Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09058/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On the 26 October 2022	**On the 06 December 2022**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

K S (THAILAND)
[NO ANONYMITY ORDER]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Ms Angelina Nicolaou of Counsel, instructed by Duncan Lewis & Co
For the respondent: Mr Stefan Kotas, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision on 9 July 2018 to refuse international protection pursuant to the Refugee Convention, humanitarian protection or leave to remain on human rights grounds. The appellant is a citizen of Thailand.

2. **Anonymity order.** Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the

appellant, likely to lead members of the public to identify the appellant. **Failure to comply with this order could amount to a contempt of court.**

3. **Vulnerable appellant.** The appellant is a vulnerable person and is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance. No specific adjustments were sought but Ms Nicolaou asked that she be given a break if she became emotional, and that the appellant's partner remain outside the hearing room, as he was unaware of the abuse she had suffered as a child.

4. In the event, the appellant did not need a break as her evidence was fairly brief. No reference was made to the abuse while her husband was in the room and he was not asked about it in evidence. That part of the appellant's account is not challenged.

Background

5. The appellant was born in 1996 and grew up in her home country of Thailand, where from a very young age she suffered physical and sexual abuse within the family, the former from her father, the latter from her cousin. The appellant is still traumatised by her childhood: she has moderate to severe post-traumatic stress disorder. The factual matrix in relation to the appellant's childhood is not contested by the respondent.

6. The appellant did not seek or expect to receive help from the Thai police with her abuse issues: the police were not interested in domestic issues. Also, the appellant's father was a wealthy and influential man, who bribed the authorities regularly. Many policemen came to the family home, where her father ran an illicit gambling den.

7. The appellant visited the UK between April and July 2014, returning to Thailand within the currency of her visit visa. She last came to the UK in February 2015, aged 19, travelling to see her boyfriend (now her partner), on her own passport with a visit visa valid for 6 months. She had said on her application that she would be staying for 12 days only. The appellant said that at the time she intended to return to Thailand before her visa expired. The appellant lived separately at an address in Ilford for a month, but then moved in with her partner in March or April 2015.

8. The appellant's partner's lawful residence in the UK also expired in July 2015 but he did not embark for Pakistan. The couple remained in the UK without leave. They do not speak the same language, and each of them still practises their own religion. They still live together in the UK, with their daughter who is now 6 years old, and their baby son, born in June 2022.

9. The appellant and her partner are of different religions. The appellant is a Buddhist, but her husband is Muslim. The appellant contacted her family

in 2015 to tell them that she was getting married to her Muslim partner. They got very angry and threatened her. She did not claim asylum at this stage, on her account because she did not know about it and could not afford the legal fees involved.

10. The appellant and her partner had an Islamic marriage in May 2015. She told the Imam that she was Buddhist, but intended to convert to Islam. During the ceremony, the appellant was asked whether she accepted Islam, and said she did. She has never formally converted. They have never married under UK law.

11. When her visa expired in July 2015, the appellant did not return to Thailand. In late 2015 or early 2016, she became pregnant. In June 2016, she told her family of the pregnancy. They reacted badly: her father told her to get an abortion, and threatened that if they ever returned to Thailand he would shoot her husband and force the appellant to have an abortion. She was very shocked and scared by their reaction: she had not expected her father to threaten to kill her husband. The appellant has not heard from her family since then.

12. The appellant feared returning to Thailand, since she would have to use her Thai identity card and there was a risk that her father would find out that she was back, and where she was living, because of his police connections across the country. Her father was still running his gambling den, as far as she was aware. Thai society was narrow minded and she also feared being attacked by non-state actors because of her mixed religion marriage.

13. The other possibility was that the couple could live in Pakistan. The appellant said that she and her child were non-Muslim and such mixed marriages were illegal in Pakistan.

First-tier Tribunal decision

14. The First-tier Judge accepted the appellant's nationality, identity and immigration history. Those matters were not contested by the respondent, or were otherwise proven.

