**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: PA/00989/2020 (V)

**THE IMMIGRATION ACTS**

**Heard at: Field House**
**On: 23 February 2021**

**Decision & Reasons Promulgated**
**On: 5 March 2021**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**CLP**
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr M West, instructed by F R Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This has been a remote hearing to which there has been no objection by the parties. The form of remote hearing was skype for business. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

2. The appeal comes before me following the grant of permission to appeal to the Upper Tribunal.

3. The appellant is a national of India, born on 10 July 1969. She first entered the UK on 18 December 2005 with a visit visa, with the stated intention of attending the wedding of the sponsor (CS)'s daughter, the sponsor being a friend of her father. She returned to India on 2 February 2006 and then came back to the UK on 22 June 2006, again as a visitor and again to attend the sponsor's daughter's wedding which was said to have been cancelled previously due to illness. The appellant overstayed and on 3 November 2008 she applied for leave to remain under Article 3 and 8 on the basis of her family life with AS and a fear of return to India. Her application was refused on 21 December 2009 and she was served with removal papers. Her appeal against that decision was dismissed on 24 June 2010 and she became appeal rights exhausted on 6 July 2010.

4. From 24 January 2012 the appellant made a number of unsuccessful applications for leave to remain, outside the immigration rules and under Article 8, including an application for an EEA residence card as the partner of an EEA national and an appeal against the decision refusing that application, and then finally on 9 March 2018 she lodged an asylum claim which is the subject of these proceedings.

5. The appellant claimed that she was forced into an arranged marriage on 30 May 1991 with a man whom she met only at the time of the marriage and she moved in with her husband and his mother. Her husband and mother-in-law fired their maid and forced her to do the household chores in addition to her employment as a tailor. Her husband was unemployed and would drink and gamble and both her husband and his mother beat her and verbally abused her and she was forced to hand over her wages to her husband. The appellant said that she became pregnant and had a son, but the abuse continued after the baby was born. In August 2002, when her son was 9 years of age, her husband came home drunk and demanded money. When she told him that she could not give him money as she was saving for their son's school trip, he pushed her into the stove and her clothes caught on fire. Her son threw water on her to extinguish the flames and she had to go hospital where she was admitted for 15 days. She told her brother what her husband had done and he went to the police to lodge a report, but they would not take any action because her husband was a member of the Bharatiya Janata Party (BJP). She then moved in with her mother, together with her son. Her burns did not heal and she had go back into hospital for skin grafts and further treatment until July 2003. Some time after July 2003 she attended a religious event with a friend and she was seen by BJP members who told her husband and he came and attacked her and threatened to kill her if she did not return to him. The appellant then went to stay with her brother. At that time she met a friend's family member, CS, who was visiting India from the UK and she confided in him. He offered to sponsor her visit to the UK so that she could escape.

6. The appellant claimed that she came to the UK in December 2005, sponsored by CS, intending to find a job and bring her son to join her, but she had to return to India when her brother told her that her son was not eating as he was missing her too much. After settling her son she returned to the UK and in the end her son decided to stay in India. The appellant stated that she began a relationship with a Portuguese national in January 2010 and she submitted an EEA residence card application on the basis of that relationship, but the relationship broke down. She claimed asylum when a friend saw her scars and advised

her to make a claim. Her mental health had deteriorated and she suffered from flashbacks, depression and suicidal ideations. Her son had completed his studies and was attending university in Toronto, Canada. She feared her estranged husband if she returned to India.

7. With the application, the appellant submitted a psychiatric report from Dr George Stein, a retired consultant general psychiatrist at Hayes Grove Priory Hospital in Kent, and a medico-legal report from Dr Phyllis Turvill, together with other supporting evidence.

8. The appellant's application was refused by the respondent on 21 January 2020. The respondent did not accept that the appellant's claim engaged the Refugee Convention, but in any event rejected her account of events in India, although accepting that she had scars on her body resulting from burns and skin grafts, and considered that she would be at no risk on return to India. The respondent considered that there was a sufficiency of protection available to her and that she could safely and reasonably relocate to another part of the country, if she genuinely feared her estranged husband. The respondent considered that the appellant's removal to India would not breach her human rights.

