



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

Appeal Number: AA/12801/2015

THE IMMIGRATION ACTS

Heard at Manchester

On 2 May 2017

**Decision & Reasons
Promulgated
On 8 May 2017**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**SA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holmes, instructed by Bolton Citizens Advice

For the Respondent: Mr Harrison, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. I found an error of law in the First-tier Tribunal's decision and gave my reasons for so finding in a decision which was promulgated on 23 November 2016:

"1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant SA was born in 1985 and is a female citizen of Pakistan. She entered the United Kingdom in 2008. Her leave to remain expired in 2009. She entered a relationship with an Indian citizen in the United Kingdom during which she claims to have suffered domestic violence. On 13 August

2015, a decision was made to refuse to grant the appellant asylum upon her application. The appellant appealed to the First-tier Tribunal (Judge Alty) which, in a decision promulgated on 27 June 2016, allowed the appeal on Article 8 ECHR grounds. The appeal on asylum grounds and in respect of Articles 2/3 of the ECHR was dismissed. The appellant has not challenged that part of the decision before the Upper Tribunal.

2. The appellant has a child living with her in the United Kingdom. The child was born in 2012. At [35] at the beginning of her analysis of Article 8, Judge Alty wrote:

The appellant has been in the UK for eight years and has a child here. She has developed links with community and church. Therefore I am also satisfied that she has developed a family life capable of being interfered with under the first stage of Razgar [2004] UKHL 2004 (sic) and that such interference is material enough to potentially engage Article 8 under stage 2 (sic).

3. I accept Mr McVeety's submission that the judge has conflated private and family life in her analysis. It is not at all clear why the judge considered that the appellant and her child have a family life in the United Kingdom simply because they had "developed links with community and church". Those links can properly be categorised as elements of the private lives of both the appellant and her child; the family life of the appellant and child is in this instance that which they enjoy together rather than third parties who are not related to them. It is difficult to see how that family life would suffer a significant or disproportionate interference given that the appellant and her child would be removed together to Pakistan where their family life may be continued. It is clear that, if the removal of the appellant and the child severs links with their local community and church in Blackburn, then that does not constitute an interference of the family life of either the appellant or the child.

4. The conflation of family life and private life has led the judge into legal error. As Mr McVeety properly pointed out, Section 117B of the Nationality, Immigration and Asylum Act 2002 (as amended) provides that little weight should be given to a private life that has been established by a person at a time "when the person's immigration status is precarious". Further, given that the appellant's visa expired in 2009 and that she did not make an application for asylum until some time after that date, she cannot establish that she has always been living in the United Kingdom lawfully; in consequence, and by the application of Section 117B(4), little weight should be given to private life developed during the period between the expiry of her visa and her claim for asylum and subsequent appeal to the First-tier Tribunal.

5. At [38] the judge does consider Section 117B concluding that the appellant's English is "not fluent" and that there was "no evidence to indicate that she is financially independent". The judge was right to take these matters into account but it is not entirely clear to me how those factors have influenced her analysis and the outcome of the appeal. Likewise, the comments the judge makes at [41] regarding the "ostracism and/or discrimination on return to Pakistan given that she is a young lone woman with an illegitimate child" may be a factor although I consider there is some force in Mr McVeety's submission that it is not clear on what basis the judge has sought to bring this factor back into the appeal, having

rejected the submission that it is a proper basis for allowing the appeal on either asylum or Article 3 grounds.

6. In the light of what I have said above, I find that the decision of the First-tier Tribunal should be set aside.

Notice of Decision

7. The decision of the First-tier Tribunal promulgated on 27 June 2016 is set aside. The decision will be re-made in the Upper Tribunal following a resumed hearing at Manchester before Upper Tribunal Judge Clive Lane. The findings of the judge in respect of the appeal on asylum and Articles 2/3 ECHR grounds are preserved. The findings in respect of Article 8 ECHR are set aside.”

2. For the resumed hearing at Manchester on 2 May 2017, the appellant attended and gave evidence in English. She adopted her written statement as her evidence-in-chief and was cross-examined by Mr Harrison, for the respondent. The appellant’s child, S, was born in December 2012 and is now aged 4 years. The father of S (A) is a citizen of India. The appellant was cross-examined regarding A’s status in the United Kingdom. The appellant said that she understood that A continues to “sign” with the Immigration Officer indicating that he has no settled status. The appellant had suffered domestic violence at the hands of A and, at the time of the hearing before the First-tier Tribunal, the relationship between herself and A appeared to have broken down completely. At the resumed hearing, however, the appellant gave a different picture of the current state of the relationship. She described S’s fondness for her father; indeed, the appellant and S had spent the night with A in Manchester prior to the resumed hearing and A had agreed to look after S whilst the appellant was at the hearing. The appellant was somewhat evasive as regards the re-establishment of the relationship with A when cross-examined by Mr Harrison. She seemed unable to remember when the relationship had recommenced although she believed that it was at some time before S’s last birthday (December 2016). The appellant said that she wished to recommence her relationship with A but that she is taking matters quite slowly at the present time, especially in the light of their previous unhappy history.
3. The appellant said that her father and mother were deceased but the rest of her family live in Pakistan although she has no contact with them. She has no contact with her former husband who also lives in Pakistan. The appellant said that she is a qualified midwife who last worked in Pakistan in 2008 in that capacity. She has never worked as a midwife or otherwise whilst in the United Kingdom.
4. The appellant described her social life which appears to be based largely upon a Catholic church in Blackburn. About ten members of the congregation come to the appellant’s house every week for choir practice.
5. I reserved my decision.

