



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/03280/2014

THE IMMIGRATION ACTS

Heard at Field House, London
On 24 September 2014

Determination Promulgated
On 30 October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SK

(ANONYMITY ORDER CONTINUED)

Respondent

Representation:

For the Appellant: Ms A Everett, Home Office Presenting Officer

For the Respondent: Ms A Mohsin, instructed by Marks & Marks Solicitors

DETERMINATION AND REASONS

1. Whilst this is an appeal by the Secretary of State for the Home Department, for convenience I will refer to the parties in the determination as they appeared before the First-tier Tribunal
2. The appellant, a national of Pakistan, appealed to the First-tier Tribunal against a decision made by the Secretary of State to refuse her application for asylum and to remove her from the UK. Judge of the First-tier Tribunal Beach allowed the appeal and the Secretary of State now appeals with leave to this Tribunal.

3. The appellant's three sons (born in 2000, 2002 and 2006) are her dependants for the purposes of this appeal. The appellant and her children are all nationals of Pakistan. The appellant claims that she ran a construction business and beauty salons in Pakistan. She claims that after her third child was born her in-laws said that he was not her husband's son and her brother-in-law assaulted her twice and she was threatened by her in-laws on a number of occasions. She claims that she was threatened and told that she had to choose between her property and her children. The appellant came to the UK in 2010 and claimed asylum on 5 August 2013.
4. The Judge found the appellant's claim to be credible and these findings are not challenged by the Secretary of State. The Judge summarised the factual findings at paragraph 53 as follows;

"I find therefore that the Appellant's in laws were unhappy with her independent lifestyle, were unhappy at the breakdown of the marriage and believed that she had brought dishonour on the family as a result of her meetings with men as part of her work. I further find that the Appellant's in laws wished to obtain the property owned by the Appellant which the Appellant, as is her right, refuses to hand over. I further find that the Appellant has suffered threats and attacks by her brothers in law and that it is likely such threats would continue if the Appellant returned to Pakistan not only because she still owns the property but because of the perceived dishonour she has brought to the family."

5. The Judge considered the country guidance case of KA and Others (domestic violence - risk on return) Pakistan CG [2010] UKUT 216 (IAC) and decided that there would not be adequate protection for the appellant in Pakistan and it would not be reasonable to expect her to relocate. In so finding the Judge noted that whilst the appellant had reported the threats from her brothers-in-law to the police, they did not provide her with any protection and told her that it was a family problem and they could not therefore assist. The Judge concluded at paragraph 54 that the appellant's experience with the police was *"in line with the background evidence which strongly suggests that women find it very hard to seek protection or redress from the police or the judicial system in Pakistan. I find that there is a real risk that the Appellant would not be adequately protected if she returned to Pakistan."*

Error of law

6. The issue in dispute in this appeal is whether the Judge properly applied the country guidance in assessing whether the appellant could relocate within Pakistan. The grounds of appeal contend that the Judge erred in failing to apply the guidance set out in head note vi of KA which states;

"vi. The guidance given in SN and HM (Divorced women - risk on return) Pakistan CG [2004] UKIAT 00283 and FS (Domestic violence - SN and HM - OGN) Pakistan CG [2006] UKIAT 00023 remains valid. The network of women's shelters (comprising government-run shelters (Darul Amans) and private and Islamic women's crisis centres) in general affords effective protection for women victims of

domestic violence, although there are significant shortcomings in the level of services and treatment of inmates in some such centres. Women with boys over 5 face separation from their sons."

7. In SN & HM (Divorced women - risk on return) Pakistan CG [2004] UKIAT 00283, which was approved in KA, the Tribunal set out the approach to be taken by Judge's in considering cases involving domestic violence in Pakistan at paragraph 48;

"48. The same [April 2004] CIPU Country Report accepts that internal flight options are limited for women, but it does not state that there are no internal flight possibilities and each case will depend on its own particular factual matrix. We find that some support is available in the cities, and we also consider the geographical scale of Pakistan (covering an area of about 307,374 square miles, with a population of 140,470,000); the question of internal flight will require careful consideration in each case. The general questions which Adjudicators should ask themselves in cases of this kind are as follows -

(a) Has the claimant shown a real risk or reasonable likelihood of continuing hostility from her husband (or former husband) or his family members, such as to raise a real risk of serious harm in her former home area?

