



IAC-AH-KEW-V1

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

Appeal Number: AA/07370/2015

THE IMMIGRATION ACTS

**Heard at Bradford Upper Tribunal
On 21st March 2016**

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

Before

UPPER TRIBUNAL DEPUTY JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**HK
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Diwncyz (Senior Home Office Presenting Officer)
For the Respondent: Mr Hachemi (Solicitor)

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 an anonymity order is made. Unless the Upper Tribunal or court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. This appeal is anonymised because it refers to an asylum claim, which the First-tier Tribunal found to have sensitive material. In this matter I shall refer to the Secretary of State for the Home Department as “the Respondent” and to Ms HK as “the Appellant” which is how they appeared respectively before the First-tier Tribunal.
2. The Respondent appeals with permission against the decision of the First-tier Tribunal (Judge Turnock) which in a decision promulgated on 30th July 2015 allowed the Appellant’s appeal against the Respondent’s decision of 19th March 2015 refusing to grant her asylum and giving Section 10 directions for her removal from the UK.

The Appellant’s Immigration History

3. The Appellant was born on [] 1990 and is a female citizen of India. She arrived in the UK in January 2011 in possession of a student visa. She was accompanied by her husband who entered as her dependant. The Appellant and her husband have a son born December 2008. He remained with the Appellant’s mother in India.
4. Although the Appellant entered the UK in possession of a valid student visa, that visa was curtailed by the Respondent on 2nd April 2012 to expire on 1st June 2012. This was because her sponsoring college’s licence was revoked. She applied for further leave to remain as a student on 25th May 2013 and this was granted initially until 26th September 2016.
5. However on 14th September 2014 she was served with an IS151A for obtaining leave by deception. On 3rd October 2014 she applied for leave to remain under the domestic violence concession, outside the Rules. This claim was rejected.
6. On 24th October 2014 following refusal under the above concession she claimed asylum. Her claim to asylum was on the basis that she was the victim of historic domestic violence in India at the hands of her husband and his family. She claimed she could not seek any support from her own family; her father did not want her to report the assault on her to the authorities in India. She was also the victim of domestic violence at the hands of her husband when he was here in the UK. She and husband had now separated but she feared to return to India, because of the fear of her husband and his family and fear of her own father. She said she could not receive protection in India; especially as a lone woman with a child. Additionally she now suffers from severe depression, has suicidal thoughts and as a single parent suffering from depression, would not get the protection she needed.
7. The Respondent rejected her claim on three counts.
 - The fear which the Appellant claimed prevented her from returning to India was of her husband and in-laws. They are non-state actors. India provides adequate protection for victims of domestic violence.
 - No good reason had been forthcoming why the Appellant could not internally relocate in India and

- Her health problems were not such as to bring her within the high threshold required to meet Articles 2/3 of the ECHR.

The Hearing before the First-tier Tribunal

8. The hearing before the First-tier Tribunal took place on 16th July 2015. The judge noted and set out the Appellant's claim in [6] to [17] and it is reproduced below.

- “6. The Appellant's claim is on the basis that if she were returned to India she would face mistreatment from her father, her husband or her husband's family because she left her husband in the UK and was responsible for his arrest. She particularly fears her brother-in-law who, she claims, is dangerous.
7. The Appellant completed a BA degree in Art whilst in India although she did not work in that country. She lived with her parents until she married on 20 February 2007. After the marriage she spent one and a half years living with her 'in-laws' but then moved back to her parents because her 'in-laws' were beating her up.
8. The Appellant claims that her problems had started three or four weeks after she got married. She claims her husband and his mother started to beat her for trivial matters such as if they did not like the clothes she was wearing. She claims that every other day her husband would beat her and her mother-in-law would beat her every one to two weeks. Although the Appellant claims she told her family what was happening she was told not to report it to the police but to 'put up' with it and try to make things better, for herself. On the final occasion, she was assaulted when she was pregnant, and her mother-in-law beat her so badly that her waters burst and she gave birth prematurely. The Appellant claims the doctor told her to report it to the police but her father did not let her and she moved back home with her parents instead.
9. The Appellant came to the United Kingdom on 19 January 2011. She says that she came because her family could not keep her any longer and she thought it would be a safe place. She also thought she could carry on with her studies in the UK.
10. However, the Appellant claim that after being in the UK for approximately two to three months her husband came home drunk and on drugs and beat her very badly. She claims that he subsequently made attempts to kill her, the first time being in September or October 2013 when he put a pillow over her head.
11. The Appellant claims that her husband assaulted her in September 2014, which led to his arrest and prosecution. The Appellant claims that when she notified her father of the arrest of her husband her father said he would kill her if she made a statement against her husband.