6. The balance of probabilities is the standard of proof in the Article 8 ECHR appeal. There remains no appeal in respect of asylum and Articles 2/3 ECHR.
7. The evidence which the appellant gave regarding the recommencement of a relationship with A was vague; she appeared reluctant to answer questions about the relationship. I am prepared to accept, however, that the appellant was not deliberately attempting to obscure the truth; it seems more likely that she simply “doesn’t want to think about the past” as she put it. The fact remains, however, that a relationship with A is not firmly re-established. The couple do not live together and the appellant’s main motivation for having a relationship with A appears to be so that A can enjoy contact with their daughter, S who appears to be fond of A. On the basis of the evidence as at the date of hearing, I find that S and the appellant have a family relationship but that such family life as S, A and the appellant may enjoy is rather weak as contact between them all occurs only intermittently. I accept that A has contact with S although, in the light of the vagueness of the appellant’s evidence, I am unable to sure to the appropriate standard that this contact takes place every week as she stated.
8. I accept that the appellant has a private life based around her friends from the congregation of a Catholic church which she attends in Blackburn. I accept that she holds choir meetings at her own home.
9. The Article 8 assessment turns on the question of proportionality. I have regard to Section 117B of the Nationality, Immigration and Asylum Act 2002 (as amended):
 - ‘Article 8: public interest considerations applicable in all cases
 - (1) The maintenance of effective immigration controls is in the public interest.
 - (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
 - (a) are less of a burden on taxpayers, and
 - (b) are better able to integrate into society.
 - (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
 - (a) are not a burden on taxpayers, and
 - (b) are better able to integrate into society.
 - (4) Little weight should be given to—
 - (a) a private life, or
 - (b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.'

10. I accept that the appellant is able to speak English (it is not clear why she has had an Urdu interpreter at the past court hearings) and she does not have an income or financial assets which have been disclosed to the Tribunal. A is not a "qualifying partner" and S (being a citizen of Pakistan, like her mother) is not a qualifying child. As I recorded in my error of law decision, that, for much of her time in the United Kingdom, the appellant's status has been that of an illegal overstayer and her residence here has been in consequence precarious. I attach little weight to her private life formed through the church on account of the fact that this has (a) been formed while her status has been precarious and (b) can be replicated upon return to Pakistan with members of a similar congregation worshipping there.
11. Mr Holmes in his submissions made much of section 55 of the Borders, Citizenship and Immigration Act 2009 and its application to the facts of this case. I accept that the child S was born in the United Kingdom but is a citizen of Pakistan. Mr Holmes urged me not to make a decision which would lead to S being removed from the supportive environment of the United Kingdom but the fact remains that, although she attends nursery school at the present time, she has yet to start full time school as such and it is not clear what input, if any, she receives from Social Services or similar agencies at the present time. S's primary relationship is, of course, with her mother. I accept that S has a relationship with her father, A, and I find that it is that relationship which has primarily led the appellant to recommence a relationship with A notwithstanding the domestic violence which she had suffered at his hands in the past. Mr Holmes submitted that the fact that A is Indian and the appellant and S are from Pakistan was a significant factor in the proportionality exercise since the family would be split by being removed to different countries. But the difficulty with that submission is that I have no evidence at all to show that A would not be admitted to Pakistan as the partner of the appellant. It is not for the Tribunal simply to accept such submissions in the absence of any evidence. In any event, it was not clear to me at all from the appellant's evidence that she would wish to live with A on a permanent basis either in Pakistan, India or the United Kingdom. As I have noted, S is not a qualifying child so the provisions of Section 117B(6) do not apply in this instance. I have to say that on the basis of the evidence which I received both written and oral, that there is simply not enough evidence to justify

permitting the appellant and S to remain in the United Kingdom on the basis of the contact currently taking place between A and S. I accept Mr Harrison's submission that, other than the contact which does take place, there is no evidence at all that A is taking any active role in the life of S or that he is likely to do so in the future. It is apparent from the evidence that all decisions in respect of S's education and welfare are taken by the appellant. As regards S's best interests, I find that those are met on the facts of this case by her remaining with her mother, the appellant.

12. Set against the factors favouring the appellant in the Article 8 assessment, that there is the public interest concerned with their removal. The appellant's immigration history is not good. She has formed a relationship in this country and had a child born of that relationship at a time when she was well aware that she had no right to be here. On return to Pakistan, the appellant and S will be able to continue their family life together and, as I have noted above, I have no firm evidence to show that A would not be able to accompany the family to Pakistan in order to enjoy family life with them if, indeed, that is intended by any of the parties. At the resumed hearing, Mr Holmes made nothing of the possible stigma which the appellant would face upon return to Pakistan as the mother of an illegitimate child and, in the absence of any firm evidence as regards that matter, I do not take it into account as a weighty factor. I am aware, however, that the appellant is a qualified midwife and there would appear to be no reason why she should not be able to resume such work upon return to Pakistan. By doing so, she would be able to provide for herself and S notwithstanding the fact that she has little contact with members of her family in Pakistan. I find that the public interest concerned with the appellant's removal is relatively strong in this instance and I find that such factors as may weigh against that public interest are on the facts insufficient to lead me to allow the appeal on Article 8 ECHR grounds. I am satisfied that it would not be disproportionate for the appellant to be removed with S to their country of nationality.

Notice of Decision

The appellant's appeal against the decision of the respondent dated 13 August 2015 to refuse her asylum is dismissed on all grounds.

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 4 May 2017

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 4 May 2017

Upper Tribunal Judge Clive Lane