



IAC-FH-NL-V1

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

Appeal Number: AA/05404/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 March 2016**

**Decision & Reasons  
Promulgated  
On 13 April 2016**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**RC  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In Person

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

**DECISION AND REASONS**

1. The appellant is a citizen of India born on [ ] 1991. She arrived in the UK on 24 September 2009 and made a claim for asylum on 12 December 2013.

2. Prior to making her claim for asylum she had a son born in the UK on 29 June 2012. Her husband had joined her in the UK on 25 December 2009. The appellant was the victim of domestic violence, with a history of having been seriously abused and assaulted by her husband, leading up to the asylum claim.
3. Her claim for asylum was refused and a decision taken by the respondent to remove her under Section 10 of the Immigration and Asylum Act 1999. Those decisions were made on 18 July 2014.
4. The appellant's appeal came before First-tier Tribunal Judge Page ("the Ftj") on 13 August 2015 whereby he dismissed the appeal on asylum grounds, and on human rights grounds with reference to Articles 2, 3 and 8 of the ECHR.
5. Permission to appeal was granted by a judge of the First-tier Tribunal ("FtT") but only in relation to Article 8 of the ECHR, in particular with reference to Section 55 of the Borders, Citizenship and Immigration Act 2009 ("the 2009 Act"). Permission was refused in relation to asylum, and human rights grounds under Article 3.
6. A renewed application for permission to appeal in relation to the asylum and Article 3 grounds was refused by a judge of the Upper Tribunal.
7. Thus, the appeal came before me in relation to Article 8 of the ECHR only.
8. In his decision the Ftj referred to a family court judgment by Recorder Rodgers on 29 March 2015 in which the appellant's account of the abuse that she was subjected to from her husband was accepted. At [18] the Ftj said as follows:

"It is plain that the whole of the appellant's story that she told to the respondent in support of her asylum claim was the truth. There are no credibility issues for me to determine in this appeal. These events have all happened in the United Kingdom in the unfortunate circumstances of the appellant's marriage to her husband."
9. At [20] he concluded that the appellant had established to the lower standard that she would be at risk of persecution in her home area, that is to say a risk of being harmed by her husband's family. He concluded that she is a member of a particular social group, as a woman in India. However, he decided that the appellant would have available to her the option of internal relocation.
10. It is not necessary to explore further the judge's reasons for concluding that the appellant would be able to relocate in India, permission to appeal against that aspect of his decision having been refused.
11. The ground of appeal pertinent to the proceedings before me is as set out in the grounds on which permission was granted. It asserts that the Ftj erred in not making a finding regarding submissions made in relation to

s.55 of the 2009 Act. It is stated in the grounds that submissions were made by the appellant's representatives at the hearing regarding the respondent not complying with her duty under s.55 to safeguard the appellant's son. It is further said that the appellant's son is under a supervision order, as explained in the report by a social worker.

12. The respondent's 'rule 24' response, in summary, asserts that the judge rejected the contention that the appellant would be at risk of reprisals from her husband's family throughout the whole of India. The FtJ had concluded that it would not be unduly harsh for the appellant to relocate internally, particularly given her level of education, and that those findings of fact clearly inform a best interest's assessment.
13. The rule 24 response goes on to state that although there does not appear to be an explicit reference to s.55 in the FtJ's decision, it can be assumed that the best interests of the child are served by remaining with his primary carer, his mother. The child is aged 3 years and is clearly focused on his mother, and is "adaptable". Reference is made to the decision in *Azimi-Moayed and others (decisions affecting children; onward appeals)* [2013] UKUT 00197 (IAC). It is asserted that there is no *material* error in the FtJ's decision.
14. Furthermore, it is said to be clear from [34] that no formal Article 8 or s.55 arguments were advanced on behalf of the appellant at the hearing.
15. Before me Ms Everett relied on the rule 24 response. It was submitted that although the judge did not refer to 'best interests' or 's.55', on the facts there is nothing to indicate that the child's best interests would not be met by staying with his mother. He has no basis of stay in the UK and could go to India with her. The decision in *EV (Philippines) and others v Secretary of State for the Home Department* [2014] EWCA Civ 874 was relied on.
16. Even though the appellant has experienced great difficulties there is, for example, no care order in place for the child, and no reason to conclude that he cannot be with his mother. It is unlikely that contact with the child's father would be resumed. The child's primary focus would be towards his mother, having regard to the child's age.
17. Before me the appellant said that although the FtJ had decided that she could relocate in India, India is a very male dominated society and she would never be accepted. The first question she would be asked is where her husband was. She would be unable to look after her son in India as she is able to do in the UK. She is afraid for his safety. She has lots of support in the UK from social services and from the children's centre. She would not be able to have that support in India.

