



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

Appeal Number: PA/14139/2016

THE IMMIGRATION ACTS

Heard at Newport (Columbus House)

**Decision &
Promulgated**

Reasons

On 29th August 2017

On 3rd October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

**M A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Alban instructed by Fountain Solicitors
For the Respondent: Mr G Harrison, Home Office Presenting Officer

DECISION AND REASONS

**Order Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

1. 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 his family. This direction applies

both to the Appellant and to the Respondent. Failure to comply with this order could lead to contempt of court proceedings.

2. The Appellant is a citizen of Pakistan, 2 years old as at the date of hearing before the First-tier Tribunal on 15th February 2017. His mother had previously claimed asylum with the Appellant as her dependent. That claim had been refused and her subsequent appeal dismissed in February 2016. Permission to appeal was pursued to the Court of Appeal, with permission refused at every stage. Shortly thereafter, on 15 June 2016 the Appellant, through his mother, made his own claim for international protection. It was asserted that requiring him to leave would breach his human rights. The argument put forward was, in summary, that as an illegitimate child he would be at risk from persecution as a member of a particular social group, at risk of death or Article 3 thresholds of inhuman or degrading treatment, namely destitution, inability to access education, healthcare or employment, and would be subject to ostracism and discrimination.
3. In support of this claim the Appellant produced to the First -Tier an article from Al Jazirah dated 2012 to the point that infanticide of illegitimate newborns was on the increase in Pakistan, medical evidence that the Appellant's mother's anxiety regarding her immigration status was adversely impacting on the Appellant's emotional and social development as she found it hard to understand and manage his behaviour showed that it was in the child's best interests to be allowed to stay here.
4. The Respondent rejected the Appellant's claim pointing to the earlier judicial decision dismissing the credibility of the mother's account, and finding that her claimed subjective fears were, in any event, not borne out objectively. The respondent concluded he was not at any real risk of persecution or harm because of his being illegitimate, or of being unable to access education. Appropriate healthcare would be available in Pakistan.

The First-tier Tribunal

5. For the Appellant, it was argued that the earlier First-tier Tribunal decision in respect of the mother had no bearing on his case. Devaseelan did not apply because the Appellant was a different party. In AS and AA (Effect of Previous Linked Determination) Somalia [2006] UKAIT 00052 the fact that someone was a family member was held not to be a proper basis upon which to take a decision in respect of a different family member as a starting point in respect of their own appeal. In any event the previous judge was approaching the early appeal from the angle of the risk to the Appellant's mother, not to him his perspective must be separately examined.
6. Judge O'Rourke found that contrary to the case of AS and AA involving the case of a brother whose sibling had succeeded before a judge on similar grounds of tribal background, the Appellant in this case was in fact a

dependent in the earlier case. Further, contrary to the case of AS and AA where the factual dispute between the parties had differed from each other, the disputed factual matrix in this Appellant's case had to a significant extent been substantially considered by the First-tier Tribunal in the Appellant's mother's case in a comprehensive 25-page determination upon which permission to appeal had been refused. The judge self-directed that the previous determination in the mother's case should be his starting point but that subsequent events and evidence could result in a different outcome. Judge O'Rourke noted there was a new argument in respect of the Appellant's discrete mental health issues, and different evidence had been produced in respect of the treatment of illegitimate children.

7. Judge O'Rourke noted that there was no new evidence before him as to the risk to the mother, to the point that the First-tier Tribunal's decision that she was not entitled to international protection whether on asylum/ECHR Articles 2, 3 or 8 grounds remained.
8. In assessing the risk to the Appellant based on illegitimacy the judge noted that the country information evidence put before him was from 2014 and 2015 and therefore could have been brought before the previous judge but was not. However, explaining that because he was considering the position of a child, he decided to take account of it. He found that the evidence, going to the killing of newborn children in Pakistan did not, in the context of the Appellant having been born in the UK and now being 2 years old, have any application to the Appellant.
9. In terms of the claimed fear of discriminatory or persecutory treatment Judge O'Rourke noted the evidence:
 - (a) an extract from the High Commission for Pakistan's website concerning "frequently asked questions" in respect of passports, which stated that both parents' national identity cards are required to obtain a passport.
 - (b) the Appellant's reliance on the Respondent's country information of February 2016 which referenced a consultant's report that illegitimate children do not have rights of inheritance and cannot be registered on the national database without providing the father's name and that an ID card is required to access education and state healthcare.
 - (c) the Respondent's reliance on country information in the reasons for refusal decision to the point that many children are unregistered, and public services were available without a birth certificate, and that education is compulsory.
 - (d) The judge noted the previous judge's conclusion that as a child of a divorced woman the appellant would not necessarily be regarded as illegitimate and that the Appellant would not necessarily need to declare his status., and the earlier judge's conclusions that the

