



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/04253/2014
AA/04241/2014
AA/04244/2014
AA/04246/2014

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly
On 20 February 2015

Decision Promulgated
On 2 March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

S A
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S A
V

(ANONYMITY DIRECTION MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Dr Mynott instructed by IAS solicitors

For the Respondent: Mr G Harrison Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. An anonymity direction was made previously in respect of this Appellant.

Having considered all the circumstances and evidence I do not consider it necessary to make any change in the anonymity direction.

2. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge Burns promulgated after a hearing on 28 July 2014 which dismissed the Appellants appeal on all grounds.

Background

3. The Appellants are a mother and her three children. The principal Appellant was born on 2 December 1978 and the remaining Appellants were born on 23 June 2006, 12 July 2007 and 5 May 2013. They are all nationals of Pakistan.
4. On 4 December 2012 the Appellant applied for a family visit visa which was granted after an appeal and a valid visa was issued for the period 10 August 2013 to 10 February 2014. On 24 October 2013 the Appellant came to the United Kingdom and returned to Pakistan on 28 November 2013.
5. On 9 January 2014 the Appellant together with her 3 children arrived in the United Kingdom and claimed asylum on her own behalf and that of her children on the basis that her and her children were the victims of domestic violence at the hands of her husband and they were all at risk on return.
6. On 9 June 2014 the Secretary of State refused the Appellants application. The refusal letter gave a number of reasons:
 - a. The claim that the Appellants were all the victims of domestic violence at the hands of Amir Mehmood her husband was accepted.
 - b. It was accepted that her husband's family supported him.
 - c. The claim that on 21 October 2013 after she had returned to her parents' home her husband had visited accompanied by two gangsters and a policeman and made threats to her was not accepted.
 - d. The Appellant's claim to have been attacked on 13 December 2013 by her husband is not corroborated by the medical report which does not identify any injuries.
 - e. It s accepted that the Appellant lodged a case of harassment and a FIR against her husband and initiated a khula to force him to divorce her although there are discrepancies in the documentary evidence in relation to the FIR.
 - f. The claim of domestic violence having been largely accepted the letter considered the Appellants risk on return by reference to KA and others (domestic violence - risk on return) Pakistan CG [2010] UKUT 216 (IAC).
 - g. The Appellant is an educated woman with a support network in Pakistan and not from a tribal area.
 - h. The telephone calls from her in laws may amount to harassment but is not persecution.
 - i. The authorities have taken action against her husband and therefore there has been no sustained and systematic failure by the authorities in protecting her and the children.

- j. The Appellants could live in Lahore with her family and there is also help and support available from women's shelters.
- k. The situation for divorced women is improving in Pakistan.
- l. The best interests of the children are to return to Pakistan with the children.

The Judge's Decision

- 7. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Burns ("the Judge") dismissed the appeal against the Respondent's decision.
- 8. The Judge summarised:
 - (a) The refusal letter in some detail at paragraphs 5-20.
 - (b) The bundle of documents before him that included witness statements and a report from a Roger Ballard. He summarised the claim based on the witness statements. At paragraphs 23-25.
 - (c) The Appellant's oral evidence at paragraphs 26-30.
 - (d) The brother's evidence.
 - (e) The submissions made by Ms Baines on behalf of the Respondent who highlighted the change in the Appellant's evidence to suggest that there had been contact after the harassment order was made although this had never been suggested in any statement; that there was an ongoing criminal case against the Appellant's husband and therefore there was sufficient state protection for the Appellant and her children; that the Appellant's father was explicitly offering to support her so she could return to her family; and she pointed out a number of issues with the expert report such as conclusions based on factual inaccuracies such as the Appellant having male guardians and his inaccurate assessment of legal issues.
 - (f) The submissions of Ms Cooke whose skeleton argument he detailed in relation to risk on return and sufficiency of protection
- 9. The Judge found that there was a discrepancy in relation to whether there had been any contact after the harassment order was made; her credibility was not enhanced by her and her brother having signed statements giving her brother's address when she no longer lived there; found that there was sufficiency of protection in that the Appellant's husband had been charged with serious criminal offences and was awaiting trial and the civil courts were seized of the divorce; he attached little weight to the report of Mr Ballard as he considered Mr Ballard's approach was that of an advocate on the Appellant's behalf rather than an expert and found his legal observations (given that he was not a lawyer) were 'contentious and inflated.'; he found no reason to believe that the husband's family had influence and that the Appellant could live as an independent woman as she had before; her and her children could return together.
- 10. Grounds of appeal were lodged arguing that the credibility findings were flawed and the Judge had failed to give proper weight to the expert's evidence and that of the background material referred to in the skeleton argument. On 5 September 2014 First-tier Tribunal Judge Chambers gave permission to appeal.

