



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

Appeal Number: PA/05805/2017

THE IMMIGRATION ACTS

Heard at Liverpool Civil and Family Court

Decision & Reasons

On 29th January 2019

Promulgated

On 18th February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SA

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr A Tan, Senior Home Office Presenting Officer

For the Respondent: Miss G Patel of Counsel instructed by Rochdale Law Centre

DECISION AND REASONS

Introduction and Background

1. The Secretary of State appealed against a decision of Judge Holt (the judge) of the First-tier Tribunal (the FtT) promulgated on 20th April 2018.
2. The Respondent before the Upper Tribunal was the Appellant before the FtT and I will refer to her as the Claimant. She is a citizen of Pakistan born in May 1991. She has a partner who she met in the UK, and they have a daughter who was born on 11th August 2016. The Claimant, her partner

and their daughter are citizens of Pakistan. They live together as a family but the Claimant and her partner although they have a genuine and subsisting relationship, do not wish to marry.

3. The Claimant made an asylum claim based upon a fear of her aunt in Pakistan, because the Claimant had refused to marry her aunt's son. The Claimant's case was that her family both in the UK and Pakistan have rejected her because she has commenced a relationship with her partner without their permission, and had a child without being married. She claimed that her aunt and other family members in Pakistan would harass and torture her if she returned. She claimed that her aunt has made threats to kill her. The Claimant's parents and sister live in the UK.
4. The Secretary of State refused the claim for international protection on 7th June 2017 and the appeal was heard by the FtT on 5th April 2018.
5. The judge found the Claimant's claim to be credible, with the exception of the element that related to the claim that the aunt had commenced court proceedings against the Claimant in Pakistan, alleging that she is guilty of adultery. The judge specifically rejected that part of the claim.
6. The judge found that if the Claimant, her partner and their child returned to Pakistan they would suffer "high levels of discrimination in Pakistan amounting to persecution". The judge found the Claimant would not be able to return to her home area. The discrimination would be caused by the Claimant and her partner not being married, which would cause difficulties for their child. The judge allowed the appeal on the basis that the Claimant would be at risk of discrimination amounting to persecution upon return to Pakistan and found that removal from the UK would breach Articles 2 and 3 of the 1950 European Convention on Human Rights (the 1950 Convention).
7. The Secretary of State applied for permission to appeal to the Upper Tribunal. It was submitted that the judge had erred by failing to consider the country guidance decision SM (lone women - ostracism) Pakistan [2016] UKUT 00067 (IAC). It was submitted that the judge had failed to establish that social ostracism amounted to persecution and it was submitted that the judge had erred in finding that the Claimant's child would be unable to obtain an identity card as the identity of the child's father was known.
8. In addition it was contended that the judge had erred in failing to identify why discrimination referred to in background evidence would amount to persecution, particularly as the Claimant would have the protection of her male partner if she returned to Pakistan. It was submitted that the facts of this appeal are similar to SM, and in that case it was found that the Claimant would not be at risk if she returned to Pakistan with her unmarried partner and three illegitimate children, if they relocated.
9. Permission to appeal was granted by Judge O'Garro of the FtT.

Error of Law

10. On 27th July 2018 I heard submissions from both parties in relation to error of law, and concluded that the judge's decision must be set aside. Full details of the application for permission to appeal, the grant of permission, the submissions made by both parties, and my reasons for setting aside the decision are contained in my error of law decision dated 2nd August 2018, promulgated on 9th August 2018. I summarise below, in brief, my reasons for setting aside the FtT decision.
11. There was no challenge to the credibility findings made by the judge and those findings were preserved. The judge at paragraph 21 of the decision records that the core elements of the Claimant's claim are accepted, and at paragraph 23 makes it clear that what is not accepted is the claim that the aunt in Pakistan had issued court proceedings.
12. I found that the judge had erred in law by not demonstrating that applicable country guidance case law, that being SM, had been considered. Practice Direction 12.4 provides that any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as Grounds for Appeal on a point of law. The judge had not demonstrated that SM had been considered, and had not demonstrated why the principles did not apply.

Re-making the Decision

13. At the resumed hearing the Claimant and her partner had attended but were not called to give oral evidence. I ascertained that I had received all documentation upon which the parties intended to rely, and that each party had served the other with any documentation upon which reliance was to be placed. I had the Claimant's bundle comprising 99 pages, the Home Office Country Information and Guidance on women fearing gender based harm/violence in Pakistan dated February 2016, and a further bundle submitted on behalf of the Appellant comprising 97 pages. This bundle included an expert report dated 25th January 2019 prepared by Mrs Uzma Moeen. In addition I received on behalf of the Claimant a letter dated 19th September 2018 from the destitution project.
14. I heard oral submissions from both representatives. The submissions have been recorded in full in my Record of Proceedings. The submissions are lengthy and will not be reiterated here. I set out below a very brief summary of the submissions that were made.
15. On behalf of the Secretary of State I was asked to find that reliance should be placed upon the country guidance decision rather than the expert report. I was asked to note the Claimant has been educated to A level in the UK. Her partner has family members in Pakistan. Therefore although the Claimant's family would not support her, there could be some family support from her partner's family.

