



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/03474/2009

THE IMMIGRATION ACTS

Heard at Birmingham
on 30th September 2013

Determination Sent

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SHAHELA AKTHER

Respondent

Representation:

For the Appellant: Mr Smart – Senior Home Office Presenting Officer.

For the Respondent: Mr Vokes instructed by French & Company Solicitors.

DETERMINATION AND REASONS

1. Although the Secretary of State is the Appellant I have referred to the parties by the status they had before the First-tier Tribunal for ease of reference. Hence the term Appellant below is a reference to Mrs Akther.
2. Following a hearing at Birmingham on 16th July 2013 the determination of First-tier Tribunal Judge Camp was set aside in relation to both the Appellant and her son. This hearing only relates to her claim for the reasons set out in the 'Error of Law' finding.

3. The Appellant was born on 1st April 1980 and is a citizen of Bangladesh. There are a number of preserved findings from Judge Camp's determination as follows:
 24. I am in no doubt that, whatever the objective evidence, the appellant fears her husband and his family. Unless she is a consummate actor, she conveyed a genuine terror of being returned to Bangladesh. I have no doubt that she is subjectively in fear of serious ill treatment and possibly death.
 27. The appellant gives an account of domestic violence, which led her to leaving the matrimonial home. Her husband will not have her back. This does not seem implausible. Family pride is well known to be a significant factor in this cultural context.
 28. Moreover, I am satisfied that the appellant is living alone with her child. I see no reason to disbelieve her evidence that her husband has not seen the child and that he had told her to have an abortion.
 33. Although the appellant was under difficulties at the hearing (being unrepresented and accompanied by a young child), I found her to be a generally credible witness, although I do not discount the possibility that she may have been guilty of some exaggeration. However, I am satisfied that she has been the victim of domestic violence, as she states.
 34. This finding does not, of itself, provide an answer to the question whether the appellant would be at risk of violence in Bangladesh, whether from her husband's family or from her husband himself, if he returns there.
 35. The appellant speaks of threats of violence to her and her child, as well as to her mother. I am prepared to accept that threats have been made. Moreover, having found the appellant credible on other matters, I have no reason to doubt her evidence that threats have been made. Given the appellant's state of apprehension, it is difficult to know how much weight to place on the reality of these threats. However, there is ample objective evidence of the status of women in Bangladesh society.
4. The Appellant married on 24th February 2006 in Bangladesh and entered the United Kingdom legally as the dependent of her husband who was a work permit holder at that time. The Appellant's witness statement of the 7th May 2013 records incidents of domestic violence and it is a preserved finding that she has been subjected to domestic violence at the hands of her husband, although she is unable to remain in the United Kingdom by virtue of the provisions of the Immigration Rules relating to victims of domestic violence as cannot meet the requirements of the relevant rules.
5. The Appellant claims that in Bangladesh she has a mother and sister although at paragraph 31 of her statement also refers to 'aunties'. She claims her mother

who lives in her villages is isolated by her in-laws although her father-in-law and two daughters live in Dhaka. The village is said to be less than half an hour by car from where they live.

6. The Appellant states her mother lived with her own grandmother supported by an uncle although when her grandmother died a few months ago such support stopped. She claims she has distant male cousins who would not support her as they do not support her mother who has to work to survive, and so will not be able to support the Appellant.
7. Recent developments include the Appellant's father-in-law stating he wishes to see his grandson and proceeding through a village committee to seek recognition of the legitimacy of the child which was found in the Appellant's son's favour. This does not support the claim to be facing hostility from all elements of her husband's family.
8. The Appellant was given leave to file an additional witness statement at court in which she states she is not working and is on medication for high blood pressure and diabetes. She wanted to go to college and saved money to do so but is not able to start college. She has few roots in the United Kingdom, having moved seven times in five years, with only one close friend in this country.
9. The Appellant states her son started Year 1 at school and during pre-school was referred to a paediatrician due to speech, communication and understanding difficulties. The Appellant claims to have told her solicitor about this although no reports have been provided and the Appellant has been told that before a diagnosis of Aspergers Syndrome can be properly made the child will have to be seven years of age. He sees a speech and language therapist at school and has six monthly checks. He also receives physiotherapy at six to eight weekly intervals.
10. The Appellant is a capable woman who worked in the United Kingdom until 2008 when she stopped due to her pregnancy. She maintained in her oral evidence that her fear is still ongoing as a result of threats made by her husband's brother based in part on inheritance issues, inheritance law in Bangladesh indicating that her husband and then his son will be in line to inherit the assets in Bangladesh after the death of her husband's father.