15. The First-tier Judge also noted the difference in language and religion between the appellant and her partner, and that both of them are overstayers whose families disapprove of their relationship. He did not accept that the appellant's family would persecute her, or that she could not be safe by exercising an internal flight option to Bangkok, where she had lived previously. The Judge did not accept that if returning to Thailand, the appellant would do so as a lone mother, or that there would be insurmountable obstacles to her husband settling in Thailand. The appellant would be removed to Thailand, so the question of whether the couple could live in Pakistan did not arise.

16. The Judge considered that it would be in the best interests of the appellant's child to remain with her mother. Both of them only have Thai nationality. The appellant had come to the UK in 2014 and returned to her family, so he did not accept that she could not do so again, despite her childhood history of familial abuse. Her mental health issues were not such as to prevent her returning to live in Thailand.

17. The Judge dismissed the appeal on all grounds.

18. The appellant appealed to the Upper Tribunal. She did not challenge the international protection findings (Refugee Convention and humanitarian protection) but she did challenge the private and family life findings under Article 8 ECHR.

Error of law decision

19. In a decision dated 30 July 2019, Upper Tribunal Judge Blum set aside the First-tier Tribunal decision as it related to human rights (Article 8 ECHR only), upholding the protection elements of the claim.

20. He did so in particular because the Judge had not given adequate reasons for rejecting the evidence of the country expert, Dr Vanja Hamzić BFA (Sarajevo), BDes (Sarajevo), LLM (Nottingham), PhD (London), SFHEA, currently a senior lecturer in Legal History and Legal Anthropology at SOAS, University of London. The respondent had not challenged the expert's expertise.

Procedural matters

21. There followed a number of directions orders, and a long delay caused in part by the difficulties produced by the Covid-19 pandemic.

22. On 2 August 2021, in response to directions, the Secretary of State clarified her position as follows:

> "1. Further to the directions of the Upper Tribunal, the Secretary of State for the Home Department responds to paragraph 7 as follows:
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> 2. (i) She has no further questions for the country expert and therefore does not require her [sic] to attend the remaking hearing.
>
> (ii) She contests the conclusions of the expert, which in essence are that it would not be possible, nor would it be safe/reasonable for the appellant and her partner to settle in either Pakistan or Thailand.
>
> 3. The Secretary of State will set out her submissions on these points in a skeleton argument ahead of the resumed hearing, in accordance with paragraph 11 of the Tribunal's directions."

23. On 18 January 2022, PRJ Kopieczek made a transfer order, releasing the appeal to be heard by a different panel on the basis that it was not

practicable for the original Tribunal to complete the hearing or give its decision without undue further delay.

24. Final directions for hearing were given by Upper Tribunal Lawyer Bakhshi on 30 August 2022.

25. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

26. The appellant gave oral evidence through a Thai interpreter. Both the appellant and the interpreter confirmed that they understood one another, and there were no interpreter issues during the hearing.

27. The appellant adopted her previous witness statements and a new statement prepared on 12 October 2022. In her latest statement, the appellant said that her daughter was now at school, while her son was just 4 months old, a good child in general. She had experienced post-natal depression after his birth.

28. Now that their family was larger, the appellant and her partner, and the two children, had moved out of their previous accommodation and were sharing a house with two male friends of her partner. They had one big bedroom for themselves and shared the rest of the house. They were living on asylum support, with accommodation provided by these two friends.

29. The appellant did not want her children to be raised as religious. In the UK, she was able to refuse to take her 6 year old daughter to the mosque, whereas in Pakistan she would have no choice. Her partner was trying to teach Islam to both children. Her partner attended mosque on Fridays, but there were no Islamic practices at home. The appellant listened to Buddhist teachings on YouTube and followed Buddhist teachings: that was the extent of her current religious practice.

30. In answer to a supplementary question from Ms Nicolaou, she said that when separated from her husband in detention, she felt very lonely. It had impacted her mental state as well.

31. The appellant confirmed that she was still a practising Buddhist. She was then tendered for cross-examination.

32. In cross-examination, the appellant confirmed that between her return to Thailand in July 2014, and re-entering the UK in February 2015, she had lived at her parents' home.

