Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01267/2019

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On 7 November 2019	**On 21 November 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

MS A A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brown, Counsel, instructed by Arshed & Co Solicitors,
For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Although this decision is a subject of an anonymity order (see below), and the name of the appellant and the full name of her son are not given, it is necessary because of the issues arising the appeal, to name one person, being the appellant's alleged former partner.

2. This is the Appellant's appeal against the decision of Judge of the First-tier Tribunal D S Borsada dated 14 June 2019 dismissing the Appellant's appeal against the decision of the Respondent dated 22 January 2019 refusing the Appellant's protection and human rights claim.

3. The Appellant is a national of Pakistan and arrived in the United Kingdom on 11January 2012 on a Tier 4 (General) Student visa. Her leave to enter as a student was curtailed on 18 August 2012 so as to expire on 17 October 2012, for reasons which are not material to this appeal. It is apparent that the Appellant did not leave the United Kingdom upon her leave to remain expiring. Her account is that upon arriving in the United Kingdom she was introduced to a man of Pakistani origin named Raja Faysal Rahman ('RFR') through a friend. RFR and the Appellant were said to have become friends and ultimately commenced a relationship with one another.

4. The Appellant remained in the United Kingdom within this relationship as an overstayer. In March 2015 the Appellant discovered that she had become pregnant. It is said that upon her informing her family members in Pakistan of this pregnancy outside of marriage her mother became angry and the reaction of the male members of her family was more extreme. It was said that the Appellant's brother had directly threatened her life on the telephone and it was also said that the Appellant's sister had informed the Appellant that the male members of the family intended to kill the Appellant upon her return to Pakistan. It was also said that the Appellant's uncle, being a police officer, had influence to avoid any investigation into such an honour killing.

5. The Appellant gave birth in due course to her son, whose last name is Rahman, in November 2015. It is to be noted that the birth certificate for that child names the Appellant as the child's mother and names RFR as his father. The birth certificate states at section 11 that the informant to the registrar was the mother. It was said that the relationship between the Appellant and RFR deteriorated. The Appellant had hoped that they would marry but RFR did not wish to do so and felt pressured by the Appellant to marry, causing a deterioration in the relationship. After the relationship broke down it is said that the Appellant was threatened with homelessness and was ultimately obliged to make a claim for protection.

6. In considering that claim for protection the Respondent rejected the credibility of the Appellant's account for reasons set out in the decision letter of 22January 2019. The Respondent argued that the delay between March 2015 and the Appellant claiming asylum in July 2017 diminished the credibility of her claim to be at risk of serious harm in Pakistan. Further, the Respondent noted that the Appellant had suggested that she had not met RFR until after she arrived in the United Kingdom, whereas within a previous application for entry clearance, prior to her arrival in the UK on 11 January 2012, there were records of email correspondence from one 'Faisal Rehman', requesting that the visa application be withdrawn. The Respondent formed the view that this Faisal Rehman and RFR were one and the same, and was the father of the

Appellant's child. That being so, the Respondent suggested that the Appellant had known Faisal Rehman prior to her departure from Pakistan, diminishing the credibility of her entire account.

7. The Respondent also noted that both the Appellant's and RFR's names were recorded on the Appellant's son's birth certificate. The Respondent asserted, citing the web address www.gov.uk/register-birth/who-can-register-a-birth as a source, that the level of detail contained on the birth certificate could only have been supplied by a married couple, or if a statutory declaration of parentage had been supplied to the registrar. It was asserted that no such statutory declaration had been submitted to the Respondent along with the son's birth certificate and thus the respondent formed the view that on the balance of probabilities, the parents of the child must be married, which was contrary to the Appellant's account, and which therefore undermined her credibility.

8. The Respondent also argued that RFR's reluctance to marry the Appellant was inconsistent with the cultural traditions of Pakistan. Further, the Appellant's assertion that her uncle was in the police and had influence, and that he had an inclination to harm the Appellant was said to be speculative and not supported by evidence. The Respondent also argued that there was effective protection available to the Appellant by the reasons of the existence of specialised women's police stations in Pakistan, and referring to other country information set out at [48] to [60] of the decision. Further, the Respondent also asserted at [66] to [75] that internal relocation would be available.

