



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

Appeal Number: PA/00925/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 11th July 2019**

**Decision & Reasons Promulgated
On 19th July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**H A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Ahmed, Counsel

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by [HA] against a decision of First-tier Tribunal Judge Hussain to dismiss her appeal against the decision of the Respondent to refuse her Protection Claim arising from a claimed risk of serious at the hand of her husband should she return to Pakistan.
2. The Respondent refused the Appellant's current Protection Claim on 10th January 2019. She had previously made a Protection Claim on 6th September 2013, based essentially on the same grounds as her current claim. Her previous claim had been refused on 6th February 2014 and her appeal against that decision was dismissed by Judge O'Garro on 9th April

2014. The claim made on 10th January 2019 was partially based upon fresh evidence. An important part of that fresh evidence was a medical report. The author of that report concluded that the Appellant was suffering from post-traumatic stress disorder (PTSD). It is common ground before me that this fact meant that the Tribunal was required to treat the Appellant as a 'vulnerable witness'.

3. I deal firstly with the decision of Judge Hussain. Quite rightly, he took as his starting point the earlier findings of Judge O'Garro. What Judge Hussain said about those earlier findings is contained within paragraphs 34 to 36 of his decision:-

"34. In between paragraphs 8 to 16 [of Judge O Garro's decision] the judge in admirable clarity sets out the basis of the Appellant's claim which is the same as before the present Tribunal, save of course for the evidence that was not before that judge. Inbetween paragraphs 7 to 24, she sets out the case for the Respondent. In paragraph 27, the judge records that the Appellant adopted her statement of 13th March 2014 as her evidence-in-chief.

35. In paragraph 44 the judge records that she accepts that the Appellant had an arranged marriage. However, she rejected the Appellant's claim that she was the victim of violence in the hands of her husband, firstly because, as recorded by her in paragraph 47 of the determination, the notice issued by the Islamic Sharia Council to the Appellant's husband made no mention of the abuse she now claimed to have suffered. The judge also in paragraph 48 commented adversely on the inconsistency on the evidence relating to the Appellant's brother being shot. In paragraph 52, the judge comes to a clear finding that she is not satisfied that the Appellant has proven that her husband is violent and that he has been violent towards her when she lived in Pakistan. In paragraph 53, the judge noted the Appellant's claim that since coming to this country she has received threats from her husband on Facebook and e-mail but she has not provided any evidence of that.

36. In paragraph 54, the judge records the Appellant's claim that her husband has threatened to kill her mother if she did not give him the details of the Appellant's whereabouts but there is no evidence that he has harmed her mother to date. The judge noted that her mother has written a short statement in support of the Appellant's appeal where she made no mention of being threatened by her son-in-law or of the Appellant being harmed by him or her son being shot by the Appellant's husband. The judge makes an interesting observation in paragraph 58, which was that the Appellant not being divorced from her husband, will be returning there as his wife and therefore there would be no loss of honour on his part. In any event, she will be returning to an urban part of Pakistan where there should be no fear of an honour killing."

4. Before moving on to Judge Hussain's own reasons for dismissing the appeal, it is necessary to refer to the first ground of appeal to the Upper

Tribunal. This is that the judge erred in law in failing to treat the Appellant before him as a vulnerable witness in accordance with the Joint Presidential Guidance Note No 2 of 2010. I confess that I at first considered there to be little merit in this ground. The reason for this was, that whilst the judge undoubtedly failed to state that he was treating the Appellant as a vulnerable witness, it was not immediately apparent to me how or why this had affected the safety of Judge Hussain's ultimate decision. This in turn was because it does not appear from Judge Hussain's decision that the Appellant gave very much by way of oral evidence before him, rather, she principally relied on a fresh written statement from her mother in Pakistan and a psychiatric report concerning her own mental illness. Indeed, Judge Hussain does not appear to have made any adverse credibility findings based on the oral testimony that the appellant gave before him. Indeed, when I first asked Mr Ahmed what the relevance of the Appellant being a vulnerable witness was to Judge Hussain's decision, he simply referred to the Practice Direction and said that there was no evidence that Judge Hussain had taken any of the suggested steps that it contains.

5. However, having reflected on the matter, I am satisfied that whilst the vulnerability of the Appellant was probably irrelevant to Judge Hussain's assessment of the evidence that she gave before him, it was highly relevant to the adverse credibility findings that Judge O'Garro had made. This is illustrated by the following. Firstly, it is clear that Judge O'Garro had placed considerable weight in her findings upon the inconsistencies in the evidence that the appellant had given at the hearing before her. By way of example, having highlighted a particular inconsistency about the date of a significant event in the Appellant's narrative, Judge O'Garro continued as follows:-

"50. In fact I do not find the Appellant's explanation for this inconsistency about the dates credible because I would expect the Appellant to recall the date the incident occurred because a close family member was seriously injured by her husband on that date, if the incident did in fact occur. I find the Appellant's failure to recall the correct date undermines her credibility and has cast doubt on her claim."

