



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

Appeal Number: AA/06063/2014

THE IMMIGRATION ACTS

Heard at Manchester

On 12th June 2015

**Decision & Reasons
Promulgated
On 26th June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**ZL
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Shah of Counsel instructed by Eden Solicitors

For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant has appealed against a decision of Judge of the First-tier Tribunal Birk promulgated following a hearing on 23rd September 2014.
2. The Appellant is a female citizen of Pakistan born in December 1977 who arrived in the United Kingdom as a visitor on 26th April 2013 with her dependent daughter who was born in December 2005.

3. The Appellant's visit visa was valid between 11th April 2013 and 11th October 2013, and on 30th July 2013 she made an application to claim asylum. The Appellant underwent a screening interview on 16th August 2013 and a substantive asylum interview on 7th October 2013.
4. The application was refused by letter dated 31st July 2014, and a Notice of Immigration Decision dated 6th August 2014 was issued, indicating that a decision had been made to remove the Appellant from the United Kingdom following refusal of her asylum and human rights claim.
5. The appeal was heard on 23rd September 2014 and dismissed, Judge Birk (the judge) finding that the Appellant was not entitled to asylum or humanitarian protection, and that her removal from the United Kingdom would not breach her human rights.
6. The Appellant was subsequently granted permission to appeal to the Upper Tribunal.

Error of Law

7. The appeal came before me on 23rd January 2015. After hearing submissions from both parties I set aside the decision of the First-tier Tribunal.
8. I found that the judge had erred by failing to consider the evidence in the round. The judge had referred to Tanveer Ahmed [2002] UKIAT 00439, but had not considered whether documentary evidence could be relied upon, after looking at all the evidence in the round. The judge made findings that two attempted kidnappings did not occur, and then went on to consider documentary evidence in relation to FIRs and arrest warrants. The judge found that because the incidents had not occurred as claimed by the Appellant, the documents submitted to support the Appellant's account were not reliable.
9. I set aside the decision of the First-tier Tribunal with no findings preserved. The hearing was adjourned for a continuation hearing to take place so that further evidence could be heard. Full details of the application for permission to appeal, the grant of permission by Judge White, and my reasons for finding an error of law are contained in my decision dated 29th January 2015.

Re-making the Decision

The Law

10. The Appellant is entitled to asylum if she is outside her country of nationality and is recognised as a refugee, as defined in regulation 2 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 as a person who falls within Article 1A of the 1951 Geneva Convention. The onus is on her to prove that she has a well-founded fear of persecution for a Convention reason (race, religion, nationality, membership of a particular social group or political opinion),

and is unable or, owing to such fear, unwilling to avail herself of the protection of the country of her nationality.

11. The Appellant is eligible for humanitarian protection under paragraph 339C of the Immigration Rules if she does not qualify as a refugee, but establishes substantial grounds for believing that if she was removed from the United Kingdom, she would face a real risk of suffering serious harm, and is unable or, owing to such risk, unwilling to avail herself of the protection of the country of return.
12. In relation to Articles 2 and 3 of the 1950 European Convention on Human Rights (the 1950 Convention) it is for the Appellant to establish that if removed from the United Kingdom there is a real risk of her being killed, or subjected to torture or inhuman or degrading treatment or punishment.
13. The burden of proof is on the Appellant and can be described as a reasonable degree of likelihood, which is a lower standard than the normal civil standard of the balance of probabilities. I must look at the circumstances as at the date of hearing.

