



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/11618/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
on: 20 October 2017**

**Decision and Reasons  
Promulgated  
on: 25 October 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHANA**

**Between**

**SI**

(ANONYMITY DIRECTION MADE)

Appellant

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**and**

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

Respondent

**Representation:**

For the Appellant: Ms A Basharat, of Counsel

For the Respondent: Mr S Walker, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant, a national of Bangladesh, appeals to the Upper Tribunal against the decision of the respondent dated 6 October 2016 refusing her claim for asylum and humanitarian protection in the United Kingdom.

First-tier Tribunal Judge Monson dismissed the appellant's appeal in a decision promulgated on 5 April 2017.

2. Permission to appeal was granted by First-tier Tribunal Judge PJM Hollingworth in a decision dated 16 August 2017 stating that it is arguable that the Judge's reasoning has been vitiated by his reference to the Bihari community in Bangladesh given that the appellant has never referred to her husband as a Bihari because he is a citizen of Pakistan and that the Judge wrongly applied the conclusion set out in relation to the Bihari community to the appellant's husband. As a consequence, it is arguable that the proportionality assessment pursuant to Article 8 has been affected.
3. The First-tier Tribunal Judge in his decision made the following findings, which I summarise. The appellant was granted a student visa valid from 1 April 2009 to 28 February 2013. She was granted further leave to remain in the United Kingdom in her last leave being valid until 27 June 2015.
4. The appellant married on 14 May 2014 and applied for leave to remain under Article 8 of the European Convention on Human Rights as she was in her last stages of pregnancy. The appellant's husband originates from Lahore in Pakistan. He has been a student in Pakistan and has also worked part-time as a typist for a local newspaper in Pakistan.
5. The appellant's reason for why she feels returning to Bangladesh was that Bangladeshis hate Pakistanis. She believed that her husband might be killed or her family, who did not accept the appellant, would ignore them. Her daughter would not be able to enter Bangladesh because her father is a Pakistani. Even if she could relocate away from her family to Chittagong or somewhere else, her husband would not be able to go with her. Sheikh Hassina has said that there is no place for Pakistanis on Bangladeshi soil.
6. The Judge found that the appellant's evidence is wholly lacking in credibility. The thrust of her original claim was that the family had refused to have any contact with her after learning that she had married a Pakistani national without prior consultation with them. It was not part of her original claim that a mother, sister or other relatives in Bangladesh had threatened to do her harm on her return to Bangladesh with or without her husband. It was only in the witness statement which he adopted as her evidence at the hearing that the appellant first claimed that she had received a specific threat from her family. During cross examination, the appellant did not repeat the claim she made in a witness

statement. On the contrary, the plain implication of her evidence was that no such threat had been made. Indeed, it emerged from her oral evidence that contact with the family in Bangladesh had been very limited. While she had previously claimed that her sister or sisters had expressed extreme disapproval of a marriage, in cross-examination she only referred to one sister with whom her last contact had been before the marriage. Therefore, this sister could not have had the opportunity to tell the appellant that she disapproved of the marriage. The appellant's mother's reaction is consistent with her being upset about not being consulted about the appellant's marriage and does not show that her family had any objection because of the nationality of her husband.

7. The appellant delayed claiming asylum and her reason was that she hoped the family would come around to accepting the marriage. There is every reason to believe that they will do so, once they have had the opportunity to meet the appellant's husband. Whatever the outcome, there are not substantial grounds for believing that if the appellant returns to Bangladesh with her husband and their daughter, her family will become agents of persecution.
8. Regarding this second strand of the appellant's asylum claim, there is a historic antagonism in Bangladesh towards the Urdu speaking Bihari community. This is because during the 1971 liberation war, some factions within the Bihari's supported West Pakistan. Nevertheless, the same report notes, despite having to battle continued social stigma, in 2008 about a 150,000 Bihari's, who were minors at the time of the liberation war of 1971, or who were born after this war, were given citizenship rights. About 94% of the Bihari's are illiterate, according to the Refugee and Migratory Movements Research Unit, while the national average is 46%. Although the appellant's first language is Urdu and Hindi, he is literate and well educated. So, there are not substantial grounds for believing that he would be identified in Bangladesh as belonging to the socially stigmatised Bihari community. The Bihari's are not liable to persecution per se despite their negative association with Pakistan, there are substantial grounds for believing that the appellant would be liable to persecution in Bangladesh merely on account of his Pakistani nationality.
9. Background evidence notes that foreign policy analysts pointed out that ties between the two nations have not been under so much stress since 1974, when Bangladesh became a member of the Organisation of Islamic Cooperation. Although the prosecution, conviction and execution of Bangladeshi nationals for complicity in crimes against humanity and

genocide in connection with the 1971 war of liberation continues to be a source of strained relations between Pakistan and Bangladesh, Pakistan has once again acknowledged its complicity in the mass atrocity crimes committed during the Bangladeshi liberation war in 1971. Therefore, there are not substantial grounds for believing that these tensions at intergovernmental and diplomatic level have translated into an enhanced risk for Pakistani nationals in Bangladesh. There are also no reports of Biharis being persecuted on that account in this recent period of strained relations between Bangladesh and Pakistan.

