



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

Appeal Numbers: AA/07330/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 October 2015**

**Decisions and Reasons Promulgated  
On 28 October 2015**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA**

**Between**

**MS ZINEB ICHALLALENE CHARIF  
(no anonymity direction made)**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Ms Chapman of Counsel  
For the respondent: Mr Tufan Senior Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a national of Algeria born on 31 January 1979. She appeals to the Upper Tribunal against the determination of First-tier Tribunal Judge EB Grant, dated 16 October 2014, refusing her appeal against the decision of the respondent dated 11 September 2014 refusing her application for asylum and humanitarian protection in the United Kingdom.
2. Permission to appeal was initially refused by First-tier Tribunal Judge Lambert on 12 January 2015 but on 4 May 2015 granted by Upper Tribunal Judge Chalkley who stated that "the first challenge does raise properly arguable issues which *may*

disclose an error of law on the part of the Judge and that he does not seek to limit the challenges”.

### **First-tier Tribunal's findings**

3. The First-tier Tribunal Judge in his determination made the following findings which I summarise. Judge JW Khan in his determination in respect of the appellant's husband's appeal with the appellant as his dependent of 2 May 2012 found that the appellant's husband's claim was not credible and dismissed the appeal. Judge Khan in his determination at paragraph 28 stated that “the actions of the appellant's wife in returning to Algeria in order to sell her gold and jewellery is not consistent with any fear that the appellant may have had from the authorities. She did not experience any problems whilst in Algeria from anyone. If there was any risk to the appellant's family, his wife would not have returned to Algeria. She could easily have asked her sister to sell the gold and jewellery on her behalf and transfer the money to her in the UK”. Judge Khan found that there is no real risk to the appellant's husband because in his asylum appeal it was found that he has no connections to international terrorism or that he would be at real risk of being detained on arrival in Algeria and interrogated.
4. Although this determination concerns the appellant's husband, the appellant was a dependent on that appeal and underwent a dependent interview. The appellant's husband is dependent on the outcome of the appellant appeal. Matters raised by the appellant's husband in the earlier appeal have been repeated by the appellant to Mr Joffe.
5. The Judge following the case of **Justin Surendran Devaseelan v SSHD [2002] UKIAT 00702** stated that the earlier determination of Judge Khan in respect of the appellant's husband, should form the starting point for the appellant's determination insofar as findings made by Judge Khan relate to matters also raised before Judge Grant.
6. The appellant has reiterated her husband's claim in her own claim to the respondent and says they are at real risk on return from the Algerian authorities because her husband will be suspected of connections with internal terrorism. Those claims have already been found to be devoid of any merit by Judge Khan. The Judge found that the appellant is not at risk on return to Algeria and in coming to this finding, the Judge adopted the findings of Judge Khan made in AA/02989/2012. The Judge agreed with the conclusions of the respondent in her reasons for refusal letter set out in paragraph 37-46. The Judge found that the appellant's husband will not be detained on arrival on return to Algeria as alleged or at all.
7. The Judge then considered the updated evidence which was not before Judge Khan in respect of the appellant's husband in the Medical Foundation Report. This report states that the appellant husband suffers from PTSD arising from his claimed kidnapping in Algeria. The appellant's husband did not give evidence in support of his wife's appeal or give evidence about the matters referred to in the medical report. These are the same matters which were considered at length by Judge Khan who give cogent reasons for finding that the appellant's husband has not told the truth, including his failure to claim asylum until after he had been living in working illegally in the United Kingdom for almost 3 years.

