Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/09145/2016**

THE IMMIGRATION ACTS

Heard at Rolls Building, London	**Decision & Reasons Promulgated**
On 9th February 2018	**On 14th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MS NM
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Gajjar (Counsel)
For the Respondent: Mr I Jarvis (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Perry promulgated on 26th April 2017, following a hearing at Birmingham Sheldon Court on 16th March 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of Pakistan, who was born on 10th March 1987. She appealed the decision of the Respondent Secretary of

State dated 15th August 2016, refusing her application for asylum. The basis of her claim is that she has been disowned by her family on account of having been involved in an illicit extra-marital relationship with a man by the name of IS, such that if she were to be returned to Pakistan she would be a lone female, who would be subject to ill-treatment, and who not be able to find internal relocation.

The Appellant's Claim

3. The Appellant's claim was set out in detail by Judge Perry, who observed that the Appellant entered the UK on 14th December 2011 with entry clearance as a Tier 4 Student, which was valid until June 2013. In October 2012 she commenced the relationship with IS and on 14th February 2013 he started living with her in a house in London. The Appellant stated that because of the stigma with which her family would have viewed the relationship with IS she did not tell her parents that she was cohabiting with him (see paragraph 12).

4. Sometime in 2013, the Appellant did then return back home to Pakistan and she told her mother she wanted to marry IS, although she did not tell him that she was cohabiting with him, but she forbade her from doing so (paragraph 13). In the meantime, the Appellant was granted leave to remain as a Tier 4 Student from 8th July 2013 until 18th February 2015.

5. The judge observed how the basis of her present asylum claim arises from the fact that in December 2014 an "aunty" visited the Appellant's house in London from Manchester. She did so unannounced. She was a neighbour of the Appellant's back home in Pakistan. She had apparently been asked that she visit the Appellant in London by her mother. While she was visiting somebody else, she took the opportunity to drop in on the Appellant's house. The Appellant was not there but her co-tenants were there. In a space of a few minutes they told her that the Appellant had undergone an abortion after falling pregnant with IS, who the co-tenant said the Appellant was married to. When the Appellant contacted her mother a week later she states that the mother told her that as far as she was concerned the Appellant was dead. She had no contact with her family from December 2014 onwards.

6. The Appellant continued to live with IS until 18th January 2016. The relationship then broke down. The Appellant moved to Birmingham. The final straw between them was when the Appellant asked IS to accompany her to the Home Office for an interview and, after initially agreeing to do so, he then refused and became violent towards her. (See paragraphs 13 to 16).

7. The judge observed at the outset how he had expert reports from a Professor Bluth of the University of Bradford and a psychiatric report from Razia Hussain (paragraph 11). In the determination, the judge went on to say that a number of aspects of the Appellant's claim were accepted. These were that there was a Convention reason, her identity was as stated, her nationality was accepted, the fact that she had an abortion on

18th April 2013 was accepted, and the medical evidence was accepted. However, equally importantly, other aspects of her evidence were not accepted (see, paragraph 17). The judge accepted the social stigma that would arise from her cohabiting with a IS without being married to him (paragraph 18).

8. In other respects, however, the judge was not persuaded that the Appellant was telling the truth. First, the judge was not satisfied why the Appellant would routinely repeat the fact that she and IS were married to the wider world at large (including to doctors who treated her) where no such stigma applied. Second, if her housemates were of the conservative mindset that she herself describes (such that she had to lie about her relationship with IS to them) it was not clear why she shared with one of her housemates the sensitive matter of her having had an abortion.

9. The judge also observed that,

> "Having accepted she routinely lied to the world at large as to a relationship not just to those who might ascribe a social stigma to the same, having failed to identify why that was so or why she shared with one of her housemates that she had an abortion, in my judgment they are factors that damage her credibility".

10. The judge also found as plausible the Respondent's reasons for rejecting the Appellant's account. Three aspects were referred to:-

    (i) First, that the account of her aunty having visited her was implausible given that the aunt had never visited her before.

    (ii) Second, that having her aunt done so, and being admitted into the house by a co-tenant, who had never met the aunty, the co-tenant then shared with the Appellant's aunty (a complete stranger) the fact that the Appellant was married and had an abortion.

