IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00357/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 November 2015	**On 20 November 2015**

Before

UPPER TRIBUNAL JUDGE GOLDSTEIN
UPPER TRIBUNAL JUDGE WIKELEY

Between

S A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms G Capel, Counsel instructed by Hammersmith & Fulham Community Law Centre
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant, a citizen of Pakistan born on 2 April 1989 against the decision of First-tier Tribunal Judge Aziz, who following a hearing at Hatton Cross on 23 April 2015 and in a determination promulgated on 15 May 2015 dismissed her appeal on asylum, human rights (Articles 3 and 8 of the ECHR) and humanitarian protection grounds. In her letter of refusal the Respondent noted that the Appellant claimed to have a well-founded fear of persecution in Pakistan on the basis that she

was a member of a particular social group, namely that she was a woman fearing forced marriage and honour killings.

2. The Appellant attended Punjab University where she obtained a BM in Arts and completed a Diploma in Computer Application and Data Management from the Vocational Training Institute Punjab in 2010. Her marriage was part of an arranged marriage that took place on 22 February 2010. She had not met her husband prior to the wedding and neither was keen on this union. The Appellant lived with her husband 40 miles away from her home area together with her husband's younger brother. The Appellant claimed that one month after the wedding, her husband sent her back to her parents explaining that the house was too small for both of them to live in together with his younger brother, but he would in the meantime look for a larger house.

3. On return, her parents were angry but advised the Appellant to be patient. Her husband would visit her once a month when he would be pleasant towards her in front of others. The Appellant had told her parents how her husband was in fact violent towards her, but they forbade her from informing the police. The Appellant claimed that two months later her parents witnessed her husband being violent towards her. After three to four months, her husband asked her to apply to come to the United Kingdom as he believed that he would then be able to obtain a visa and employment as a dependent spouse. In the event her husband's application for a visa was refused.

4. The Appellant came to the United Kingdom on 6 October 2011 having travelled from Lahore. She arrived in the UK on the same day and reapplied to extend her student visa in November 2013 which was refused on 17 December 2013. She sought advice from a solicitor and claimed asylum on 14 October 2014. The last time she spoke to her husband was in December 2011 or she thought January 2012. In February 2012 the Appellant divorced her husband and her parents agreed to help her by taking power of attorney assuming that she had agreed to marry a person of their choice, that being her maternal cousin, although the Appellant was unwilling to do this due to the age difference.

5. In consequence, she received abusive messages and letters from her parents, over the period May, June and October 2014 in which there were threats to kill her for dishonouring them. The Appellant claimed that she would be unable to report these problems to the police as they would be unwilling to help because the matter would be considered to be a family problem.

6. There was before the First-tier Tribunal Judge, a skeleton argument in which it was claimed that on the evidence before the Tribunal, the Appellant should benefit from the "Joint Presidential Guidance Note No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance". It was stated that the Respondent accepted that the Appellant was indeed a victim of domestic violence.

7. Documentation within the Appellant's bundle of documents before the Judge included a report from a locum psychiatrist dated 9 September 2014 attached to West London Mental Health NHS, who concluded that the Appellant suffered from significant anxiety and depression which was "reactive to her social and family circumstances". She would need further follow-up. She had been diagnosed as suffering from a severe depressive episode and experienced suicidal ideation and had self-harmed. She was prescribed Mirtazapine and Quetiapine and she attended counselling and the Community Psychiatric Nurse saw her regularly and she was reviewed by a psychiatrist every four to six weeks.

8. It was pointed out that in her refusal letter, the Respondent had accepted the Appellant's account. The First-tier Tribunal Judge in his determination further noted that the Respondent also accepted that her claim engaged the Refugee Convention as women in Pakistan could be considered as part of a social group (see paragraph 29 of his determination). The Judge, however, further noted that the Appellant's application was refused because the Respondent had concluded that there was a sufficiency of protection available to the Appellant in Pakistan and that internal relocation was a viable option and that the Presenting Officer had submitted that these were the key issues in this appeal. It was recorded that the Appellant's Counsel, Ms Capel (indeed the Counsel who appeared before us today) wholly concurred.

9. The Judge in the course of his determination, proceeded to take account of what he considered to be relevant case law and for reasons that will become shortly apparent, it will suffice if we refer specifically to his consideration of KA and Others (domestic violence – risk on return) Pakistan CG [2010] UKUT 216 (IAC) that held inter alia, that whether a woman on return faced a real risk of an honour killing would depend on the particular circumstances and that such a risk was likely to be confined to tribal areas and was unlikely to impact on married women.

10. Indeed there was within KA a most helpful and detailed head note containing the Tribunal's guidance listed from i. to vii. and again for the purposes of our decision it will suffice if we make reference to vi. and vii. that reads as follows:

> "vi. The guidance given in SN and HM (Divorced women – risk on return) Pakistan CG [2004] UKIAT 00283 and FS (Domestic violence – SN and HM – OGN) Pakistan CG [2006] UKIAT 00023 remains valid. The network of women's shelters (comprising government-run shelters and private and Islamic women's crisis centres) in general affords effective protection for women victims of domestic violence, although there are significant shortcomings in the level of services and treatment of inmates in some such centres. Women with boys over 5 face separation from their sons.
>
> vii. In assessing whether women victims of domestic violence have a viable internal relocation alternative, regard must be had not only to the availability of such shelters/centres **but also to the situation**

women will face after they leave such centres." [Emphasis added].