Discussion

11. Even though it is not raised in the grounds of appeal it was accepted that Article 8 ECHR was an issue dealt with by Judge Camp with no objection being raised. I accept that permission must have been given to amend the grounds by the Judge to include this ground, in addition to those relating to the Refugee Convention.

12. Although it was decided in the error of law finding that her son has no in-country right of appeal and is therefore not an appellant before me today, Mr Vokes submitted that it was relevant to consider his position as part of his mother's Article 8 claim and under section 55 in relation to hardship that would be faced if returned.
13. The current county guidance case for women in Bangladesh is SA (Divorced woman - illegitimate child) Bangladesh CG [2011] UKUT 00254(IAC) in which the Tribunal held:
- (i) There is a high level of domestic violence in Bangladesh. Despite the efforts of the government to improve the situation, due to the disinclination of the police to act upon complaints, women subjected to domestic violence may not be able to obtain an effective measure of state protection by reason of the fact that they are women and may be able to show a risk of serious harm for a Refugee Convention reason. Each case, however, must be determined on its own facts;
 - (ii) Under Muslim law, as applicable in Bangladesh, the mother, or in her absence her own family members, has the right to custody of an illegitimate child;
 - (iii) In custody and contact disputes the decisions of the superior courts in Bangladesh indicate a fairly consistent trend to invoke the principle of the welfare of the child as an overriding factor, permitting departure from the applicable personal law but a mother may be disqualified from custody or contact by established allegations of immorality;
 - (iv) The mother of an illegitimate child may face social prejudice and discrimination if her circumstances and the fact of her having had an illegitimate child become known but she is not likely to be at a real risk of serious harm in urban centres by reason of that fact alone;
 - (v) The divorced mother of an illegitimate child without family support on return to Bangladesh would be likely to have to endure a significant degree of hardship but she may well be able to obtain employment in the garment trade and obtain some sort of accommodation, albeit of a low standard. Some degree of rudimentary state aid would be available to her and she would be able to enrol her child in a state school. If in need of urgent assistance she would be able to seek temporary accommodation in a woman's shelter. The conditions which she would have to endure in re-establishing herself in Bangladesh would not as a general matter amount to persecution or a breach of her rights under article 3 of the ECHR. Each case, however, must be decided its own facts having

regard to the particular circumstances and disabilities, if any, of the woman and the child concerned. Of course if such a woman were fleeing persecution in her own home area the test for internal relocation would be that of undue harshness and not a breach of her article 3 rights.

14. I have considered the Appellants evidence together with a report prepared by Professor Katie Gardner, but note this is dated prior to the promulgation of SA. The report is dated 2nd January 2011.
15. The Appellant has a subjective fear of violence on return and the first thing to consider is whether it is objectively well founded. The suggestion in Professor Gardner's report relating to a dowry does not establish such a risk as in her asylum interview she stated no such dowry was paid. She fears harm at the hands of her husband but he remains in the United Kingdom and there is no evidence that at the date of the hearing he is attempting to find or inflict any further harm upon her in this country. They have not had any contact for a number of years.
16. It appears that her father-in-law has become reconciled and wishes to see his grandson and appears to have taken steps to ensure that the child's legitimacy is recognised. This element no longer appears to create a real risk and the fact the child has been recognised as being legitimate is relevant to any risk arising from return with an illegitimate child. A child born in wedlock is acceptable culturally far more than one born outside, but recognition of legitimacy is said to create the risk from the Appellant's brother-in-law based upon the effect of Bangladesh inheritance law.
17. Whether the third party will take action against the Appellant and the child when that child has been accepted and recognised by his own father (the child's parental grandfather) is not something supported by sufficiently persuasive evidence.
18. I do accept that in a close rural community it will be difficult for the Appellant to return without her presence being discovered. If any member of the family wished to take action against her there are issues regarding the availability of protection from the police in that environment, which is not likely to be effective even if available.
19. The key question is whether it is reasonable in all the circumstances for the Appellant to relocate away from her home area and return to Dhaka. This issue is of importance because Paragraph 339O of the Immigration Rules, which is intended to incorporate the Directive, states:

- (i) The Secretary of State will not make:

- (a) a grant of asylum if in part of the country of origin a person would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or
 - (b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.
- (ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making his decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.
 - (iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return.
20. In SA it was recognised that a person in the Appellants situation without family support would be likely to have to endure a significant degree of hardship but is likely to be able to obtain employment, rudimentary state aid may be available, and she will be able to enrol her child in a state school. In this case the Appellant also has relatives in Bangladesh including her mother and a sister.
21. The Appellant clearly does not want to return and Mr Vokes in his skeleton argument referred to recognition in SA that as a result of high levels of domestic violence and disinclination by the police to act an appellant may well be able to demonstrate she would not be able to obtain an effective measure of state protection by reason of the fact that she was a woman. I accept this is relevant to whether she is able to return to her home village but it has not been shown that if she chooses to relocate to Dhaka her extended family will be aware of her return.
22. Mr Smart relied upon an article produced by the United Nations Development Programme dated 14th February 2013 headed "Gender Violence Based Investigations Increasing" recording 417 cases investigated by female police officers from the Women Support and Investigation Division of Dhaka Metropolitan Police (DMV), indicating a willingness and positive action being taken to try and provide additional victim support services for women. There is no evidence that if required the Appellant would not have recourse to such services.
23. I do not find the Appellant has substantiated her claim that if she is unable to return to her home village she has an objectively sustainable well founded fear

of risk in all parts of Bangladesh, particularly in Dhaka. She has not established that it is unreasonable in all the circumstances for her to re-locate to the city where the Country of Origin Information Report clearly records the availability of NGO assistance to victims of violence if required. The combined availability of state and non-state organisations supports a finding the Appellant has failed to substantiate her claim there will not be a sufficiency protection available if she faces threat from her brother-in-law or other family members opposed to her or her son.

24. There are a growing number of single women following divorce in Bangladesh and it has not been shown that being a single woman with a child creates a real risk per se although I accept that such a person may be more vulnerable in Bangladeshi society.
25. The Appellant has been in the United Kingdom for some time and has a limited private life here. Her family life is with her son. In relation to her claim under Article 8 ECHR it has not been shown there is anything that would make the decision to return disproportionate. Mr Vokes sought to rely upon the situation of her son, the medical issues, and section 55 as a result.
26. I accept that it may be difficult for the Appellant to return and that she will face hardship but she is capable of meeting the needs of her son so far as they relate to basic requirements of food, shelter, love, affection, and assistance and guidance in maximising his development potential. Letters were provided on the day of the hearing from BIG Community confirming that a referral has been made for her son who is to be seen in December 2013 by a community paediatrician but there are no reports and nothing more than a letter stating a referral is to be made. There is no evidence that the child has been formally diagnosed, what treatment is required if he has a recognised condition, or that necessary treatment will not be available to the Appellant and her son in Bangladesh.
27. There is a further letter from the Birmingham Community NHS Trust, Paediatric Physiotherapy and Occupational Therapy Department, dated 10th July 2013 referring to an appointment on 23rd July 2013 although the Appellant has produced no reports or any further information relating to the extent of her son's problems and, further, there is no evidence that his situation or condition is such that it cannot receive appropriate support in Bangladesh or would make the return disproportionate or contrary to the child's best interests.
28. Mr Vokes was right in his final submissions to refer to the differences between the life of a child in the United Kingdom and in Bangladesh where there will be a material difference in facilities, prospects, and standard of living generally, but that is not the test. The family may face difficulties as a single parent unit although it is a mother with a legitimate child and a unit that has some support within that country.

- 29. When all the competing interests are considered with appropriate care, and based upon the evidence made available to the Upper Tribunal, I find the Secretary of State has substantiated her claim to show that the decision to return is proportionate under Article 8 ECHR when considering the family and private life aspects of both the Appellant and her son and the statutory duty in section 55. The Appellant is a failed asylum seeker who has been the victim of domestic violence in the United Kingdom and who may face difficulties in her home area. I note the strength of her subjective fear and indeed she was upset at court at the prospect of being returned to Bangladesh but it has not been shown to be objectively well founded and not shown to be an issue that will result in such consequences on return that will make the decision disproportionate or engage any of the United Kingdom’s obligations under the Refugee Convention, Qualification Directive or Articles 2 or 3 ECHR in relation to protection or medical issues.
- 30. Further medical evidence may warrant a fresh claim in relation to her son but that is a matter upon which the Appellant will be able to seek advice. This decision is based solely upon the evidence I have been asked to consider.

Decision

- 31. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is dismissed.**

Anonymity.

- 32. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as no application for anonymity was made and the facts do not establish any reason to make such an order.

Signed.....
Upper Tribunal Judge Hanson

Dated the 4th October 2013