    (iii) Third, the Appellant's account was that her aunty must have been given her address by her parents (as she had not given it to her) and that her aunty was clever and "visited when she knew the claimant would be out" (paragraph 19). The judge did not find this to be credible for two reasons. First, because, "the Appellant assured me that her parents believed her when she had previously reassured them about the nature of her relationship with IS." Secondly, the judge also goes on to say that, "if the co-tenant was as conservatively minded as the Appellant states the co-tenant would have known this would be viewed by the Appellant's family". Accordingly, the judge held that whereas it was plausible that the aunty had met with the co-tenants for a meeting "it is unlikely to have taken place in the way the Appellant describes" (paragraph 19).

11. The judge thereafter went on to look at further documentary evidence in support of the Appellant's assertion that she had been disowned by her family. This included a court report and two press reports together with the original summons, which were provided on the morning of the hearing (paragraph 27). The judge in this respect held that the Appellant had failed to provide a full explanation for the delay in it being provided (paragraph 27). More serious, however, was the fact that there was an advert placed by her family on 4th February 2016 disowning their daughter. The originals had not been supplied even though the reports were twelve months old. What was curious about these press reports was that they were referring to summons which had already been issued when the summons were dated 17th February 2017, as long as the year after the press report (paragraph 28).

12. The judge concluded by stating that the Appellant had "not only failed to make an asylum claim at the first opportunity but now refers to matters to support the application that were known to her at the time that were not relayed" (paragraph 30).

13. The claims were dismissed.

Grounds of Application

14. The grounds of application state that the judge failed to take into the country guidance and the psychiatric expert report. No weight was placed on the court summons, and the press reports. The judge's approach of credibility was misconceived.

15. On 11th October 2017, the Upper Tribunal granted permission on the basis that it was arguable that in coming to the conclusion that the Appellant's account contained inconsistencies, the Tribunal erred in failing to have regard to the expert evidence of the consultant psychiatrist, who had specifically commented on the Appellant's ability to accurately recall events.

The Hearing

16. At the hearing before me on 9th February 2018, the Appellant was represented by Mr J Gajjar, of Counsel and the Respondent was represented by Mr I Jarvis, a Senior Home Office Presenting Officer. Mr Gajjar made the following four submissions before me.

17. First, that the issue before the judge was that concerning the expert report of Dr Razia Hussain. The judge had the report (which appears at pages 42 to 55 of the bundle) but failed to apply it. The expert report was significant insofar as it specifically dealt with the issue of abortion and the ability of the Appellant to recollect events. Yet, the judge overlooks this. Instead, the conclusion that it was not credible for the Appellant to have told a flatmate about her abortion, given how conservative her flatmate was, overlooked the fact confirmed in the exit report that the Appellant was a vulnerable woman. Her partner had forced her into an abortion. The judge's criticism of the Appellant having routinely repeated the fact that

she was married to IS to the world at large (including to doctors who treated her, knowing that this did not carry a stigma with them, failed to factor in the expert report of Dr Razia Hussain who had referred to her state of mind (see page 47 of the report). The expert had recorded how "NM ended up aborting her child but she says it devastated her as she found the experience very tormenting" (page 47). The expert recounts also that, "NM knows, she cannot now go to Pakistan, where her family is most likely to get her killed to salvage the family honour, which is a strange and inhuman scenario in Europe but a part of routine events in Pakistan" (page 49). It has also confirmed that, "the traumatic past events related to her relationship with IS and subsequent pregnancy/abortion has affected her life in general" (page 50). In relation to the Appellant's mental state, the expert observes that "there was also evidence of a certain degree of psychomotor retardation (slowness of movements and thoughts)" (see paragraph 6.1). None of this, submitted Mr Gajjar, was expressly referred to, or taken into account implicitly, by the judge.