8. This is bolstered by evidence that the appellant's husband worked for an agency called Urbnis who was contracted to the province of Algiers Town Planning and Development Department and he worked there as IT expert who maintained the computer equipment for the agency. It was therefore found not to be credible that the appellant's husband was able to access government information useful to a terrorist organisation as he had no access to government information. He merely maintained the IT systems. The appellant husband may be suffering from or PTSD as diagnosed by the Medical Foundation but the Judge did not accept, for the same reasons given by Judge Khan that it is on account of a kidnapping in 2007. The Judge did not accept the report as evidence that the appellant husband was kidnapped as alleged.
9. The appellant give evidence before Judge Khan at her husband's appeal hearing. She gave evidence about the reason for her return to Algeria which was to sell her gold and jewellery to raise funds for the appellant's and her husband's ongoing stay in the United Kingdom.
10. Judge Khan found at paragraph 28 of his determination that the appellant did not experience any problems from anyone whilst in Algeria or upon her return from Algeria. She now says in her evidence that she told her family that she had sold her jewellery for the expenses of a medical treatment to help conceive. Her family will now want to know why she has not have children. If her brother discovers that she is still a virgin, this will bring shame on her family because she has not consummated her marriage and this will put her at real risk.
11. The Judge found no reasons for why the appellant's brother should fall out with her simply because the appellant has not consummated her marriage. Fertilisation takes two people and it is clear from the appellant's husband's witness statement that the sexual difficulties in the marriage are not solely those of the appellant. He has difficulties both of them are receiving counselling for these difficulties at the Helen Bamber Foundation. Even if the appellant and her husband resolve their problems, the medical evidence shows that the appellant suffers from polycystic ovary syndrome which can cause female infertility. The appellant has the perfect explanation to offer her family for her failure to have a child and there will be no reason for her family to know that the marriage has not been consummated.
12. As Judge Khan in his determination for the appellant's husband's appeal, found that the appellant's husband will not be at risk on his return to Algeria because to his claimed involvement with the terrorist group which has been found not to be credible. Judge Khan stated that there would be no reason for the appellant's husband to be arrested upon return to Algeria. Dr Joffe's report is largely based on the appellant's potential plight on return to Algeria on information provided to him. Therefore no weight is attached to the report insofar as it seeks to address risk on return to the appellant on account of her husbands dismissed claim.
13. The appellant's claim about her sexuality and the difficulties she and her husband have had on the sexual level, which are still ongoing, and the absence of children and the risk this will cause her upon return was not placed before Judge Khan. This evidence was brought up after the appellant's husband's appeal was dismissed with the appellant as his dependent. It is clear from the appellant husband's witness statement who did not attend the Tribunal to give oral evidence, is devoted to his

wife. He is attending counselling with her and they are doing whatever they can do together to overcome their sexual difficulties.

14. The Judge stated in her determination that she has had the opportunity to observe the appellant give evidence before her and it is clear to her that the appellant loves her husband. The appellant's husband protects the appellant and she is very attached to him. The appellant has no intention of leaving her husband. The Judge noted that the actions of this couple are of a couple determined to overcome their sexual difficulties and not to walk away from one another. In short, the evidence shows that the appellant and her husband are a devoted couple and committed to one another.
15. The appellant's alleged fears on return stem from her claim that her brother will perceive that the appellant's marriage has not been consummated due to a lack of children. The Judge did not accept the appellant's claim that she is at risk from her brother as alleged or at all.
16. The appellant in her evidence before Judge Khan at her husband's asylum appeal described how her brother rescued her from being raped when she was 15 years old. She describes her father and brother being taken away and detained and in 1996 been released from prison. She described her father getting cross with her because she had left her first husband. The appellant's evidence was that after her divorce until 2006, many men came to her father and brother to ask for the appellant's hand in marriage and every time she refused by giving any reason that came to her mind. This led to her father and brother getting angry and her brother beating her for not marrying one of his friends. The appellant went on to recount meeting her husband in the library and she liked him treating her with respect and gentleness. She married in 2006 they married even though some members of her husband's family were reluctant to accept because she had been married before.
17. The appellant returned to Algeria in 2009 and did not encounter any problems from anyone as recorded by Judge Khan. The appellant stated in her evidence before Judge Khan "I returned to Algeria to my family home not my husband's. So I stayed in hiding in my family home whilst my sister sold the gold for me. Once I received payment I came back to the UK". She made no mention of her fear of her brother at the hearing before Judge Khan. The Judge drew an adverse inference as to the appellant's credibility for her failure to mention her fear of a brother prior to or during her husband's asylum claim where she gave evidence in support of his appeal. The appellant failed to make any mention of the purported threats from her brother during her screening interview as a dependent on her husband's asylum claim.
18. The Judge found this is because she was not threatened by her husband as alleged or at all and that she has fabricated this account once her husband's fabricated claim for asylum was found not credible and dismissed for very good reasons given by Judge Khan in his determination. The Judge also found that the appellant would not have returned to Algeria if she was in fear of her brother or anyone else. Instead she would have asked her sister to sell her gold for her and send her the money raised to the United Kingdom. This reasoning equally extends to the appellant's brother. If there had been any risk to the appellant from her brother (as opposed to the Algerian authorities as claimed before Judge Khan) the appellant would not have returned to Algeria but would have adopted the course of asking her sister to raise the necessary funds.

