



IAC-FH-CK-V2

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

Appeal Number: IA/09991/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 26 October 2015
Prepared 3 November 2015**

**Decision & Reasons Promulgated
On 6 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MISS SADIA MALIK
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Graham, Counsel instructed by Visawise Immigration Services

For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Pakistan, date of birth 23 April 1969, applied on 3 November 2014 for a variation of leave to remain outside of the Immigration Rules which was refused and a further decision was made to make removal directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. The Reasons for Refusal Letter dated 24 February 2015 amply demonstrates that the basis for seeking leave to remain was essentially for the Appellant to pursue studies or employment in the United Kingdom pursuant to the education which he had undertaken here.

The appeal was dismissed by First-tier Tribunal Judge Blair (the Judge) on 1 June 2015. Permission to appeal was given by First-tier Tribunal Judge Molloy on 3 September 2015 principally because he thought documents provided late by the Appellant were not considered.

2. It is plain beyond any doubt that no part of the original application was made on the basis of any Humanitarian Protection reason, rights engaged by Articles 2 and 3 of the ECHR and/or particularly relating to the risk of persecution under the Refugee Convention and/or the risk of proscribed ill-treatment such that internal relocation was not a reasonable option and that there was no sufficiency of protection from the state to which the Appellant could have recourse.
3. In the grounds of appeal against the Secretary of State's decision the grounds substantially address the original application made and seeking to appeal with reference to Section 84 of the Nationality, Immigration and Asylum Act 2002 on the basis that:- First, the decision was not in accordance with the Immigration Rules. Secondly, it was unlawful under Section 6 of the Human Rights Act. Thirdly, it was not otherwise in accordance with the law. Fourthly, the Secretary of State had not exercised any discretion conferred by the Immigration Rules. These grounds which are dated 10 March 2005 make passing reference to a complaint that the Appellant's ex-husband had initiated court proceedings essentially asserting that the Appellant and others were involved at theft of property from the Appellant's ex-husband's home and seeking the return of those materials. It further adverted that the Appellant was concerned that if she returned her ex-husband could initiate some further proceedings, which are unspecified, against her as he is an influential person in Pakistan. The Appellant was denying any wrongdoing on her part.
4. Again those grounds do not particularise or raise any claim of a risk of persecution or honour killing or of ill-treatment by her ex-spouse and/or his family but was simply in the most general terms. Documents originally provided in support again barely make any reference to the issue and a statement that was lodged with the application which again barely touched upon such issues in any meaningful way and certainly did not suggest that the Appellant was at risk of persecution on return.
5. It is perhaps therefore unsurprising that when the matter came before the judge on 1 June 2015 when in considering the matter on the papers that were before him and in the light of representations made there was nothing meaningful to suggest that there was a Refugee Convention claim nor a risk of ill-treatment contrary to Articles 2 and 3 of the ECHR nor any need for Humanitarian Protection. Quite simply there was nothing to suggest that those matters had been addressed to the Secretary of State by way of an application even up until the time of the consideration of the appeal.
6. The judge it seems took the view that the evidence did not support the claims of risk associated with such criminal proceedings as may have been

initiated in Pakistan by the Appellant's ex-husband. Rather on the material that he thought he had before him there was no material that particularly assisted such claims.

7. It may be the documents (two documents plus a statement from the Appellant) were received in Glasgow at the Tribunal on 18 May 2015 to some extent enlarged upon her concerns by return. There was no Section 120 notice and no particularised claim under the Refugee Convention provided, either to the Secretary of State or at all. Within the bundle that was sent to the Tribunal was a divorce petition together with the grant of a decree of divorce and information concerning a request from, it is said, the Appellant's ex-husband seeking a direction from the court to the district police officer in Sialkot and the senior officer at the police station at Sialkot asserting that a lady, Miss Sadia Bibi, had been involved in the removal of his property from his home and asserting that Sadia Bibi and her brother Malik Adnan had "... armed with lethal weapons home forcibly broken the locks and loaded household accessories ..." which are then listed and asserting that these had been removed and were of a value of 115,500 Pakistani rupees.
8. In the circumstances I am satisfied that the judge did not have before him a properly evidenced and articulated claim under the Refugee Convention or the need for Humanitarian Protection under the Immigration Rules nor with reference to Articles 2 and 3 of the ECHR. Therefore any omission of the material if it was in fact on the court file at the material time or came thereafter does not suggest to me that there has been any procedural error of law nor a claim that should have been considered by the judge nor would it have made a difference to the appeal relating to her desire to continue with PGD studies. I am satisfied that the Appellant's position is fully protected by her ability to make a Refugee Convention and other protection claims if that is what she wishes to do. I do not find any error of law by the judge in the way he considered the disparate material before him nor was the nature of that material such as to raise the possibility of a further and extant Article 8 ECHR claim or indeed under the Refugee Convention or any other protection provisions within the ECHR.
9. In those circumstances, the basis on which permission was originally given by First-tier Tribunal Judge Molloy is understandable but I simply disagree with the judge that such omission was material to the consideration of the appeal outside of the Rules that was before the judge.

NOTICE OF DECISION

The original Tribunal's decision stands. The appeal is dismissed.

No anonymity direction is made.

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 4 November 2015

Deputy Upper Tribunal Judge Davey