12. The Appellant claims that her husband was prosecuted for his assault upon her and served a period of imprisonment. The Appellant says that after completing his sentence her husband returned to India.
13. The Appellant claims that approximately three weeks before this appeal hearing she received a call from her mother who informed her that her husband had gone to her house in India to remove the Appellant's son. The Appellant says that she was told that her husband had attended with other people from his family. She says she was told that her husband and his friends were complaining about her and the 'mess' she had caused for her husband in the UK and the shame she had brought upon them by causing him to be arrested and receive a criminal conviction. The Appellant says that her mother told her they threatened revenge saying that she would be killed if she returned to India. She was told that her husband declared in front of everybody that he would personally kill her. Her mother also told her that her husband was making 'terrible false allegations' against her describing her as being a prostitute who had multiple relationships with different men. He described her as being too 'dirty' to keep in the house and made any other such 'insulting comments.'
14. The Appellant says that she was told her husband was prevented from removing her son because her mother resisted and 'screamed and shouted,' and many neighbours gathered to see what was happening. The Appellant says that as a result of the crowd that had assembled around the house and the fuss that her mother was making her husband gave up trying to take her son and he left the scene with the other men.
15. The Appellant states that although her mother cares for her son and takes the Appellant's side, her father disapproves of the Appellant because he blames her for causing the situation that arose and bringing shame on his family. She claims that her father wants her to go back to her husband, even though that would put her in danger. She states that she is now always worried that her son is going to be abducted. Her mother told her over the telephone that neighbours had seen her husband and another man on a motorbike riding around their home.
16. The Appellant states that when she heard the news she telephoned her son's school to warn them about the possibility that her husband might kidnap her son from there. She was told that they would try to keep an 'eye out' and would call the police if necessary. Her mother asked for advice from a neighbour who is a police inspector about what should be done. He advised that proof should be obtained from England about her husband's bad behaviour towards the Appellant and his conviction for beating her. The Appellant has approached the Citizens' Advice Bureau in Sheffield to ask them to help obtain the necessary information. The Citizens' Advice Bureau have referred her to a solicitor who offered to

help to get the information from the police but required the charge of £180, which the Appellant states she could not afford. The Appellant states she is going to send her mother some items of evidence from her asylum case, which can then be shown to the police.

17. The Appellant also states she also approached a Women's Aid Group called 'Roshni' who helped her prepare a letter to the British police requesting confirmation that she was a victim of domestic violence."

9. The judge also heard evidence from the Appellant and noted that her husband had been prosecuted by the authorities in this country. He noted in [37] the issues before him and said this:

"The issues in this case are whether the Appellant would be at risk of attack from her husband and her own family in the event of her return to India and if so whether there would be sufficiency of protection for her taking account of the possibility of internal relocation."

10. He then set out extensively the background evidence from the Country Information and Guidance report on India - women fearing gender-based harm/violence which is dated April 2015. He took into account Dr Longshaw's report noting that the Appellant had been diagnosed with severe depressive disorder and then he said this at [63].

"The country information referred to above makes it clear that whilst, in general, there will be sufficiency of protection for a woman in India facing domestic violence each case must be considered and determined on its own particular facts. Account must be taken of past ill-treatment and the likelihood and ability of the husband and family (in this case) being able to pursue her and account must be taken of all the relevant factors which in the Appellant's case will mean having particular regard to her health and the fact she has a child."

11. He went on further to say at [66]

"With regard to the question of relocation account has to be taken of the mental health issues which the Appellant faces and their impact upon her ability to be self-sufficient and avoid finding herself in isolation and vulnerable. There are clearly problems with regard to the availability of housing in India and these would appear to be particularly acute in the case of a mother and young child where the mother has health issues of the nature of those faced by the Appellant."