19. The appellant has now made a new claim that she is attracted to women and refers to an alleged relationship with her female cousin which began she was a teenager and which was discovered by her brother. The Judge did not believe that the appellant is telling the truth and found this to be another fabrication designed to bolster a very weak asylum claim once her husband's asylum claim was dismissed for very good reasons in 2012. The Judge stated that even if she is wrong about the appellant's claimed sexuality, she finds it is clear from the evidence before her that the appellant has no intention of finding love with a woman. She told Yvonne Stine, her psychotherapist that she has no intention of finding love with a woman and will stay bonded to her husband. Together they seek to overcome their sexual difficulties. The Judge did not accept that the appellant ever acted upon her inclinations as alleged or at all in Algeria and did not accept that the appellant is at risk on return from a brother on account of this.
20. The Judge considered the evidence from Dr Agnew Davies that the appellant suffers PTSD. The Judge stated that this is not at all surprising given the attempted rape at the age of 16. It is clearly a factor in all of the sexual difficulties experienced by the appellant with her husband.
21. She considered the detailed expert report about the couple sexual difficulties and found that this does not support a claim for asylum.
22. On return to Algeria, the Judge stated that she did not accept the appellant's evidence that the appellant's husband's family will exert pressure on him to divorce the appellant and find a wife who can give him children. The Judge also did not accept that the appellant's husband will divorce the appellant, given that he has remained in a sexless marriage for many years and has not divorced her. The Judge stated that there is no reason at all for this couple to return to the city where their families live in Algeria. The couple do not live with or near their families now and there is no reason for them to do so in Algeria. She continued that if they wish to have a child, perhaps they can adopt and present themselves to their families with children later. There is the opportunity to do this at Algeria. She cited background evidence on adoption in Algeria and said that this is a viable option for the appellant and her husband and said that there are many unwanted babies in state nurseries in Algeria and that adoption, is a viable alternative
23. The Judge found that the appellant and her husband both have mental health difficulties but stated, just as Judge Khan found in his determination, that it would not be unreasonable for them to return to Algeria together and obtain their medication as there is background evidence which states that there is healthcare facilities available in Algeria. They can both continue their treatment on their return to Algeria.
24. The Judge found that the appellant is not at risk on return to Algeria on account of her brother. She also found that she is not at risk on return on account of her claimed sexuality. She is also not at risk because she does not have any children. She is also not at risk on return because she is still a virgin. The appellant herself said that Algiers is a big city where they can hide. The appellant has therefore not shown substantial grounds for believing she will face serious harm upon return.
25. As regards Article 8, the Judge found that mental health treatment is available in Algeria and it is not unreasonable to expect the appellant and her husband to avail themselves of continuing treatment when they return.

26. The Judge dismissed the appellant's appeal, adopting the findings of Judge Khan, under the Immigration Rules, under the humanitarian and protection provisions and Article 3 of the European Convention on human rights. She granted the appellant anonymity.

