



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

Appeal Number: PA/09376/2016

THE IMMIGRATION ACTS

Heard at Newport (Columbus Decision & Reasons Promulgated House)

On 25 July 2017

On 14 August 2017

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**A J
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Shaw instructed by Migrant Legal Project (Cardiff)
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the Appellant. This direction applies to both the

appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Pakistan who was born on [] 1986. She is a Sunni Muslim. She arrived in the UK in January 2011 as a student with leave valid until 28 December 2011. That leave was subsequently extended until 8 May 2013. In March 2011, she met her partner. He is a Sh'ia Muslim and a Pakistan national. They have undergone a religious marriage and now have three children. In July 2013, the appellant applied for further leave on the basis of her family and private life but that was refused on 13 August 2013. Her husband's subsequent application for leave relying upon Art 8 was also refused on 8 June 2015.
3. On 15 June 2015, the appellant was encountered by immigration officials and served with removal documents as an overstayer. On 16 March 2016, the appellant claimed asylum. The basis of her claim is that she is at risk from her family in Pakistan because she had married a Sh'ia Muslim and her family are strict Sunnis. She also fears inter-sectarian Sunni/Sh'ia violence from Sunni militia as a Sunni woman who has married a Sh'ia man.
4. On 19 August 2016, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the European Convention on Human Rights.

The Appeal

5. The appellant's appeal to the First-tier Tribunal. In a determination promulgated on 16 November 2016, Judge O'Rourke dismissed the appellant's appeal on all grounds. In particular, the judge did not accept that the appellant would be at risk of serious harm from her family but, in any event, she could safely and reasonably internally relocate to live in Karachi where her husband's family lived.
6. The appellant sought permission to appeal to the Upper Tribunal on a number of grounds, in particular that the judge had failed properly to consider the country information relating to the risk of "honour killings" in Pakistan and had been wrong to find that the appellant could internally relocate to Karachi.
7. Permission to appeal was initially refused by the First-tier Tribunal but on 8 February 2017, the Upper Tribunal (UTJ Plimmer) granted the appellant permission to appeal.
8. On 8 March 2017, the Secretary of State filed a rule 24 response seeking to uphold the judge's adverse decision.

The Submissions

- 9.** Ms Shaw, who represented the appellant, relied upon paras 3, 4 and 5 of the grounds of appeal. First, she submitted that the judge had failed to take into account the entirety of the passage in the CIG, “Pakistan: Women Fearing Gender-based Harm/Violence” (2006) at para 26(i) of his determination. Whilst he referred to the document’s statement that “generally honour killings took place in “rural or tribal areas”, he had failed to refer to the part that said: “More recent information indicates that the risk of honour killings in Pakistan is not restricted geographically or otherwise”. The passage then goes on to identify more broadly the occurrence of honour killings including two cases of honour killings in Islamabad.
- 10.** Secondly, Ms Shaw submitted that the judge had failed to take into account passages in the CIG document at paras 2.4.11 and 2.4.12 dealing with the Pakistan authorities inability or unwillingness to protect women from honour killings and that they were often ostracised and the victims of honour killing where ‘love marriages’ had occurred. Ms Shaw also relied upon para 2.4.11 and 2.4.19 of the CIG cited at ground 3(iii).
- 11.** Thirdly, as regards the risk from Sunni extremists, Ms Shaw submitted that the judge had failed properly to take into account the expert report of Dr Giustozzi at paras 13-27.
- 12.** Mr Mills submitted that the judge was entitled to dismiss the appellant’s claim under both limbs, namely the risk from her family as a result of her mixed marriage and the general risk to her as a Sunni woman married to a Sh’ia man.
- 13.** Mr Mills accepted that the judge appeared not to have taken fully into account para 2.4.10 of the CIG in para 26(i) of his determination. However, he submitted that error was not material. He submitted that the judge had been entitled to find that the appellant had not been subject to any continuing threat from her family, although she had been in contact with them and they had been unhappy after a visit by friends to the appellant’s accommodation in the UK. Mr Mills accepted that in a telephone call to her mother subsequently, the appellant had said that her brother had been shouting in the background but there were no letters or direct threats thereafter to the appellant. He submitted that the judge was entitled to find that the appellant’s position was not one which was of any continuing interest to her family.
- 14.** Further, Mr Mills submitted that the judge was entitled to find that the appellant could, in any event, internally relocate to live in Karachi (together with her husband) with her husband’s family. He submitted that the judge was entitled to find at para 27(i) that Pakistan was a large country and that Karachi had at least six million inhabitants. He referred me to Dr Giustozzi’s report and a table at para 13 of that report which set out the level of sectarian violence in Pakistan between 1989 and 2016. He accepted that 32% of all sectarian attacks took place in Karachi (see para 14 of Dr Giustozzi’s report) but if the appellant’s claim was, as it appeared

to be, that she was at risk as were all Sh'ia Muslims in Pakistan then the judge was entitled to find that there was no real risk to her.

- 15.** In her reply, Ms Shaw placed reliance upon the fact that the appellant's evidence had been that there was a threat from her brother and there was an escalation of that threat. During the course of a second phone call with her mother, her mother had said that her brothers had reported her (the appellant) to the police. Ms Shaw submitted that there was background evidence to show that the police might not provide protection and, as a consequence, the judge's internal relocation finding could not be sustained as he had failed to consider that issue.

Discussion

- 16.** The judge dealt with the risk, if any, to the appellant from her family at paras 25-26 as follows:

"25. The 'neighbour incident'. I accept the Appellant's evidence as to the 'neighbour incident' and that as a consequence her family found out about her relationship with her partner. I didn't view any identified inconsistencies as particularly serious and it would seem inevitable that, at some point, bearing in mind the close-knit nature of ex-patriate Pakistani communities in UK that her family would have found out.

