



**Upper Tribunal
(Immigration and Asylum Chamber)**
AA/10488/2014

Appeal Number:

THE IMMIGRATION ACTS

Heard at North Shields

**Determination
Promulgated**

**On 3 September 2015
Prepared on 4 September 2015**

On 22 September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

W. U. N.
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Vaughan, Solicitor of NBS Solicitors
For the Respondent: Mr Kingham, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant entered the United Kingdom as a Tier 4 (General) Student on 8 June 2011 with leave to remain until 4 May 2013. She claimed asylum on 4 October 2012. That application was refused on 18 November 2014, and since she did not appear to meet the requirements of the Immigration Rules as a student her leave was curtailed so that she had none, and in consequence a removal decision was made in relation to her by reference to s47 of the 2006 Act.

2. The Appellant appealed to the Tribunal against the removal decision and her appeal was heard on 16 January 2015, and it was dismissed on human rights grounds, but allowed on both asylum and humanitarian protection grounds by decision of Judge Robson, promulgated on 10 February 2015.
3. The Respondent's application to the First Tier Tribunal for permission to appeal pointed out the error of law in the decision to allow the appeal on both asylum and humanitarian protection grounds, and in addition argued that since the Judge had specifically rejected the Appellant's account of why she was at risk of harm, and who she was at risk of harm from, there was in any event no proper basis upon which the appeal could have been allowed on either of those grounds.
4. That application was granted by Designated Judge Appleyard on 25 February 2015.
5. The Appellant has filed no Rule 24 Notice.
6. Thus the matter comes before me.

Error of Law?

7. It is plain, and Mr Vaughan does not seek to suggest otherwise, that the Judge made a material error of law in his decision to allow the appeal on both asylum and humanitarian protection grounds. He accepts that the issue for me is whether only one, or both, of those decisions are to be set aside and remade.
8. The Appellant's claim was that after she graduated from University in Pakistan she had married MR, but that this first marriage had failed so that she was divorced within a year. This first marriage was childless, and it was not relied upon as giving rise to any risk of harm.
9. The Appellant claimed to have entered a second marriage when she married ZH in Pakistan on 26 December 2010. She said that he was a first cousin, who was also a divorcee, with a son from his own first marriage, who lived with them after their marriage.
10. The Appellant claimed to have been supported by ZH in pursuing a professional education in the UK as an accountant, so that she obtained entry clearance as a student with the financial support and encouragement of ZH, even though he was to remain living in Pakistan.
11. Having come to the UK on 8 June 2011 the Appellant claimed that within days of arrival she had met S at a bus stop, and had commenced an extra-marital affair with him. She claimed that this resulted in her conceiving an illegitimate child with S on 27 June 2011. Thus she claimed that the father of the son born on 20 March 2012 was S, even though she accepted that she had declared the father to be ZH when registering that child's birth.

12. Upon arrival in the UK the Appellant accepted that she had lived in the household of MWJ, also one of her first cousins – she said as a lodger. MWJ is described as a nephew of her husband ZH. If MWJ is truly her first cousin, and if ZH is also truly her first cousin, one would expect MWJ to be a first cousin of ZH – although it is possible I suppose that he is both.
13. The Appellant claimed that her affair with S remained a secret from her cousin MWJ, and also from her husband and extended family. She claimed that the affair continued after the birth of the first child, and that she once again quickly fell pregnant to S, with the result that she gave birth to a daughter on 12 February 2013 who was also fathered by S. By the date of the hearing she claimed to be pregnant to S once again, and to be bearing twins.
14. The Appellant claimed that she had been able to persuade both ZH her husband, and her cousin MWJ, that ZH was the father of her son, on the basis that it was just possible she had conceived this child immediately prior to travelling to the UK. She claimed however that after her son's birth her affair with S was discovered by MWJ, who in turn informed ZH. Thus her affair was known to ZH by May 2012 with the result that ZH began to threaten to kill both the Appellant and her two children upon return to Pakistan. Despite this the Appellant accepted that she continued to live with, and to be supported by MWJ. Her explanation for MWJ's conduct being that the rest of the extended family did not know that he was doing so.
15. The Appellant accepted that she had not attended her college since 7 February 2012.
16. The Judge noted that neither S nor MWJ attended the hearing, and that neither of them had given any written evidence on her behalf. Having heard the Appellant give evidence he rejected as untrue, and as a fabrication, the following elements of her claim;
 - a) to have commenced an extra-marital affair within days of arrival in the UK,
 - b) to have pursued an extra-marital affair with S,
 - c) that S was the father of any of her children,
 - d) that her relationship with the various members of her extended family had broken down, and
 - e) that ZH had uttered any threats against her mother, herself, or her children [56-62].
17. The Respondent raised no challenge to these adverse credibility findings, and nor has the Appellant sought to do so. On the basis of these clear and well reasoned findings of fact (which were well open to the Judge on the evidence before him) the Respondent argues that there was simply no basis upon which the Judge could properly go on to find either that the Appellant had been undertaking extra-

marital affairs with any as yet unidentified man, or, that she faced any risk of harm upon return to Pakistan. That was not after all, her claim.

