



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/03474/2011

THE IMMIGRATION ACTS

Heard at Field House
On 15 October 2013

Determination Sent

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

MS A M
(Anonymity direction made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Dhanji of counsel instructed by Haris Ali & Co

For the Respondent: Mr J Saunders a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan born on 9 February 1986 who has been given permission to appeal the determination of Immigration Judge M R Oliver who dismissed her appeal against the respondent's decision of 11 March 2011 to give directions for her removal from the United Kingdom following the refusal of asylum.

2. Whilst I have not been asked to do so I consider it appropriate and necessary to anonymise this determination in order to protect the interests of the appellant and her young daughter.
3. The appellant came to the UK on 13 July 2010 with leave as a student. The leave was for a period expiring on 9 September 2011. At that time she was pregnant and her daughter was subsequently born in this country in October 2010. The appellant and her family are Sunni and the father of her daughter and his family are Shia. Their families strongly disapproved of the relationship and they never married. The father having encouraged the appellant to come to this country where he said he would join her and they would marry subsequently married somebody else and now has no contact with the appellant or his daughter. The appellant claimed that when they discovered she was pregnant her parents threatened to kill her and her child and would, through their contacts and influence be able to find her and prevent her from obtaining protection from the authorities should she return to Pakistan. She claimed to fear persecution from them and generally as an unmarried mother if she was to return to any part of Pakistan.
4. The respondent did not believe the appellant's account of events or that she would be at risk on return to Pakistan. The appellant appealed and Immigration Judge Oliver heard her appeal on 18 April 2011. Both parties were represented and the appellant gave evidence. Whilst the judge hesitated about some aspects of the appellant's evidence he found that there had been genuine threats from her father, she came from a wealthy family with connections with the police and would get no protection from them, would find it virtually impossible to live on her own with her daughter without means and support and, although she would be eligible to be admitted to a woman's refuge, she would get minimal help and would not be able to look forward to an early or viable exit. If she returned to Pakistan she and her daughter would be at real risk of being subjected to honour killings. He allowed the appeal on asylum and human rights grounds. It appears that the human rights grounds were Articles 2 and 3; not Article 8.
5. The respondent applied for permission to appeal arguing that the judge erred in law by failing to make clear findings both in relation to internal relocation and whether her family would be able to find her if she returned to a part of Pakistan outside her home area. Permission to appeal was granted and directions given. The appeal came before Designated Immigration Judge David Taylor on 30 August 2011. He concluded that Immigration Judge Oliver erred in law, set aside his decision and proceeded to rehear the appeal. Having done so he found that the appellant was not a credible witness, declined to accept the genuineness of two newspaper cuttings submitted by the appellant which she claimed had been advertisements placed by her father offering a reward for discovering and reporting her whereabouts and concluded that she had no genuine fear of harm from her family and would not be at risk on return. In the alternative he concluded that if she was at risk she could relocate to a part of Pakistan other than her former home area.

Having set aside the decision of Immigration Judge Oliver he substituted his own decision and dismissed the appeal on all grounds.