33. Regarding her mental health, the appellant had received therapy from two organisations, Talking Therapy for 6 weeks (the most they offer on one referral) and the Rape and Sexual Abuse Support Centre (RASASC) for just

over a year, from February 2020 to March 2021. RASASC also had a specific number of sessions available.

34. The appellant had not sought further assistance until she re-referred herself to Talking Therapies, with whom she had an assessment on 15 October 2022, the day before the hearing. She had given birth to a son in June 2022 and felt very sad and tearful after he was born. Talking Therapies always only offered 6 sessions. The appellant was not taking any medication to help with her mental health issues.

35. The appellant had not considered what she would do if she had to choose between Thailand or Pakistan to live as a family. She did not feel that she could live safely anywhere but the UK.

36. There was no re-examination.

37. The appellant's partner then gave evidence. He adopted his previous witness statements and an updating statement dated 12 October 2022. In the latest statement, the appellant's partner said that he had come to the UK to study and had never worked in Pakistan. He had no experience or knowledge of how to find a job and his family would not assist him. He had not lived in Pakistan since 2011 and did not know where they could live safely, or how.

38. In the UK, he said that they were raising their children without a specific religion, so that they could choose when they were old enough. He would like his children to be Muslim and he did try to teach his 6-year old daughter about his religion. His son, at 4 months, was too young.

39. If the family lived in Pakistan, the children would have to be raised as Muslims and would have to actively and visibly practise Islam, including attending Islamic schools.

40. The appellant would stand out in Pakistan as a woman from a non-Muslim country. There would be attention, curiosity, and questions about her religion. Even if she said she had converted to Islam, it would soon become obvious that her knowledge of Islamic rituals and prayers was negligible. She would have to deny her Buddhist religion and begin daily prayers and things like fasting over Eid. She would face significant obstacles to fitting in in Pakistan.

41. If anyone suspected that the appellant was not Muslim, the whole family would face problems and the appellant would be at risk. That was not a situation in which he wished to place his family.

42. In answer to supplementary questions from Ms Nicolaou, the appellant's partner said that they shared childcare. He helped with changing nappies and did a couple of hours at night so that his wife could get some sleep. If they were living in Pakistan, it would be very difficult: he was still only semi-skilled and his wife would not fit in, because of her different culture and religion. He would not wish to go to Pakistan alone, without his family.

43. In cross-examination, the appellant's partner said he was about 23 or 24 years old when he came to the UK in 2011. He finished his secondary education at 16 or 17 years old, then went to college for two years, studying art subjects, but did not finish college. When he came to the UK, his family supported him: they paid for his flights, his subsistence, his accommodation, and the renewal of his Tier 4 visa. They paid for everything.

44. Mr Kotas put it to the appellant's partner that he had been found working illegally. He denied that he had been working: he was just visiting a friend who had a hardware shop, but was detained and then claimed asylum, saying that his family in Pakistan that threatened him. First-tier Judge Bulpitt had not believed his account.

45. After he told his family about the elder child, they would not send any more money and told him he would be killed if he returned to Pakistan, because he had disrespected his religion. His parents had not insisted he attend mosque, allowing him to choose, but they did always push him about it.

46. In contrast to the appellant's evidence, her partner said that they had discussed what they would do if her appeal failed. There were serious difficulties in their living in his country, and if they went to her country then he did not speak the language and they would be unable to do anything financially.

47. In answer to questions from me, the appellant's partner explained that he came to the UK to study an ESOL English course at Queensberry College, then had his Tier 4 visa extended for a Diploma in Management at Hilias International College, which he obtained. He was studying for a further qualification with Swarthmore College in 2015 when its Tier 4 sponsor status was revoked and his visa was cancelled.

48. He had married the appellant in an Islamic ceremony but they could not marry under UK law until they had status, which he had been unable to obtain.

49. In re-examination, the appellant's partner confirmed that he had given oral evidence at the First-tier Tribunal. He also confirmed that his family had told him not to get married outside his religion. When they learned that he had, they were angry, and problems began with his family.