(b) If yes, has she shown that she would have no effective protection in her home area against such a risk, including protection available from the Pakistani state, from her own family members, or from a current partner or his family?

(c) If yes, would such a risk and lack of protection extend to any other part of Pakistan to which she could reasonably be expected to go ...having regard to the available state support, shelters, crisis centres, and family members or friends in other parts of Pakistan?"

8. In this case the Judge answered the first question in the affirmative. The Judge also answered the second question in the affirmative based on the appellant's experience of the police response to her reporting the threats made by her brothers in law. I am satisfied that such a finding was open to the Judge based on the appellant's evidence and the background evidence set out in KA and the other country guidance cases.
9. The Judge then considered the third question, that of internal relocation [55]. The Judge said that the appellant had relocated in the past to the extent that she lived with her sister in accommodation arranged by her father in Lahore and returned to her father's house in Shagragar but that her in laws tracked her down to each place and attacked her at her sister's accommodation and threatened her in her car when she was at her father's house. The Judge did not find credible the appellant's evidence that her father would not continue to support her if she returned to Pakistan but noted that this support amounted to financial support for accommodation rather than support within the family home. The Judge found that this might afford the appellant accommodation paid for by her father but said that this is not the only issue as *'there is societal prejudice towards single women in Pakistan and I find that it would not be reasonable to expect the appellant to relocate to another area of Pakistan. She has already faced problems both in Lahore*

and Shagragar and I find that of she returned to these areas she runs a real risk of being targeted by her in laws. If she relocated elsewhere in Pakistan she would, in effect, be alone, which would be likely to cause considerable distress and difficulties given the societal attitude to divorced or single women in Pakistan.'

10. Ms Everett submitted that the Judge did not give adequate reasons for her findings in relation to internal relocation and submitted that societal prejudice is not enough and that the Judge had failed to consider the fact that the appellant's father had previously paid for her accommodation.
11. Ms Mohsin submitted that it is clear from reading the determination as a whole that the Judge had in mind the property dispute and the threats to the appellant's children. She said that the Judge must also have considered that the appellant would be returning with her children. She also submitted that the Judge cited the 2013 COI Report which was issued subsequent to KA which quotes the Human Rights Commission of Pakistan as saying that 'it is next to impossible for a single woman in Pakistan die to prejudices against women and economic dependants' 55]. However Ms Everett submitted that in order to depart from KA the Judge should have provided a full extract, she submitted that this is incomplete and it is not clear where in the COI Report it is from.
12. I have looked at the Pakistan COI Report of 9 August 2013 and I note that the Judge's quote was inaccurate. The full relevant extract is as follows;

"Single women

23.96 The Immigration and Refugee Board of Canada (IRB) noted in a response by its Research Directorate, dated 14 January 2013, that, according to a representative from the Human Rights Commission of Pakistan (HRCP) '... it is "next to impossible" for a single woman to live alone in Pakistan due to prejudices against women and economic dependence.' [12u] (5. Shelters)

23.97 In a response dated 17 November 2010, the IRB noted that:

'For women to live alone and unmarried in Pakistan, it will depend on which province and in what context they are living, reported the Metropolitan State College of Denver Assistant Professor... The Assistant Professor explained that, socio-economically, "Pakistan has [a] very sharp rural and urban divide".. 'Rural is collectivist, community/village based, agrarian, traditional, more illiterate and poor. Women are not recognized as an individual member of the community, they are members of their male-dominated family. Woman's life in the village context is a matter of concern for every man of the neighborhood community. There is no concept of an "unattached" woman. She has to live with her family. What do widows, divorced or spinsters do? They live with their parental or in-laws family. Older women with grown up children normally depend on their sons or daughters. There are always exceptions to their situations in the rural context but generally it is not socially safe and acceptable for [single] women to live in the rural context.