9. The Appellant appealed against the Respondent's decision, that appeal coming before the judge at the Birmingham Hearing Centre on 31 May 2019. The Appellant was represented by Mr Brown who appears before me today. The judge in summary, agreed with all of the points raised by the Respondent and dismissed the appeal. Those findings are set out at paragraphs 9 to 13 of the judge's decision.

10. The Appellant appealed against that decision in grounds dated 26 June 2019, arguing that the judge erred in law, in summary, as follows:

    (i) (a) The judge had erred in law on a central and, it was asserted, determinative issue, as to whether the Appellant's claim to be an unmarried mother was credible. The judge had erred in law in appearing to find that only a married couple could supply the level of detail required as contained in the birth certificate in the present case. The grounds quoted from the appellant's evidence in her witness statement:

> "Mr Rahman and I went to the local registry to register our son's birth and at the registry we provided driving licences as proof of identification. I confirm that we were not required to provide a marriage certificate at the registry for registering the birth of our son"

(b) The grounds assert:

> "This information is consistent with what most couples who go to register a birth of child (*sic*). Put simply you do not have to be married to provide the level of detail that is recorded. It is perverse to infer that such details show on balance that the birth parents are married. This is an impermissible presumption/assumption to make."

(c) The grounds then set out at paragraph 7 what purports to be a further extract from the same www.gov.uk website regarding registrations of births. One quoted passage within the Appellant's grounds of appeal provides as follows:

> "**Unmarried Parents**
>
> The details of both parents can be included on the birth certificate if one of the following happens:
>
> - they sign the birth register together…".

(d) The grounds aver that: "The evidence above simply does not show that the level of detail recorded on the birth certificate can only be supplied by a married couple".

(ii) The grounds also argue that the judge had failed to take into account adequately or at all the Appellant's evidence that for the reason for the delay in her claiming asylum, which was that after the original threat the Appellant had remained living with her partner she was not then at risk and there had been no reason for her to claim asylum. She had only become vulnerable after her partner had left her, and the judge had erred in his approach.

(iii) The Appellant also argued that the judge erred in law in proceeding on the assumption that the name Faisal Rehman mentioned in the entry clearance application form was the same person as RFR the father of the Appellant's child. The grounds assert that this had simply not been established on the evidence and it was asserted that the Appellant had not been cross-examined at the hearing about these two names and whether they were the same person.

(iv) The grounds conclude "the Appellant contends that for the above reasons the judge's reasons for rejecting the primary claim that the Appellant had a child out of wedlock is unsafe and arguably such errors infect the subsidiary findings which the judge makes from paragraph 11 of the decision and reasons.

11. Permission to appeal was granted by Judge of the First-tier Tribunal Grant-Hutchison on 16 July 2019 on the basis that these grounds were arguable.

Submissions

12. On behalf of the Appellant Mr Brown relies on the grounds of appeal, and argues that the judge proceeded unfairly by seeking to rely upon the coincidence of similar names contained within documentation relating to the Appellant's application for entry clearance before she came to the United Kingdom and the name of her partner who she met after arriving in the United Kingdom (Ground (iii)).

13. In relation to the Appellant's first ground of appeal, Mr Brown argued that it was perverse for the judge to treat the Appellant's and RFR's names appearing on the birth certificate as meaning that they must have been married or that the Appellant had provided a statutory declaration of parentage. Mr Brown accepted that although the Appellant had set out her account of what she said happened at the registry office, she did not set out in her witness evidence any evidence about what she understood the correct procedure to be, and that no evidence, other than that contained in the respondent's refusal letter, and what the Appellant said had happened, was before the judge as to the process for registering a birth.

14. Rather, Mr Brown sought to rely upon the extract from the government website set out in the grounds of appeal. However, Mr Brown accepted that this material was not before the judge.

15. I queried whether the purported reliance on such new evidence should be the subject of an application under Rule 15(2A) of The Tribunal Procedure (Upper Tribunal) Rules 2008 (no such application had been made) and even if such evidence were now admitted by the Upper Tribunal when considering the present appeal, how the purported reliance on such evidence, on appeal, necessarily demonstrated an error of law on the part of the judge, proceeding on the basis of evidence available before him.