Documents

14. In re-making this decision I have taken into account the Respondent's bundle of documents with Annexes A-H, the Notice of Appeal, and a further bundle of documents submitted by the Respondent comprising 151 pages.
15. I had also been provided with an initial bundle on behalf of the Appellant comprising 52 pages, a second bundle comprising pages 133-387, a third bundle comprising pages 388-408 and a seventeen page skeleton argument. I also received a further witness from the Appellant dated 12th June 2011.
16. Mr Shah did not have the Respondent's bundle comprising 151 pages, although this had been provided to a representative of his instructing solicitors at a Tribunal hearing on 18th March 2015, which subsequently had to be adjourned. The hearing was therefore put back for that bundle to be provided to Mr Shah.
17. When the hearing resumed both representatives indicated that they were ready to proceed and there was no application for an adjournment. Mr Shah confirmed that the Appellant claimed asylum on the basis of her membership of a particular social group that being a Pakistani woman who feared her former husband, and in the alternative claimed humanitarian protection. The Appellant also claimed that to remove her from the United Kingdom would breach Articles 2 and 3 of the 1950 Convention. Mr Shah stated that no reliance was placed upon Article 8 of the 1950 Convention.

The Appellant's Claim

18. The Appellant's claim as considered by the First-tier Tribunal is set out in a screening interview, a substantive Asylum Interview Record, and her

witness statements dated 2nd September 2013 and 18th September 2014 and may be summarised as follows.

19. The Appellant married MA on 5th February 2014. There is one child of the marriage born in December 2005. The Appellant has two sisters, one living in the United Kingdom and one living in Denmark. She has two brothers living with their families in Pakistan and her mother still lives in Pakistan. Her father, who was a lawyer, passed away approximately four years ago.
20. The Appellant suffered domestic violence from MA, and he forced the Appellant and her daughter out of the matrimonial home in 2007. The Appellant then went to live with her parents. In 2008 MA divorced the Appellant and started to threaten her by telephone, stating that he would kill her and kidnap her daughter.
21. There was an attempted kidnapping on 15th November 2012 when the Appellant was returning from school with her daughter. MA and armed men attempted to kidnap the Appellant's daughter but were unsuccessful. The Appellant's younger brother, who was a lawyer, immediately went to the police and filed an FIR. The Appellant believes that MA was arrested by the police but paid a bribe and was released.
22. The second incident occurred on 13th January 2013 when the Appellant and her daughter were in a market. MA and other armed men again attempted to kidnap her daughter but were unsuccessful. The Appellant informed her brother who went to the police station and filed another FIR. The Appellant believes that MA was arrested again, but once again paid a bribe and was released.
23. MA has significant power and influence in Pakistan although he spends the majority of the year working in a hotel in Italy.
24. There have been further threats made by telephone. In April 2013 the Appellant applied for a visa to visit her sister in the United Kingdom. This was granted and the Appellant and her daughter arrived in this country on 26th April 2013.
25. She was told by her brother in Pakistan that telephone threats continued and she subsequently decided to claim asylum. The Appellant fears MA will cause her harm if she returns to Pakistan, and fears that her daughter will be kidnapped. She does not believe that the police in Pakistan would be able to protect her, and does not believe that she would be able to live away from her home area in Pakistan as she would have no family support and she would be a single woman with a young child to support, and in any event MA has influence outside their home area of Kaharian in Gujrat.

The Refusal

26. The reasons for refusal are contained in the Respondent's letter dated 31st July 2014. In summary it was not accepted that the Appellant had been

married to MA as claimed. It was not accepted that attempts had been made to kidnap the Appellant's daughter.

27. It was acknowledged that copy FIRs and four arrest warrants in the name of MA had been submitted, but the Respondent having considered the evidence in the round did not find that these documents could be relied upon.
28. The Respondent contended that the Appellant had delayed claiming asylum having arrived in the United Kingdom on 26th April 2013, and this adversely affected her credibility.
29. The Respondent believed that the Appellant would be able to return to her home area and would not be at risk.