'Urban is semi-collectivist and individualistic, more literate, with better infrastructure and transportation facilities and plenty of job opportunities i.e. skilled or unskilled. Urban is different but still there are difficulties for single women. Here, class is the main

determinant of woman's choices for her life style. In big cities educated women with jobs or some property income would not have much difficulty to live alone...

'The Law Professor also said that "[i]t all depends on who you are, what resources you have, which part of the country you come from, [and] what your own educational and economic, professional status is"..' [12r]

23.98 The IRB added, on the degree of independence experienced by women living in Pakistan, that:

'Both the Assistant Professor and the Law Professor said that the ability of women to act independently differs depending on their level of education ... For example, the Assistant Professor said that "[e]ducated urban, upper/middle class working women or housewives do not find it difficult to rent an apartment or to open a bank account or travel domestically or internationally. Women in the rural areas normally do not rent a house or any other place. Due to lack of education, they are normally accompanied by a male member to open an account or to do other things in public sphere." ...

'The Law Professor also indicated that, although there are no laws preventing a woman to open her own bank account, "it depends [on] who that woman is," whether she's literate, has her own identification, and can travel alone... As the Professor explained, This is more to do with access rather than the law or society. If a professional woman, earning good money went to rent an apartment, no one would bat an eyelid. [B]ut that is because her sense of autonomy and authority would make her able to do so...' [12r]

23.99 The same source added on the treatment of single women:

'The Assistant Professor reported that a woman living alone in a rural area is an "exceptional situation" that "is not liked by her family or community"... However, the Assistant Professor allowed that the woman's age should be taken into consideration... If she is an older woman, in her 70s or 80s, it would not be a big problem in both contexts, rural and urban or in any class. A young or a middle age woman finds it hard to live alone in all of these contexts. All kind [of] gossips surround her and she is watched by everyone for every move she makes...

'The Law Professor stated that the absence of a male relative may make a woman "vulnerable" and added that "the worsening law and order situation" has made Pakistan "a generally unsafe place to be"... Younger women risk attracting "unwanted attention from men"; older women may find themselves taken advantage of by their helpers... The Assistant Professor also said that a woman "[l]iving alone in majority of the contexts such as rural (which is about 70% of Pakistan) and lower/middle class urban" would put herself at "risk for her safety and security"... The Law Professor likewise said that any attempt to break away from her family "might pose a danger" to the safety of even "a resourceful woman"...' [12r]

23.100 The IRB put into context the regional differences with regards to single women, which stated:

'In a follow-up to initial correspondence with the Research Directorate, the Assistant Professor explained that of Pakistan's four provinces-Sindh, Punjab, Balochistan and Khayber Pakhtunkhah (KP) (formerly the North-West Frontier Province [NWFP]) - the urban centres in Punjab and Sindh are "more educated and liberal" while cities in Balochistan and KP have a "very conservative culture. It would be easier for an educated single woman to live alone in Karachi or Lahore but not in Peshawar or Quetta"... The Assistant Professor added that [s]ocial and physical mobility of single women in Pakistan is not an easy thing. An educated woman working in multinational [organisation] may move easily from Karachi to Lahore or Islamabad (capital city) [but] not to the rural areas or to

the smaller cities. If she is hiding from her family or her husband, it would be much difficult for her do that...

'Similarly, the Law Professor said that "maybe" an "educated, professional woman," with "resources," could relocate and live alone in a city... But, the Law Professor cautioned, if she is young and does not have a male relative, it would be "difficult" ...' [12r]

13. Whilst some of this evidence does post-date KA I am satisfied that it is consistent with the evidence before the Tribunal in KA. Having considered all of the evidence the Tribunal in KA concluded;