6. The appellant sought permission to appeal to the Court of Appeal. Permission was refused by an Upper Tribunal Judge. Although I do not have the grounds of appeal when the application was renewed to the Court of Appeal I do have the order of Black LJ dated 20 November 2012 ordering by consent that the appeal be withdrawn and making an order as to costs. There was confusion as to the effect of the order which was amended by consent on 3 July 2013 to make it clear that the appeal was being remitted to the Upper Tribunal. The appeal came before me for a directions hearing on 6 August 2013 with the same representatives as now appear before me. Mr Saunders told me that he had the advantage of studying the notes prepared by the Presenting Officer who appeared before Designated Immigration Judge David Taylor. Neither representative was aware of the existence of any Statement of Reasons which I would have expected to have been produced for the Court of Appeal. Mr Saunders submitted and Mr Dhanji conceded that Immigration Judge Oliver erred in law on one of the points raised in the grounds of appeal that is by failing to give adequate reasons for the conclusion that internal relocation was not open to the appellant and her daughter. Both representatives agreed that I should set aside Immigration Judge Oliver's decision but that his findings of fact should be preserved and the only outstanding issue to be determined was that of internal relocation.
7. I gave directions dated 6 August 2013 recording these matters and setting out further steps to be taken by the parties. I agree with the course of action proposed by the representatives and the reasons for this. I set aside the decision of Immigration Judge Oliver which I must now remake on the issue of internal relocation adopting his findings of fact.
8. I have two bundles submitted by the appellant's representatives with their letter of 16 September 2013. The first bundle includes a skeleton argument and a supplementary witness statement from the appellant dated 16 September 2013 although Mr Dhanji accepted that this added little to the previous witness statements. The second bundle contains the country guidance case of KA and others (domestic violence - risk on return) Pakistan CG [2010] UKUT 216 (IAC), extracts from the COI report of 9 August 2013, extracts from the OGN on Pakistan dated January 2013, a report from the Immigration and Refugee Board of Canada dated 17 November 2010 and a report from Dr Roger Ballard dated 4 January 2012. Mr Saunders submitted an extract from the OGN dated January 2013.
9. Mr Dhanji tendered the appellant for cross-examination but Mr Saunders indicated that he did not wish to cross examine her.
10. In his submissions Mr Saunders relied on the OGN at paragraph 3.10.6, 3.12.1 and 3.12.8. He also referred to the COIS report in the appellant's bundle. Dr Roger Ballard's report disagreed with the findings in KA and KA should be

preferred. He directed my attention to paragraph 265 of KA. Immigration Judge Oliver had done no more than find that there was no evidence to undermine the appellant's assertion that her family would be able to find her.

11. Mr Saunders argued that the appellant was an educated woman and as a result would be able to relocate and sustain herself. It would not be unduly harsh to expect her to relocate to a part of Pakistan outside her home area. He asked me to dismiss the appeal.
12. Mr Dhanji relied on his skeleton argument. The appellant was a single woman now aged 27 with a three-year-old daughter. She was educated but did not have any professional qualifications. She had never worked and needed to look after her three-year-old daughter. She would have no financial or emotional support in Pakistan either to support herself and her daughter or to provide trustworthy childcare. Her long-term prospects were bad. Paragraph 10.6 of the OGN should be looked at together with the COIR report at pages 55 to 62. There were very few women's shelters for the size of the population and those that existed were under resourced. It was difficult to obtain admission. Even if the appellant and her daughter were able to obtain admission it would only be a temporary solution. She had no male relatives to help and protect her, indeed no relatives who would help her at all. She would be vulnerable and at risk as an unmarried woman with an illegitimate child. He submitted that she fell squarely within paragraph 239 and 240 of KA.
13. Mr Dhanji argued that there was nowhere in Pakistan where the appellant and her daughter would be safe from her family or severe societal discrimination and the ill effects of this. I was asked to allow the appeal.
14. Mr Saunders indicated that he did not wish to reply.
15. I raised with the representatives the question of the extent to which the appellant had raised Article 8 human rights grounds. Mr Dhanji said he was not aware that she had. Very properly Mr Saunders drew my attention to the skeleton argument before Immigration Judge Oliver. All this does, in paragraph 26, is to state; "it is also submitted that Articles 2, 3 and 8 of the ECHR are engaged". Neither representative was able to draw my attention to any other way in which the appellant had sought to pursue Article 8 human rights grounds. I am also conscious that the appellant has said almost nothing about her private life in this country or, of even greater importance, anything about her daughter, her health, possible pre-school education, domestic circumstances or status. There is some indication of potentially severe difficulties in relation to her daughter's status because the appellant has been to the Pakistan High Commission in London who have issued a letter which indicates that because no father is named on the daughter's UK birth certificate the authorities will probably not issue her with either a Pakistan passport or an identity document. There are suggestions that without these the appellant's daughter may not be able to gain admission to Pakistan or, once there, have access to any of the benefits which may be provided by the

state. There is also the suggestion that her lack of a passport or registration document may make it more likely that she will be identified as a child born out of wedlock.

