



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/04182/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford

On 9th October 2017

**Decision & Reasons
Promulgated
On 17th October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SS

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Diwncyz, Home Office Presenting Officer
For the Respondent: Ms Khan of Counsel, instructed by Parker Rhodes
Hickmotts

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Myers made following a hearing at Bradford on 31st May 2017.

Background

2. The claimant is a citizen of Pakistan born on 14th March 1977. She entered the UK as a student on 22nd January 2012 with her husband and three sons as her dependants. She claimed asylum in February 2013, and was refused, and her appeal was dismissed. She became appeal rights exhausted on 22nd July 2013. She then lodged further submissions which were rejected, followed by judicial review proceedings which concluded when it was agreed that her further submissions would be reconsidered.

After a further rejection she was issued with an appealable decision, the one before the Immigration Judge.

3. The judge took as her starting point the determination of Judge Batiste, who had dismissed her original appeal in May 2013. Judge Batiste recorded that the respondent accepted that the claimant had suffered domestic abuse whilst in the UK. He did not accept that she had suffered abuse whilst in Pakistan.
4. However, before Judge Myers, it was explicitly conceded by the Secretary of State that it was likely that the claimant had been the victim of domestic violence in Pakistan. Accordingly Judge Myers said that she did not need to make detailed findings about the evidence the appellant had submitted, which included her husband scalding her with boiling water and attacking her whilst six months pregnant, causing her to lose the child.
5. Judge Myers recorded that an expert report had been submitted by Ms Moeen which sets out the likely risks of her suffering serious harm if returned to Pakistan, such as being the victim of an honour killing or losing custody of her sons. The judge concluded that there was no evidence that her husband had been actively monitoring her to check if she had returned to Pakistan but did accept that both she and the children were subjectively in fear of him and believed that they were at risk of him finding them there.
6. The evidence did not point to the husband having any desire to have the children live with him but she did accept that if he learned she was back in Pakistan it was possible he could apply for custody of the children solely to cause suffering to her.
7. The judge reviewed the medical evidence, referred to the relevant case law and concluded as follows:

“I have found above that although it is likely that the appellant will have some support from her family she would be at risk on return to her home area. There is no evidence that she would have a male protector and although she is well-educated I accept that she and her children are vulnerable because of their health difficulties. She has not worked for many years, and I accept that it would be extremely difficult for her to find work to support herself and her children. She would not be able to avail herself of any State support for victims of domestic violence for anything other than the short term. Although all the children are now much more settled than before and are doing well at school I accept that this is in the context of living safely in the UK. The youngest child has ongoing health problems and whilst treatment is available in Pakistan it would be prohibitively expensive. Taking account of all factors in the round and applying the lower standard of proof I find that internal relocation would be unduly harsh in this case, and consequently I allow the appeal on asylum grounds.”

8. The judge went on to consider Article 8 of the ECHR and wrote:

“Even if I am wrong in my conclusion that it would be unduly harsh for the appellant to internally relocate within Pakistan, in relation to the children’s Section 55 interests, taking account of the evidence detailed above, I find that it is in their best interests to remain in the UK. They are all doing well at school, and the reports show that Z has realistic prospects of attending a Russell Group University to study medicine. They have lived in the UK since 2012 and the older two children are at an age where they will have established their own private lives. Although I have not accepted the appellant’s claim in its entirety and have found that she has exaggerated or fabricated aspects of it, the children are not to be blamed for this. In relation to the public interest criteria, although the appellant gave her evidence via an interpreter, I accept that she can speak adequate English and all the evidence shows that the children are fluent English speakers. Up to present this family has not contributed to the economic wellbeing of the country in that they have been in receipt of medical and educational services, however, I am confident that in the future they should be financially independent and all have the potential of being useful members of society and of making a positive contribution.”