"269. The appellant now says in her most recent witness statement and in evidence to us that her father no longer has property or assets and faces expensive medical treatment and would not be able to assist as before, something she repeated before us. We consider this inconsistent with her earlier evidence that her father had sold only some of his property and gold to help her leave the country; and in our judgment she has not adequately explained how it has come about that she can say he no longer has any other property or any gold. In any event, it remains, even on her own latest account, that he has a pension following retirement from employment in the professional sector and she has not suggested that the family's standard of living has declined. We also know that the appellant has three sets of relatives, none of whom are said to be poor or to have expressly turned their back on her. Given the lengths to which her father and mother went to before to assist her we do not consider that they would leave her to relocate elsewhere in Pakistan without any kind of family assistance, whether in the form of financial or other assistance. Even though the appellant's level of education is modest, it is still above that of many women in the larger cities and she (although she chose to give evidence before us through an interpreter) speaks English. We agree with Dr Shah that this would be an asset for some employers in the big cities. She would, of course, have two young children and so if she were to work would need help with their care during the day, but it seems clear that such help is available at a low cost.

270. The appellant says that she fears social isolation and disgrace. The expert and background evidence highlights the damage done to women's reputation by being made the subject of FIRs relating to adultery allegations and being detained in police custody. We do not seek to belittle the difficulties the appellant will face in her home area as a result of her husband's past vendetta against her and his likely continued pursuit of her through the courts, but we do not consider that in *other parts of Pakistan* her history would become known or that she would need to make it known to those she associated with. It is clear from the background evidence that in the larger cities single women with children can get by and there is not the same level of social scrutiny that occurs in the smaller towns and rural areas."

14. The appellant in this case has the financial support of her father. She is not someone who would have to recourse to a shelter and could, on the Judge's findings, obtain accommodation elsewhere in Pakistan. The only reason given by the Judge for the decision that it would not be reasonable to relocate was that she would be alone and which would cause her considerable distress and difficulties 'given the societal attitude to divorced or single women in Pakistan' [55]. She did not highlight any issues particular to this case which Ms Mohsin submitted made this case different. The Judge, at the end, only relied on societal attitudes. The decision in KA is clear on this issue

and I am satisfied that the Judge erred in not properly considering the guidance in KA and in not giving reasons for not following that decision. I am satisfied that this is a material error and I therefore set aside the decision of the First-tier Tribunal. There has been no challenge to the credibility findings and I preserve all of the findings of the First-tier Tribunal Judge in relation to credibility and sufficiency of protection.

Remaking the decision

Asylum

15. I go on to remake the decision in relation to the internal flight option. That is the third question posed in SN and HM which is whether the risk and lack of protection in the appellant's home area extends to any other part of Pakistan to which she could reasonably be expected to go having regard to the available state support, shelters, crisis centres, and family members or friends in other parts of Pakistan.
16. Ms Everett submitted that this appellant worked successfully in Pakistan in the past. She submitted that her father would support her financially so the appellant could work and would have her father's financial support. She submitted that there is no finding that the appellant could be traced elsewhere in Pakistan or that her in-laws continue to have an interest in the children.
17. Ms Mohsin submitted that it is clear on the facts found that the appellant's children are relevant. She also submitted that the property dispute is also relevant in the context of the amount of property the appellant's in-laws are after. However according to the appellant's oral evidence [17] the property has been passed to her in-laws although they do not have the original documents. In her witness statement she said that two of her properties had been transferred to her brothers-in-law (paragraph 12).
18. Ms Mohsin submitted that in KA there was no issue of custody of the children. However the appellant's oral evidence in this case was that in 2009 her in-laws told her that she would have to choose between her property and her children. The Judge found that the appellant was granted custody of the children [50]. As her in-laws now have two of her properties there is no evidence that they will seek custody of the children.
19. Ms Mohsin also submitted that the appellant faces separation from her sons as set out in the head note of KA. However the position taken by the Tribunal is not as simple as it appears from the head note. The detail of this part of the decision is set out at paragraphs 241 and 242 of KA as follows;

241. Another important variable concerns women who have male children over five. From the Safe to Return? research, taken together with other materials, we are satisfied that women with boys over five may not be able to find a centre or refuge that will allow them to live together; the boys above this age are placed in orphanages or madrassahs in the area. As described by the Safe to Return? report:

"[O]n admittance the mother is informed of this policy and has to then make a choice of being with her sons or accepting a place at the shelter. If the woman chooses to enter the shelter her sons are referred to the local madrassas or orphanages. This practice has not taken into consideration the impact this has on the children who may have been a witness to the violence. Apart from the trauma of separation from their mother the children may have specific psychological needs because of their previous experiences in their homes".

