



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/00999/2013

THE IMMIGRATION ACTS

Heard at Glasgow  
On 4 October 2013

Determination Promulgated

Before  
MR C M G OCKELTON, DEPUTY PRESIDENT  
UPPER TRIBUNAL JUDGE DEANS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT  
(Anonymity order made)

Appellant

and

SA

Respondent

Representation:

For the Appellant: Mrs M O'Brien, Home Office Presenting Officer  
For the Respondent: Ms K Thomson, Brown & Co Solicitors

DETERMINATION AND REASONS

- 1) This is an appeal with permission against a decision by Judge of the First-tier Tribunal Quigley allowing an appeal on human rights grounds by SA, hereinafter referred to as the claimant. The appellant before the Upper Tribunal is the Secretary of State.
- 2) The claimant is a national of Bangladesh who arrived in the UK in April 2007 as a dependant of her husband who was studying here. The appellant and her husband have a daughter, born in the UK in June 2008. The claimant had her leave extended until August 2009 but in January 2009 she returned to Bangladesh before coming back to the UK in June 2009. The claimant was again granted leave until January 2012. In

May 2010 she claimed asylum on the basis of domestic violence. This claim was refused and a subsequent appeal was unsuccessful. Fresh representations were made in November 2012, which have led to the present appeal.

- 3) The Secretary of State accepts that the claimant has been a victim of domestic abuse and that she suffers mental health problems. The Secretary of State further recognises that there is societal discrimination against women in Bangladesh. In summary, the reason the previous appeal was unsuccessful was because the claimant would be returning to Bangladesh but her abusive husband would be staying in the UK. There was a possibility of the claimant's husband returning to Bangladesh but that possibility could be addressed by internal relocation.
- 4) In view of the findings in the previous appeal, to a large extent the submissions before the First-tier Tribunal concerned the viability of internal relocation and whether it would be unduly harsh to expect the claimant to relocate. The claimant's fear was not only of her husband but also of her husband's family and for this reason she was found to have a well-founded fear of persecution in the area of Bangladesh where her husband's family reside.
- 5) While the Judge of the First-tier Tribunal found some difficulty with regard to a definitive diagnosis of the claimant's various physical ailments, the judge found there was no doubt as regards the severe mental health problems which she experiences and the history of suicide attempts. There was also a concern that the claimant's daughter would be vulnerable to abuse in a household comprising a small child in the care of a frail woman. The judge found that the Secretary of State had placed too much weight on the fact that the appellant was highly educated and had some experience of employment and insufficient weight on her severe mental health problems and the best interests of her daughter. The judge was satisfied that women in Bangladesh can constitute a particular social group, having regard to the case of SA (divorced women - illegitimate child) Bangladesh CG [2011] UKUT 00254. On this basis the judge found that it would be unduly harsh for the claimant to internally relocate within Bangladesh to avoid persecution.
- 6) Under Article 8 the judge found that both the claimant and her daughter have established private and family life in the UK. The claimant's daughter has spent her whole life here. Given the psychological assessment of the claimant and the serious child protection issues raised in relation to the daughter, the judge was satisfied that the best interests of the daughter were served by remaining with her mother in the UK. It would be a disproportionate interference with their Article 8 rights for them to be moved to Bangladesh.
- 7) Permission to appeal was granted in part on the basis that the judge arguably did not properly assess the question of internal relocation. It was also arguable that the judge did not properly follow the case of Devaseelan [2002] UKIAT 00702 in respect of the findings made in the previous appeal.

- 8) At the hearing before us, Mrs O'Brien relied upon the grounds of the application for permission to appeal. The first of these is that the judge did not properly apply the principles in Devaseelan. In the previous appeal the Upper Tribunal found a real possibility of the claimant's husband returning to Bangladesh but this would not be sufficient to bring the claimant within the Refugee Convention. The only new evidence was a medical report but this did not affect the risk to the claimant.
- 9) It was submitted secondly in the application for permission to appeal that the judge did not apply the proper test with regard to internal relocation, in terms of VW (Uganda) [2009] EWCA Civ 5. The judge applied a test of whether internal relocation would be unduly harsh but in terms of VW (Uganda) this test had been replaced by a reasonableness test. In terms of reasonableness the judge should have given greater weight to the claimant's educational qualifications and ability to obtain employment. The judge's approach to the medical evidence was contrary to case law as to the very high threshold to be applied in medical cases, particularly those involving the risk of suicide in a foreign country.
- 10) For the claimant, Ms Thomson submitted there was no material error of law in the determination by the Judge of the First-tier Tribunal. The judge was entitled to take into account the claimant's deteriorating physical and mental health. If it was unduly harsh for the claimant to relocate this was the same as it being unreasonable. The judge took into account the findings made in the previous appeal and found that the advantages of the claimant's education were outweighed by the medical evidence as to her condition.
- 11) For our part we are not persuaded in the circumstances of this appeal that there is a material difference between the unduly harsh test, as applied by the Judge of the First-tier Tribunal, and the test of reasonableness. We consider this point as having been settled at least since Robinson [1997] INLR 182. The Court of Appeal in VW (Uganda) was concerned with the test under Article 8 for considering whether family life could be continued in another country and not with internal relocation to avoid persecution. Accordingly, we see no error of law in the application by the judge of the test of undue harshness to the viability of internal relocation. The judge was properly directed as to the law and gave adequate reasons for her decision.
- 12) So far as the findings from the previous appeal are concerned, we are satisfied that the judge was entitled to take into account the new medical evidence and the deterioration in the claimant's condition since the previous appeal. These were material factors entitling her to conclude that internal relocation was now unreasonable whereas previously the Tribunal did not find that this was so. We are satisfied that the judge weighed the medical evidence and the related adverse issues in relation to internal relocation against the issues relied upon by Secretary of State, such as the claimant's education and employment experience, and reached a conclusion which the judge was entitled to reach.

13) For the foregoing reasons we are not satisfied that there is an error of law in the decision of the Judge of the First-tier Tribunal such as it should be set aside. The decision will stand.

### **Conclusions**

14) The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

15) We do not set aside the decision.

### **Anonymity**

16) The First-tier Tribunal made a direction pursuant to Rule 45(4)(i) of the Asylum & Immigration Tribunal (Procedure) Rules 2005. We continue that order (pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Signed

Date

Upper Tribunal Judge Deans