18. There is considerable force in that argument, and it is very far from clear to me how the Judge persuaded himself in the light of his clear findings of fact that the Appellant must have indulged in extra-marital affairs in order to conceive her children, and/or that she would be perceived upon return to Pakistan of having done so, and/or that she would be at risk of “honour killing” at the hands of unidentified individuals [67].
19. Once the Judge had rejected on the applicable lower standard of proof the core of the Appellant’s account as untrue, as he clearly did, there was simply nothing left of her claim that she faced a real risk of harm upon return. The Judge rejected the claim that any of her children were illegitimate. She had not told the truth about having an extra marital affair with S, who was not their father. Despite the birth of two children in the UK, and her obvious pregnancy by the date of hearing (apparently with twins) the Judge found that she had not fallen out with any member of her extended family in either the UK, or Pakistan. Her husband as her first cousin was plainly a member of that extended family group. She continued to live with, and to be supported by, a male member of that extended family group.
20. In the light of these findings there is simply no room for any inference in her favour that any of her children are illegitimate, or would be perceived to be illegitimate by anyone. Any such inference would be inconsistent with the finding that they were not, and that she had not fallen out with any member of her extended family, and thus perverse. There was no basis upon which the Judge could properly draw an inference that the children would be perceived by third parties to be illegitimate upon return to Pakistan. Finally, if she remained on good terms with all the members of her extended family, as he had found, then there was no basis upon which he could infer that she was at risk of an “honour killing” from one of them.
21. Mr Vaughan recognised the difficulties he faced in defending the decision to allow the appeal on asylum grounds, in the light of the adverse credibility findings. I offered him the opportunity to consider whether there was any basis upon which he could argue that they were flawed, and stood the appeal down to allow him to do so. When the appeal was called on once more I was informed that he did not seek to argue that any of the adverse credibility findings were flawed.
22. In the circumstances I set aside both the decisions on the asylum and the humanitarian protection appeals and

remake those decisions in the light of the preserved adverse credibility findings.

The decisions remade

23. Even on the applicable low standard of proof I am not satisfied that there is any basis upon which the Appellant can properly argue that either she, or any of her children, are at risk of an “honour killing” from any member of her extended family in the event of her return to Pakistan. The Judge specifically found that she remained on good terms with all of her extended family.
24. The Appellant says that she remains married to ZH, a member of her extended family, and that she is not divorced from him - those aspects of her claim were not rejected. The Judge specifically reject the claim that ZH had threatened both the Appellant, her children, and her mother. In the circumstances, since ZH is a member of her extended family, it is clear that the Judge’s finding was that she remained on good terms with him, and faced no risk of harm from him.
25. In the circumstances the Appellant failed to establish on the applicable low standard of proof that she faced any risk of harm from either ZH or any other member of her extended family.
26. It follows that that the Appellant has failed to establish on the applicable low standard of proof that either she, or her children, face any risk of murder at the hands of non state agents, on the basis that she will upon return be perceived to have borne illegitimate children to S. There is simply no basis upon which a finding could sensibly be made that such a risk existed in the light of the Judge’s adverse findings, and the finding that she remained in good terms with her husband and all of the other members of her extended family. The same must go for the claim that she faced a risk of prosecution at the hands of the state, as a perceived adulterer; there would be no-one to initiate such a prosecution, and no basis upon which to do so.
27. It is plain from the Judge’s findings that it is entirely possible that the Appellant is married to a man who has either visited her in the UK, or who has been living with her in the UK. There is no proper evidential basis for any assumption that any of her children are illegitimate in the light of the adverse findings. Having rejected the claim to have had an extra-marital affair with S, and to have rejected the claim that S was the father of the children, the Judge appears to have proceeded in the closing paragraphs of his decision on the basis that it was possible these children were the result of extra-marital affairs with one or more men whose identity she has yet to disclose. That was

not her case, and there was no proper basis upon which such an inference could be drawn.

28. In the circumstances I reject Mr Vaughan's argument that notwithstanding the Judge's adverse credibility findings there is a sound evidential basis upon which I could find that the Appellant was at risk of harm upon return to Pakistan. Accordingly I remake the decisions so as to dismiss both the asylum appeal and the humanitarian protection appeal. It is plain that it is in the best interests of these infant children to remain with their mother. She has not established that they are entitled to British citizenship, and the Respondent has no obligation to provide for them and to educate them. Both the Appellant and her children can be returned in safety as a family group to the care and support of her extended family in Pakistan.

DECISION

The Decision of the First Tier Tribunal which was promulgated on 10 February 2015 contains an error of law in the decision to allow the Appellant's appeal on asylum and humanitarian protection grounds which require that decision to be set aside and remade. There is no error of law in the decision to dismiss the Appellant's appeal on human rights grounds and that decision is confirmed.

I remake the decision so as to dismiss the appeal on all grounds.

Signed
Deputy Upper Tribunal Judge JM Holmes
Dated 4 September 2015

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed
Deputy Upper Tribunal Judge JM Holmes
Dated 4 September 2015