### **Grounds of appeal**

27. The appellant grounds of appeals are as follows which I summarise. The appellant arrived in the United Kingdom on 31 October 2008 with the six-month visit visa. She returned to Algeria for two weeks in February 2009 before returning to the United Kingdom. On 14 March 2011, the appellant's husband claimed asylum with the appellant as his dependent. His application was refused on 7 March 2012 and his appeal was dismissed on 1 May 2012. He became appeal rights exhausted on 20 August 2012. The appellant made an appointment to claim asylum on 2 May 2013 and made an asylum claim in her own right on 3 May 2013 with her husband as her dependent. The basis of her claim as put forward in her interview on 28 May 2013 and supported by the expert evidence, was twofold (i) she feared persecution on account of imputed political opinion arising from the authorities suspicion that her husband has links with the terrorist group and (ii) she feared violence and murder from her brother because she had not consummated her marriage. This application was refused in a decision dated 11 September 2014.

28. The appellant subsequently disclosed to her solicitor and to her therapist that she had a same-sex relationship with her cousin in Algeria from the ages of 13 or 14 to the age of 25. She also claimed that her brother caught them once together and she fears if she is returned to Algeria, in the absence of any children, which is a source of shame, she would be forced to undergo another physical examination to confirm whether or not her marriage had been consummated and she would be beaten and killed by her brother. Her brother would also disclose her relationship with her cousin, which would put a real risk of divorce and ostracism, the loss of the children and being killed. She has not told her husband about her relationship with her cousin nor her fears on this account.

29. Judge Grant in her findings at paragraph 20 gave no reason for why the appellant's brother should find out that her marriage is not consummated. She failed to take into account a material consideration which is that the appellant was subjected to a virginity test in Algeria after the failure of her first marriage. A copy of the test was submitted in evidence. The expert report from Dr Seddon states that it is usual for families to insist on a virginity test and this has not been addressed by the Judge. The Judge's speculative comments in respect of the possibility of adoption are simply not material in the circumstances, not least because there is no provision for instant adoption nor can the appellant and her husband be reasonably expected to lie about the provenance of any adopted child for the remainder of their lives.

30. The Judge failed to provide any or adequate reasons for rejecting the appellant's claim as to her relationship with her cousin but rejects the account solely on the basis of its timing. The Judge in doing so, failed to look at the evidence in the round. The Judge further attempts to minimise this relationship by asserting that this took place when she was a teenager whereas in fact the relationship was of more than 11 years duration. The Judge states that it is clear from her evidence that she had no intention of finding love with a woman when in fact this is materially factually incorrect as in

both her statement and in her oral evidence and at paragraph 36 of the letter from Yvonne Stine the appellant stated that she would like to be with her cousin.

