



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/05350/2013
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THE IMMIGRATION ACTS

Heard at Field House
On 3 October 2013

Determination Promulgated
On 1 November 2013

Before

THE HON. MR JUSTICE COLLINS
SITTING AS A JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE KEKIC

Between

SADIA MUSHTAQ
MINAHAL FATIMA

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss N Hashmi, Counsel
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the dismissal by First-tier Tribunal Judge Brunnen of the appeal by Sadia Mushtaq and her small daughter who is her dependant against the rejection by the Secretary of State of her asylum claim.

2. The background is as follows. The principal appellant was born in December 1984. She is from Pakistan. She has a daughter who was born in this country on 22 February of this year. The appellant grew up in Sialcot. She studied to degree level and then worked for two years as a teacher of English and social studies in a government school. Her paternal uncle has a business manufacturing sports equipment and apparently he suggested that if she obtained a qualification in business management he would employ her. She thought that that was a good idea and with the aid of the uncle and her father she selected a course at the London Business College and received entry clearance as a Tier 4 (General) Student Migrant on 18 March 2012, that being valid until 28 April of this year.
3. She arrived in this country at the end of March 2012. Arrangements had been made for her to lodge with a family but it seems that those broke down after a few days and she had to find alternative accommodation. She did not seek help from her family. She found it difficult. She became distressed and met up with a man called Arif Karim. She explained her problems. He persuaded her to share his accommodation and he, as it was put, seduced her with promises of marriage and in the result she became pregnant in May 2012. Apparently she had informed the college that because of the accommodation problems she could not start her studies straight away after arrival and the college informed her that the non-attendance had been reported to the Home Office. Mr Karim assured her that he would marry her but once he appreciated she was pregnant he began to backtrack and prevaricated. He became controlling and he in the end would not marry her and left her in October 2012 and effectively she was then abandoned. She had contacted her sister in the meantime. Her sister had told her mother who in turn had told her father and brothers and the men of the family she said were extremely angry, taking the view that she had brought shame on the family and they disowned her and she said that if she were to return they would kill her and her child and also the female members of the family broke off contact with her. And so it was that in February this year she contacted the Home Office to claim asylum. She was advised apparently to wait until she had given birth and, following a screening interview and a substantive interview, her application was refused on 20 May 2013.
4. Essentially her application was based upon the contention that as a member of a social group, namely single parents in Pakistan, she would be liable to persecution and two matters in particular were relied on. First and foremost, she would suffer possible death and certainly ostracism by her family and so she would not be able to return in safety, and, secondly, she would land up as a single parent. The Pakistan Criminal Code indicated that fornication was a criminal offence and since a child had been conceived outside marriage she was guilty of fornication and so was liable to the penalty in that regard.
5. Those contentions were, as we say, not accepted by the Secretary of State who in addition took the view that if there was any risk from her parents she would be able to relocate. She was an intelligent person from what could be described as the middle class and there were agencies available who could provide assistance for such as her, namely a single parent without a husband or a man to look after her. Clearly

she would be in a difficult position. There is no question about that but that difficulty would not be so serious as to amount to persecution or to contravene the need for protection under the European Convention on Human Rights.

6. She called as a witness before the First-tier Tribunal Judge a gentleman called Mohammed Khan. He said that he knew the appellant's family because her family and his family lived in the same village before they had both moved to Sialcot and he met the appellant in this country in July 2012. He said that he had met the appellant's brother who told him that the family would wash out the appellant's sin by killing her when she returned to Pakistan and he said that the threat to the appellant was in his view genuine since her father was a devout Muslim and very angry about what she had done.
7. The judge went on to say this and we quote paragraph 20 of his determination:

"There is, however, reason to doubt Mr Khan's evidence. He has said the Appellant's father and brother were farmers yet the Appellant said in her interview that her father was banker and one of her brothers was a lawyer, although the other brother was a farmer. This must call into question how well Mr Khan really knows the family."