Oral Evidence

30. The Appellant gave evidence with the assistance of an interpreter in Urdu. There were no difficulties in communication.
31. The Appellant adopted as her evidence her witness statements dated 2nd September 2013 and 18th September 2014 which have already been summarised. In addition she adopted her statement dated 12th June 2015 in which she stated that it would not be possible for her to live in Pakistan. She did not have anybody to support her financially or emotionally. She described herself as having a very basic education and coming from a rural area, and stated it would not be possible for her to find employment and survive as a single mother.
32. The Appellant has never had employment and would not be able to relocate to another part of Pakistan as there would be nobody to accommodate her, and there would always be threats to herself and her daughter.
33. The Appellant was cross-examined. I have recorded all questions and answers and will not reiterate them in full here.
34. In summary the Appellant stated that she has two brothers in Pakistan, the older brother who works for the government, lives in Islamabad with his wife and has four children. The younger brother is a lawyer who lives in Kaharian with his wife and six children. Her mother also lives in Kaharian.
35. The Appellant attended a private fee paying school and left when she was 16 or 17 years of age without qualifications. Her daughter also attended a private school.
36. The Appellant said that both kidnapping attempts were reported to the police and an FIR issued on each occasion. She did not make the report to the police station, but a police officer came to see her so that she could sign the FIR.

37. It was put to the Appellant that she owned property in Pakistan with her brother and she stated that the land referred to was not hers, but belonged to her brother, even though the land deed specifically stated that she and her brother had purchased it.
38. The Appellant said that after her divorce her father had supported her financially and after his death her mother and sister had supported her. She said that her brother, the lawyer, had not assisted her with money because he had six children to look after. Her other brother who lived in Islamabad had also not helped her. The Appellant confirmed that she had visited the United Kingdom as a visitor in 2011 following a successful appeal against refusal of entry clearance as a visitor. She had returned to Pakistan after visiting her sister.
39. The Appellant described her husband as living in Italy but visiting Pakistan two or three times a year. She described him as being quite rich and having a lot of influence in Pakistan.
40. The Appellant said that when she visited the United Kingdom in 2013, the situation got worse in Pakistan so she decided to stay in this country and claim asylum.
41. The Appellant stated that her lawyer brother had provided her with the FIRs and arrest warrants but he had told her in a telephone conversation that he no longer wanted anything to do with her because of the threats that were still being made and she now had no contact with him. She remained in contact with her mother.
42. The Appellant said that she had visited Islamabad before her father passed away, and the distance between Islamabad and her home area in Kaharian was three or four hours by car.

The Respondent's Submissions

43. Mr Harrison relied upon the reasons for refusal letter dated 31st July 2014 in requesting that the appeal be dismissed. I was asked to find that there was no satisfactory evidence that MA had any power or influence in Pakistan.
44. The Appellant appeared to come from a family of lawyers and the indication given in the documents submitted for the entry clearance appeal was that her family had substantial assets.
45. Mr Harrison submitted that the Appellant attempted to portray herself as being uneducated, with no support, but the evidence did not support that, and I was asked to find that the Appellant did have family support in Pakistan, and the attempted kidnappings had not occurred, and she had not received threats from MA, and neither had her family.
46. Mr Harrison confirmed that the Respondent did not accept that the copy arrest warrants and FIRs were genuine documents.

The Appellant's Submission

47. Mr Shah relied upon his skeleton argument. I was asked to find that the Appellant had given a credible account, and to take into account the expert evidence that had been submitted in relation to the FIRs and arrest warrants. I was asked to find that the expert report proved that the documents could be relied upon.
48. I was referred to paragraphs 30 and 31 of the skeleton argument, which relate to an extract from the Foreign and Commonwealth Office Report 2014, and the Human Rights Commission of Pakistan 2013. This evidence indicates that Pakistan slipped to 123rd out of 148 in the UN Gender Inequality Index, and concern was expressed at the increasing violence against women in Pakistani society. Women faced harassment and police stations were avoided by most women.
49. I was also referred to the Human Rights Commission of Pakistan Report, also in paragraph 31 of the skeleton argument which provided statistics for cases of violence against women.
50. I was asked to find that the Appellant had suffered domestic violence when she was married.
51. I was asked to find that the inconsistencies referred to by the Respondent in the reasons for refusal letter were not material and did not affect the core of the Appellant's account.
52. I was asked to find that the background evidence indicated that there would be no sufficiency of protection or reasonable option of relocation for the Appellant in Pakistan. I was asked to find that the police would not protect her and MA would be able to trace her if she returned. I was asked to allow the appeal.
53. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