31. Secondly in respect of the persecution by her brother, the Judge rejects this on the bases that he rescued her from being raped when she was 15 and the timing as to when she raised this claim. Neither of these points constitute adequate reasons for rejecting the entirety of the appellant's claim particularly given that the appellant's brother was bound to rescue her in order to protect the family honour. This in no way indicates that her brother would take a liberal view of her sexuality and the threat from her brother inextricably bound up with the appellant sexuality. The IAT Asylum Gender Guidelines 20005 state that there are cogent reasons as to why women who were dependents do not put forward a separate claim and this is particularly so when their issues relating to sexual violence and shame. As a consequence of the Judge's erroneous findings as to the credibility of the appellant's account, she failed to consider her account in the context of the jurisprudence and the social and cultural context of Algeria as a consequence of which it is clear that there is a serious possibility that the appellant would be at risk of persecution on account of her sexuality or perceived sexuality.
32. The Judge failed to consider the appellant's credibility in light of the evidence as a whole, particularly the expert evidence is set out in the case of **Mibanga [2005] EWCA Civ 367** the Judge at paragraph 29 notes "having examined her claim I do not agree with Mr Stines opinion and attach little weight to it". There is no reference to at all to the expert evidence of Dr Seddon and his opinion that (i) if her family were to discover that her difficulties were linked to a same-sex relationship with a cousin, they would be appalled, deeply offended and angry and this is highly likely to manifests itself in very credible personal verbal abuse and emotional pressure with a good chance of physical violence from the male members of her family, notably her brother and evidence of honour killings indicates that there is even a possible risk of her life; (ii) there is no sufficiency of protection for gay people by the state from harassment and persecution by third parties; (iii) social attitudes and behaviours to a same-sex relationships and those involved in them are extremely hostile and often violent and have become more so in recent years under the growing influence of Islamic fundamentalism; (iv) the appellant would be at extreme risk from fundamentalist Islamist if it was known that she had been involved in a same-sex relationship and had refused sexual intercourse with two husbands; (v) extreme violence-GBH, disfiguration, even killing-is entirely possible by her family; (vi) the appellant's husband would be under extreme pressure from his family to divorce her for failing to produce a child in nearly a decade of marriage. The Judge further failed to consider the issue of credibility in light of the country context and particularly the fact that same-sex relations are illegal in Algeria and would clearly be considered to be shameful.
33. The Judge further found that it would not be unduly harsh to expect the appellant to internally relocate within Algeria in light of the expert evidence of Mr Joffe that the appellant would find it extremely difficult to successfully relocate elsewhere in Algeria because family support is a crucial component of survival, a consideration which, in itself, makes relocation a very difficult alternative. The Judge's findings that the appellant and her husband have significant and ongoing sexual dysfunction and mental health issues and suffer from PTSD and Yvonne Stine's clear view that the appellant would require specialist clinic treatment for a number of years to come, in

circumstances where such treatment is simply not available in Algeria. The Judge did not correctly apply the correct jurisprudential test set out in **Januzi [2006] UKHL 5**.

34. The Judge makes frequent references to sexual difficulties but erroneously fails to take into account that the the reason that the marriage has not been consummated is because of the appellant's sexuality. Moreover, nowhere in the determination does the Judge address the appellant's evidence that she has not told her husband about her relationship with her cousin and the fact that in the context of Algeria, it would simply not be possible for the appellant to do so as part of any "treatment". The Judge further mischaracterised the medical evidence that the appellant remains a virgin as confirming "that they have never been sexually active" when this would relate to heterosexual sex and thus erroneously failed to take account of the corroborative effect of this evidence in respect of the appellant sexuality.

#### **Rule 24 response**

35. In the Rule 24 response the respondent stated that the Judge made adequate findings of fact and gave reasons for those findings in respect of the appellant's claim to be in fear of her brother. The Judge has given clear reasons as to why he disbelieves the appellant's version of events and there is no material error of law.

#### **The hearing**

36. At the hearing, Miss Chapman relied on her grounds of appeal. She accepted that the Judge was entitled to rely on Judge Khan's findings in her husband's appeal. The Judge did not take into account the medical letter dated 30 April 2000 in relation to the virginity test, which the appellant underwent. She did not take into account that the appellant failed to consummate her first marriage and that the appellant remains a virgin. The absence of children will make the appellant's brother question her virginity. Dr Seddon in his expert report stated that virginity tests are common in Algeria. The Judge assumes that because the appellant has polycystic ovaries, she will not get pregnant. There is no evidential basis to this assumption. The Judge in raising that the appellant can adopt a child and present themselves with children, is not reasonable to expect the appellant to lie. The Judge did not reach a rational and reliable conclusion. The Judge did not take into account that the appellant claims that she had a relationship with her cousin from the age of 18 until 25 years. There is no reason for why the appellant is not telling the truth and she remains a virgin.