6. The Appellant was given the opportunity before Judge Hussain to explain the inconsistencies in her evidence before Judge O'Garro. That opportunity was afforded to her in cross-examination by the Presenting Officer, and her response to the questions put to her is recorded at paragraph 15 of Judge Hussain's decision:-

"15. In cross-examination, the Appellant was told that at the previous hearing she was represented by Mr Burrett. She said that she did not even know that he was going to represent her. Her solicitor was not there. She had prepared a statement before her interview at the Home Office. She did not provide another for the hearing. She cannot remember what she was asked. She was frightened and panicked. She had never appeared before a judge.

Her mental and physical condition was bad. She is much better today. Then she was a wreck." [Emphasis added]

7. There are two significant things that arise from the above. Firstly, and least importantly, is the fact that the Appellant was stating she felt much better on the day of the hearing before Judge Hussain. Thus, whilst it was accepted by Mr Walker that the appellant was appropriately characterised as a 'vulnerable witness', it may well be that she was not as vulnerable as she had been before Judge O'Garro. However, the principle point is that the Appellant was clearly seeking to explain the inconsistencies in her evidence before Judge O'Garro by reference to her vulnerability at that time. Indeed, she went so far as to describe herself as, "a wreck". In fairness to Judge O'Garro, it may be that she was unaware of the Appellant's mental condition at the time she made her adverse credibility findings. However, it is clear that Judge Hussain was aware of the situation by the time he heard the appeal before him. Accordingly, even if the Appellant's vulnerability was not particularly relevant to the credibility of the testimony that she gave before him, it was plainly relevant in deciding the weight attaching to the adverse credibility findings made by Judge O'Garro. Moreover, it is clear from the passages I cited at paragraph 3 (above) that Judge Hussain placed considerable weight upon the adverse credibility findings made by Judge O'Garro. The error of law thus lies in Judge Hussain's uncritical acceptance of Judge O'Garro's adverse findings without having factored into his assessment of them the vulnerability of the Appellant at the time when she gave evidence before Judge O' Garro.
8. There are other relatively minor errors in the decision of Judge Hussain. I will deal with them briefly given that they would not individually have led to me exercising discretion to set aside his decision. These essentially arise from the judge's assessment of the credibility of the contents of a written statement by the Appellant's mother on the basis his own supposed knowledge of the social and cultural norms of Pakistan. It is not always clear whether the judge is referring to his own personal experience or to evidence he has heard in other appeals. In either case, it is an error of law to take such matters into account. Subject to an exception concerning reported Country Guidance Cases, decisions must be based solely and exclusively upon the evidence heard in the proceedings to which they relate.
9. The first example of the judge falling into error in this way can be found at paragraph 40. The judge had earlier referred to what appeared to be a notice, dated 2nd January 2018, in which the Appellant's mother purportedly wrote to a police station alleging that, on 1st January 2018, the Appellant's husband came with three gangster friends and tried to enter the house forcefully. At paragraph 40, the judge made the following comment about that letter:-

"Having read this letter the conclusion is inescapable that it is a self-serving document. Firstly it does not have any of the markers that one has become accustomed to seeing in terms of documents placed before the police as a first complaint. Such documents in Pakistan are

typically known as FIRs and this particular document does not have any of the bearings of such a document.”

10. It is far from clear on what evidential basis Judge Hussain found that complaints in Pakistan are typically known as ‘FIRs’, or that the document in question did not have any of the “markers” of such a document, given that he does not refer to any evidence that was before him in order to support that finding. On the contrary, he appears to base his finding upon that to which he says he has, “become accustomed”.
11. The other lesser example relates to the ‘fatwa’ that the appellant claimed had been issued against her. The judge did not find the fatwa to be a credible document. One of the reasons that he gave appears at paragraph 45:-

“What makes this evidence incredible is the fact that although the punishment referred to is sanctioned by Islamic law, it has to be executed by the state which is not done in Pakistan.” [Emphasis added]

What the judge says in the passage that I have emphasised may or may not be right. However, any such finding must ultimately be based upon the evidence, and the judge fails to refer to any evidence that was before him in order to support such a finding.

12. For all the above reasons, taken cumulatively, I have concluded that this decision should be set aside and that none of the findings of the First-tier Tribunal should be preserved. That being the case, the matter will have to be heard afresh by another judge. I have considered whether it would be appropriate for me to remake the decision in the Upper Tribunal. However, given that this appeal now requires to be determined afresh - subject only to appropriate weight being placed upon the extant findings of Judge O’Garro - it seems to me appropriate to remit this matter to the First-tier Tribunal to be heard by any judge other than Judge Hussain.

Notice of Decision

13. The appeal is allowed.
14. The decision of the First-tier Tribunal to dismiss the appeal is set aside.
15. The appeal is remitted to the First-tier Tribunal to be heard afresh before any Judge other Judge Hussain.

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 her or any member of her 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: 15th July 2019

Deputy Upper Tribunal Judge Kelly