50. There was no re-examination.

Dr Hamzić's evidence

51. The Tribunal benefits from three expert country reports by Dr Vanja Hamzić, BFA (Sarajevo), BDes (Sarajevo), LLM (Nottingham), PhD (London), SFHEA. Dr Hamzić is a Reader in Law, History and Anthropology at SOAS University of London, where he is also an Associate Director of Research. Dr Hamzić has studied and taught the legal systems of both Thailand and

Pakistan, for over 15 years, including extensive empirical legal and social fieldwork in both countries.

52. In Thailand, Dr Hamzić considered that interfaith marriages between Muslims and Buddhists were regarded as shameful and deeply undesirable by members of both communities, risking physical and verbal abuse by third party actors of persecution, as well as family members.

53. Foreigners who were legally married to a Thai citizen could apply for a non-immigrant O Visa, but that required evidence of lawful marriage, an employment letter, passport and visa of the Thai spouse, and a copy of the registration for the company or organisation where the accompanying spouse would work. The report continued:

> "20. Given the above requirements and the personal circumstances of the appellant's partner, I am confident that he would not be granted a non-immigrant O Visa for Thailand, which is the only appropriate avenue for him to settle legally in Thailand. It is further highly unlikely that, even if he were to obtain this visa, it would then be extended in the country. A regular, highly paid job (first abroad, and then, presumably, in Thailand) and/or substantial savings are just some of the *sine qua non* conditions that he does not appear to be able to satisfy. In sum, the appellant's partner is extremely unlikely to be able to settle in Thailand. …
>
> 22. It is my opinion that the Islamic marriage (*nikah*) between the appellant and her partner would not be accepted as valid in Thailand. This is because Thai family law, as espoused in the Civil and Commercial Code, sections 1435 to 1598 (Book V), *inter alia* stipulates that for a marriage to be recognised as valid, it has to be solemnised in Thailand or recognised as legal in the country in which it was concluded. …"

54. Dr Hamzić considered there to be a reasonable degree of likelihood of religion-based violence against the appellant, her partner and/or their daughter, 'given the overall deterioration of Muslim-Buddhist relations under the current military regime in Thailand'.

55. In Pakistan, the situation was even more difficult: where 96.4% of the 230 million population of Pakistan were Muslim. Honour killings were a serious problem. Interfaith marriages were not accepted: the appellant had made a declaration of conversion during her marriage (the Shahada) and her return to her Buddhist practices 'might be interpreted as an act of blasphemy'.

56. At best, the appellant would have to conceal her religious identity. If she were unable to do so, she and her daughter would risk discrimination and/or persecution, and her daughter might be treated as born outside marriage:

> "32. However, all [open] settlement avenues would be open only if the appellant's marriage were to be accepted as genuine in Pakistan. This, in my view, would only be possible if the appellant, or her partner, or any third party, were to refrain from contesting the presumption that her *nikah*

> certificate remains a firm testament of her irreversible conversion to Islam. She that presumption be contested at any time, her road to persecution in Pakistan would be nearly certain. …
>
> 34. Alternatively, if at any point in time the marriage between the appellant and her Muslim partner were suspected to be 'interfaith' by virtue of the appellant's abiding Buddhist faith, by any other party in Pakistan, she and her daughter (as well as her partner) could become subject to abuse and discrimination. Her daughter might, indeed, be perceived to have been born out of wedlock. As the relevant Home Office guidance suggests, 'children born outside of marriage are considered 'forbidden under Islam'. They do not have inheritance rights and have problems accessing national identity cards'. This, in turn, could prevent the appellant's daughter's access to education, healthcare, and other elementary services.
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> 35. The appellant's daughter's dual Thai-Pakistani heritage might not, in and of itself, be the reason for any discrimination she might face in Pakistan, but all other circumstances explored above certainly could, including her being born in what some might perceive as a 'sham' marriage to a non-Muslim, or worse, 'formerly Muslim' mother."

