



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: PA/06652/2016

THE IMMIGRATION ACTS

Heard at Manchester
On November 3, 2017

Decision & Reasons Promulgated
On November 8, 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MRS N P
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Patel, Counsel, instructed by Amjad Malik Solicitors
For the Respondent: Mr Bates (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan. She claimed asylum on June 7, 2016 but her application was refused on June 15, 2016 under paragraphs 336 and 339F HC 395. On June 28, 2016 she appealed the removal decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
2. Judge of the First-tier Tribunal McCall (hereinafter referred to as the Judge) dismissed her appeal on all grounds on December 7, 2016 in a decision promulgated on December 21, 2016.

3. The appellant lodged grounds of appeal on January 4, 2017 submitting the Judge had erred. Permission to appeal was granted by Judge of the First-tier Tribunal Page on March 27, 2017 and the matter came before me on June 30, 2017.
4. The Judge accepted that the appellant had suffered at the hands of her father and her former husband and faced a risk, as a woman, of further harm if she returned to her family home. Whilst the Judge considered whether the appellant could return to a place other than the family home his finding that the appellant could live with her sister was flawed in light of the fact she lived in the same area as their father.
5. I found there was an error of law on this issue on the issue of internal relocation.
6. I have preserved the Judge's findings contained in [18] to [21] of his decision. In summary these are:
 - a. The appellant suffered domestic abuse from both her father and her first husband.
 - b. The appellant was not educated beyond the age of 12, has no occupational trade and has never worked either in Pakistan or the United Kingdom.
 - c. The appellant is of small build and stature and is of nervous disposition.
7. I adjourned the issue of whether internal relocation was available and for further consideration of any private/family life claim to today and directed that further evidence be adduced to address these issues. It transpired that my directions, referred to in my decision, were never served on the parties. However, this has not prevented me from concluding this appeal today.
8. I extend the anonymity direction previously made in this matter pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

FRESH EVIDENCE

9. The appellant adopted her statement made on October 27, 2017. She confirmed her sister and brother-in-law lived in London with their three children and whilst her brother-in-law worked she was unsure of his occupation. They maintained telephone contact speaking at least once a week.
10. Her other sister lived across the road to where her father lived in Pakistan. Whilst her sister was married with five children it was not possible for her to return and live with her because firstly they had no room; secondly, they were not rich enough to look after her and thirdly, she lived across the road to their father making any return impossible.

11. She stated her current husband has two brothers in Pakistan and they share accommodation with the one of the brother's wife and five children. The other brother is disabled. They live around 4-5 hours away from her own family but she would be unable to live with them because she neither knew them nor did they have any room for her. Whilst her husband has three sisters in Pakistan she had also never met them and they were married with children.
12. Her husband had lived in the United Kingdom for around 22 years and he supported her. He is 65 years of age and they have only gone through an Islamic marriage because the respondent would not release her passport for a civil ceremony.
13. Her husband has three children from his first marriage who are all British. He still sees them once a month albeit they are now adults. He also has grandchildren.
14. Both the appellant and her husband stated that her husband was unwilling to return to Pakistan because he had lived and worked in the United Kingdom for over 22 years and now received his State Pension. His rent continued to be paid by the DWP/Council as his monthly income was only.
15. The appellant's husband stated he was not prepared to accompany or support his wife in Pakistan as he had married her here with the intention of them living together here.
16. He confirmed that he knew she was here unlawfully when they began their relationship but he thought that if they married he would try his best to ensure she would be allowed to remain. Whilst they discussed the possibility she would have her application refused he stated that he would keep trying to ensure she could remain although he accepted that if she was returned to Pakistan he would then try to secure her re-entry to the United Kingdom.

SUBMISSIONS

17. Mr Bates submitted that there was no reason why the appellant could not relocate to her husband's village which was between 4-5 hours away from where she used to live. There was no evidence her father or former husband's family had the means to seek her out. It was open to the appellant to return to Pakistan with her husband who was a Pakistani national albeit with a right of residence in the United Kingdom. There was nothing actually preventing them returning apart from choice. This did not amount to an insurmountable obstacle especially as he had acknowledged in his oral evidence that he knew his wife had no right to remain here when they began their relationship. Her status had been both unlawful and precarious and she had demonstrated no ability to speak English and a Judge had previously found she had never worked and was uneducated since the age of twelve. She could return either

with her husband or continue to be supported by him in Pakistan, as she was in the United Kingdom. Mr Bates invited me to dismiss both the protection and family/private life claims.

18. Ms Patel adopted the skeleton argument lodged by her instructing solicitors. Looking at her characteristics she submitted it would be unsafe for the appellant to be returned as she had nowhere to live and no means of support and as a lone female she would face an increased risk of persecution. The oral evidence was that her husband's family would not welcome her and in those circumstances her appeal must succeed. Alternatively, she submitted the appellant and her husband lived together in a relationship akin to a marriage. Whilst his income did not satisfy the £18,600 threshold she submitted that there were exceptional and compelling circumstances to allow the appeal under article 8 ECHR. She argued the husband was financially independent and had lived here for over 22 years and to refuse her permission to remain would be disproportionate.