8. There was present an interpreter. Apparently Mr Khan needed an interpreter for his evidence although perhaps it was not so necessary for the appellant herself. The interpreter was not entirely satisfactory. Miss Hashmi who represented her below and has represented her on this appeal herself was a speaker of the relevant language and was able to understand where the interpreter was getting things wrong and indeed she made a number of complaints or interjections to correct matters that had not been properly interpreted. However it is important to note what the judge says in paragraph 11 about this and again we quote:

"I must also record that the interpreter provided by the Tribunal for this appeal was substandard. Concern was expressed by Miss Hashmi but she did not ask for the hearing to be abandoned, no doubt having in mind the Appellant's financial situation. It was necessary to take care and to go over some questions more than once to ensure that the Appellant's evidence had been correctly recorded. Miss Hashmi did not make any further reference to this aspect of the matter in her submissions."

Although that refers to the appellant's evidence rather than Mr Khan's and that may be somewhat mistaken, nonetheless the point is an obvious one, namely that Miss Hashmi could but did not find it necessary to make any representations as to the clear error Mr Khan was making about the occupation of the father and it should have been obvious that that was a matter which was capable of being of some importance because there was doubt raised as to the veracity of the appellant's account that she would be killed if she returned to Pakistan and to her family and effectively would be abandoned by her family.

9. The judge did take the view that, albeit he accepted that the father and brothers would be very angry and might even go so far as to disown her, nonetheless he did not accept the threats to kill. He said he was not impressed by Mr Khan's evidence, he did not accept his claim to be acquainted with the appellant's family or his claim that the brother had told him that they would kill her and he went on to say that the fact that the appellant called this evidence damaged her credibility on the issue and he did not accept threats had been made. That finding is criticised by Miss Hashmi but in our view it was a finding that the judge was entitled to reach on the material before him. It must have been clear that if Mr Khan's evidence was rejected because he was not seen to be telling the truth about a relevant matter it meant that the appellant herself must have known that Mr Khan was not in a position to give the assistance that he was appearing to give and so it did damage her credibility and in our view entitled overall the judge to reject her evidence as to the threats. Furthermore, the judge was entitled as he did to rely upon the objective material which is available in relation to honour killings and which is to be found in the decision of this Tribunal in **KA [2010] UKUT 216** and the fact that the appellant did not come from a tribal area or a rural area but from a middle class family, her father being a banker and one of her brothers a lawyer, meant that the chances that they were such as would indulge in honour killings was singularly improbable. Overall, in our view, the judge was as we say entitled to conclude as he did on that issue.
10. The other matter relied on was the failure of the judge to deal with, or even to refer directly to, the fact that the Pakistan Criminal Code made fornication a criminal offence and the appellant herself was, *prima facie*, guilty of that offence and therefore would suffer, or could suffer as a result. What has to be established of course is that there was a real risk of that happening and, although the threshold is not a high one, nonetheless it is necessary to establish that the risk is a reality. The fact that that is on the statute book as a criminal offence does not mean that it will necessarily be implemented and there is equally no reason to believe that the appellant, even if she were unable to receive the protection of her family and certainly that has not been established, would be known to be someone who had a child as a result of fornication and would be pursued criminally on that basis. The risk in our view was such that the judge would have been entitled to have regarded it not as a real risk had he dealt with the matter as he clearly should have done. However we are in the position of deciding that for ourselves.
11. There is no further evidence that can be produced or relied on and so there is no question of returning the matter for a further decision to be reached on fact. All that is relied on is the objective material and essentially that provides no more than that this is an offence within the Criminal Code. There is no evidence produced that goes to the likelihood or the risk of this being used against this appellant were she to be returned to Pakistan.
12. The other matter that was dealt with was the question of the possibility of relocation to another city in Pakistan. Both the Secretary of State and the judge on appeal took the view that relocation was a real possibility and in those circumstances that there were organisations which were available to assist. There is no specific ground of

appeal relating to that and it is plain in our view that the judge was entitled to decide that relocation was an answer if, in reality, the appellant were rejected by her family were she to be returned to Pakistan. In those circumstances, although we recognise that the appellant has got herself in the situation which is most unfortunate and she will suffer undoubtedly as a result of the actions of Mr Arif Khan, nonetheless she does not qualify as a refugee or a person in need of humanitarian protection and accordingly we must dismiss this appeal.

Signed

Dated: 2013

Mr Justice Collins
Sitting as a Judge of the Upper Tribunal