54. I have taken into account all the evidence both oral and documentary placed before me, together with the submissions made by both representatives. I have considered the evidence in the round and taken into account the circumstances at the date of hearing. I have considered this appeal in the light of the provisions of paragraph 339L of the Immigration Rules. I am conscious of the need to take great care before making adverse findings of credibility in asylum cases, and am aware of the importance of considering this appeal in the light of conditions in Pakistan.
55. The Respondent rejected the Appellant's claim primarily on credibility grounds, the only part of her account which was accepted was her nationality and identity.

56. The issue of the Appellant's marriage was not pursued by the Respondent before the First-tier Tribunal, and Judge Birk was satisfied that the Appellant had been married to and divorced from MA, who is the father of her daughter. There were no oral submissions made to me in relation to the marriage, and I am satisfied that the Appellant was married and divorced as claimed, and that MA is the father of the Appellant's daughter.
57. I have considered the documentary evidence in the light of the principles set out in Tanveer Ahmed which in summary are that it is for an individual claimant to show that a document on which he or she seeks to rely can be relied upon. A decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round. I carefully considered the two reports prepared by Dr Iqbal, one dated 13th April 2015 which relates to two FIRs, and the second dated 5th June 2015 which relates to four arrest warrants issued against MA, dated 17th November 2012, 1st December 2012, 7th February 2013 and 2nd March 2013. I note paragraph 5 of Dr Iqbal's first report in which he states;
- "5. It is very hard to get a definitive answer on the authenticity of the documents in question without verifying them from the sources that issued them. Therefore, my conclusions are my best views on the format, basic features and contents of these documents.
58. Dr Iqbal reaches similar conclusions in respect of the FIRs and the arrest warrants, commenting that both FIRs, which are dated 15th November 2012 and 13th January 2013, match all the features of a standard FIR and the contents reflect the description of the offences mentioned. In relation to the arrest warrants Dr Iqbal concludes that they match all the features of a standard arrest warrant.
59. I accept that Dr Iqbal is qualified to give an opinion on these documents, and I accept his conclusions that the documents produced match the features of standard documents of that type, although Dr Iqbal does not state that the documents are genuine.
60. The core of the Appellant's account relates to the claim that MA has twice attempted to kidnap her daughter. It was as a result of the attempted kidnappings, that the FIRs and arrest warrants were issued. I have carefully considered the Appellant's account as contained in her witness statements and interview record. I find that there are relevant inconsistencies in relation to the incident said to have occurred on 15th November 2012. The Appellant stated in reply to question 34 of her interview that she last saw MA in 2007 when he forced her to leave the matrimonial home. She then stated (64) that the first time she saw him again was the attempted kidnap on 15th November 2012. But this conflicts with the FIR dated 15th November 2012 in which she reports that many times when she had been on her way home from school, MA had teased her daughter and threatened to murder both herself and her daughter. There is clearly a conflicting account as to whether the Appellant had never seen MA between 2007 and 15th November 2012, or whether prior to 15th November 2012 on many occasions he had seen the Appellant on her

way home from school with her daughter and he threatened to murder her.