mother had not shown more than a mere hardship or a mere difficulty or mere obstacle if she had to return to Pakistan, with her son, but otherwise alone.

10. Judge O'Rourke was satisfied that the earlier judge had been aware of the various contentions as to the position of illegitimate children and their registration and that the evidence before him did not add anything significantly different, to render that conclusion unsafe.
11. In respect of the Appellant's health problems the judge noted that his mother had been depressed since his birth, that difficulties reported in March 2016 relating to feeding and eyesight, and a concern about whether he had a tumour, had fallen away. What remained were behavioural difficulties, which the evidence pointed to resulting from the Appellant's mother's anxiety being transmitted to the Appellant. The judge notes that a health worker, had identified the behavioural difficulties and who had provided a report of her preliminary assessment of cause, Miss Sterling, had not set out her qualifications, but that her conclusion: that the family should be helped so that the Appellant has the opportunity to learn to regulate his feelings and to be separated from his mother, are unexceptional. So far as the health worker's conclusion as to the mother's situation in Pakistan, he notes that that is based entirely on what the Appellant's mother has said, and accordingly Judge O'Rourke found that her conclusions that there would be "serious implications for Murad's infant mental health status should he and his mother return to Pakistan were undermined, and he rejected them and he rejected that conclusion.
12. Judge O'Rourke looked at the rest of the evidence, but found nothing there indicated that the Appellant's health would be in serious danger in Pakistan, or that, if needed, he would not be able to obtain appropriate treatment, so that his circumstances, including his medical condition, was not a factor that operated to prevent removal in respect of ECHR Article 3 or 8.
13. Ms Alban, who had not drafted the grounds of the application for permission or represented the Appellant before the First-tier Tribunal, appeared for the Appellant at the hearing before me. She re-iterated the ground that Judge O'Rourke had taken the wrong approach to the earlier judicial decision, relying on the case of AS and AA to argue that Devaseelan was not applicable, and the earlier decision was not the right starting point. In addition, she relied on the various criticisms raised in the grounds including the judge's treatment of the country information on infanticide, and the medical evidence of the report of Amanda Sterling. The structure of the article 8 consideration was inadequate because there should have been a separate assessment of the best interests of the child in the event that the mother returned to Pakistan without him.
14. The Respondent was represented by Mr Harrison who relied on the rule 24 response to the point that the judge was right to take the First-tier Tribunal decision as his starting point and has adequately explained why

the principal of Devaseelan applies dealing with the Appellant's points in respect of AS and AA extensively, having set them out fully at paragraph [21] and reached his conclusions at [23] to [28]. The judge has taken account of the matters described as discretely applying to the Appellant in the context of the new evidence submitted when he goes on at [29] onwards to deal with the risk to illegitimate children and the Appellant's medical condition. The judge was entitled to conclude as he does that as at the date of hearing the Appellant has not shown a well-founded fear of persecution or ill-treatment if returned and that return to Pakistan did not breach article 8.