16. Miss Patel submitted that the Claimant did not wish to marry, and did not believe in marriage, and therefore was entitled to live with her partner without being married. I was asked to find that the scenario in SM was factually different and therefore SM could be distinguished and need not be followed.
17. I was referred to various paragraphs throughout the expert report which indicated that the Claimant would be at risk if returned to Pakistan because she would be living with her unmarried partner and her daughter would be illegitimate.
18. If I found that SM could not be distinguished on the facts, I was asked to follow the expert report which indicates that SM should no longer be followed.
19. I was asked to conclude that the expert report demonstrated that there would be no reasonable internal relocation option, no sufficiency of protection, and therefore the Claimant would be at risk if returned to Pakistan. Miss Patel confirmed that the Claimant claimed asylum, or in the alternative humanitarian protection, and relied upon Articles 2 and 3 of the 1950 European Convention.
20. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

21. I have considered all the evidence that has been supplied, and considered that evidence in the round. In relation to risk on return the burden of proof is on the Claimant, to the lower standard, that being a reasonable degree of likelihood.
22. The credibility findings of the FtT are preserved. These are that the Claimant left Pakistan on 26th January 2010 travelling with her mother and sister. An agent was used to aid their journey, and she used a forged passport.
23. The Claimant's aunt helped fund the trip and it was understood that the Claimant would marry the aunt's son. The Claimant did not enter into that arranged marriage but met her partner in the UK. They began a relationship and now have a daughter born 11th August 2016. They live together as a family unit. The Claimant's family in the UK, with the exception of her sister, do not have any contact with her. The Claimant's fear is of her aunt in Pakistan who has threatened her for failing to enter the arranged marriage.
24. The issue that I have decided is whether the Claimant has proved she has a well-founded fear of persecution for a Convention reason, and whether she would be at risk if returned to Pakistan or with her daughter and partner.
25. I have carefully considered the expert report. I will not reiterate all the paragraphs to which I was referred. The expert believes that the Claimant

would be at risk in Pakistan of being charged with adultery or fornication under section 496B of the Pakistan Penal Code. The expert finds it plausible that the Appellant may be at risk of honour killing. The expert at paragraph 73 records that she does not know of any case of a couple living together in Pakistan without a valid marriage, having children born out of wedlock. The expert's opinion is that the Claimant and her unmarried partner would be prosecuted under Hudood laws and would not be able to relocate and the authorities would not be able to provide protection for her.

26. The expert considers sufficiency of protection commencing at paragraph 127 of her report and does not believe that the police would offer such protection, because of the corruption that is endemic within the police force.
27. Internal relocation is considered commencing at paragraph 137. The expert points out that citizens in Pakistan must register with the National Database and Registration Authority (NADRA) of Pakistan. It is mandatory for every citizen after eighteen years of age to register with NADRA and acquire a Computerised National Identity Card (CNIC). The expert at paragraph 139 believes it highly likely that the Claimant's estranged extended family could easily gain information about her whereabouts by bribing the police if she was in the Punjab as the police maintain a database of all tenants residing in rented houses or hostels. It would appear that this does not however apply to the whole of Pakistan. However the expert at paragraph 144 gives the opinion that it is highly likely that the Claimant's extended family could obtain greater information about her whereabouts by bribing police or clerks at the NADRA offices.
28. At paragraph 149 the expert gives the opinion that to obtain a Child Registration Certificate (CRC) the child would need to be registered in the NADRA database and proof of birth would need to be submitted and proof of the father or mother's nationality. The status of the father and mother would need to be "married" to register the child. The expert contacted an employee at the head office of NADRA and asked what would the position be if there was no proof of marriage or the child is illegitimate, and was told that the employee was not sure, but in that case an affidavit or sworn statement of the father would be needed acknowledging the child's paternity and explaining why there is no proof of marriage. The employee was asked if he could confirm that this is the procedure to which he replied he could not confirm it, but there are cases where proof of marriage is not available, but then he did confirm that unless one of the parent's status is married, a CRC cannot be issued by NADRA. The status or seniority of the employee is not disclosed in the report. It is not clear what authority he has to comment upon whether a CRC could be issued. I do not attach significant weight to the report on this point.
29. The expert's opinion does not accord with some cases previously decided by the Upper Tribunal in relation to Pakistan. The Upper Tribunal decided in AW (sufficiency of protection) Pakistan [2011] UKUT 31 (IAC) that there

is in Pakistan a systemic sufficiency of state protection. However an individual's particular circumstances may give rise to a need for additional protection and the facts of each case must be considered. In this case, the Respondent's position is that there is a sufficiency of state protection and a reasonable option of internal relocation.