61. In answer to question 51 of the interview the Appellant explained she had taken her daughter to school on 15th November 2012, and two people came out of a car and tried to snatch her daughter. This account changed when answering questions 59 and 60 as to the number of people involved, the Appellant then stating there were two or three people, and in answer to question 56, the Appellant said that no car was involved. There was a further conflict when the Appellant answers question 80, when she is still being questioned about the kidnap attempt on 15th November 2012, in which she refers to the driver of the car who had the weapons having escaped.
62. In relation to the number of people involved in the first kidnap attempt, the FIR gives a different account as the Appellant's account to the police was that MA was accompanied by four other unknown persons armed with firearms.
63. I take into account the Appellant's account in interview was given with an interpreter, and there is always the possibility of errors if evidence is given by an interpreter, but I find that there is a clear conflict in the accounts given by the Appellant, in relation to the number of people involved, and whether or not a car was involved.
64. There are further inconsistencies. In answer to question 49 the Appellant was asked when the kidnap attempt took place and she confirmed it was 15th November 2012 when she was taking her daughter to school. She repeated in answer to question 51 that she was taking her daughter to school and when she was by the school, two people came out of a car. In answer to question 68 the Appellant stated when asked what time of day this had occurred, that she did not remember exactly, but then she said it was in the morning.
65. The Appellant was then asked (question 69) whether her daughter was on the way to school, and she changed her account, to say that she was bringing her daughter home from school at the end of the school day. This is a markedly different account from taking her daughter to school in the morning. If this event had occurred, I find that it would have made a significant impression. No doubt the Appellant would have been shocked, but I find that she would have been able to describe whether the incident had occurred on the way to the school in the morning, or on the way home from school at the end of the school day. The Appellant did make reference to the interpreter in interview not listening properly, but I do not accept that this explains the conflicting and inconsistent accounts given. The Appellant in answer to two separate questions stated that she was taking her daughter to school, and the incident had occurred in the morning. I find that these inconsistencies are relevant and adversely affect her credibility.

66. The Appellant stated that she did not go to the police station to make the FIR but her brother did this, and she confirmed in answer to question 76 that she did not go with him. She was asked why her signature was on the FIR, and she replied (question 77) that "he might have come and asked for my signature." This is a vague response and in oral evidence when asked this the Appellant stated that a police officer came to her house. I do not find it credible that the Appellant was not able to definitively state in interview whether a police officer had come to her house to ask her to approve the contents of the FIR and to sign it.
67. The Appellant was interviewed about the second kidnap attempt which took place on 13th January 2013, commencing at question 87 of the interview. Once again it was noted that her signature was on the FIR although she had stated that her brother went to the police station. Her explanation (question 76) was that "my brother came home and asked for my signature." I do not find it plausible or credible that the Appellant's brother would go to a police station and have an FIR prepared, and then take the FIR away with him, and have the Appellant sign it in the absence of any police officer.
68. There are some differences in the account as contained in the FIR when compared with the interview. There is no mention in interview of the kidnappers being masked, whereas there is such a reference in the FIR. There is no mention in the FIR of a shot being fired whereas this is mentioned in interview. The Appellant when interviewed made reference to a white car and had no idea what make of car it was, although in the FIR it is specifically stated that it was a Toyota Corolla.
69. The Appellant was also asked in interview (question 113) whether she intended to return to Pakistan when she applied for a visa in April 2013. She said that she did not. The Appellant then visited the United Kingdom, her account having been the victim of two attempted kidnapping attempts during which attackers were armed and on at least one occasion a shot was fired, but she made no attempt to claim asylum.
70. If kidnapping attempts had occurred as claimed, I find it reasonably likely that the Appellant would have attempted to claim asylum without delay. I do not find that the delay alone is determinative of her claim, but I find that it is relevant and adversely affects her credibility.
71. In her oral evidence the Appellant claimed for the first time that her lawyer brother no longer had any contact with her and did not wish to have any contact. This was the individual who had made the complaints to the police on her behalf, and who had provided her with FIRs and arrest warrants to produce to the Respondent, and who according to the documents submitted with the appeal for entry clearance owned land with the Appellant and had financially supported her.
72. The Appellant was asked whether she owned land with her brother and denied this stating that the land belonged only to her brother. This conflicts with paragraph 8 of her witness statement dated 16th February

2011 which was produced before the Tribunal and in which she stated that she owned a property in Pakistan together with her brother and she attached the sale deed of the property. She also confirmed in that witness statement at paragraph 6 that her brother would provide her with financial support. The brother referred to is the brother who is a lawyer. The issue of financial support was put to the Appellant in interview (question 124). She denied that her brother could support her, stating that he had no children and could not support her.