9. The appellant appealed that decision and her appeal came before First-tier Tribunal Judge Bulpitt on 3 August 2020. The appellant gave oral evidence before the judge, as did her three witnesses. The judge accepted the evidence that the appellant had suffered severe burns in the past and had skin grafts, but he did not accept that they were caused by an abusive ex-husband whom she feared would cause her harm. The judge considered that the fact that the appellant had, admittedly, made false statements in her applications for entry clearance, undermined her credibility in general and the fact that she returned to India after her first visit undermined her claim to be at risk from her ex-husband. The judge noted that the appellant had not pursued her previous application and appeal on the basis of abuse from her husband and had made no mention of burns resulting from violence from her husband. The appellant's application in 2008 had been made at least in part on the basis of her family life in the UK with AS, yet she had made no mention of that relationship to the two doctors who had prepared the medical reports for the current appeal. There was also conflicting evidence about the claimed relationship with a Portuguese national. The judge considered that each of the appellant's previous applications had been designed to mislead and that was therefore a significant matter in assessing the credibility of the current account. The judge also referred to various inconsistencies in the appellant's current account, inconsistencies between the appellant's evidence and that of her witnesses and a lack of corroborative evidence where it would be reasonable to obtain such evidence and he concluded that the appellant had concocted a story after her previous attempts to remain in the UK had failed. The judge found that the appellant was at no risk on return to India and that her removal to India would not breach her human rights. He dismissed the appeal on all grounds.

10. The appellant sought permission to appeal that decision to the Upper Tribunal on four grounds, namely the judge's arguable failure in his approach to the medical/ psychiatric evidence, the judge's arguable failure in making adverse findings based on matters not put to her or her witnesses, the judge's arguable failure in inferring matters from a document not before the Tribunal in evidence, and the judge's arguable failure

correctly to apply section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004.

11. Permission was refused in the First-tier Tribunal, but was granted on a renewed application to the Upper Tribunal by Upper Tribunal Judge Canavan on 17 November 2020.

**Hearing and submissions**

12. The matter then came before me. Both parties made submissions.

13. Mr West submitted that the first ground was a challenge to the judge's treatment of the medical evidence, namely the reports of Dr Stein and Dr Turvill and the letter from the appellant's GP, Dr Vipin Patel which was submitted for the appeal. The challenge was threefold: firstly, that the judge failed to apply the approach in Mibanga v Secretary of State for the Home Department [2005] EWCA Civ 367, as approved in SA (Somalia) v Secretary of State for the Home Department [2006] EWCA Civ 1302; secondly, a perversity challenge, namely that the judge had failed to give adequate reasons for rejecting the medical opinions of the experts when they had all given an opinion of the appellant suffering from complex PTSD and severe depression and having sustained horrific, repetitive and prolonged domestic violence; and thirdly, that the judge erred by giving undue emphasis to the appellant's immigration history and using that to reject the core elements of an account which was otherwise substantiated by the medical evidence at the very least to the lower standard of proof. Mr West relied on the case of JL (medical reports-credibility) China [2013] UKUT 145 in that regard. Mr West submitted that the judge failed to accord a liberal application of the benefit of doubt in the assessment of the appellant's evidence, in light of her vulnerability.

14. Mr West's fourth ground repeated the challenge to the judge's over-reliance on the appellant's immigration history, a matter considered arguable by UTJ Canavan when granting permission. Mr West submitted that the judge repeatedly used the appellant's immigration history to undermine her credibility, referring at [30] to her history 'substantially' undermining her credibility and as being 'significant'. He submitted that the judge had erred in law by adopting such an approach. In relation to ground three, Mr West submitted that the judge erred by relying at [26] and [27] upon evidence which was not in fact before him, namely the appellant's application of 3 November 2008 to which FTTJ Baldwin's decision related, and extrapolated his own view of that application, making his own inferences and assumptions without any rational basis and without the document being before the Tribunal.

15. As for the second ground, Mr West submitted that the judge erred by making findings on matters not put to the appellant, the starkest example of which was at [35] where the judge referred to one of the witnesses mentioning that the appellant told him that her husband had raped her. The judge held that against her without giving her an opportunity to respond, which was contrary to the principles of fairness and natural justice. Mr West also relied on the grant of permission which referred to the judge

arguably erring by failing to consider whether the appellant's claim was consistent with the background evidence as to gender-based violence. In conclusion Mr West submitted that there was ample evidence for the judge to have allowed the appeal to the lower standard of proof.

16. Mr McVeety submitted that whether or not there was evidence that could have led to the appeal being allowed, the relevant issue was whether the judge erred in law and he did not. He gave valid reasons why he did not find the appellant's account credible. He was entitled to give the weight that he did to the medical reports as there were considerable differences between what the appellant told the doctors and her evidence for the appeal. The appellant had given the doctors the impression that she lived alone with no friends or support, which was completely not the case and she had therefore misrepresented the truth. It was never in dispute that the appellant had suffered terrible burns, but the medical experts were not able to say how the burns were caused, other than by reference to the appellant's account. Mr McVeety submitted that the grant of permission seriously misrepresented what the judge had said at [35] about the appellant's disclosure of having been raped, as it was never held against her as a late disclosure. As for the appellant's immigration history, the judge was fully entitled to take into account the fact that the appellant only made her asylum claim after 12 years and had never previously mentioned being abused by her husband. The section 8 issues in this case were extremely relevant. Whilst it was clear that something terrible had happened to the appellant, it was for the judge to decide whether or not it happened in the circumstances claimed.