16. I consider that in the circumstances of this case the need to address Article 8 issues is obvious and should not be ignored. However I am also conscious that neither side has addressed this or provided the sort of information which would be needed if I was to reach informed conclusions. In the circumstances I accede to the request made by both representatives that I should determine the appeal on asylum and Article 3 human rights grounds only. Both agree that the asylum and Article 3 human rights grounds stand or fall together.
17. I reserved my determination.
18. In assessing the evidence of the appellant Immigration Judge Oliver set out and weighed a number of factors for and against her credibility. Having done so and perhaps with some hesitation he did accept that the appellant was a broadly credible witness. I do not consider that the sentence in paragraph 27; "There is no evidence to undermine the appellant's assertion that she comes from a wealthy family with some connections with the police" when read with the rest of the determination indicates that he did not believe this part of her account.
19. There are a number of facts which are not disputed. Combining these with Immigration Judge Oliver's findings of fact and his broad acceptance of the appellant's credibility I make the following findings. The appellant is a citizen of Pakistan now aged 27 who came to this country legitimately as a student on 13 July 2010. She was pregnant. She has a daughter born here in October 2010 who continues to live with her in this country. She had a relationship with the father of her daughter, also a Pakistani citizen. The appellant and her family are Sunni and the father of her daughter and his family are Shia. Both families strongly disapproved of the relationship and tried hard to bring it to an end. The father of her child encouraged the appellant to come to this country saying that he would join her and they would get married. The appellant's father agreed that she should come here to study; she thinks because he believed that it would take her away from the man he disapproved of whilst he did not disapprove of education for his daughters. He planned to arrange her marriage when she had completed her studies.
20. After the appellant arrived in this country the father of her child would not take her calls, has since married somebody else and now has no contact with the appellant or his daughter. On discovering that the appellant had given birth to a child her father made what she believed to be very real threats to kill her and her daughter. He also indicated that he would make strenuous efforts to track them down should they return to Pakistan. The appellant's family is relatively affluent and she believes that her father would have influence with the police and the authorities which would help him track her down and prevent her from obtaining help and protection from the authorities.

21. I follow and adopt Immigration Judge Oliver's findings that the threats made by the appellant's father are genuine and that she and her daughter would face a real risk of being killed in "honour" killings were they to go to her family's home area. I also adopt the finding that the authorities would not provide the appellant and her daughter with a sufficiency of protection in that area.
22. I find that whilst the appellant is an educated woman from a moderately wealthy family and an urban area she has never worked and does not have any professional or other qualifications. She would have no financial or other support from her family or anyone else and every incentive to avoid any contact with them. There is no indication that she has any money to help support herself and her daughter in Pakistan. Her ability to obtain work would be circumscribed by the need to make arrangements for the care of her daughter.
23. KA states at paragraphs 236 to 240;

"236. We wish to emphasise, however, that what emerges very strongly from the Safe to Return? report is that it is not sufficient simply to consider the issue of internal relocation by reference to whether there are available and adequate centres/refuges. Focus has to be not only on the provision but the general position women who make use of such centres will find themselves in the longer term.

237. One of the main conclusions of the report is that there is a lack of after-care and rehabilitation and the absence of any re-housing for women made homeless following violence. Its authors emphasise that this fact plays a major role in limiting the decisions and choices such women then go on to make (see para 11). But the report also informs us that although in several centres/refuges, women are expected to leave after a relatively short time, those who run them do sometimes allow women to stay longer and sometimes even allow them back. So whilst we think the Safe to Return? report draws helpful attention to the need to look at the longer-term situation such women face, we do not find that the evidence contained in this report or the other sources helps us very much in forming a clear picture of how women victims of domestic violence who have made use of women's centres and refuges then resolve their difficulties in terms of finding places to live and work. The Safe to Return? report argues that the position is that in general such women end up being forced to return to their abuser husbands/families or face serious exploitation. But there is very little empirical evidence cited in support of these broad generalisations and, given the numbers of women said to use these services, we would have expected, if the general position was that these centres/shelters routinely failed to end the cycle of oppression the women who turn to them face, that would have been evident in the form of more reported cases in the press or in the Pakistan Human Rights Commission report or in available cases studies. Nevertheless, the uncertain state of the evidence makes it imperative in our view that decision-makers pay particular regard to how they think the individual applicant/appellant will be able to manage getting on with their lives after they have left the centres/refuges.