37. Although this was a late claim, the report from the appellants therapist where she states that the appellant's future lies with her husband. The Judge cannot assume this in the heterosexual context. Dr Seddon's report states that same-sex relationships are abhorrent to Algerian society. The Judge rejects at paragraph 27 family honour and that her brother would protect the appellant if she was getting raped. The Judge failed to take into account the social and cultural context of the appellant. The Judge failed to assess her credibility in light of all the evidence. The Judge does not refer to the report of Dr Seddon. The Judge stated internal relocation is an option but this is a collateral issue.

38. Mr Tufan on behalf of the Secretary of State's made the following submissions. The Judge has made a comprehensive determination. The findings are lengthy and detailed. Internal relocation is not a collateral issue because if it is available to the appellant and the appellant's appeal fails on this basis alone. There is no reason for



the couple not to return to Algeria and live away from the appellant's brother and her husband's family. In **Januzi**, is a high test for there is no error in the determination.

39. In the case of **MF** [*MF (Albania) v SSHD* [\[2014\] EWCA Civ 902](#)] it is stated that it is for the Tribunal not an expert to decide risk on return. At the previous hearing of the appellant's husband appeal before Judge Khan there was no mention of the appellant's brother and her sexuality. The fact that the appellant and her husband have PTSD has no bearing on the appeal. The Judge does not refer to the expert report of Dr Seddon because there is no material importance in the report which will advance the appellant's case.
40. Miss Chapman in reply said internal relocation has not been properly considered as there is no analysis by the Judge whether it would be unduly harsh or difficult for the appellant to relocate to Algeria. The appellant's objective fear is that the appellant's husband will leave her on return to Algeria. There is an error of law in the decision and requested that the appeal be sent back to the first-tier Tribunal for findings of credibility to be made.

### **Findings as to whether there is an error of law**

41. I have given anxious scrutiny to the determination of the First-tier Tribunal and have taken into account the appellant's grounds of appeal and the arguments at the hearing. The gist of the ground of appeal is that the First-tier Tribunal Judge did not make correct findings on the evidence before her.
42. The Judge applied the principles in **Devaseelan** which sets out guidelines on how a second adjudicator should approach the determination of another adjudicator who has previously heard an appeal by the same appellant. The Judge noted that the appellant's husband's appeal with the appellant as his dependent was dismissed by Judge Khan and that has to be her starting point. There was no objection taken on the approach by the Judge which is entirely correct.
43. The Judge then only considered the evidence which was not before Judge Khan. That is the correct way of approaching an appeal of an appellant whose case has been previously decided. The appellant was a dependent on her husband's claim and Judge Khan found that the appellant's husband's claim was not credible.
44. The appellant's asylum claim included the appellant's husband's previous claim which was decided by Judge Khan and also set out additional and different basis for why she fears persecution in Algeria. The appellant's evidence is that she had a relationship with her cousin in Algeria and her brother found out and this puts her at risk from her brother and the authorities in Algeria because homosexuality is not tolerated in Algeria. The other bases of the appellant's claim which was not before Judge Khan was that the appellant fears persecution from her brother in Algeria because she does not have any children and that this puts her at real risk from him. She claimed that her brother will subject her to a virginity test and if she is found not to have consummated her marriage she would be presumed still to be a virgin, this will bring shame on her family and will also put her at risk from her brother.
45. The Judge placed reliance on the findings of Judge Khan that as the appellant returned to Algeria, this demonstrated that she was not in fear of anyone in that country. The judge made adverse credibility's findings about the appellant's conduct in returning to

Algeria, as the appellant claimed, to sell her jewellery and gold in order to finance their ongoing stay in the United Kingdom. The Judge considered this evidence and also considered the appellant's explanation for why she returned, which was that you wanted to sell her golden jewellery and rightfully rejected it.