### *My Conclusions*

18. In the grounds of appeal before the FtT it is asserted that the respondent had failed to consider and apply s.55 in relation to the appellant's son. The grounds go on to state that he has been a victim of abuse by the appellant's former spouse, and returning the child to India would increase the risks of abuse that he may face at the hands of his father.
19. In that respect therefore, the best interests of the child are linked to the asserted risk to him (and to the appellant) at the hands of the appellant's former spouse.
20. In the appellant's skeleton argument also before the FtT it states that the respondent had wrongly failed to give consideration to "A's children and their interests (sic)" when making the decision, referring to Article 3 of the UN Convention on the Rights of the Child. The skeleton argument goes on to state that the respondent additionally did not comply with her duty under s.55 to safeguard the appellant's son.
21. It can be seen again therefore, that the child's circumstances are linked to the protection claim, the reference being to safeguarding the appellant's son.
22. In the concluding paragraph of the skeleton argument various Articles of the ECHR are referred to, including Article 8, although no distinct argument is advanced in relation to Article 8 at that point.
23. At [34] of his decision the FtJ said as follows:

"I now turn to the appellant's appeal under Article 8 which stands to be determined as a separate limb, based on the appellant's life in the United Kingdom. I record however that although the skeleton argument prepared for the appellant's appeal raises Article 8 - hence the reason why I have amended the grounds of appeal to include a claim under Article 8 - no submissions as such have been made under Article 8 in the skeleton argument. Neither was any submission made at the end of the hearing by Ms Delgado, Counsel for the appellant, to argue that the appellant should be allowed to succeed under Article 8 as a separate limb. I determine the Article 8 ground of appeal as added to the skeleton argument as a separate limb and conclude as follows."
24. The FtJ then referred to the Immigration Rules, authority, and the provisions of s.117A-D of the Nationality, Immigration and Asylum Act 2002.
25. It is clear from my recital of the grounds of appeal to the FtT and from what is set out in the skeleton argument that there was no independent Article 8 argument advanced on paper before the FtT. Furthermore, it is also apparent from the FtJ's decision that no separate Article 8 argument was advanced before him. What is recorded at [34] about his 'amending' the grounds of appeal seems to me to be a reference to the fact that the grounds of appeal to the FtT do not include any distinct Article 8 argument

but that the judge felt that he had to determine the issue because the matter was raised in the skeleton argument.

26. It is evident however, that the issue now raised in the grounds of appeal in terms of Article 8 and the best interests of the appellant's son was never a matter that was advanced before the FtT. Indeed, even the grounds in relation to the FtT's decision contain barely any particulars of the basis upon which an Article 8 argument could be advanced with reference to the child's best interests.
27. I have for my part considered all the material in the appellant's bundle which could have any possible bearing on this issue, including the CAFCASS report, the final care plan for the child, the social work reports, including the independent social worker's report and the family court judgment. I cannot see in that material any basis for any distinct Article 8 argument. Indeed, if it were thought on behalf of the appellant that there was any support to be gleaned from that material for the appeal to be allowed on Article 8 grounds, it is reasonable to conclude that it would have been referred to at the hearing before the FtT.
28. In advance of the hearing before me an application had been made for an adjournment of the appeal whilst the appellant's solicitors awaited a decision from the legal aid authorities in respect of exceptional case funding. That application for an adjournment was refused by a judge of the Upper Tribunal. A letter dated 14 March 2016 from the appellant's solicitors refers to a support letter from Barnardo's, dated 14 March 2016, said to be relevant to a consideration of Article 8. It is seemingly acknowledged in the solicitor's letter that this further evidence is not relevant to the question of whether the FtT erred in law. The letter was not before the FtT.
29. Returning to the issue of the FtT's decision, whilst I do consider that it would have been preferable for him to have expressly referred to the best interests of the child, and s.55, I cannot see that his failure to have done so, which is the distinct argument on behalf of the appellant, amounts to an error of law. Even if it is an error of law, it is not one which in my judgement is material. The judge quite properly recognised that if there was a ground of appeal under Article 8 it needed to be determined, even though no distinct arguments were put before him on the issue. It is unsurprising therefore, and understandable, that he dealt with the matter in perhaps a broader fashion than he would have done had that ground in reality, or in fact, been relied on.
30. Furthermore, on the material that was before the FtT, I cannot see that in any event any distinct Article 8 ground of appeal could have succeeded. The FtT was well aware of the fact that the appellant would be returning to India as a single mother; he referred to that fact on several occasions in his decision. Her circumstances in that regard, and generally, were plainly taken into account in his conclusion that it would not be unduly harsh for her to return to a place of relocation in India with her young son.

31. Insofar as the grounds before me suggest that the respondent failed to comply with the duty under s.55 to safeguard the appellant's son, as I have already indicated the grounds before the FtT raise that issue in relation to the appellant's safety. Separately, at [79] in the refusal letter, it is stated that the Article 8 Immigration Rules take into account the need to safeguard and promote the welfare of children in the UK.
32. In conclusion therefore, I am not satisfied that there is any error of law in the decision of the FtJ in relation to Article 8 of the ECHR in any respect.

*Decision*

33. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to dismiss the appeal on all grounds therefore stands.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Upper Tribunal Judge Kopieczek

4/04/16