30. I must follow country guidance case law if it is applicable, and if I do not follow that case law, I must provide cogent reasons why I have departed from it. I do not find that there is a material factual difference between SM and the Claimant's case before me. In SM the Appellant was estranged from her husband. She claimed asylum on the basis that her estranged husband came from a rich and powerful family and if she returned to Pakistan from the UK she would be killed. Following her separation from her husband, the Appellant had formed a relationship with another man of Pakistani origin, and although not divorced, she and her new partner had three children together. The Upper Tribunal had to consider the risk of ostracism of a mother with an illegitimate child in Pakistan.
31. The Upper Tribunal heard expert evidence from Dr Ballard, a consultant anthropologist, who had prepared a report entitled "risk on return to Pakistan in the case of a single mother and her illegitimate children". The Upper Tribunal also heard evidence from a qualified social worker, in relation to the circumstances of the Appellant and her children. In addition the Upper Tribunal took into account country background reports and evidence.
32. It was found that where a risk of persecution or serious harm exists in her home area for a single woman or female head of household there may be an internal relocation option to one of Pakistan's largest cities, depending on the family, social and educational situation of the women in question.
33. It would not normally be unduly harsh to expect a single woman or female head of household to relocate internally within Pakistan if she can access support from family members or a male guardian in the place of relocation.
34. It would not normally be unduly harsh for educated, better off or older women to seek internal relocation to a city. It helps if a woman has qualifications enabling her to get well paid employment and pay for accommodation and childcare if required.
35. Where a single woman with or without children is ostracised by family members and other sources of possible social support because she is in an irregular situation, internal relocation will be more difficult and whether it is unduly harsh will be a question of fact in each case.
36. The Upper Tribunal found that there would be the option of shelters for a period of time.

37. It was found that women in Pakistan are legally permitted to divorce their husbands and may institute divorce proceedings from the country of refuge, although that it is not applicable in this case. A woman who divorces her husband and returns with a new partner or husband will have access to male protection and is unlikely outside her home area to be at risk of ostracism still less of persecution or serious harm.
38. At paragraph 102 of SM the Upper Tribunal concluded that the Appellant could return to Pakistan accompanied by her children and by her partner, the father of her children, and if they returned together and relocated outside Lahore, which was her home area, there was “no reason why they should face problems as an unmarried couple and no reason why the Appellant and her partner could not marry.”
39. Therefore the Upper Tribunal was considering a woman returning with the three illegitimate children, and a new partner to whom she was not married. The conclusion was that they would not face problems as an unmarried couple with three illegitimate children.
40. If the Claimant in this case returned, she would not be returning as a married woman estranged from her husband, living with a new partner. She would be returning as an unmarried woman, with a partner and her daughter who was born out of wedlock. I do not find that factually there is a material distinction to be made between SM and this case. There is no satisfactory evidence to indicate that the Claimant’s aunt or extended family in Pakistan have any influence with the authorities either locally or nationally.
41. I am therefore faced with an expert report which disagrees with the country guidance decision. I do not find that the expert has pointed to a worsening of the situation in Pakistan since SM was decided. The view of the expert is that SM should not be followed, but I do not find that any cogent reasons have been provided in the report, to show that I can depart from a country guidance decision which deals with very much the same circumstances as are the circumstances in this appeal.
42. For that reason I feel that I am bound to follow the country guidance decision of SM, and conclude that the Appellant has a reasonable internal relocation option away from her home area in Pakistan. I do not find that it has been proved that there is not a sufficiency of protection from the authorities should that be needed. I do not find that the evidence indicates, even to the lower standard of proof, that the Claimant’s aunt would be aware if she returned to Pakistan and would seek to bribe police officers and officials who operate the NADRA database. I do not find that it is clear that the Claimant’s daughter could not be registered in Pakistan. A note in the Respondent’s Country Information and Guidance published in February 2016 at 9.2.1 indicates that a child born out of wedlock could be registered with NADRA if the father’s name was provided.

43. I therefore conclude that the Claimant has not proved that she would be at risk if returned to Pakistan and therefore is not entitled to a grant of asylum or humanitarian protection, and has not proved that there would be a risk of treatment that would breach Articles 2 or 3 of the 1950 Convention. I make no findings upon Article 8, as this was not in issue before me.

Notice of Decision

The decision of the FtT involved the making of an error of law and is set aside. I substitute a fresh decision.

The appeal of the Secretary of State is allowed.

I dismiss the appeal of the Claimant on asylum grounds.

I dismiss the appeal of the Claimant on human rights grounds.

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

Unless and until a Tribunal or court directs otherwise, the Claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 11th February 2019

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

I have dismissed the Claimant's appeal and therefore there can be no fee award.

Signed

Date 11th February 2019

Deputy Upper Tribunal Judge M A Hall