18. Second, the judge had misunderstood the reference to a "court summons" when criticising the Appellant for the fact (at paragraph 28) that an advert placed by her family on 4th February 2016 disowning their daughter, had wrongly referred to a court summons having been taken out, when the court summons was dated 17th February 2017, which was a year later. Mr Gajjar submitted that the judge had discounted the suggestion that there may have been two court summons. If one looks at question 63 of the interview (at B9) it is clear that there was a reference to a possible police report when Q, the Appellant's friend in Pakistan, "told me that a report has been filed about me by my father and brother to the police station". Mr Gajjar submitted that this is what the Appellant would have meant in a reference to a court summons.

19. Third, the judge had accepted that there had abuse of the Appellant, observing that, "there is no dispute the abuse occurred; the issue relates to the allegedly inconsistent accounts the Appellant gives…" (at paragraph 26). The judge states that, "she did not refer to it in her statement lodged on 20th July 2015" (paragraph 26). Mr Gajjar submitted that it was irrational to have expected a reference to the domestic violence, given that the relationship with IS did not come to an end until 2016.

20. Finally, the judge failed to make findings upon the vulnerability of the Appellant and to follow the guidance given in the Joint Presidential Guidance Note No.2 (2010), a child vulnerable adult and sensitive Appellant guidance.

21. For his part, Mr Jarvis submitted that, as far as the last of the points made by Mr Gajjar were concerned, the directive in the Joint Presidential Guidance Note No.2 of 2010 did not create a different way of treating the evidence. It was there for anyone to draw upon. The guidance was simply saying that one must take care when dealing with vulnerable witnesses, but did not carve out a new path for viewing the evidence.

22. Second, although beyond paragraph 12 of the determination there was no express reference to the psychiatric report of Dr Razia Hussain, much of what was in that report was simply what the Appellant had herself said to the expert. The fact was that the Appellant had no cognitive malfunction at all.

23. Third, as far as the media report is concerned, which was heavily criticised by the judge at paragraph 28 because it referred to a summons already issued on 17th February 2017, when the report itself was in the newspaper only on 4th February 2016, all that Mr Gajjar had been able to say was that there may have been an earlier prosecution report, which the Appellant had confused the summons with. This was highly speculative.

24. Fourth, any confusion that there may have been in this respect, could not be explained away by the fact that the Appellant's family appeared to have put a newspaper advert on 4th February 2016 disowning their daughter, and referring to a summons, which had not been issued until 17th February 2017, a year later.

25. In reply, Mr Gajjar made two further points. First, as far the Appellant's abortion was concerned, there was a detailed witness statement from her (at paragraphs 15 to 16) where she had explained why she had disclosed her pregnancy. The co-tenant showed concern to her when she was feeling vulnerable and downcast. The judge was wrong, accordingly, to state (at paragraph 18 of the determination) that this lacked credibility. Second, as far as the medical report itself is concerned the judge did not say that the report contains an itemised list of considered aspects relevant to the Appellant. Had the judge applied the vulnerable adult and sensitive Appellant guidance this would indeed have been the case. Accordingly, the judge's approach had effected the eventual findings made on the credibility of the Appellant. I was asked to allow the appeal.

No Error of Law

26. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. I find that the decision of Judge Perry is clear, comprehensive, and entirely well-reasoned. My reasons are as follows.

27. First, there is the issue of the psychiatric report of Dr Razia Hussain. The judge refers to it at the outset at paragraph 11, together with the report of Professor Bluth. However, it is not the case that the judge thereafter ignores it. Nowhere is this clear than in the central paragraph of the determination, where the judge disbelieves the account of the Appellant, namely, at paragraph 18, where the judge states that it was not plausible for the Appellant to have routinely repeated that she and IS were married *"to the wider world at large (including to the doctors who treated her) where no such stigma applied",* thereby suggesting that the Appellant had routinely chosen to lie about her relationship with IS. In fact, the judge

accepts that, "there is no dispute the abuse occurred; the issue raises the allegedly inconsistent accounts the Appellant gives …" (paragraph 26).

28. The acceptance of the abuse, especially in circumstances where the Appellant's account had been found to be orally inconsistent in large parts, is no less due to the judge bearing aware of the entirety of the evidence before him. In any event, since the existence of the abuse was accepted, such that it was not in contention that the Appellant had suffered emotional and physical traumas, the failure to set out the contents of the medical report at length was not material.