11. As a preliminary issue Dr Mynott sought to amend the grounds of appeal to include the failure to assess the best interests of the children. Mr Harrison did not object. I agreed to allow the amendment.
12. At the hearing I heard submissions from Dr Mynott on behalf of the Appellant that in essence:
 - (a) He relied on the grounds of appeal.
 - (b) In relation to the negative credibility findings he suggested that apart from the issue in relation to whether there was harassment before or after the court action the issue over the change of address took the matter no further.
 - (c) The heart of this case related to risk on return. The Judge had failed to consider all of the background material referred to in the skeleton arguments.
 - (d) The Judge failed to take into account the risk of honour killing was no longer referred to in the Respondent's own guidance as being limited to tribal areas.
 - (e) The Judge did not sufficiently take into account the terrible history of abuse in this case
 - (f) The Judge failed to take into account the evidence from her lawyer at Annex j suggesting that there had been an incident after the hearing of the court case when he attacked the Appellant and tried to snatch her daughter.
 - (g) While the divorce was ongoing the background material suggested that the legal system would fail to protect her.
 - (h) The suggestion that the Appellant could support herself as she had before failed to take into account that the Appellant had supported herself before she married and had children.
 - (i) The Judge was not entitled to reject Dr Ballard's report who from his previous publications appeared to be an expert.
 - (j) The Judge failed to have regard to the best interests of the children: there was no consideration of the Appellant's claim that the father would abduct the children and seek custody and the legal system would favour the husband.
13. On behalf of the Respondent Mr Harrison submitted that :
 - (a) He relied on the Rule 24 response.
 - (b) The Judge would have been assisted by the submissions of Dr Mynott but this is an error of law hearing not a re argument of the case. On the basis of the evidence before him the Appellants claim was not made out.
 - (c) The Judge when considering the Guidance was entitled to conclude that these Appellants were not going to fall into the situation anticipated in the Guidance in that the principal Appellant had supportive family in her parents and extended family who had taken her back when she left her husband.
 - (d) The Judge was entitled to take into account that the Appellant was educated and resourceful and had shown that she could use the court system to seek protection and this was apparently successful.
 - (e) Demonstrating that there would be societal discrimination was not enough.

- (f) The Judge had considered the best interests of the children.
14. In reply Dr Mynott on behalf of the Appellants submitted :
- (a) There was evidence that the Appellants family were supportive but the assessment had to factor in past persecution.
 - (b) The degree of discrimination was relevant to the issue of relocation.
 - (c) He conceded that section 55 did not require the use of a strict formula but the Judge had to assess their interests in the context of international protection.

