



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006293

First-tier Tribunal No: PA/55802/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 25 August 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**AM
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. A. Bhachu, Counsel instructed by Freedom Solicitors
For the Respondent: Ms. R. Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 10 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Dieu, (the "Judge"), dated 5 September 2022, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse a grant of asylum. The Appellant is a national of Pakistan who claimed asylum on the basis of being a woman at risk of honour killing.
2. Permission to appeal was granted by First-tier Tribunal Judge Curtis in a decision dated 28 October 2022 as follows:

"Ground 1 criticises the Judge for failing to take into account the evidence of the Appellant's brother. The Judge confirms, as this ground sets out, that the Appellant's brother, ARM, attended the hearing to give live evidence. He adopted his witness statement. It is right to say that the Judge makes no mention of ARM's evidence in the "Findings & Considerations" section of his determination. The Judge does mention the statement of another brother, RSA, who is in Italy and who did not attend the hearing, but failed, it is arguable, to take into consideration the evidence of a witness who had attended and, it would seem, who gave potentially corroborative evidence of their father's assault on the Appellant. Whilst there is no obligation on a Judge to set out every single evidential point in a determination, it seems to me at least arguable that a failure to explicitly consider the evidence of a live witness amounts to an error of law. Ground 1 discloses an arguable error of law. Since the error of law arguably infects the finding relating to the risk on return from the Appellant's father it seems to me at least arguable that that error also infected the finding that she could internally relocate.

3. In light of the above I make no discrete findings in relation to Grounds 2 and 3, although Ground 2 appears weaker in the absence of any application by Ms Bachu that the Appellant ought to be treated as a vulnerable witness under the relevant presidential guidance. Ground 3 also appears to me to be weaker where there was an apparently obvious discrepancy between the extent of the injury to the Appellant between the medical evidence and the FIR."

The hearing

3. The Appellant attended the hearing. I heard oral submissions from Ms. Bhachu and Ms. Arif. I reserved my decision.

Error of law

4. It is asserted in Ground 1 that the Judge failed to factor in the evidence of the Appellant's brother, ARM, who gave oral evidence at the hearing, and/ or failed to give reasons for not attaching weight to that evidence. It was submitted by Ms. Bhachu that this evidence went to the core of the Appellant's account. ARM had first hand testimony of what had happened in Pakistan. This was relevant to the Appellant's credibility, and also consideration of the Devaseelan principles as it was evidence which had not been before the previous Tribunal. It was submitted that ARM had given cogent reasons for why he had not given evidence on the previous occasion. His evidence was key on a material issue, and corroborative of the Appellant's account. The Judge's failure to take it into account affected his overall findings.
5. Ms. Arif submitted that the Judge had neither accepted nor rejected the evidence of ARM. She acknowledged that it was not referred to in the Judge's findings, but submitted that it had been addressed as its contents at been acknowledged at [21]. There was no evidence that ARM had given oral evidence regarding the

events in Pakistan, but his oral evidence elaborated his relationship with the Appellant.

6. At [11] of the decision the Judge refers to the statement from ARM. He states:

“The Appellant also provided a statement from her brother, ARM. The statement states that their father threatened to harm her if she did not stop working. He also insisted that she married their sister’s cousin. The Appellant’s brother says that the Appellant was beaten badly and admitted to hospital. He asked for him to be kept out of her claim whilst he was applying for ILR. He said that they now had a good bond and if returned to Pakistan the Appellant would be destitute and at risk.”

7. At [21] he refers to the fact that ARM adopted this statement and gave oral evidence. He states:

“I then heard from the Appellant’s brother, [ARM]. He adopted his statement of the 16th February 2021. I have read that statement and acknowledge its contents. In oral evidence he elaborated that the Appellant was all that he had in the UK. They are close and there for him and his family. He is very close to the Appellant’s children and loves them dearly.”

8. These are the only two references to ARM’s evidence. The Judge does not mention this evidence at all in his findings which start at [24]. Neither does he give any reasons for why he has rejected this evidence. The Judge has recorded that ARM did not give oral evidence regarding events in Pakistan. However, this in and of itself does not mean that the evidence in his statement of events in Pakistan does not carry weight. The Judge acknowledged at [11] that his statement contained evidence of events in Pakistan, and also that ARM adopted this statement. I find that the Judge has not taken into account the evidence in the witness statement, which was corroborative of the Appellant’s account of events in Pakistan. While he summarised this evidence at [11], he has not explained why he has not attached weight to it.

9. I find that Ground 1 is made out, and that the Judge has erred in failing to take ARM’s evidence into account, and/or in failing to give reasons for why he has rejected it. I find that this error is material as it goes to the core of the Appellant’s claim of past persecution in Pakistan. As this evidence is corroborative of the Appellant’s account, it therefore affects the Judge’s findings as to her credibility. It was evidence which had not been before the previous Tribunal, and therefore is relevant to the consideration under Devaseelan.

10. Given that I have found that Ground 1 is made out, and that it goes to the core of the Appellant’s account such that the credibility findings cannot stand, I do not need to consider the further grounds of appeal.

11. I find that the decision involves the making of a material error of law. I have carefully considered whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade. I have taken into account the case of Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

“(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.

(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal.”

12. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b). I have found that the Judge’s failure to take into account material evidence which was corroborative of the Appellant’s account means that the credibility findings, and the findings on the Appellant’s account, cannot be maintained. Given the extent of fact finding necessary, I find that is appropriate in these circumstances for the appeal to be remitted to the First-tier Tribunal to be reheard.

Notice of Decision

13. The decision of the First-tier Tribunal involves the making of a material error of law.
14. I set the decision aside. No findings are preserved.
15. The appeal is remitted to the First-tier Tribunal to be reheard de novo.
16. The appeal is not to be listed before Judge Dieu.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
17 August 2023