10. The appellant has not discharged the burden of proving that either she or her husband have a well-founded fear of persecution in Bangladesh on account of her husband's Pakistani nationality. By the same token, there are not substantial grounds for believing that on return to Bangladesh, either the appellant or her husband would face a real risk of serious harm at the hands of non-state agents such as to cross the threshold of Article 3 of the European Convention on Human Rights. In light of the primary findings of fact, the appellant does not qualify in the alternative for humanitarian protection in accordance with paragraph 339C of the immigration rules.
11. It is accepted that the appellant does not have a viable private life claim under paragraph 276 ADE of the immigration rules or a viable family life claim under appendix FM.
12. With regard to Article 8, outside the immigration rules, the Judge accepted that questions one and two of the Razgar test must be answered in the favour of the respondent. On the issue of proportionality, the Judge took into account the public interest considerations arising under section 117B of the 2002 Act.
13. The appellant must be reasonably competent in the English language as she has studied here as a student. She is better able to integrate and that account, but Article 8 does not confer upon a couple the right to insist upon continuation of married life in the host state, particularly where both of them entered the host state on the implied undertaking that they would leave at once their respective studies had finished. The appellant is not financially independent. Little weight can be attached to a private life which is built up whilst the person's status here is precarious. Her husband must be able to speak English to a reasonable level of competence and so he should be able to find employment in Bangladesh.

Also, he can reasonably be expected to learn to communicate in Bengali in due course.

14. There are no compelling circumstances in the appellant's case which would justify her been granted Article 8 relief outside the immigration rules. The decision appealed against strikes a fair balance between, on the one hand, the appellant's rights and interests and those of her husband and daughter, and, on the other hand, the wider interests of society. The decision is proportionate to the legitimate public end sought to be achieved, namely the protection of this country's economic well-being and the maintenance of firm and effective immigration controls.
15. The Judge dismissed the appellant's appeal on all grounds.

### **Findings on whether there is an error of law**

16. I have given anxious scrutiny to the decision of First-tier Tribunal Judge 's Monson's decision and have taken into account the grounds of appeal and the submissions of the parties at the error of law hearing. The main complaint made against the Judge is that he erroneously understood that the appellant's husband was from the Bihari community when in fact he is a Pakistani national and has never claimed to be a Bihari. It is argued that the Judges analysis on those bases was flawed. It was also argued that this error of fact also affected the proportionality assessment by the Judge respect of Article 8 of the European Convention on Human Rights.
17. There has been a clear error by the Judge in considering the circumstances of the Bihari community in respect of the appellant's husband. The appellant's husband is a Pakistani national. It became obvious at the error of law hearing that the appellant in her asylum interview referred to the Bihari community but did not say that her husband was a Bihari and had always maintained that he is a Pakistani national. Unfortunately, the Judge mistook this reference and considered her claim on the basis that her husband was from the Bihari community. The appellant's claim was that her husband was a Pakistani national and she relied on the background evidence stating that there is tension between Pakistanis and Bangladeshis and that Pakistanis are not welcome to live in Bangladesh due to their historic enmity emanating from the 1971 war of liberation when some factions within the Biharis in Bangladesh supported West Pakistan.
18. The Judge clearly fell into error by analysing the risk posed to the Bihari communities in Bangladesh which was not relevant to the

appellant's appeal because her husband was a Pakistani national. The question now remains whether this error is material and whether a different decision would result if the error had not been made.

