



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

Appeal Number: AA/04357/2014

THE IMMIGRATION ACTS

Heard at North Shields

On 22 October 2014

Decision & Reasons

Promulgated

On 27 October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE HOLMES

Between

F Y

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Pickering, Counsel instructed by Switalskis Solicitors

For the Respondent: Mr Dewison, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan. She entered the UK on 15 August 2011 with a valid grant of entry clearance until 14 October 2013, in the company of her mother and siblings.
2. In May 2013 the Appellant approached staff at her college to report that her family proposed to force her into an arranged marriage to which she

- did not consent. Bolton Social Services and police were involved as a result, and she was removed from her family to a refuge.
3. On 3 February 2014 with the assistance of Bolton Social Services the Appellant claimed asylum. The Appellant's case was that she faced a risk of harm from non state agents in the event of a return to Pakistan, against which the authorities would be unable or unwilling to provide protection.
 4. On 12 June 2014 the Respondent refused her asylum claim, and made a decision to remove her to Pakistan. The Appellant's appeal against the removal decision was heard on 28 July 2014, and was dismissed in a Determination promulgated on 6 August 2014 by First Tier Tribunal Judge Hands. In the course of that Determination the Judge made a series of adverse findings of fact, rejecting as untrue the Appellant's account of her experiences.
 5. First Tier Tribunal Judge Maller granted the Appellant permission to appeal the decision on 2 September 2014.
 6. The Respondent has filed no Rule 24 Notice, but opposes the appeal on the basis there was no error of law in the Judge's approach to the evidence.
 7. Thus the matter comes before me.

The Judge's reasoning

8. According to paragraph 25 of the Determination the Respondent accepted by the date of the hearing of the appeal that the Appellant had been subject to a forced marriage, and that she would be a member of a "particular social group" in the event of return to Pakistan.
9. It is common ground that the Judge's approach was to find; (i) that the Appellant did not disclose the fact that she was already married when she first sought assistance from staff at her college, and (ii) that the Appellant had not told the truth about her continuing contacts with members of her family after she first sought assistance from staff at her college.
10. The Judge appears to have identified that the enquiries made by Social Services which are detailed in the report prepared in early October 2013 [B1-] did not extend to any enquiries or interview of the Appellant's husband, and father in law, even though officers were by then aware that the Appellant was already married. The Judge comments that this aspect of the Appellant's account "has largely been ignored".
11. The Judge noted the account the Appellant had given of marital rape in her witness statement and interview, and that this was the trigger for her seeking help at her college.

The errors in the Judge's approach

12. It is common ground that the Determination contains no reference to the letter from Bolton Social Services of 29 January 2014 that in turn refers to the multi agency approach to the Appellant's circumstances, and the conclusion that she was at risk of harm from both (a) members of her own extended family, and, (b) members of her husband's extended family. That letter was specifically referred to by

Counsel for the Appellant in the course of her oral submissions, and was referred to in her skeleton argument. At paragraph 34 of the Determination the Judge notes the earlier Bolton Social Services report of 4 October 2013 [B1-] and concludes that it does not make any reference to the Appellant facing a risk of harm from her husband. It is in my judgement plain from the Determination that the Judge has overlooked the letter of 29 January 2014, and thus overlooked the fact that it constituted evidence that a multi agency assessment of risk conducted by both Bolton Social Services and the police had concluded that she faced precisely that risk.

13. There is moreover, no adequate analysis to be found in the Determination, of the weight to be attached to the sequential disclosure by the Appellant of her account, because the Judge having noted the Appellant's account of the incidents of marital rape being the trigger for her seeking the assistance of a welfare officer at her college, makes no further comment upon that evidence.
14. Instead the Judge's approach appears to have been to conclude that the Appellant's account was not credible notwithstanding (a) the concession made by the Respondent that she was subject to forced marriage, and, (b) the assessment of the risk faced by the Appellant as a result of her rejection of that forced marriage that had been undertaken by the professionals involved in dealing with the Appellant.
15. I am satisfied that the Judge's approach to the evidence was such as to render the Determination unsafe, for lack of adequate reasoning and analysis of the evidence placed before the Tribunal. I have in these circumstances considered whether or not to remit the appeal to the First Tier Tribunal for it to be reheard, as requested by the Appellant. In the circumstances of the appeal I am satisfied that this is the correct approach, and I note Mr Dewison does not seek to suggest otherwise. In circumstances where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the Appellant of the opportunity for his case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 25 September 2012. Moreover the extent of the judicial fact finding exercise is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 25 September 2012.
16. Having reached that conclusion, with the agreement of the parties I make the following directions;
 - i) The decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal. The appeal is not to be listed before Judge Hands. The appeal is to be listed at North Shields on 25 November 2014 before me, allowing 1 hour, for Directions only (which shall include fixing a date for the hearing of the appeal), since it is anticipated the Appellant will now seek to obtain further evidence from Bolton Social Services and the police as to their enquiries.

- ii) An Urdu interpreter is required for the hearing of the appeal although not for the Directions hearing.
- iii) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Decision

17. The Determination promulgated on 6 August 2014 did involve the making of an error of law and accordingly the decision upon the appeal is set aside. The appeal is remitted to the First Tier Tribunal with the following directions;

- i) The decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal. The appeal is not to be listed before Judge Hands. The appeal is to be listed at North Shields on 25 November 2014 before me, allowing 1 hour, for Directions only (which shall include fixing a date for the hearing of the appeal), since it is anticipated the Appellant will now seek to obtain further evidence from Bolton Social Services and the police as to their enquiries.
- ii) An Urdu interpreter is required for the hearing of the appeal although not for the Directions hearing.
- iii) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Deputy Judge of the Upper Tribunal JM Holmes
Dated 22 October 2014