FINDINGS

19. This is a resumed hearing the purpose of which was to consider firstly whether the appellant can reasonably be expected to stay in a different part of Pakistan and if it is whether removal would breach her rights to family and/or private life in this country.
20. I have considered the appellant's claim from the starting point that she cannot return to her home village and this would therefore rule out a return to her sister's house because she lived a short distance away from their father.
21. Applying paragraph 339O HC 395 I have to ask myself whether she would be safe in another part of Pakistan and secondly whether she could reasonably be expected to live there.
22. Ms Patel's argument is that she would not be safe and my attention was drawn to the country evidence contained at pages 213 to 221 of the recent bundle.
23. It is accepted that women in Pakistan can form part of a particular social group but in this appeal there are two additional factual matters I have to take into account namely (a) the appellant is now married under Islamic law and (b) her husband has family who live a considerable distance away from the appellant's father.
24. Ms Patel's submission is that I should ignore these factors because (a) her husband has made it clear he would not accompany her back to Pakistan and (b) her husband's family neither want her nor have the room for her

25. It is wrong to suggest the appellant is a single woman because on her own admission she is married to a Pakistani national who could, if he wished, accompany her to Pakistan and live there with her as husband and wife. Whilst her husband has acquired British citizenship the fact remains he is a Pakistani national and he still has siblings living in Pakistan with whom he maintains regular contact.
26. The country evidence relied on by Ms Patel assumes the appellant is a single female and has no male person to turn to in Pakistan. That is not the case. She has her husband and her husband's family contains male members.
27. I am satisfied there are areas in Pakistan where the appellant could go to. She does not have to return alone. Both the appellant and her husband made it clear they are in a genuine and subsisting relationship so clearly return with her husband remains an option. There is also the option she could go and stay with her husband's family in Pakistan.
28. I set today's hearing up to consider whether she could return and whilst I have the oral/written evidence from the appellant and her husband I note the appellant's bundle lacks any evidence from the sisters or brothers. There was no suggestion their relationship has not been accepted by them and I am satisfied it suits the appellant's case to say they will not accept her at their home.
29. In considering whether internal relocation is available I am satisfied there is another part of Pakistan she can return to and it would be reasonable to expect her to do so. I accordingly find that the appellant's protection claims should be dismissed.
30. I turn now to the private and family life claim. Ms Patel's argument before the First-tier Tribunal was that the appellant could succeed under Section EX.1 of Appendix FM of the Immigration Rules on the basis there were "insurmountable obstacles" to her living with her husband in Pakistan.
31. With respect to the appellant these arguments do not amount to insurmountable obstacles. They are reasons and excuses why she does not want to live in Pakistan but there is nothing preventing the appellant and her husband living together in Pakistan. The Immigration Rules require me to consider whether there are any insurmountable obstacles to them living in Pakistan. Based on the fact the appellant and her husband are of Pakistani origin and her husband has siblings still living there I am satisfied that there are no insurmountable obstacles to her return.
32. Similarly, when considering private life under paragraph 276ADE HC 395 I am satisfied there are no "very significant obstacles" to her return. The appellant has not identified any particular private life and her husband is now retired. Allowing her to stay because her husband would not be able to

see his friends as often as he would wish does not amount to a “very significant obstacle”.

33. Her appeal falls to be considered under article 8 ECHR and I accept the appeal can be considered under this heading because her husband has lived here for over 22 years. He is now 65 and whilst he has lived one third of his life in this country he has spent two thirds of his life with his family in Pakistan.
34. Paragraph 117B of the 2002 Act applies in this appeal and most I must have regard to the following factors when considering the issue of proportionality:
 - a. The importance of immigration control.
 - b. The parties commenced their relationship at a time when the appellant had been here both unlawfully and precariously. They entered into their relationship in full knowledge of her unlawful and precarious immigration status.
 - c. The appellant does not speak English and has no financial resources of her own. The appellant is wholly reliant on her husband’s state pension which amounts to around £8,000 per annum which is far below the £18,600 threshold set by the Government in the Immigration Rules. Her husband relies on state support for his rent.
 - d. She cannot meet the Immigration Rules or Section EX.1 of Appendix FM of the Immigration Rules.
 - e. There is family to turn to in Pakistan.
35. Ms Patel invited me to place weight on the fact the appellant’s husband has said he would not accompany her. The fact remains they married in full knowledge the appellant would be refused permission to remain here and when questioned by me the husband stated that he effectively hoped her application would succeed but if she had to return he would continue to try and bring her back to this country.
36. The Government when introducing Section 117B into statute made it clear that these are statutory factors I must have regard to. Whilst an ability to speak English and to be financially independent are neutral factors great weight must be placed on a family and private life formed whilst here unlawfully. This is exactly what I have in this case.
37. Given my other findings I am satisfied that it would not be disproportionate to remove the appellant given the above factors.

DECISION

38. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I previously set aside the decision and now remake

it by dismissing the appellant's appeals for protection and under article 8 ECHR.

Signed:

A handwritten signature in black ink, appearing to read 'SPALIS', with a horizontal line underneath.

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I make no fee award because I have dismissed the appeal.

Signed:

A handwritten signature in black ink, appearing to read 'SPALIS', with a horizontal line underneath.

Deputy Upper Tribunal Judge Alis