounts to an error of fact as contended in the skeleton argument, still less an error of law, let alone a material error of law.

26. Although the grounds refer to paragraph 33 the focus of the challenge is on paragraph 34. I see no error in the judge's conclusions in paragraph 33 in any event.

27. Counsel focused heavily on paragraph 37 of the judge's determination. A distinction is drawn between what the appellant faces in the United Kingdom with a supportive police force and the position in India. However, as Mr Bramble submits, paragraph 37 needs to be seen in the context of the preceding paragraphs where the judge had found that the appellant had not satisfied her that the alleged abuse took place at all and in fact was part of an attempt to bolster her asylum claim. The judge's use of the word "implausible" in paragraph 36 was perfectly justified. Viewed as a whole, the judge's decision is safely and properly reasoned in my view.

28. A point is taken on the approach to the psychiatric evidence.

29. I have already commented that the judge makes it clear that the order in which she considered matters was not material and she had taken into account all the evidence in the round when reaching her conclusions. I am not satisfied that she misdirected herself by making her findings in a vacuum and without regard to the medical evidence – see **Mibanga v Secretary of State** cited above.

30. The judge acknowledged that the doctor had found that the appellant was suffering from PTSD and depression. The judge was plainly not satisfied with this medical evidence, noting that medical evidence had to be considered in the round. She considered what weight she would apply to it and sets out her approach in paragraph 38 and on any fair reading of that paragraph it is made abundantly clear that the weight that the judge was able to give to the report was low. It is acknowledged in the grounds that any assessment of credibility was in the domain of the judge hearing the appeal. The judge makes express reference to paragraph 16.11 of the report which is relied on the grounds. I do not find that it is made out that a significant part of the report was not taken into account by the judge.

31. In ground 4 reference was made to risks on return if permission was granted on the previous ground. In that context reliance was placed on **BK (India)**.

32. The judge disbelieved the appellant's account and, as Mr Bramble submits, the issues of risk on return needed to be seen in that context. The appellant would be returning on the judge's findings to a supportive family. The appellant was also an educated woman and her circumstances are not the same or indeed similar to the circumstances considered by the Tribunal in **BK (India)**. This is quite apart from the central conclusion made by the judge that the appellant was not at risk of harm from her ex-partner or from members of his family.

33. I do not find that the judge did not give proper weight to the expert report by Dr Daryn. She says that she found it generic in nature and it did not specifically address the appellant's circumstances. It was open to her to conclude that the appellant remained in contact with her family, who continued to support her.

34. In paragraph 47 of her decision the judge deals with the appellant's private and family life and considers the issue of very significant obstacles. As I have said, the judge was criticised for dealing with the medical evidence as she did earlier on in her decision. She does, however, make it clear in paragraph 47 that while the appellant might suffer from depression the severity of any mental health problem fell far short of that required to amount to a very significant obstacle or to engage Articles 3 or 8. In my view she was entitled so to conclude and her analysis of the medical evidence was not arguably flawed or inadequately reasoned in any material respect. The vulnerable witness point was not taken in the grounds which were settled by counsel representing the appellant at the hearing. She would have been best placed to assess what points to take and a skeleton argument lodged at the hearing is not the way to raise new grounds.

35. Having carefully considered the arguments advanced I am not persuaded that the First-tier Judge erred in law as contended.

Notice of Decision

The judge's decision was not materially flawed in law. I direct it shall stand. The appeal is dismissed on asylum, humanitarian and human rights grounds (Articles 2, 3 and 8).

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.

TO THE RESPONDENT
FEE AWARD

The First-tier Judge made no fee award and I make none.

Signed Date 7 July 2017

G Warr, Judge of the Upper Tribunal