46. The Judge was entitled to find on the evidence before her that the appellant would not have returned to Algeria in order to sell her gold, if she was in fear of anyone in that country. The evidence before the Judge was that the appellant went to Algeria and remained in hiding while her sister sold her gold and therefore the Judge stated that the appellant's sister could have sold her jewellery while the appellant remained in the United Kingdom. The finding is sustainable because the appellant would have returned to Algeria if she genuinely feared her brother or anyone else for any reason.
47. The Judge was also entitled to find that the appellant did not mention fear of her brother at her husband's asylum claim. The Judge was bound to find that the appellant's failure to mention this very important fact at the first available opportunity went to her credibility. This is a sustainable finding on the evidence.
48. The Judge considered the appellant's new claim that she had a sexual relationship with her cousin while in Algeria and that she cannot tell her husband about it. The Judge gave cogent reasons for her finding that the appellant and her husband are in a loving relationship and took into account the appellant's evidence that she does not wish to have a relationship with a woman but intends to live with her husband. She also took into account the evidence that the appellant and her husband are receiving therapy for their sexual problems which shows her that they are committed to each other.
49. The Judge was also entitled to find that the timing of the appellant's claim, which came after her husband's appeal had been dismissed, goes to the credibility of this evidence. The Judge's finding that the appellant's claim that she had a relationship with her female cousin in Algeria is an attempt to bolster her very weak asylum claim has been properly made. I find no perversity in these findings.
50. I find that the Judge was entitled and required to reach the conclusion that she did based on her consideration and evaluation of the evidence as a whole. The appellant's medical condition of PTSD was of no relevance to her findings. The Judge was entitled to find that the appellant's asylum claim is no more than an attempt to have a second bite at the cherry after her husband's asylum claim with her as his dependent was dismissed by Judge Khan.
51. The Judge has taken into account all the evidence including the medical evidence and it is implicit in the determination that he found that it had no relevance in respect of the appellants' credibility. The appellant's mental condition cannot explain the complete implausibility in her account. The Judge found that there are mental health services available in Algeria. The judge also found that the appellant and her husband can relocate within Algeria and correctly stated that they do not at present live near their families anyway.
52. The Judge was entitled to find the appellant's evidence not credible that her brother will subject her to a virginity test given, even though there was evidence that in Algeria women are sometimes forced to do virginity tests but no mention has been made in the report for the reasons why a woman would be asked to undergo a virginity test.

Implicit in the determination is that the appellant is a married woman who is with her husband and therefore her brother would have very little influence on her personal matter as she is under the protection of her husband.

53. I find there is nothing unreasonable or perverse in the Judges conclusion that the appellant will not be subjected to a virginity test merely because she does not have children. It is also complicit in the determination that the Judge did not believe that the appellant was previously subjected to a virginity test because this aspect of the claim was not mentioned before Judge Khan.

54. It is evident that even in Algeria everyone must know that there can be many reasons for lack of conception and it also does not necessarily mean that a woman is a virgin if she does not have children. The Judge rightfully did not find this to be credible evidence.

55. The appellant's grounds of appeal are no more than a quarrel with the findings of the Judge set out in a detailed and careful determination and her reasoning and conclusions are understandable.

56. In **R (Iran) v Secretary of State for the Home Department** [\[2005\] EWCA Civ 982](#) Brooke LJ commented on that analysis as follows:

“15. It will be noticed that the Master of the Rolls used the words "vital" and "critical" as synonyms of the word "material" which we have used above. The whole of his judgment warrants attention, because it reveals the anxiety of an appellate court not to overturn a judgment at first instance unless it really cannot understand the original judge's thought processes when he/she was making material findings.”

57. I find that I have no difficulty in understanding the reasoning in the Judge's determination for why she reached her conclusions. I find that the grounds of appeal and no more than a disagreement with the Judges findings of fact and the conclusions that she drew from such findings.

58. I find that no error of law has been established in the First-tier Tribunal's determination. I find that she was entitled to conclude that the appellant is not entitled to be recognised as a refugee or to be granted humanitarian protection in this country. I uphold her decision.

## **DECISION**

Appeal dismissed

Dated this 27<sup>th</sup> day of October 2015

Signed by,

Mrs S Chana  
A Deputy Judge of the Upper Tribunal