



**Upper Tribunal  
(Immigration and Asylum Chamber)** Appeal Number: PA/12136/2019 (P)

**THE IMMIGRATION ACTS**

**Decided under Rule 34  
of the Tribunal Procedure (Upper  
Tribunal) Rules 2008  
On 24 March 2021**

**Decision & Reasons Promulgated**

**On 6 April 2021**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

**R M  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

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

Respondent

**DETERMINATION AND REASONS (P)**

1. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008. I do so because this is a protection claim (see Guidance note 2013 No 1: Anonymity Orders). Unless and until a court directs otherwise the appellant is granted anonymity. No report of these proceedings shall directly or indirectly refer to her. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

## The Background

2. The respondent with permission, appeals against the decision of the First-tier Tribunal (Judge Williams) (hereinafter referred to as the "FtTJ") who, in a determination promulgated on 14 September 2020, dismissed her protection claim.
3. Permission to appeal was refused on 5 October 2020 by FtTJ Chohan but on renewal to the Upper Tribunal, UTJ Perkins granted permission on 17 December 2020.
4. This decision is made without a hearing under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('the 2008 Rules') and is done so with the consent of the parties reflected in the email exchanges in the correspondence sent to the Tribunal on the 18th and 23<sup>rd</sup> March 2021.
5. The Overriding Objective is contained in the Upper Tribunal Procedure Rules. Rule 2(2) explains that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues.
6. Rule 2(4) puts a duty on the parties to help the Upper Tribunal to further the overriding objective; and to cooperate with the Upper Tribunal generally.
7. Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008 provides:  
'34.-"
  - (1) Subject to paragraphs (2) and (3), the Upper Tribunal may make any decision without a hearing.
  - (2) The Upper Tribunal must have regard to any view expressed by a party when deciding whether to hold a hearing to consider any matter, and the form of any such hearing.
  - (3) In immigration judicial review proceedings, the Upper Tribunal must hold a hearing before making a decision which disposes of proceedings.
  - (4) Paragraph (3) does not affect the power of the Upper Tribunal to-"
    - (a) strike out a party's case, pursuant to rule 8(1)(b) or 8(2);
    - (b) consent to withdrawal, pursuant to rule 17;
    - (c) determine an application for permission to bring judicial review proceedings, pursuant to rule 30; or

(d) make a consent order disposing of proceedings, pursuant to rule 39, without a hearing.'

8. In the light of the present need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules<sup>1</sup>, directions were sent out to the parties. In compliance with those directions, a Rule 24 reply from the respondent was issued on the 9 January 2021.
9. Having had regard to the grounds, the decision of the judge, the submissions and the email correspondence from the respondent dated 18 March 2021 and to all the evidence before me, I am satisfied that a full account of the facts are set out in the papers on file and the issue to be decided is a straightforward one. No issues have been raised other than those addressed in the written submissions. I was mindful as to the circumstances when an oral hearing is to be held in order to comply with the common law duty of fairness and also as to when a decision may appropriately be made consequent to a paper consideration: *Osborn v. The Parole Board* [\[2013\] UKSC 61](#); [\[2014\] AC 1115](#).
10. In my judgment and in the light of the issues set out in the written submissions there is no complexity which necessitates an oral hearing to ensure fairness and that the decision is one which can properly and fairly be made on the papers taking into account the overriding objective as set out in the Tribunal Procedure Rules which includes the issue of delay. This is a course the parties have consented to.
11. The appellant is a citizen of Pakistan who arrived in the United Kingdom in March 2014. She made a claim for asylum in March 2014 which was refused in February 2015. Her appeal was dismissed on 16 July 2018.
12. Further submissions were submitted on her behalf in 2016, 2018 and also in 2019. However on 18 July 2019 further submissions were submitted to the respondent which formed the basis of a decision to refuse her protection claim in a decision dated 18 November 2019.
13. The basis of her claim was that she was at risk of persecution and/or serious harm by her family. The respondent did not accept that she would be at risk of persecution or serious harm at the hands of her family but in the alternative as she feared nonstate actors, it was considered that she could obtain protection or internally relocate within Pakistan. Consideration was given to the country materials and in the light of the country guidance caselaw of *KA and others (domestic violence risk on return) Pakistan CG* [2010] UKUT 2016 and also *SM (lone women - ostracism) CG* [2016] UKUT67. For the reasons set out in the decision letter, it was not accepted that returning as a lone woman without family connections would lead to persecution or serious harm on return.

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<sup>1</sup> The overriding objective is to enable the Upper Tribunal to deal with cases fairly and justly: rule 2(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008; see also rule 2(2) to (4).

14. The appellant appealed that decision it came before the FtTJ on 9 September 2020. In a decision promulgated on 14 September 2020, he dismissed her appeal having found that she had not given a reliable account and in the alternative even taken at its highest, he found that there was sufficiency of protection within Pakistan from nonstate agents and that she could internally relocate.
15. Grounds of appeal were lodged on the 25 September 2020 challenging all aspects of the decision (I refer to the written grounds submitted). Permission was granted by the Upper Tribunal (UTJ) Perkins on 17 December 2020).
16. Since the grounds and the grant of permission further correspondence with the tribunal has followed. In an email sent to the tribunal from the senior presenting officer dated 18 March 2021, the respondent accepts that there is a material error of law in the decision of the FtTJ as set out in the grounds of permission and grant of permission.
17. The respondent therefore invites the Tribunal to set aside the decision of the FtTJ and to remit the appeal to the FtT for a hearing where the evidence will be considered and factual findings an assessment of risk on return will be made.
18. Following that correspondence by email, a reply was received from the appellant's solicitors sent 23<sup>rd</sup> March 2021 in agreement with that approach.
19. The grounds issued on behalf of the appellant challenge the adverse credibility findings made by the FtTJ, assert that there was a failure of anxious scrutiny and that the FtTJ failed to reach properly reasoned conclusions both on the factual account and also on the issue of relocation.
20. Having had the opportunity to give further consideration to the grounds, the respondent accepts that the grounds of challenge are made out for the reasons set out in the grant of permission and that consequently the decision of the FtTJ involved the making of an error on a point of law and that the decision should be set aside and remitted to the FtT for a further hearing.
21. I have therefore considered whether it should be remade in the Upper Tribunal or remitted to the FtT for a further hearing. In reaching that decision I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal.

"[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

22. Both representatives submit that the venue for hearing the appeal should be the FtT in the event of an error of law being found. I have considered their submissions in the light of the practice statement recited above. As it will be necessary for the appellant to give evidence and to deal with the evidential issues, further fact-finding will be necessary alongside the analysis of risk on return in the light of the relevant evidence, and in my judgement the best course and consistent with the overriding objective is for it to be remitted to the FtT for a further hearing.
23. For those reasons, and in the light of the parties' agreement, I am satisfied that the decision of the FtT dismissing the appeal involved the making of an error on a point of law for the reasons set out in the grounds and the grant of permission. Therefore as the parties have set out, the decision should be set aside and should be remitted to the FtT with no findings of fact preserved. Whilst the Upper Tribunal has made an anonymity direction, on remittal before the FtT this will be an issue that can be redetermined following any submission from the parties.

**Notice of Decision:**

The decision of the First-tier Tribunal decision involves the making of an error on a point of law. The decision is set aside. The appeal shall be remitted to the First-tier Tribunal for a hearing.

**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 her family members. 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 Upper Tribunal Judge Reeds

Dated: 24 March 2021

Upper Tribunal Judge Reeds