11. At paragraphs 103 to 109 of his determination the First-tier Tribunal Judge had this to say:

"103. The next question for the Tribunal is therefore whether the Appellant can reasonably be expected to relocate to another part of the country. The Appellant is a young single woman. She is educated. However, she completed a long distance learning degree. She has limited experience of working outside the family home in Pakistan. Her only job in Pakistan was teaching children from home. Although she is an educated person she has had no life experiences of studying or working in a large metropolitan city in Pakistan. What she does have is experience of an independent life in the United Kingdom, more than anything else, the experiences she has of living in this country provide her with valuable skills which may equip her with leading an independent life in Pakistan. However, such skills have to be tempered against two factors.

104. Firstly, for a woman to live an independent life in the United Kingdom is not directly comparable to living an independent life in Pakistan. Pakistan is a much more socially conservative society. This is recognised in the country guidance which I have quoted at paragraphs 79 – 80 above.

105. Secondly, the Appellant's mental health has, over the past twelve months, deteriorated and this in turn impacts upon her ability to establish an independent life herself.

106. Importantly, I also take into account Section 2.4.1 of the 2014 COIR on Pakistan country information:

'2.4.1 According to a representative from the Human Rights Commission of Pakistan (HRCP) '... it **is 'next to impossible' for a single woman to live alone in Pakistan due to prejudices against women and economic dependence.'** According to a Metropolitan State College of Denver Assistant Professor, most women in rural areas lived with their families and it was generally not socially acceptable for women to live alone. **In urban areas, especially larger cities such as Karachi, Lahore or Islamabad, educated, higher class, working women found it easier to live alone, although this was still quite a rare occurrence**. The sources consulted by the Immigration and Refugee Board of Canada describe difficulties for single women renting property in urban areas, security concerns and social constraints. Divorcees face specific stigmatization and social rejection.' [The Judge's emphasis].

107. If the Appellant had been from an urban area of Pakistan, from an upper-class family, someone who was educated at university which she attended (as opposed to studying for her degree from home) and had

she experience of working in Pakistan, then I may have been persuaded that it is possible for her to internally relocate and live alone as an independent woman without male protection. **However, given the particular profile of this Appellant, I do not find that she falls into that category of women which the country information suggests can live independently in a large city. Even if she fell into this small category of women in Pakistan who could live independently, in light of her current mental health issues, I would still come to a conclusion that in the particular circumstances of her case that it would not be possible for her to establish an independent life for herself in Pakistan without substantial support from family members or friends, neither of which I find that she has in Pakistan.**" [Emphasis added].

108. The next question is whether it is reasonable to expect the Appellant to relocate to a women's shelter in Pakistan?

109. At paragraphs 30 – 32 of her skeleton argument, Ms Capel sets out her arguments as to why it is not suitable for the Appellant to be placed in a shelter. In particular at paragraph 32(viii) she highlights the impact that being placed in a shelter may place upon her mental health. I take into account her submissions."

12. The Judge then proceeded to consider other aspects of the country guidance, indeed remarking following his reference to the guidance in NL (Mental Illness - Support for Family) Pakistan CG [2002] UKIAT 04408 at paragraph 112 of his determination:

> "112. If anything, it may be argued that the Appellant in NL faced greater hardships given her particular profile. The Appellant in this appeal is highly educated, has lived and worked independently in the United Kingdom and does not have children."

13. More particularly, at paragraph 113, however, the Judge was most candid in stating as follows:

> "113. This has not been an easy decision for the Tribunal to arrive at. I acknowledge that the country guidance case law in this area is well over ten years old…"

14. At paragraph 114 of the determination, the Judge went on to say that had sufficient evidence been submitted to persuade him that the position in Pakistan had changed since NL (NL being a decision some thirteen years old) he may have been persuaded to arrive at a different decision.

15. At the outset of the hearing before us, it became apparent, as indeed most frankly and realistically recognised by Mr Tufan for the Respondent, that he accepted that ground 1 upon which permission to appeal had been granted was "the real issue".

16. In this regard Ms Capel had opened her submissions to us by making the point that the failure of the Judge to make the finding that he was obliged to make, in terms of vii. of KA as to what would happen to the Appellant after she left a women's shelter in Pakistan and the fact that the Judge

failed entirely to consider what would happen to her in such circumstances, was a most significant point as indeed we so find. We cannot further ignore the fact that the Judge clearly found this to be a difficult and a borderline decision. Indeed, he remarked, as we have earlier stated, that this had not been an easy decision for him that in our view, reinforces the conclusion that we have reached, that in failing to take account of vii. of the head note at KA, he had materially erred in law and the fact that the Judge considered the matter to be a borderline decision, should have further tipped the balance in favour of his allowing the appeal.

17. As Ms Capel rightly submitted, had he not overlooked this extremely vital aspect of the guidance in KA given his overall difficulties, it should have inevitably led him to the conclusion in light of the findings to which we have earlier referred, that this was an Appellant who in her particular circumstances, simply could not safely relocate anywhere in Pakistan were she to be returned. We remind ourselves that in vii. of KA the Tribunal were very clear, and it is worth repeating, that "regard must be had not only to the availability of such shelters/centres [in Pakistan] but also to the situation women will face after they leave such centres." [Underlining added].

18. Our task today has been to decide whether or not the determination of the First-tier Tribunal Judge has disclosed an error or errors on a point of law such as may have materially affected the outcome of the appeal and for the reasons that we have above identified, it is apparent that the First-tier Tribunal Judge did so materially err in law such that his decision in dismissing the Appellant's appeal must be set aside.

19. We therefore proceed to make a fresh decision and for the reasons that we have identified above that take account of those positive aspects of the Judge's findings that we have identified, it is apparent to us that the proper course is to allow this appeal. We thus make that fresh decision.

Decision

The First-tier Tribunal erred in law such that the decision should be set aside. We make a fresh decision to allow the appeal.

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 Date 16 November 2015

Upper Tribunal Judge Goldstein