12. He then concludes by saying at [67]

"I find that if the Appellant sought to relocate, given her particular circumstances she would be vulnerable, with extreme difficulty in finding accommodation and with no one to turn to. I find that in those circumstances it would be unduly harsh to expect her to relocate."

13. He then allowed the appeal under the Refugee Convention.
14. The Respondent sought and was granted permission to appeal that decision. There was one ground seeking permission; namely that the judge had misdirected himself in law. He allowed the appeal under the Refugee Convention when the risk identified, even by the judge himself, was one of domestic violence from family members. Therefore there was no identifiable Convention reason. In addition there was availability of state protection for women in India. The judge appeared to give no proper consideration to this. The Appellant could not be categorised as a member of a particular social group.
15. Permission to appeal was granted in the following terms
 - “1. The Appellant is a national of India who had claimed that she was at risk of domestic violence. First-tier Tribunal Judge Turnock allowed her asylum/humanitarian protection/human rights appeal against removal in a decision and reasons promulgated on 30 July 2015.
 2. The Respondent’s grounds of onwards appeal dated 7 August 2015 were in time. In summary the grounds contend that the judge misdirected himself/herself over the Refugee Convention.
 3. The grounds are arguable. The judge’s reasoning is inadequate.”

Thus the matter comes before me to decide initially whether the First-tier Tribunal’s decision discloses an error of law such that the decision must be set aside and be re-made.

Error of Law

16. I heard submissions from both representatives. Mr Diwncyz submitted that the FtT had misdirected itself and furthermore the decision on the face of it contained inconsistencies rendering it unsustainable. The judge himself at [63] acknowledged that there was an availability of state protection in India for women facing domestic violence. Whilst he accepted that each case must be looked at on its own particular facts nevertheless there is a lack of reasoning in [64] as to why the Appellant cannot avail herself of that state protection. Equally, so far as internal relocation is concerned, the background documentation which the judge referred to clearly showed that internal relocation is available. The judge has not set out with any clear analysis why the Appellant cannot avail herself of internal relocation. Instead he has confined his remarks to several short paragraphs simply reiterating the Appellant's history without making reasoned findings on it. The decision should be set aside.
17. Mr Hachemi unsurprisingly submitted that the decision should stand. He pointed out that the judge was correct to say that each case must be looked at on its own merits. He submitted that the judge seemed to accept that the Appellant fell into the definition of particular social group i.e. a single woman with a child suffering

violence at the hands of her husband and or his family. This would bring her into the Refugee Convention and the decision is sustainable.

18. At the end of submissions I ascertained from the representatives that should an error of law be found, neither party had any further evidence to call. Both representatives agreed that I would be in a position to re-make the decision on the evidence already presented.
19. I am satisfied that the FtT's decision discloses a material error of law such that it needs to be set aside. I now give my reasons briefly for that finding. I find force in the grounds seeking permission. The facts in this appeal are essentially unchallenged. The judge set out the Appellant's case, which is that she has suffered abuse at the hands of her husband (and/ or his family) and that her own family in India appear unwilling to provide her support. Yet, after extensively quoting from the country information and guidance background documents showing there is state protection available for the victims of domestic abuse, there are simply no reasoned findings on whether the Appellant would be able to avail herself of that protection. The decision does say in [66] there are problems with regard to the availability of housing in India for single women but does not say why the Appellant could not avail herself of the working women's hostels nor why internal relocation is not a viable option. That lack of reasoning is material and accordingly I find the decision must be set aside and re-made.

Re-making the Decision

20. There are several strands to the Appellant's claim to asylum/ Articles 2 and 3 ECHR.
 - She cannot return to India because she fears domestic violence at the hands of her husband and his family and her own family are unable or unwilling to protect her.
 - She claims internal relocation is not a viable option because she would be a single woman with a child.
 - Her severe depression and suicidal ideation reaches the high threshold required to establish an Article 2/3 claim.
21. Taking each of these strands in turn it was submitted by Mr Hachemi on behalf of the Appellant that she falls into the category of a particular social group of women fearing gender-based harm or violence. In furtherance of this he handed in the Upper Tribunal decision in **NA and VA (Protection: Article 7(2) Qualification Directive) India [2015] UKUT 00432**. Mr Hachemi cited that case as authority for saying each case must be looked at on its own merits rather than on the generalities claimed in the Country Information and Guidance report.