26. Risk to the Appellant from her Family. Based on the Appellant's evidence and the objective and expert evidence, I accept that it is entirely likely that her family disapprove of her relationship, both because it was not arranged by them and because, as an aggravating factor, it is with a Shia. Whether that approval is to such a degree that it will result in serious harm to her is another matter. I don't consider that it will, for the following reasons:

- i. Both the expert and objective evidence indicates that 'honour'-based violence is generally a rural or tribal area phenomenon [CIG Pakistan: Women fearing gender-based harm/violence - 2016 - 2.4.10] and the Appellant's family are city-dwellers, with cosmopolitan links to the US and UK.
- ii. Despite her family knowing the true situation now for five years and the close-knit nature of ex-patriate Pakistani society in UK, not a single threat or approach has been forthcoming from the Appellant's family against her or her partner.
- iii. She now has three very young children which must be of some influence on her family.
- iv. She is a previously-divorced woman and therefore, in the eyes of many Pakistani Muslims, due to social and religious stigma, of less marriage 'value' than an unmarried woman, therefore possibly indicating less resistance than she asserts to her 'marriage' to Mr Uddin.
- v. She has never had a direct (even telephone) threat from her brother(s), the apparent main possible instigator(s) of violence against her and the evidence for any such threat is entirely dependent on her oral evidence. I do, in this respect consider that

her credibility is damaged by her failure for four years to bring an asylum claim. I accept that until 2013, as she had leave to remain, there was less pressure on her to do so, but that still leaves a two-year period. The evidence of hers and her partner's previous applications indicate that their real concerns are for continued family life in UK, with the economic and other benefits that attracts. If she really thought that her and her children's life was in danger on return to Pakistan, I see no reason for delay, particularly bearing in mind Mr Uddin's experience of the process. Instead, her and her partner's approach has been procedural and legalistic, attempting every other avenue possible, before she brought this claim."

- 17.** Mr Mills accepted that in para 26(i), the judge had not had regard to the full text of the CIG document including that honour killings were not restricted to rural or tribal areas and also occurred in the city context. In that regard, I agree that the judge failed to take into account relevant evidence.
- 18.** In addition, I accept Ms Shaw's submissions in relation to the judge's statement set out in para 26(ii) that there had not been "a single threat or approach" from her family. Whilst it is true that there had been no direct threat, there was evidence from the appellant that her brother had, in the background whilst she was on the phone to her mother, threatened her and also subsequently it was reported by her mother that her brothers had reported the appellant to the police. This was, if accepted by the judge, evidence of continuing interest by her family as a result of her inter-faith marriage. Of course, in para 26(v), the judge appears to have made an adverse credibility finding against the appellant based upon her delay in claiming asylum, in particular her failure to raise asylum in her previous applications for leave. However, it was part of the appellant's evidence (as set out at para 19 of the judge's determination) that she had an explanation for the delay and at para 7 of the skeleton argument before the First-tier Tribunal, there is set out citation to the relevant evidence that the appellant had, in fact, raised the problem with her family before. That, in my judgment, undermined the judge's adverse credibility finding in para 26(v). There is, therefore, no proper finding based on the evidence about the threats and continuing interest, if any, of her family.
- 19.** Mr Mills submits that the appellant cannot succeed as the judge's internal relocation finding in para 27, in effect, overcomes any error in the judge's adverse finding on the risk from the appellant's family. The difficulty, in my judgment, with that submission is that part of the appellant's case was that in the course of a second telephone conversation with her mother, her brother had reported her to the police. If that was the fact, then it would be relevant as to whether or not the appellant could be traced to Karachi and whether a sufficiency of protection would be provided by the Pakistan authorities. As the judge's findings in respect of the risk to the appellant from her family are flawed, that necessarily has, therefore, an impact upon his assessment of whether she could safely and reasonably internally relocate to Karachi. That, in my judgment, is in itself sufficient to

undermine the judge's finding in para 27 and make his error in respect of his findings in paras 25-26 material.

- 20.** In relation to whether the judge properly assessed the risk to the appellant from Sunni extremists, it is not entirely obvious that that assessment should be made, as it was by the judge, by reference to whether the general risk rose to a level to engage Art 15(c) of the Qualification Directive. The appellant was not relying upon the risk of indiscriminate violence arising from an internal armed conflict in Pakistan. Further, although the judge set out Dr Giustozzi's evidence in summary at para 20, the judge appears to have treated it as insufficient in para 27(ii) because it was not supported by any country guidance. The fact that there was, and is, no country guidance relevant to the assessment of the risk to the more general appellant does not necessarily undermine the weight of the expert opinion. In the absence of country guidance, background evidence and expert opinion are the only tools available to a judge in order to assess the situation in a particular country. As I have already indicated, the judge's finding in relation to internal relocation to Karachi cannot stand. In all the circumstances, it would be wrong to consider the issue of internal relocation in isolation of the risk, if any, from Sh'ia militia either in general or because of her mixed marriage. That is not an issue bound up inexplicably with whether the appellant can establish an Art 15(c) risk but rather is one of a number of factors relevant to the reasonableness of living in Karachi. In remaking the decision, the First-tier Tribunal should also consider that risk, if any, as part of the internal relocation issue.
- 21.** For these reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. The decision cannot stand and is set aside.
- 22.** Having regard to the nature and extent of the fact-finding required, and applying para 7.2 of the Senior President's Practice Statement, the appropriate disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge O'Rourke.

Signed

A Grubb
Judge of the Upper Tribunal

Date: 11 August 2017