19. It is completely evident on the reading of the entire decision, that the Judge was aware that the appellant was a Pakistani national. This reference to the appellant's husband being a Pakistani national is littered throughout the decision. The Judge found that taking into account the background evidence "Pakistani nationals" will not face persecution in Bangladesh for any reason. When the Judge analysed the risk to the Bihari community, which was entirely irrelevant, he found that there were not be at risk even to Bihari's living in Bangladesh. The appellant's husband is not a Bihari but a Pakistani national. Therefore, the Judge applied a higher standard of risk to the appellant and still found that the appellant could not succeed. No prejudice was caused to the appellant by the Judge analysing risk to the Bihari community in Bangladesh which was irrelevant and immaterial to the appellant's appeal. It is evident from the decision that Judge was aware that the appellant was a Pakistani national and considered the appellant's appeal on those bases. I find that it is not a material error of law.
20. The Judge found that the appellant's evidence is wholly lacking in credibility and gave cogent reasons for why she did not believe the appellant that she was at risk from her family. The Judge stated that the thrust of the appellant's original claim for asylum was that her family had refused to have any contact with her after learning that she had married a Pakistani national without prior consultation with them. The Judge found that this was not part of her original claim that her mother, sister or other relatives in Bangladesh had threatened to do her harm on her return to Bangladesh with or without her husband. The judge noted that the first time that the appellant raised this fear of her family was in her witness statement before the hearing. The Judge stated that during cross examination, the appellant did not repeat the claim she had made in her witness statement. On the contrary, the plain implication of her evidence was that no such threat had been made by her family.
21. The Judge found her evidence was inconsistent because she had previously claimed that her sister or sisters had expressed extreme disapproval of her marriage. However, he noted that in cross-examination, the appellant only referred to one sister with whom her last contact had been before her marriage. Therefore, he noted that this sister could not have had the opportunity to tell the appellant that she

disapproved of the marriage. The Judge found that appellant's mother's reaction is consistent with her being upset about not being consulted about the appellant's marriage and found that this does not show that her family had any objection because of the nationality of her husband.

22. The Judge also found that the appellant's explanation for why she delayed in claiming asylum was that she hoped her family would come around to accepting her marriage. The Judge was entitled to find that there is every reason to believe that her family would accept him when they meet him. This hope that her family would eventually accept her husband demonstrated to the Judge that it is inconsistent with her claim that the appellant's family will harm her, her husband and child, let alone that her family will become agents of persecution.
23. The Judge was entitled to come to the conclusions that he did on the appellant's evidence and found that the appellant's claim that her family will harm her is an afterthought by the appellant given that she did not allude to this in her asylum interview. There is no perversity in this conclusion on the evidence before him.
24. I therefore find that although there is an error in the decision of the First-tier Tribunal Judge, it is not a material error and no differently constituted Tribunal would come to a different conclusion on the evidence in this appeal. The Judge considered the background evidence and found that the appellant, as a Pakistani national who is educated, would be able to live in Bangladesh without fear of harm or persecution and find a job and continue with his life with his wife and child and that country.
25. The Judges analysis of Article 8 is without arguable error. The Judge gave appropriate weight to the public interest as he was statutorily bound to do under section 117B of the 2002 Act. He was entitled to find that the appellant's status in this country has always been precarious, as has her husband's. They both came to this country as students and knew that they would have to return once their studies were completed. They could not have had any legitimate expectation that they could remain in this country permanently if they could not meet the requirements of the immigration rules for further leave to remain.
26. The Judge appropriately found that this couple could not dictate that they wanted to continue their married life in this country. The Judge was entitled to find that there are no exceptional circumstances in this appeal where the appellant should be granted leave to remain in the United

Kingdom under Article 8 when she could not satisfy the immigration rules. There is no perversity in this finding.

27. I find that the Judge was entitled and required to reach his conclusions based on his consideration and evaluation of the evidence, including the background evidence even if he erroneously and irrelevantly considered the risk to the Bihari community in Bangladesh which he found was none. It is clear that the Judge was aware that the appellant would return to Bangladesh as a Pakistani national and found that he would not be at risk which is an appropriate finding given the background evidence.
28. Notwithstanding his considering an irrelevant matter, it has not affected the entirety of his decision. I find that the Judge's reasoning and the conclusions that he reached in respect of this appellant's claim is understandable, and not perverse.
29. In **R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982** Brooke LJ commented on that analysis as follows:

15. It will be noticed that the Master of the Rolls used the words "vital" and "critical" as synonyms of the word "material" which we have used above. The whole of his judgment warrants attention, because it reveals the anxiety of an appellate court not to overturn a judgment at first instance unless it really cannot understand the original judge's thought processes when he/she was making material findings.

30. I find that I have no difficulty in understanding the reasoning in the Judge's decision for why he reached his conclusions which was based on the fact that the appellant was a national of Pakistan. I find that the grounds of appeal and no more than a disagreement with the Judges findings of fact and the conclusions that he drew from such findings.
31. I find that no material error of law has been established in First-tier Tribunal Judge Monson's decision. I find that the judge was entitled to conclude that the appellant is not entitled to be recognised as a refugee or to be granted humanitarian protection in this country. I uphold his decision.

## **DECISION**

Appeal dismissed



Signed by  
October 2017  
Deputy Judge of the Upper Tribunal

Dated this 25<sup>th</sup> day of

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Ms S Chana