238. We need to consider further to what extent other factors such as class, age, culture, tribe, religion etc can further modify the position of women victims of domestic violence.

239. It is fairly clear that women who have their own financial means or access to financial help from family members or friends or who are well-educated or professional women are likely to be able to secure residential accommodation. We accept the observation made by the Safe to Return? authors that possessing a class status higher up the social ladder does not mean that such women do not still face discrimination and a degree of stigmatisation. However, even the authors themselves accept that if women have financial means they can in general survive (see 6.15) and the evidence is lacking to indicate that such women are in general unable to cope with such difficulties; although clearly some do not cope and some may even find they have lost more than poorer women (7.5.1) .

240. On the other hand, concerning age, it would appear that most centres/refuges do not adequately cater for the needs of young girls on their own (Safe to Return?, 6.10) and young adult women are likely to find it more difficult to live alone than others (we note that is also the view taken by the Canadian IRB in December 2007)."

24. In the light of paragraph 265 and 266 of KA I find that there is only a remote possibility that if the appellant returns to Pakistan and relocates to an area outside that of her former family home her family would be able to track her down. Whilst her father is relatively well off there is no sufficiently clear indication that he would be able to gain the help of the authorities in a countrywide search for the appellant.
25. The OGN report of January 2013 shows and I find that there are centres in Pakistan catering for abused women and that although some of them are full beyond capacity and that their total number is not great compared to the size of the population there is a reasonable prospect that the appellant would be able to access a place for herself and her daughter. However, there are few which offer longer-term refuge and she is not likely to be able to remain in a centre indefinitely. Whilst staying in such a centre her movements would be restricted and there could be pressure to return to her family. In paragraph 3.10.11 the respondent sets out three criteria which need to be satisfied if an individual is to qualify for asylum in this country. I have found that the appellant meets the first two of these and I now find that she meets the third as well. While she may be able to access relatively short to medium-term accommodation in a centre she would be unlikely to obtain state support and would have a justifiable reluctance to seek it. There is a real risk that the authorities would consider that she had committed adultery or fornication. If she was prosecuted there would be a greater risk, amounting to a real risk, that news of her presence in the country would get back to her family. Furthermore, in relation to the third criteria, she cannot access financial or other support from her family or friends.

26. In the light of what is said in paragraph 3.12.1 in relation to women who fear becoming the victims of an honour crime I find that the appellant's position as a woman who fears her family is very similar to that of a woman who fears violence at the hands of her husband. Paragraph 3.13 also indicates the risk she faces, independently of any risk from her family, as a woman who either self-evidently or on little more than cursory investigation of her circumstances has either committed adultery or been guilty of the offence of fornication. It would take little more than the intervention of an officious or malicious individual to provoke investigation and a real risk of prosecution.
27. I have studied the COI report in particular between pages 55 and 62. This reinforces my conclusions reached in the light of the OGN. The Refworld report at pages 69 and 70 of the appellant's bundle supports similar conclusions whilst emphasising the societal discrimination and difficulties which a woman, particularly of the appellant's age, is likely to experience living alone in Pakistan without a male protector or family. She will be vulnerable, the more so as she will be living with a young child.
28. Unlike the appellant in KA this appellant will have no family support of any kind. On the contrary her well founded fears of her family are likely to mean that she will always be looking over her shoulder and judging the safety of her actions against the risk of doing something which might by one means or another cause her family to discover her whereabouts.
29. Looking at all the appellant's circumstances in the round in the light of KA and the country information before me I find that the appellant has established both a real risk of persecution and that her Article 3 human rights are likely to be infringed. I find that that she does not have a viable internal relocation option.
30. Having set aside the decision of Immigration Judge Oliver I remake the decision and allow the appellant's appeal on asylum and Article 3 human rights grounds.
31. 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.

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Signed
Upper Tribunal Judge Moulden

Date 16 October 2013