17. Mr West reiterated the points previously made in response and submitted that there was a fundamental lack of reasoning by the judge and a failure to put matters to the appellant which were relied upon as undermining her credibility, to the extent that his conclusions were perverse. He submitted that the judge failed to follow the approach in Chiver (Asylum; Discrimination; Employment; Persecution) (Romania) [1994] UKIAT 10758 when making his adverse credibility findings and failed to give a liberal application of the benefit of the doubt in the case of a vulnerable person.

**Discussion and Findings**

18. Despite the very lengthy and detailed grounds and submissions from Mr West, it seems to me that his challenge to the judge's decision is simply a disagreement with the adverse credibility findings dressed up as a reasons and perversity challenge.

19. The first ground challenges the judge's approach to the medical evidence. The submission made in that regard was effectively that the judge was bound to accept that the appellant's burns were caused by her husband in the circumstances claimed in light of the medical reports. However, as Mr McVeety properly submitted, the medical reports went no further than concluding that the appellant had been severely burned and had suffered psychologically as a result of the trauma, but they could not possibly confirm from the scarring that the burns were caused by the appellant's husband pushing her into a stove. That was a matter for the judge on an assessment of the evidence in the round.

20. That was precisely what the judge did – he assessed the evidence in the round and accorded the weight to it that he considered appropriate in light of the various inconsistencies and discrepancies in the evidence and the significant delay by the appellant in raising the matter and applying for asylum. The judge was not unsympathetic to the appellant and he recognised and accepted that she had suffered traumatic experiences in her life and had mental health issues and treated her as a vulnerable witness. However, this was not a simple matter of a vulnerable witness being reluctant to disclose a traumatic past of gender-based violence and rape, but there were numerous inconsistencies in the appellant's evidence and there was clear evidence of misrepresentations by the appellant which were not properly explained or justified. The judge was perfectly entitled to find that those inconsistencies and misrepresentations could not be overlooked and to consider them as undermining the appellant's credibility as a witness of the truth and undermining the conclusions reached by the medical professionals.

21. Mr McVeety referred in particular to the misrepresentations made by the appellant to the doctors about her circumstances, portraying herself as a lonely individual with no friends or family and no means of support, when it was clear from the many statements and letters of support produced that she had a good support network and close friends, some of whom appeared to be residing at the same address as her. Dr Turvill, at [99] of her report described the appellant as having reported that "*for most of the time, she feels lonely and isolated and …she has no friends or anyone to turn to for support*" and Dr Stein said of the appellant, at [12] of his report, that "*she has stayed with friends here but basically she lives on her own. She has no one to support her and she's been on her own the whole time in the UK.*" Yet, as the judge said at [27], the appellant had made a human rights claim in 2008 based partly on her family life with a partner with whom she was renting a house and, at [29], had made an EEA residence card application and appeal in 2013/ 2014 on the basis of her relationship with her Portuguese partner which, according to her witness statement, was a four-year relationship.

22. Accordingly, on that basis alone and even aside from the many other concerns the judge had about the appellant's evidence, the judge was perfectly entitled to be cautious when considering the doctors' views about the appellant's history and about the causes of her burns and to accord the reports the weight that he did. There was nothing inconsistent in the judge's approach with the guidance in Mibanga, SA (Somalia) and JL (China) and I find no merit in the grounds and in Mr West's submissions in that regard.

23. Likewise, I find no merit in the grounds challenging the judge's reliance on the appellant's immigration history. Mr McVeety submitted that caselaw establishes that if immigration history has an effect on an appellant's narrative, then it can go to credibility, and clearly that has to be correct. The judge was perfectly entitled to consider that the appellant's failure previously to mention abuse from her husband, the 12 year delay in her asylum claim and her previous misrepresentations and unmeritorious applications had an impact on the assessment of her current claim and adversely affected her credibility. I do not agree with Mr West that the judge's reference to the appellant's 2008 application, at

[26] and [27] of his decision, was unlawful in any way. The judge was not making any assumptions or speculating unjustifiably in considering, as he did at [26], that the appellant had failed to mention in that application domestic abuse from her husband resulting in catastrophic burns. Judge Baldwin's decision confirms at [5] that he had the appellant's application, the refusal letter and her submissions and bundle before him when he made his findings and Judge Bulpitt was perfectly entitled to conclude that, if that had been part of the appellant's Article 3 claim, Judge Baldwin would have mentioned it in his decision rather than stating that the appellant had not explained the 'dispute' upon which she based her claim. The fact that such a significant matter had never been mentioned by the appellant in any of her previous applications, in her previous Article 3 claim and in her written evidence before a previous Tribunal was undoubtedly a matter which Judge Bulpitt was entitled to conclude as undermining the credibility of her claim.