9. On that basis she allowed the appeal.

The Grounds of Application

10. The Secretary of State sought permission to appeal on the grounds that the judge had failed to properly apply the principles set down by Devaseelan and that matters should be treated as settled by the first determination if the facts presented are not materially different before the second judge.
11. It was also argued that the judge had failed to give adequate reasons why the claimant would be at risk of an honour crime, and even if there was a risk in her home area, she had erred in her conclusion that she would be able to internally relocate outside of Sialkot. The judge found, like IJ Batiste, that she had continuing support of her family, that it was mere speculation that her husband would be able to track her down by her ID card and that he had no desire to have the children live with him. It was recognised that the claimant was educated and had worked and lived elsewhere prior to entering the UK and that, despite evidence relating to her mental health, there was nothing new or updated since the appeal before IJ Batiste. The health of the children had improved to the extent that they were flourishing at school.
12. It was also argued that the Article 8 conclusions were infected by the errors outlined above and that she had erred in her approach to the children’s best interests, which were not the sole relevant consideration under Section 117B.
13. Permission to appeal was granted by Judge Shaerf for the reasons stated in the application.

Submissions

14. Mr Diwncyz relied on his grounds and the grant of permission. He commented upon the use of the word “possible” in relation to the husband’s wish to have custody of the children and submitted that her findings on internal relocation were inadequate.
15. Ms Khan submitted that the judge was perfectly entitled to depart from the conclusions of Judge Batiste given the clear concessions by the Secretary of State following that determination. There was, furthermore, substantial new evidence before the judge in the form of FIRs and an independent assessment by an expert of the effect on the appellant and her children of relocation to another area of Pakistan. There was substantial evidence before her, both from the schools and from the various agencies involved with the family upon which the judge was entitled to rely in reaching her conclusions.

Findings and Conclusions

16. When this matter came before Judge Batiste, after reviewing the evidence, he stated that he rejected each and every aspect of the claimant’s account, including her assertion that she had been the victim of domestic violence in Pakistan.
17. There was a clear difference in the position of the Secretary of State before Judge Myers in that there was a concession before her, following the submission of fresh evidence, that it was likely that the claimant had indeed been the victim of domestic violence in Pakistan.
18. Accordingly, the submission that she should have treated the evidence in relation to that matter as settled by the first determination, is unsustainable.
19. No argument was made in the grounds that the judge had misapplied the burden of proof in relation to the possible application for custody of the children, and no application was made to amend them.
20. There was in fact substantial evidence before the judge from the various workers employed by Sheffield City Council who had been involved with this family. The eldest child presented as being withdrawn and very quiet and hard to engage with as a consequence of having witnessed domestic abuse. The second child has suffered from incontinence due to the emotional trauma which he has suffered. The health visitor refers to him as being extremely anxious and the family have been referred to CAMHS for family therapy. Their emotional wellbeing was described as fragile.
21. The GP refers to the claimant as suffering from a mixed anxiety and depressive disorder, complex in nature and relating to the problems with her husband and looking after the children as a single parent.
22. Sheffield Children’s NHS provided evidence about the second child’s enuresis and digestive difficulties. The CAMHS report recommended that

it was in the best interests of all three children that they be allowed to remain in the UK and all three had expressed genuine fear and anxiety about the prospect of return.

23. It appears that, over time, the children have become more settled and the eldest child in particular is doing extremely well at school, gaining an extremely impressive set of GCSE result.
24. If the judge had referred to the evidence in more detail it would have rendered her decision less open to challenge. However, it is quite clear that the evidence was there before her. This is a family which has suffered from extensive mental health difficulties. The clear vulnerability of the children underpinned her findings that relocation within Pakistan would not be reasonable.
25. So far as the Article 8 considerations are concerned, I would accept that the judge's brief consideration of Article 8 might not have been adequately reasoned were it not for the fact that she had already found that the claimant had succeeded on asylum grounds. That is, however, immaterial because I am satisfied that her decision is sustainable in relation to that aspect of the appeal.

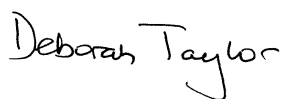
Decision

The judge did not err in law. The Secretary of State's appeal is dismissed.

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



Deputy Upper Tribunal Judge Taylor
October 2017

Date 16