16. Rather, as I pointed out to both parties, the appellant's point within the grounds of appeal is more properly made not by reference to a summary of the registration procedure contained in a website, but by reference *to the law*, that being the Births and Deaths Registration Act 1953, as amended, relevant extracts of which I provided to the parties. The Act provides at Section 10 as follows:

> "10. Registration of father where parents not married or of second female parent where parents not married or civil partners
>
> (1) Notwithstanding anything in the foregoing provisions of this Act, and subject to Section 10ZA of this Act, in the case of a child whose father and mother were not married to each other at the time of his birth, no person shall as father of the child be required to give

> information concerning the birth of the child, and the registrar shall not enter in the register the name of any person as the father of the child except -
>
> (a) at the joint request of the mother and the person stating himself to be the father of the child (in which case that person shall sign the register together with the mother); or …".

17. I gave permission for the appellant to vary her grounds of appeal on this ground from a challenge on grounds of perversity, to a challenge on grounds of misdirection in law. I heard submissions from both parties as to the application of those provisions. Mr Brown relied upon the provision within s.10(1)(a) of the Act which he stated confirmed that a joint request of the mother and father for the name of the father to be recorded as the father of a child is permitted, assuming the father is present at the time of that request, which was the appellant's account. Thus, Mr Brown argued that the judge had proceeded under a misapprehension as to the law. Mr Brown argued, echoing the penultimate paragraph in the grounds of appeal, that the where the judge's reasons for rejecting the primary claim that the appellant had had a child out of wedlock were unsafe, arguably such errors infected the subsidiary findings which the judge makes paragraph 11 onwards in the decision.

18. Mrs Aboni argued that there was no misdirection in law in the judge's decision, and the judge made a decision which was open to him on the evidence available. She argued that there was no procedural unfairness relating to the judge's findings on the coincidence of the names.

19. Further, Mrs Aboni argued in relation to the birth certificate issue that a person seeking to have his name recorded as father of a child under s.10(1)(a) of the Act, was, under that provision, required to sign the register with the mother. Mrs Aboni argued that there was no signature of the father on the birth certificate. I pointed out that neither was there any signature of the mother on the birth certificate, whereas s.10(1)(a) appeared require the father to sign the register 'together with the mother'. I expressed the view that signing the *register* did not necessarily mean that the signatures of the mother or father would appear on the birth certificate itself. Mrs Aboni further argued, in the alternative, that if the procedure had been followed as set out by the appellant, then the father's name would also have been recorded onto the birth certificate in section 12 as the named informant, alongside the mother. However, she was unable to draw to my attention any legal provision which established that that was the case.

Discussion

20. I find with respect to Mr Brown that it cannot properly be suggested that it was procedurally unfair for the judge to have relied at [10] in his decision on the coincidence of the name of RFR and of Faisal Rehman. The point was clearly raised in the Respondent's decision letter at [33]. The Appellant for her part merely

asserted in her witness statement that she met RFR in the United Kingdom for the first time in January 2012. However, she does not directly address in her witness statement the point raised by the Respondent that there is a very similar name given in correspondence to an Entry Clearance Officer prior to the Appellant's arrival in the United Kingdom, or explain who that person was. The Appellant has chosen not to address that point and cannot be said to have not been given the opportunity to say what she wanted in relation to that matter.

21. I find that any challenge as to the judge's findings that these are one and the same person is not made out on the basis of the judge having proceeded unfairly, or having failed to take into account relevant evidence. I find that the only challenge that could be made in this regard would be one of perversity. I find that it is not a perverse conclusion for the judge to have arrived at to consider the person named in the correspondence to the Entry Clearance Officer and the person recorded as the father of the Appellant's son to be the same person. This ground fails. Going further, although not necessary to support my finding, I note that the email address given for Faisal Rehman in the notes associated with the entry clearance application is 'rfaisalr@(*etc*)'. This may be compared with the name of RFR, Raja Faysal Rahman, a person that the appellant claims to have met for the first time only in the UK. The appellant's ground is hopeless.