My Consideration

15. The Appellant's argument that Judge O'Rourke should not have started with the findings of Judge Woolley of February 2016 is misconceived. As Judge O'Rourke properly identified, unlike the position of the siblings in AS and AA the factual matrix of risk based on being returned to Pakistan as the illegitimate child of a single woman without the support of family is significantly the factual matrix that Judge Woolley was considering. That is reflected in the fact that the Appellant was a dependent on the mother's claim in the appeal before Judge Woolley. The Appellant's mother's claim was described as "a risk to her **and her** son's life" as a result of the fact that he was not her husband's child, described as his having been "born out of wedlock". The Appellant's mother not only claimed honour killing but also asserted that the Appellant himself would be subject to persecution as a result of being illegitimate, unable to get ID, and being without legal rights, thereby exposing him to persecution. As Judge Woolley in February 2016 pointed out the country guidance case deals with the position of "single" mothers i.e. including unmarried mothers with illegitimate children and divorced women. Judge Wooley noted that although a single mother's specific circumstances might amount to such that they require protection, those of the Appellant's mother, which on the facts included those of her son, for reasons which were fully set out in Judge Woolley's 25-page decision did not. Although the Appellant's mother made strenuous efforts to assert error in that conclusion, renewing her claim directly to the Court of Appeal. The original grounds for permission to appeal against Judge Wooley's decision are included in the Appellant's bundle. They criticise him for failing to properly deal with the position of the child, i.e. this Appellant, in light of the country information about the difficulties for illegitimate children. The Appellant has not put in the corresponding refusal of permission at all three levels, but the import of the refusals is clear: the criticisms were not arguable. The Appellant's mother does not accept that position. As reflected in her witness statement although she acknowledges that she put forward the problems that she foresaw would face her son to Judge Wooley, she believes he failed to appreciate their difficulty, namely that her son, being illegitimate, would not have a father figure, or a male protector. So far as those points arose in the appeal before Judge O'Rourke he was entitled to take the judicial findings already made as his starting point. The criticism in these grounds is without merit.

16. The remaining points reveal a forensic approach to the judge's determination, with a cherry picking of the evidence.
17. With regard to the Appellant's medical evidence the grounds take issue with Judge O'Rourke's statement that the primary infant mental health specialist member of the East Central Child Adolescent Mental Health Service, Ms Sterling, cannot be regarded as an expert, because she does not explain her relevant qualifications. This is a nit-picking point brought forward on the ground that the Respondent did not assert that she was not an expert. The ground elevates form over substance because Judge O'Rourke explains that he finds Ms Sterling's assessment that the Appellant suffers from behavioural issues because of parenting, is unexceptional on the evidence. It is quite clear therefore that he takes no issue with that assessment, and he goes forward with that position as established. The ground that he disregarded the assessment in its entirety is unfounded. The point of contention is what weight to give to her opinion of what the position would be in Pakistan. It must be remembered that the report is an initial assessment and the findings are tentative "it appeared", "it appears" are phrases used throughout, and the recommendation is for a continued detailed assessment of the Appellant's infant mental health, within the context of his relationship with his mother. The health-worker is clear that in her view that should begin when the Appellant's mother is feeling settled and safe i.e. at some point in the future, and predicated, as her conclusion describes, on the basis that he is successful in his appeal, and consequently his mother with him. Ms Sterling had not seen the adverse credibility findings of the previous judgement or the Home Office correspondence, she does not describe independent knowledge of the availability of therapeutic help in Pakistan, or of having made any enquires about it. Judge O'Rourke's conclusion that on this question she was not an expert, and that her report added little to the Appellant's case was well founded on the evidence.
18. Contrary to the ground's assertion that Judge O'Rourke found that the Appellant would be able to lie about her son's illegitimate status, characterised as his requiring her to lie to avoid persecution, he did no such thing. What the decision actually says is that Judge Wooley had found that it had not been established that she would be required to reveal the Appellant's illegitimate status, or that he would necessarily be viewed as illegitimate, which is not the same thing at all. The requirement to provide the father's name and identity card number is not the same as requiring a revelation as to whether or not the parents were or are married. The point isolates and nit-picks a formulation of words, a distraction of form over substance, because what really mattered here is that Judge Rourke found, as Judge Wooley had before him, that even allowing that his illegitimate status was known, it would not lead to treatment requiring international protection. The decision must be read as a whole.
19. The grounds take issue with the judge's reference to the Appellant's mother considering obtaining a divorce from her husband and reading the reference to infer that Judge O'Rourke does not appreciate that the

appellant is not her husband's child but is from a second relationship. There is nothing in this. The full context makes plain Judge O'Rourke is merely referring to the evidence as it was before Judge Woolley and reading the decision in the round it is quite clear that he understood the paternity of the child.