57. Indeed, given that the appellant had reverted to her Buddhist faith after reciting the Shahada, which is an act of conversion to Islam, she had either misunderstood what she was doing (making the Islamic marriage void *ab initio*) or she was an apostate, voiding the marriage retrospectively.

58. In his first addendum report dated 30 September 2019, Dr Hamzić summarised the relevant provisions of the Thai Immigration Act BE2522 (1979), maintaining his view that the appellant's husband could not meet the requirements therein set out, in particular because the form of marriage into which the parties entered in the UK was not one recognised here, nor was it a Thai marriage effected by a consular official. Further, income requirements were set for an humanitarian visa, which the appellant's husband also could not meet. The husband could not meet the financial, marital or employment requirements, nor could he evidence lawful presence in the UK. It remained open to the parties to marry each other under Thai law and have their marriage registered in that way.

59. On 27 June 2021, Dr Hamzić provided a further additional country report, this time dealing principally with residence in Pakistan. The validity of the *nikah* entered into by the parties would fall to be considered by the Pakistan High Commission in London, which might require a more credible marriage certificate: see Muslim Family Laws Ordinance 1961 at Section 5(1) which required that any marriage should be registered by an officially appointed Nikah Registrar. The bride must be Muslim, or a woman of the people of the book (Jewish or Christian), or a genuine Muslim convert. This appellant, on her account, was an apostate from Islam and at risk of very serious discrimination in Pakistan, if not worse.

60. While the visa requirements for Pakistan were less onerous than those imposed by Thailand, there was still a requirement to produce a valid UK residence visa, which the appellant could not do. The consent of the

couple's fathers was not essential: there was an online alternative which did not require that.

61. The Pakistan High Commission had a discretion to issue a visa without a valid UK residence document. However:

> "31. Furthermore, it is safe to conclude that, from a Pakistani legal perspective, there is little preventing the appellant and her partner from marrying each other [again] and having their marriage registered according to Pakistani law – again, provided that the appellant is or is willing to become Muslim. *If she is not, under no circumstances can their marriage be considered valid in Pakistan.* " [*Emphasis added*]

62. The risk remained that the appellant's daughter (and now her son) would be considered to have been born out of wedlock, which could prevent access for them to education, healthcare and other elementary services, as well as excluding them from inheritance rights, or being issued a Pakistani national identity card.

Secretary of State's submissions

63. For the Secretary of State, Mr Kotas relied on his skeleton argument. It was not the respondent's case that the appellant, with her mental health history and vulnerability, could be expected to live alone in either Thailand or Pakistan. The respondent accepted that it would only be proportionate to expect the appellant to return to either destination if both she and her husband could live there together within a reasonable time, and on a long-term basis.

64. The respondent further accepted that it would be in the section 55 best interests of the older child, the couple's 6 year old daughter, if she were to remain in the UK.

65. The Upper Tribunal would need to decide whether the appellant's conversion to Islam was genuine. If it was not, the respondent accepted that the appellant could not reasonably be expected to live in Pakistan, either on a temporary or a long-term basis.

66. The second question was whether there would be very significant obstacles to the appellant's integration into Thailand, pursuant to paragraph 276ADE(1)(vi). The respondent maintained her position that this was not an interfaith marriage, and that the appellant had converted to Islam when she married her husband. Whether or not that conversion was genuine was material and 'square and centre' in the appeal.

67. The First-tier Judge had found that it was not and that the appellant remained a Buddhist. She had lived in Thailand for the first (almost) 18 years of her life before coming to the UK and although there would plainly be significant obstacles to her integration, caused by the length of her absence and her mental health issues, they could not properly be described as *very* significant. The respondent noted that the appellant

had been able to return to Thailand in 2014 before her final journey to the UK. There was no evidence as to the absence of outpatient treatment or medication for her mental health issues in Thailand.

68. The third issue was whether the appellant's husband could obtain a visa and live in Thailand, and secondarily, whether it was proportionate to expect the family to live there. The respondent submitted that reading the Thai expert report, the appellant's husband met all of the requirements for a guardian visa, except the financial requirement. He was not working in the UK; he would be required to demonstrate that he had Thai Baht 400,000 (about £9236 today) in a bank account, at least two months before any application for a guardian visa.