22. In relation to the Appellant's second ground, I refuse to admit into evidence the extracts in the Appellant's grounds of appeal said to be from the website www.gov.uk/register-birth/who-can-register-a-birth. The inclusion of this material in the Appellant's grounds of appeal represents in my opinion an attempt to introduce evidence on appeal that had not been before the judge. There is no application under Rule 15(2A) to adduce such further evidence and even if there was, no reason is given as to why the extended extract from the gov.uk website was not put before the judge. I find that the attempt by the Appellant to introduce evidence into the grounds of appeal is to be rejected.

23. However, I find by reference to the relevant primary legislation, that the judge did, inadvertently, proceed under a misapprehension as to the law regarding the registration of births. The judge was not assisted properly by either party.

24. I find, considering the provisions set out within s.10(1)(a) of the Act, the wording of which is entirely clear in my view, that an unmarried father is permitted to have his name recorded in the register as the father of a child, at the joint request of the mother and father. In those circumstances, there is nothing, I find, within the relevant provisions, which requires a father attending at the time of registration of the birth, to provide a statutory declaration of parentage. The judge was misled by the argument advanced by the Respondent in the refusal letter at [34] as to the relevant law. I also reject Mrs Aboni's arguments that the father's signature would need to be shown on the birth certificate, and in the alternative, that such a father would be named as joint informant, on the basis that she was unable to provide any legislative provision which stated that either of those propositions is correct.

25. I find, therefore, that the judge erred in law in treating the appearance of RFR's name on the birth certificate as indicative that he and the appellant were married.

26. Addressing briefly the Appellant's remaining grounds of appeal, I do not find it made out that the judge failed to take into account the Appellant's evidence as to the reason for the delay in her claiming asylum between March 2015 and August 2017. The judge set out the Appellant's evidence in that regard in the body of the decision. It cannot be said that the judge failed to take the explanation into account. The only other argument advanced is that the judge's conclusion in rejecting that explanation was perverse. I reject any such proposition.

27. The remaining issue then is to determine whether the error of law which I have identified at [24] above was material to the outcome of the appeal. The error was that the judge appears to have proceeded on a misunderstanding as to the legal provisions governing the registration of births of children in the United Kingdom, such that he was wrong to have doubted the Appellant's suggestion that the father of the child was able to register the birth of the child along with the mother even though they were not married.

28. However, I find that that error was not material to the outcome of the appeal. To recap briefly again the judge's reasons for finding the Appellant's account incredible, these were that:

    (i) there was a delay in claiming asylum [9];

    (ii) the name and e-mail contained within an application for entry clearance for the Appellant before her arrival in the United Kingdom gave the same name as the father of her child [10];

    (iii) the Appellant's account of threats being made against her was unwarranted speculation [11];

    (v) the Appellant's suggestion that her uncle held a position of power and influence in the police was vague and lacked credibility [11];

    (vi) it was not credible that the father of the Appellant's child would not have wanted to marry her [11];

    (vii) although at [13] the judge seems to suggest that the appellant's poor credibility was relevant to the question of whether or not her family had the power and influence in their home area to prevent the police or the authorities from protecting the Appellant, there was in any event an overarching finding within the body of the decision in the second part of paragraph [13] that the Appellant was not at risk outside of her home area because of the availability

of internal relocation, a finding which has not been challenged in any way in the grounds;

(viii) at [14] the judge's endorsement of all of the points raised in the refusal letter should also be treated as an endorsement of the points raised at paragraphs [48] to [60] of the refusal, which address in detail the question of effective protection that would be available to the Appellant on return.

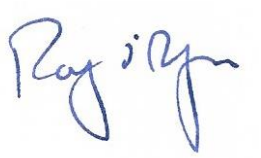
29. I find, due to the preponderance of other reasons given by the judge for dismissing the appellant's appeal, that notwithstanding the judge's error as set out at [24] above, it was not material to the outcome of the Appellant's appeal.

Decision

The judge's decision did not include the making of any *material* error of law.

The Appellant's appeal is dismissed.

Signed Date 20.11.19



Deputy Upper Tribunal Judge O'Ryan

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 him or any member of their 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 20.11.19

Deputy Upper Tribunal Judge O'Ryan