29. Second, if one looks at the psychiatric report of Dr Razia Hussain itself, however, large parts of it are premised upon the Appellant's self-reporting of what she went through. For example, it is stated that, "NM says she had managed to keep her relationship secret from her parents in Pakistan…". It is stated that when she was asked to abort the baby by IS that, "NM ended up aborting her baby but she says it devastated her…". It points out how, "NM says IS began to abuse her…" (see page 47). In the same way the abuse that she allegedly suffered from IS is referred to on the basis that, "she says was very painful". It is also stated that, "NM says she was left with numerous scars and bruising on her body". In the same way there is a reference to how, "NM says it is known worldwide that the Honour Killing in Pakistan is quite common…" (page 48). The point about these references to what the Appellant states, is that it would have been just as open to the judge, for example, to consider and examine the numerous scars and bruising that is referred to, rather than take this at face value on the suggestion of the Appellant. Under the section "Presenting Complaints" the judge describes how, "NM reported, she has been living a very difficult life in the last few years…" (at page 50).

30. Third, and in any event, insofar as the report refers to any medical prognosis, it is clear that this prognosis is not one which points to any particular disability on the part of the Appellant. Indeed the report observes that, *"NM has not reported to be suffering from any physical illness and has physical symptoms, including headaches and poor physical health in general, is secondary to an anxious state of mind. There is also no previous history of any mental illness or disorder"* (see Section 4 at page 51). Indeed, whereas the report refers to the Appellant's speech being low in volume, slow in weight, coherent and rational, it also states that, however, there was no evidence of any formal disorder or any other psychotic symptoms at this stage. Though her recent memory is intact, but she has memory loss symptoms, particularly she has short term memory loss. It ends with the observation that, "*she was, however, well orientated with time, place and person. Her attention span was normal but her concentration was poor at times…"* (see Section 6.2 at pages 51 to 52). The point is that, even if one accepts that the Appellant has "short term memory loss" the Appellant had been given enough time to resolve the issues that were before the Tribunal. As the judge recalled, "the burden is on the Appellant to demonstrate the reliability of those documents" but that this "has not been done and I place no weight on them" when referring to the fact that there had been a summons

produced which was a year after the reference to it was made in the family advert of 4th February 2016. At best this could only have shown a contrivance on the part of the Appellant. The original summons itself was only produced on the day of the hearing (see paragraph 27). Any mental disability that is presently complained of, was amply compensated for by the judge in the final conclusion that, *"I find that she not only failed to make an asylum claim at the first opportunity but now refers to matters to support that application that were known to her at the time but were not relayed"* (paragraph 30).

31. Fourth, the same applies in relation to the crystalizing event of the "aunty" attending upon the Appellant at her home. The judge deals with this in great detail (at paragraph 19). It was the Appellant's evidence (and there can be no confusion about this) that when she had returned back to Pakistan in 2013, and told her mother that she was in a relationship with IS, upon being told in no uncertain terms to terminate that relationship, she agreed to do so, and she was believed in that. If this was the case, it did not make sense, as the judge found, for the family to go to the trouble of asking a neighbour next door to pay the Appellant a visit. As the judge observed, "in my judgment there was a suggestion her family and aunty were suspicious of the Appellant's relationship. Yet the Appellant assured me that her parents believed her when she had previously reassured them about the nature of her relationship with IS" (paragraph 19). If this was the case, it did not make sense for the aunty to deliberately turn up at the appellant's residence at a time when she thought the Appellant would not be there.

32. In fact, if one looks at the Appellant's rather long and convoluted witness statement (of 34 paragraphs) her account in this respect makes very little sense indeed. In her witness statements, she states that, "my parents were concerned about me and they knew that aunty also lived in the United Kingdom. They requested her to visit me in London and find out about me. That is why that aunty came unannounced to find out about my whereabouts" (paragraph 17). If the family were concerned about the appellant, and the family was tasked with going to find out about the Appellant, it does not make sense to say that this is why the aunty came unannounced.

33. For all these reasons, the determination of Judge Perry was one that was entirely open to him.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

An anonymity direction is made.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date

Deputy Upper Tribunal Judge Juss 10th March 2018