242. We do not say that such arrangements are necessarily to be seen as making the mother and her son's relocation unreasonable, only that this may be a factor which has considerable significance when considering the reasonableness of internal relocation.

20. The Judge found that the appellant's father would continue to provide her with financial support for accommodation. Also, according to her statement, the appellant continues to receive around £300 per month rental income from Pakistan. She also says that she owns assets in Pakistan including two properties with a combined value of more than £140,000. The appellant would not therefore need to have recourse to a shelter and there would therefore be no risk of separation from her sons in this way.
21. In her oral evidence the appellant said that in Pakistan she ran a construction business, an interior design business, dealt in property and ran beauty salons [23]. The Judge was satisfied on the evidence that the appellant had worked for a building company but found that there was insufficient evidence to show that the appellant owned the business or that she owned a beauty salon. According to her statement she regularly travelled to the UK on holiday, often more than once a year, and her children were in private education. Even on the Judge's findings the appellant was able to work and, if she relocates, she could do so again. She has means and could support herself and her children. The appellant has the skills and experience to gain employment and support herself and her children.
22. There is no evidence that the appellant's in-laws have such influence and reach that they could trace her wherever she goes in Pakistan. On the evidence before me the appellant has not shown that it would be unduly harsh to expect her to relocate in Pakistan where she would not face a risk of persecution.

Article 8

23. The appellant claims to be in a relationship with a man in the UK. There is no statement from her claimed partner and he did not give evidence in the First-tier Tribunal. I have before me bank statements, a tenancy agreement and some utility bills. However in light of the limited evidence before me I am not satisfied that the appellant is married to or has been living with a British citizen, a person settled in the UK or a refugee for a period of two years. She cannot therefore meet the requirements of Gen 1.1 of Appendix FM of the Immigration Rules (HC395 as amended).
24. The appellant does not meet the requirements of Appendix FM for leave to remain as a parent as her children are not British citizens, settled in the UK or resident in the UK

for 7 years. The appellant cannot meet the requirements of the Immigration Rules in relation to private life as she has been in the UK only since 2010 and has not shown that there would be very significant obstacles to her integration into Pakistan.

25. The Immigration Act 2014 amended the Nationality, Immigration and Asylum Act 2002 by providing for factors to be considered by a Tribunal in assessing the public interest in deciding whether an interference with a person's right to respect to private and family life is justified under Article 8 (2) of the ECHR.
26. Section 117B of the Nationality, Immigration and Asylum Act 2002 as inserted by the Immigration Act 2014 sets out public interest considerations as follows;

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –
- (a) are less of a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –
- (a) are not a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (4) Little weight should be given to –
- (a) a private life, or
 - (b) a relationship formed with a qualifying partner,
- that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –
- (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
 - (b) it would not be reasonable to expect the child to leave the United Kingdom.

27. There is no evidence before me that the appellant can speak English, that she is financially independent, or that her claimed relationship was not formed when she was in the UK unlawfully or at a time when her immigration status was precarious. The appellant's children are not 'qualifying' children as they are not British citizens and they have not resided in the UK for 7 years.
28. I take account of the best interests of the children. There is limited evidence before me as to the children. I can only conclude on the basis of the evidence before me that it must be in their best interests to be with their mother.
29. I have considered the decision in Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 640 (IAC) where the Tribunal examined the case law and concluded [24]; "after applying the requirements of the rules, only if there may arguably be good grounds for

granting leave to remain outside them is it necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under them”.

30. In light of my findings above I am satisfied that there is nothing in this case to show that there may be arguably good grounds for granting leave to remain outside the Immigration Rules and it is not therefore necessary for me to go on to consider whether there are compelling circumstances not sufficiently recognised under the Rules.

Conclusion:

The decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

I re-make the decision in the appeal by dismissing it

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed

Date: 29 October 2014

A Grimes
Deputy Judge of the Upper Tribunal