



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/05476/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28 May 2015**

**Determination Promulgated
On 18 June 2015**

Before

DEPUTY JUDGE DRABU CBE

Between

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ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bandegani of Counsel instructed by Legal Rights Partnership.

For the Respondent: Mr Esen Tufan, Senior Presenting Officer

DECISION AND REASONS

1. The appellant, in this appeal to the Upper Tribunal, contends that Judge Cassel, a Judge of the First Tier Tribunal, made a material error of law by not considering the appellant's claim for asylum. It is suggested that the Judge was under a misapprehension that the appellant had withdrawn her asylum claim and was only pursuing claim under Articles 2 and 3 of the ECHR.

2. Judge Cassel allowed the appeal finding that the appellant's rights under Article 3 would be at real risk as she "would commit suicide if she were returned to Pakistan and that there is a real risk of harm to her child to whom there is a further risk of homelessness and destitution." It is worthy of note that the respondent has not challenged the decision of Judge Cassel to allow the appeal.
3. In granting permission to appeal Judge Brunnen, a Judge of the First Tier Tribunal said *inter alia* "It is submitted that in view of the Judge's finding in relation to Article 3 he ought also to have found that the appellant was a refugee. These grounds are arguable"
4. Mr Bandegani argued before me that he had not withdrawn the appellant's claim to asylum, as Judge Cassel had appeared to think. He drew my attention to his written grounds of appeal upon which he had secured permission to appeal wherein he had explained that the observation of Judge Cassel in paragraph 4 of the determination, where the Judge said that Counsel for the appellant confirmed that a breach of Article 3 of the ECHR was the only matter to be determined, had to be looked at in its proper context. Mr Bandegani said that during the hearing before Judge Cassel he had been asked whether and if so which, human rights other than Article 3 ECHR were engaged, namely Article 8. In answer to this query the counsel had confirmed that only Article 3 claim was being pursued and not any claim under Article 8 of the ECHR. He had at no time withdrawn "the refugee convention ground of appeal as can be seen from paragraph 2 of the determination." The counsel asked me to note that Judge Cassel had recorded in his determination that the counsel for the appellant had relied on his skeleton argument. That being the case paragraph 2 of that skeleton argument clearly stated that the real risk of serious harm or persecution will be for a Convention reason. The Counsel also asked me to note that in her decision letter refusing the appellant's application, the respondent had conceded that the appellant is a member of a particular social group.
5. Mr Esen for the respondent argued that irrespective of the misapprehension of the First Tier Judge in respect of the asylum claim, such claim could not succeed in any event as according to the decision in the case of AA (paragraphs 27 and 28) Country Guidance Case, the appellant would not be at real risk of persecution through out the country. Her appeal had been allowed on the grounds that the Judge had concluded that she faced real risk from her family in Lahore. If the Judge had considered her claim for asylum, it would have been dismissed based on relevant country guidance case. Mr Esen asked that if I found a material error of law in the determination of Judge Cassel, I could make the decision on asylum claim myself but he would not be opposed to the matter being remitted to the First Tier for determination of asylum claim.
6. Mr Bandegani asked that the claim for asylum should be remitted to the First Tier Tribunal for determination in the light of all the relevant evidence.

7. Having paid close attention to the determination of Judge Cassel, I find that he misunderstood Mr Bandegani in believing that Mr Bandegani had withdrawn the asylum claim. It is clear to me that Mr Bandegani had simply clarified his position on human rights claim. It is worthy of note that Mr Bandegani is not recorded as having said that the appeal was only (underline is mine) on the basis of Article 2 and 3. In the circumstances and given that the claim for asylum had not been withdrawn, Judge Cassel made a material error of law in not determining it. Although I am tempted to determine that claim myself, I have concluded that it is best to remit this aspect of the appeal to a Judge of the First Tier Tribunal for a decision on the outstanding claim of asylum. I should make it clear that the decision of Judge Cassel on Article 3 stands irrespective of the result in the asylum claim.
8. This appeal is allowed to the limited extent of being remitted to the First Tier Tribunal for making a decision on the appellant's outstanding claim for asylum.

K Drabu CBE
Date: 14 June 2015
Deputy Judge of the Upper Tribunal