24. I do not accept that there was any error by Judge Bulpitt in relying on late disclosure by the appellant and I entirely agree with Mr McVeety that the grant of permission is misconceived in that respect and is based upon a misunderstanding and misinterpretation of the appellant's claim. The reference by the judge at [35] to the appellant's disclosure to her witness of being raped was not made in the context of adverse findings based on late disclosure and was not a matter from which the judge made any adverse observations or findings. The reference was made in the context of the appellant having close friends in whom she could confide and to whom she could turn for support, which was contrary to the account given to the medical professionals, as discussed above. The question of a failure to consider background evidence relating to violence against women and the consistency of late disclosure with gender-based violence, as referred to by UTJ Canavan in granting permission, was never a ground of appeal relied upon by the appellant, as Mr West conceded, and was not an issue relevant to the challenge actually made to the judge's decision.

25. As for the assertion in the second ground that the judge failed to put matters to the appellant which were later considered as undermining her credibility, in so far as the example is given at [34] of the grounds in relation to the appellant's failure to mention rape in her evidence, I refer to my observations above, that there was never any adverse finding made by the judge on that basis, either against the appellant or her witnesses. In any event, the judge was not required to put every adverse point to the appellant. The appellant was legally represented and her representatives would have been fully aware of the issues taken against her by the respondent and therefore had ample opportunity to address those at the hearing. The appellant was fully aware that the respondent had concerns about the credibility of her claim arising from the extended delay in mentioning abuse from her husband and it was therefore for the appellant to explain why she had not expressed a fear or made a claim on that basis previously. In so far as Mr West submitted that the appellant may well have mentioned the abuse from her husband in her 2008 application in the Article 3 grounds and that the judge was wrong not so to find, I do not agree that the judge was required to speculate or had any justifiable basis upon which to do so. It was clear from the refusal decision, in particular at [4], which referred to the basis of the Article 3 claim made in 2008/9, and at [26], that the respondent did not consider

that to have been the case and drew adverse conclusions from the appellant's 12-year delay in stating her problems and claiming to have been subjected to horrific domestic violence by her husband. It was therefore for the appellant to provide an explanation for that at the hearing and it was entirely open to the judge to draw adverse conclusions from her failure to do so.

26. What is apparent from the grounds, furthermore, is that whilst they criticise the judge for making adverse credibility findings in general, they avoid making any proper response to the judge's specific concerns. The judge noted that the appellant had made false statements when applying for a visa for the UK on two occasions and had returned to India at a time when she had a visa for the UK and was claiming to be in danger from her husband (at [25]). The judge also identified inconsistencies in the evidence about the appellant's previous relationships, her current circumstances (as mentioned above), where she stayed after the incident when she was burned (at [32]), her hospital treatment and the funding of that treatment (at [33]), whether she was working in the UK (at [36]) and the care of her son (at [38] and [39]). Other than criticising the judge for not putting discrepancies to the appellant for her response, which I do not accept that he was required to do in any event, there is no proper challenge to any of these matters which the judge was perfectly entitled to consider and take into account. The judge also made observations at [35] about the witness statements leading him to accord them little weight and again the grounds provide no response to those adverse findings. The judge referred to some of the statements being identical and that is indeed the case. Aside from the example given by the judge at [35] I note that the statements from S Husain and S Afzal are almost identical. The judge was perfectly entitled to consider that that undermined the reliability of the statements and to conclude as he did at the end of [35].

27. For all of these reasons I find that the grounds disclose no errors of law in the judge's decision. The judge, having due regard to the appellant's previous traumatic experiences in India and her vulnerability and mental health issues, undertook a detailed and careful assessment of the evidence and provided cogent reasons for making the adverse findings that he did. He was fully and properly entitled to reach the conclusions that he did and to dismiss the appeal on the basis that he did.

## DECISION

28. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

**Anonymity**

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: *S Kebede*
Upper Tribunal Judge Kebede Dated: 24 February 2021