



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

Appeal Number: HU/01356/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 6 July 2017**

**Decision & Reasons Promulgated
On 8 September 2017**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

I--- S---

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms Z Ahmad, Senior Home Office Presenting Officer
For the Respondent: Ms E Daykin, Counsel instructed by Hounslow Legal Services

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Respondent. Breach of this order can be punished as a contempt of court. I make this order because the Respondent has shown that he risk ill treatment by member of her family and publication of this finding might enhance the risk.
2. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the Respondent, hereinafter "the Claimant" against the decision of the Secretary of State on 18 June 2015 to refuse her leave to remain in the United Kingdom on private and family life grounds.

3. There are several untypical features in this case. One of them is that the grounds of appeal might not encompass all the criticisms that could be made of the decision but, in fairness to the Claimant, I have limited myself to the grounds raised. She is entitled to assume that the Secretary of State's case is contained in the grounds that she has seen.
4. I begin by considering exactly what the First-tier Tribunal decided.
5. It was the Claimant's case that she could not be returned to Pakistan because she would not be safe there. In simple terms she said that she had had a relationship with her present sponsor, Mr M N B, which had offended members of her family so that in the event of her returning to Pakistan and coming to their attention she would risk serious ill-treatment. The judge also found that her partner Mr B, who is in the United Kingdom with indefinite leave to remain, would not return to Pakistan because his own safety was at risk there. He claims that there are court summonses against him and he was not prepared to face legal processes in Pakistan.
6. The judge found that the Claimant is "not a well-educated woman and, to my mind, has a relatively simple outlook on matters". He made this finding in the context of excusing lies she had told about her relationship with her cousin and landlord in the United Kingdom who, the judge accepted, was now on tolerably good terms with her partner even though he is a member of the family some of whose members are intent on punishing the Claimant.
7. If I may say so respectfully some of the judge's findings might seem a little surprising but he had the benefit of hearing the evidence and the findings have not been challenged by the Secretary of State. I have no basis for going behind them. They are certainly not obviously perverse.
8. The judge went on to find, assisted in part by the decision in **SM (Lone women - ostracism - Pakistan) [2016] UKUT 00067 (SM)** that the Claimant, being a lone woman with little education and no support from family members would be at risk in Pakistan so that there were very significant obstacles to her reintegration into society in Pakistan and he therefore allowed the appeal on Article 8 grounds. Like the findings of fact there are aspects of that approach that might have been expected to attract criticism. However the grounds supporting the application are rather precise and I set them out below:

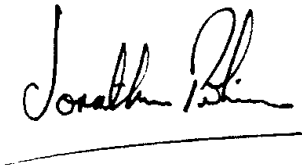
"The [claimant] seeks to remain as a partner. The focus of the consideration of the Judge appears to have been the Insurmountable obstacles test in EX2 although the determination is rather vague. In para 36 the Judge accepts the sponsor's evidence that he would not return to Pakistan due to 'outstanding court summonses'. That appears to be the only basis on which the Judge concludes that the [claimant] could not return with the sponsor. The Secretary of State considers that this was inadequate. The fact that the sponsor may have these outstanding issues in Pakistan is not a basis for finding that the test of insurmountable obstacles is met. While the sponsor may not **want** to deal with them that is a matter of choice for him. At no point does the Judge address the implications of the outstanding court summonses or in what way they amount to insurmountable obstacles. The rest of the Judge's findings are based on the assumption that the sponsor will not return with the [claimant] but since that finding is flawed they are not sustainable."

9. I say immediately that there is some mixed thinking in these grounds. The finding that the claimant could not return to Pakistan is based on her returning as a lone woman in her particular circumstances. One of the reasons she would be a lone woman is that her friend in the United Kingdom would not travel with her. It might be thought surprising that he would not return if, in fact, she would be at risk if she returned on her own and he was fond of her. However it must be remembered that his basis for coming to the United Kingdom was to claim asylum and although that claim was unsuccessful he has never resiled from his claim that he needs international protection even though he has been allowed to remain on a different basis. The fact that the sponsor was not given asylum is not a finding that he would not have any kind of difficulty in the event of his return to Pakistan and the judge clearly concluded that the sponsor would not return and therefore that the Claimant would return as a lone woman.
10. Before me Ms Ahmad argued that the First-tier Tribunal Judge should have considered Section 117 of the Nationality, Immigration and Asylum Act 2002 as amended and should have engaged with the reasons in the Reasons for Refusal Letter. The difficulty is that these points were not raised in the grounds of appeal to the Upper Tribunal. Further, it is clear to me that consideration of Section 117B of the 2002 Act would not particularly assist the Secretary of State. That Section identifies points that should be considered when it is suggested that a decision breaches a person's right to respect for private and family life. It does not purport to be an exclusive list of considerations. The judge has not allowed the appeal because of the relationship the Claimant has developed with Mr B. The judge has allowed the appeal because he has believed the evidence that the Claimant could not cope on her own in Pakistan. It would have been altogether tidier if the Claimant had asked for asylum or some other form of international protection for precisely this reason. She did not and the grounds make out no case that the judge was not entitled to conclude as he did that in the event of being returned as a lone woman the claimant would be at risk.
11. The challenge in the grounds is the judge should not have reached that conclusion when there is no good reason in the Secretary of State's mind to conclude that the Claimant's partner would not travel with her. The problem with that argument is the partner has said that he will not go. It was said in reply that it was found in his asylum case that he would not be at risk. That might be right but it is a point that should have been made before the reply and if it was to feature in the reasoning it should have been part of the grounds or at the very least an application made to amend the grounds.
12. Another way of looking at the decision is that the judge was persuaded that the Claimant would be at risk on return. The only thing identified in the grounds as undermining that finding is the decision of the sponsor not to return. However the fact that Mr Butt will not return is the fact that matters. He may be behaving irrationally, he may have an honest but misconceived belief that he is at risk, he may be considerably less than heroic in his refusal to stand by his partner but if he is, he is not the first man to fail in that way. The simple reason for allowing the appeal is the judge was satisfied that the Claimant

would be unsafe and has given permissible reasons for that which have not been challenged.

13. Not only have they not been challenged but it is by no means unbelievable that a woman on her own with little education and no family support would face a very difficult time in Pakistan.
14. It is right to record that Ms Ahmad did not settle the Secretary of State's grounds. She did the best she could with what she had got but for the reasons given I am unpersuaded that an error of law has been established and I dismiss the Secretary of State's appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 8 September 2017