Finding on Material Error

15. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
16. This was an appeal against a refusal of asylum by the Appellant and her three children who the Respondent accepted had been the victims of domestic violence by her husband. The Respondent's case was that the Appellant had a supportive family and had resorted to the courts and both the criminal courts and the civil courts had taken action and therefore they were not at risk on return.
17. The first challenge raised in the grounds was to the credibility findings made by the Judge although Dr Mynott clearly accepted that the main issue in this case was the risk on return. I am satisfied that the very limited credibility findings made by the Judge were open to him reminding myself of what was said recently by the President of the Tribunal in Nixon (permission to appeal: grounds) [2014] UKUT 00368 (IAC).
- “Credibility assessments by first instance fact finding Tribunals will normally be challengeable only on the basis of irrationality (or, as it is sometimes inelegantly termed, perversity): Edwards – v – Bairstow [1956] AC 14.”
18. The issue of whether the Appellant's husband made contact with her after the harassment order was made by the courts was an important one as it was clearly relevant to the issue of risk on return and whether the protection offered by the state had been effective. The Judge was entitled in paragraph 40 to identify that the Appellant had been interviewed and made statements and her clear evidence had been that there was no contact after the court order but in oral evidence had suggested that it occurred after the court order. He was entitled to draw an adverse inference from this and her failure to explain the change in her account.
19. Dr Mynott also submitted that the Judge was not entitled to draw an adverse inference from both her and her brother making statements in which it was asserted that she lived with him at a time when this was not the case as the statement was amended in court. The Judge did make reference to this no doubt given that she is repeatedly described as an educated and intelligent woman and those who sign witness statements are confirming the truth of their contents. Nevertheless the Judges observation is just that: he states that her 'credibility was not enhanced'. This I consider to be a remark rather than a clear finding and not one that was determinative in any way in the outcome of the case and therefore immaterial.
20. The thrust of Dr Mynotts argument was that the Judge failed to take into account both the experts report and all of the background material in assessing the risk on return for the Appellants. I am satisfied that in a detailed, careful and well reasoned decision

the Judge set out the material that was before him. I am satisfied that he was obliged to take as his starting point in assessing the Appellant's claim the country guidance case of KA whose ratio he had set out at paragraphs 10-11 and he was obliged to follow the guidance unless very strong grounds supported by cogent evidence, were adduced justifying him not doing so.

21. I reject the suggestion made in the grounds that the Judge did not consider the skeleton argument or background material as these are clearly referenced in his decision at paragraph 37 when summarising Ms Cooke's arguments. I am satisfied that the Judge gave adequate reasons at paragraph 42 why he placed little weight on the report of Roger Ballard a Consultant Anthropologist as it is not necessarily the case that expert evidence is synonymous with independent and reliable evidence: in essence he found that Mr Ballard's approach appeared to be that of an advocate rather than an independent expert; that his expertise and very limited local field work did not appear directly relevant to the issues he was addressing and that although he was not a lawyer he was 'very free with his opinions with regard to legal matters' which apparently included a lengthy discourse in relation to Article 8. The Judge was entitled to take into account in assessing the reliability of the report the failure of Dr Ballard in appreciating what matters he should be addressing.
22. I am satisfied that the factual matrix against which the Judge assessed the risk on return for the four Appellants and the country guidance case entitled him to conclude that they were not at risk on return (paragraph 41). Those conclusions were that the adult Appellant was well educated and came from a supportive family whose male members in Pakistan had taken her and her children back after her marriage broke down and made clear that she could live with them; she had invoked the aid of the criminal courts in respect of her husband's behaviour and serious criminal charges had been put for which he awaited trial and the civil courts where divorce proceedings had been initiated. The Judge acknowledged the shortcomings in the system and attitudes in Pakistan at paragraph 41 and found that 'there is no absolute guarantee' but rightly observed that this was not the test. It was open to the Judge to conclude there was sufficiency of protection and that the Appellant could return with her children to her family.
23. While there may be some force in the argument that relocation was not a reasonable option given that she had three young children and her previous experience of living independently had been before she had children this was not a conclusion that was material to the outcome given that the Judge was satisfied that the Appellant and her children could return together to her supportive family.
24. Dr Mynott argued that there had been insufficient consideration of the best interests of the children. The Judge expressly referred to the children's best interests in paragraph 20 and 45 of the decision and their best interests must be read in the context of all of the findings in the case. I am satisfied that the children's best interests were taken into account given his findings that the Appellants were not British citizens and there was limited evidence of roots established to the United Kingdom that would be affected by their removal, they had no right to future education and health care in this country, their mother was well educated and came from a supportive family, that their mother's complaint about the father's behaviour had led to him being the subject of criminal charges and therefore the family were not

at risk on return. In those circumstances their best interests would be served by living with their mother. It was difficult to see how the children's best interests would be adversely affected by their removal together with the Appellant to Pakistan. Even if the Tribunal had considered the best interests of the children in more detail there was no basis upon which it could have concluded that those interests would be so much better served by allowing the Appellant to remain in the UK that they outweighed all other considerations.

25. I am therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

26. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

27. **The appeals are dismissed.**

Signed

Date 1.3.2015

Deputy Upper Tribunal Judge Birrell