20. The grounds assertion that Judge O'Rourke failed to take account of the evidence of the Appellant's birth certificate, and in particular that it does not a father mischaracterises the evidence and the issue. The assertions of a fear of persecution were based on an inability to access healthcare and education because of an inability to register the minor Appellant for an ID card absent the name of the father on the birth certificate. There was no real dispute that the Appellant's claim, that health care and education would not be provided because the father was not named on the birth certificate, did not stand scrutiny in the light of the Respondent's evidence that such formal requirements were not strictly applied. The mother accepted as much in her witness statement when she re-focusses the claim to the point that providing a certificate without the name of a father will mark the Appellant out for scrutiny, and make him vulnerable as being without a male protector.
21. When I raised with Ms Alban that I found the reliance on the claimed inability to name the father perplexing in light of the Appellant's mother's knowledge of the father's name she responded saying that in fact the evidence showed that giving the name itself would not be sufficient, the mother would also have to know the father's national identity number. That ignores the evidence of the willingness of the father, now removed to Pakistan, to be in contact, and attempts to distract from the findings of Judge Wooley and reaffirmed by Judge O'Rourke on the current evidence, that even if he were not there is no danger from the family.
22. These shifting sands distract from Judge O'Rourke's finding that the evidence before him, including the health position, did not any more than it did before Judge Wooley, establish that an illegitimate child would face a level of discrimination that would amount to persecution or result in ill-treatment so as to establish any real likelihood of a breach of his human rights.
23. Whilst the grounds highlight Judge O'Rourke infelicitous comments about the practise of infanticide in Pakistan, comparing the practicality of the murder of new-borns of mother's living within their family with the murder of older children living outside the extended family, he correctly identified that the objective evidence of the practise did not speak to the risk of family or societal murder of the Appellant in the context of Judge Woolley's finding that there was no risk from the family in light of the finding that the evidence simply showed that the family simply do not want to have anything to do with the Appellant or his mother. Whilst the comments are extraneous to the necessary reasoning they do not reveal an error of law. Judge O'Rourke was not taken to any country background information such as to show that there was any risk that the Appellant would be at risk from

rogue elements of society who would set out to murder him simply on account of his illegitimacy, and indeed that case was never made.

24. Ms Alban's final point was that the judge should have made a finding as to whether or not it was in the child's best interest for him to be left behind and adopted. This arises because the Appellant's mother mentions in the preliminary health assessment that if she were to be removed she would like to place him for adoption.
25. Miss Sterling finds that if the Appellant returns to Pakistan in the presence of his mother he could experience increased trauma and emotional separation from her in response to her heightened emotions. There is no evidence to suggest that health workers are contemplating that his best interests might require him to remain in the United Kingdom to receive treatment to deal with the difficulties they have identified arise from her passing on her stress to him, so as to separate him from her. The evidence is that when the mother returns to Pakistan the health professionals view is that it is in the Appellant's best interests to be with her. Miss Sterling comments that *"if he was to remain in the United Kingdom and be placed for adoption and his mother to return to Pakistan, it would mean breaking his attachment to his mother who has been his only and sole parent and carer since birth."* The "if he was to remain" is a reflection of a position that would arise, not at the behest of the services here, but as a result of the mother's choice.
26. In terms of the submission about the inadequate Article 8 consideration, whilst it is right that the reasoning could have a clearer structure, the ground fails to recognise that on the findings made nothing more was required. There is no evidence that in the event of the Appellant's mother returning to Pakistan there is any likelihood the Appellant would be taken into care and placed for adoption. The Appellant's mother did not give oral evidence. Her witness statement does not particularise plans to abandon the Appellant. The mother mentioning to the health worker that that is what she would like to do is not sufficient to assert that it is a factual scenario that the judge should have provided reasoning for. The submission exceeds the evidence, but even if it did not it could not establish any legal error because any interference with the Appellant's family life and his best interests would not be as a result of any immigration decision of the Respondent, but as a result of a choice of the mothers.
27. The judge's conclusion that it is in the child's best interest to remain with his mother, and his finding that she will be able to return to Pakistan as the public interest requires, given her immigration history, and take this very young Appellant with her, without his being exposed to risk and without any breach of his human rights, is unassailable.

Decision

28. The decision of Judge O'Rourke dismissing the Appellant's appeal reveals no material error of law and stands.

Signed

Date 28 September 2017

Deputy Upper Tribunal Judge Davidge