69. It would be open to the husband to return to Pakistan and live with his own family, and then to seek employment to enable him to save the necessary funds. The Tribunal should not believe his assertion that his family would not help the husband. the First-tier Judge had rejected his account of family discord, or that his family had threatened him. Similarly, he could just ask his family to help him find the funds required.

70. If there were a period of separation between the appellant and her husband while he worked to obtain the funds, it would be months, not years, and would not be disproportionate. Alternatively, the appellant could go with her husband to Pakistan while they saved the funds for the Thai guardian visa. The respondent accepted that this would not be in the child's best interests, and might be difficult for the appellant, but on a temporary basis, and given the public interest, it was not disproportionate.

71. The respondent accepted that the appellant's daughter spoke only English, was settled at school, and had never visited either Pakistan or Thailand. However, she was young and could adapt: there was no suggestion that the child had any physical or mental health issues.

72. The appellant had not shown any objectively well-founded fear of persecution by her family in Thailand, and if returned there, would be returned with her husband and not to her family home. The evidence in Dr Hamzic's report about societal tensions between Muslims and Buddhists in Thailand all related to the south, not to Bangkok. The majority of Muslims lived in the south of the country, but 10% of the population of Thailand was Muslim (6.3 million people) and Islam was the second largest faith there. Bangkok had 100 mosques.

73. The marriage had been entered into in highly precarious circumstances, neither party being a British citizen or settled here, and neither was financially independent.

74. If the Tribunal were to find that the appellant was a genuine Muslim convert, she could obtain a visa to live in Pakistan and no financial requirement was imposed. She and her daughter would adapt, over time, with the help of the appellant's husband.

75. Mr Kotas invited the Tribunal to dismiss the appeal.

Appellant's submissions

76. For the appellant, Ms Nicolaou argued that there remained very significant obstacles to the appellant's integration in Thailand and/or that her removal to either Thailand or Pakistan would be a disproportionate interference with the private and family life rights of the appellant, her husband and their daughter.

77. Regarding removal to Pakistan, the Tribunal should find that the appellant had never been a genuine convert to Islam and would be regarded there as an apostate, having misled the Imam at her religious marriage ceremony. That would put her and her children at risk.

78. The appellant and her children did not speak the language of Pakistan nor have any experience of its culture or society. There was no family support available from either side, with her husband's family hostile to the marriage. The children might be entitled to Pakistani citizenship but would have to surrender their Thai citizenship before it could be granted.

79. There was a real risk of deterioration in the appellant's mental health if she were to be returned to Pakistan: see the evidence of Dr Hamzić.

80. The appellant's elder daughter was not yet a qualifying child under section 117D of the Nationality, Immigration and Asylum Act 2002 (as amended), but would be so in one year. Her residence was nevertheless 'lengthy' and she would have established significant social, cultural and educational ties here.

81. Ms Nicolaou asked the Tribunal to allow the appellant's appeal.

Analysis

82. The first and pivotal question in this appeal is whether the appellant is a Muslim convert. Having seen and heard the parties give evidence, I am quite satisfied that she is not and that, although she pronounced the shahada during her Islamic marriage ceremony, she has continued to practise her Buddhist faith and has not learned about the practice of Islam.

83. On the basis of Mr Kotas' concessions above, that means that the family cannot live together in Pakistan.

84. Mr Kotas conceded also that the appellant, with her fragile mental health, could not be expected to live alone in Thailand, or at least not for very long. I accept and give weight to the expert's evidence that the O Visa would not be available to the appellant's husband as he cannot show a valid UK status, past or future employment, or the necessary funds, and further, the marriage into which these parties entered is neither valid under UK nor Thai law.

85. It follows that there is no country where this family can safely and sustainably live together, and that therefore, the appeal must be allowed.

DECISION

86. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by allowing the appeal.

Signed Judith AJC Gleeson Date: 25 November 2022

Upper Tribunal Judge Gleeson