73. I do not accept that the Appellant has been truthful in her evidence. Her evidence in her witness statement dated 16th February 2011 was accepted by the Tribunal who allowed her appeal against refusal of entry clearance, accepting that she had financial support from her brother and owned property with him. This is in direct contrast to the evidence on this point that she has given for the Tribunal in relation to her asylum claim.
74. I do not accept the Appellant's claim that her brother no longer wishes to have any contact with her and would not support her, having assessed all the evidence in the round.
75. I do not find that any credible evidence has been produced to indicate that MA has any significant influence either in the Appellant's home area, or in other parts of Pakistan. The evidence indicates that he works in a hotel in Italy and spends the greater part of the year in Italy as opposed to Pakistan. There is no requirement for evidence to be given in corroboration of the Appellant's own evidence, but I am not obliged to accept a bare assertion by the Appellant that MA has significant influence in Pakistan. There has been no satisfactory evidence whatsoever to support that assertion.
76. I have taken into account the expert reports in relation to the FIRs and arrest warrants, and the evidence given by the Appellant, and I take into account the low standard of proof. I do not accept the Appellant as a witness of truth, and I do not find her account credible for the reasons that I have given above. I find that the inconsistencies and contradictions do go to the core of the account and they are relevant. I do not find that they can be explained by nervousness or problems with interpretation. I do not accept that MA has threatened the Appellant and her family by telephone, nor do I accept that any attempts have been made to kidnap the Appellant's daughter.
77. I therefore conclude that the claimant's account has been fabricated and cannot be relied upon, and I find that the Appellant could safely return to her home area where her mother lives, and her brother who is a lawyer, together with his family. I find that the Appellant's family have property and assets, as was detailed in the Appellant's application for entry clearance. The Appellant is joint owner of some of that property and land. I find that the Appellant's brothers would support her if that was needed.

78. In relation to sufficiency of protection, I have considered AW (sufficiency of protection) Pakistan [2011] UKUT 31 (IAC), and set out below paragraph 34;

“34. The starting point in assessing whether the Appellant would be given sufficient protection if returned to Pakistan is to consider whether there is systemic insufficiency of state protection. In relation to Pakistan, having regard to the case of AH and also to the case of KA and Others (Domestic Violence - Risk on Return) Pakistan CG [2010] UKUT 216 (IAC), it cannot be said that such a general insufficiency of state protection has been established. Neither party submitted that there was, nor do we find, that the background evidence before us demonstrates such an insufficiency.”

79. I do not find that the issue of internal relocation arises. My finding is that the events complained of by the Appellant in relation to MA did not occur, and that she could return to her home area where she would have family support, and where there is sufficiency of protection. I conclude that the Appellant has not established that she would be at risk if returned to Pakistan, and therefore the claim for asylum and humanitarian protection fails for the reasons given above. For the same reasons I find that there is no risk of a breach of Articles 2 or 3 of the 1950 Convention.

80. This is not a case where Article 8 is pursued as a Ground of Appeal. However for the avoidance of any doubt, I find that the best interests of the Appellant’s child will be to remain with her mother, and return to Pakistan, as both are citizens of that country. I have found that there would be no risk, the Appellant’s child could be reunited with family members, and recommence her private schooling.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and was set aside. I substitute a fresh decision as follows.

I dismiss the appeal on asylum grounds.

The Appellant is not entitled to humanitarian protection.

I dismiss the appeal on human rights grounds.

Anonymity

The First-tier Tribunal made an anonymity direction. This is continued pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No report of these proceedings shall directly or indirectly identify the Appellant. Failure to comply with this direction could lead to a contempt of court.

Signed

Date 16th June 2015

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date 16th June 2015

Deputy Upper Tribunal Judge M A Hall