Consideration

22. It has been accepted by the Respondent that the Appellant be given the benefit of the doubt as regards her claim that she is the victim of domestic violence at the hands of her husband (and his family). She has also been given the benefit of the doubt as regards her evidence that her own parents will no longer support her. What is not accepted however is her claim that there is not sufficiency of state protection for her. In this regard, she claims that the police are corrupt – she cannot go to them; if she did so her husband’s family would bribe them to drop any charges and her own family would put pressure on her not to proceed.
23. I find there is no evidence to show that the Appellant has even actually been refused protection by the authorities in India. From the evidence available, she has never tried to seek state protection. There has been no evidence put forward on her behalf to show that in some way she would be refused help from the state, on account of her gender as the victim of domestic assault.
24. On the contrary the 2015 April Country of Information Guidance which was helpfully put in by Mr Hachemi, indicates that there are statutory laws which provide tough penalties for domestic violence and since 2008 a high percentage of police investigations have been successful.
25. Whilst it is acknowledged by the Respondent that there are some limitations in the police force, that is a far cry from saying that the state is unwilling or unable to offer protection such as to bring the Appellant within the Refugee Convention.
26. The Appellant has shown by her actions here in the UK that she has the strength of character to take action against her husband. She has reported him in the UK for violence towards her and as a result he was convicted of assault. Without ever going to the authorities in India, the Appellant cannot be in a position to say that they would not offer her effective protection. She cannot therefore be said to be part of a particular social group.
27. So far as the second strand to the Appellant’s claim is concerned, she claims that relocation to another part of India, to escape her husband, would not be reasonable or it would be unduly harsh in her circumstances. The Appellant is an educated woman who holds a degree level qualification. She came to the UK to obtain further qualifications. On the face of it, she is, it would seem someone who is capable of gaining employment. She has not demonstrated that her husband or his family have influence and connections throughout India, sufficient to pursue her. The Country of Information Guidance indicates that there are several organisations which provide support to single women. In addition it states there are working women’s hostels and some hostels have day care centres for residents with children although it is stated that in general hostels for middle class working women “do not have accommodation for children.” However overarching this is the option of a voluntary assisted return programme which can provide appropriate financial and other support.

28. The final strand concerning the Appellant's claim relates to her health. There is evidence that she suffers from severe depression and has experienced five miscarriages. Her severe depression is confirmed by Dr Longshaw's report. The Appellant in her statement says that help in India, for the mental health problems she suffers from, is limited and expensive. She says furthermore that doctors in India would just prescribe "medication" which has "side effects."
29. The Country of Information Report for India reports that medical treatment is available in India for mental health issues. There is nothing to show that the Appellant would be unable to access that medical treatment. It may well be that the Appellant would have to pay for her own medication and this may be expensive although the World Health Organisation report of 2005 observed
- "A large mostly indigenous pharmaceutical industry ensures that most psychotropic drugs are available often at a fraction of their cost in high income countries."
30. It may well be that the medical facilities in India are not as well-developed as in the UK but that does not place an obligation on the UK to alleviate such disparities through the provision of free and unlimited treatment. It is hard to see that the medical evidence put forward on behalf of the Appellant reaches the high threshold required to succeed under Articles 2 and 3 ECHR.
31. In summary for the above reasons I find that the FtT was wrong to conclude that the Appellant falls within the Refugee Convention. Furthermore it was wrong to conclude that the Appellant's health issues were such as to bring her within the high threshold outlined in N v UK [2008] ECHR 453.

Notice of Decision

The decision of the First-tier Tribunal which was promulgated on 30th July 2015 is set aside. I re-make the decision. The appeal of Ms HK against the decision of the Secretary of State made on 19th March 2015 refusing to grant her asylum and making directions for her removal from the United Kingdom is hereby dismissed.

Signed

Date

Upper Tribunal Deputy Judge Roberts

No fee is paid or payable and therefore there can be no fee award.