



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/07552/2010  
AA/07554/2010

**THE IMMIGRATION ACTS**

Heard at Field House and Bradford  
On 26<sup>th</sup> October, 22<sup>nd</sup> November and  
14<sup>th</sup> December 2017

Decision & Reasons Promulgated  
On 20<sup>th</sup> February 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

SM  
MH

(ANONYMITY ORDER MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms J Elliot-Kelly instructed by Paragon Law  
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellants in this determination identified as SM and MH. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

History

1. SM is a Pakistani national; MH is her dependant son born in the UK on 17 October 2010. SM arrived in the UK in April 2006 on a visit visa to visit her

husband, Mr Mehmood<sup>1</sup>, to whom she claims to be still married. She has two other children, one born 21<sup>st</sup> July 2013 and the youngest born 21<sup>st</sup> January 2015. The two youngest children are not parties to this appeal but the outcome of the appeal of SM and MH will directly impact upon the two younger children. The father of all three children is, as subsequently accepted by the respondent, Shahid Akhtar<sup>2</sup>. SM did not leave the UK on the expiry of her visit visa. She claimed asylum on 22 April 2010, that application being refused by the respondent for reasons set out in a letter dated 10 May 2010.

2. Her appeal was dismissed by First-tier Tribunal judge Cruthers on 5<sup>th</sup> July 2010. In his decision, he accepted the factual basis of her asylum claim, namely:

- \* In Pakistan SM had never lived away from her home city of Lahore;
- \* SM has no relatives or contacts in other parts of Pakistan;
- \* Her marriage to Mr Mehmood was a love marriage and opposed by both families; they lived together in the Gulberg area of Lahore;
- \* her husband's family have considerably more money than her family;
- \* following her marriage her parents broke off all contact but she later reconciled with her mother although her mother did not tell her father or siblings of their resumed contact;
- \* property disputes led to Mr Mehmood spending time away from Lahore in Oman; she joined him in Oman in November 2003;
- \* Mr Mehmood came to the UK and she spent 1 month visiting him in September/October 2004; she then returned to Pakistan to see her mother;
- \* In April 2006, she returned to the UK to visit her husband who remained in the UK;
- \* Mr Mehmood was drinking, seeing other women, was abusive and assaulted her; he threw her out of the home in November 2007;
- \* In November/December 2007 she was informed by her mother that Mr Mehmood was back in Pakistan;
- \* SM formed a relationship with Mr Akhtar with whom she had three children. Her relationship was uneven in that sometimes he supported her and other times he did not; Mr Mehmood knows of the birth of the first child, MH.
- \* She continued to have contact with her mother about once a month and her mother generally told her of some incident with Mr Mehmood or his family where SM is described as a woman of bad character who has relations with other men.
- \* SM was at real risk of serious harm if she returns to her home area in Lahore.

3. Judge Cruthers dismissed the appeal because she could relocate elsewhere in Pakistan.

4. SM's appeal to the Upper Tribunal from that decision was dismissed on 28<sup>th</sup> March 2011 by Deputy Upper Tribunal Judge Alis. On 4<sup>th</sup> April 2011, the Court

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<sup>1</sup> I have not anonymised him. It is claimed he is not in the UK and although he has some contact with SM's mother it is claimed there is no contact between him and SM. There is no need for him to be anonymised in those circumstances.

<sup>2</sup> I have not anonymised him – it is claimed that his whereabouts are unknown and the respondent has been unable to trace him. There is no need for him to be anonymised in those circumstances.

of Appeal granted permission to appeal and the appeal was remitted to the Upper Tribunal, by consent, for a fresh hearing on the basis that the question of ostracism of the appellant as a lone mother with an illegitimate child had not been considered.

5. The respondent withdrew the 2010 decision and made a further refusal decision dated 31<sup>st</sup> March 2014.
6. The Upper Tribunal heard the appeal against that decision on 21<sup>st</sup> May 2015 and dismissed it in a decision promulgated on 2<sup>nd</sup> February 2016. Permission to appeal that decision was granted, by consent, by the Court of Appeal on 29<sup>th</sup> October 2016. The issues to be determined are:
  - (1) Whether the appellants are at real risk of persecution and/or serious harm in Pakistan given the risk of persecution and/or disproportionate punishment for fornication and adultery (applying the principles established in *KM (Zimbabwe)* [2013] 1AC 152 and *HJ (Iran)* [2011] 1 AC 956;
  - (2) Whether the appellants are at real risk of persecution and/or serious harm as a result of ostracism in Pakistan (applying the principles established in *KM (Zimbabwe)* and *HJ (Iran)*).
7. The schedule of agreed facts to the Court of Appeal are as set out in [2] above save that it was not agreed that she would be at real risk of serious harm if returned to Lahore. In addition it was agreed that SM lives in [ ] with her 3 children; she does not live with Mr Akhtar but he is involved with the children's lives and visits them; SM and the three children are Pakistani citizens and none have any leave to remain in the UK.
8. This appeal first came before me on 26<sup>th</sup> October 2017. Directions made by McCloskey J in September 2017, which included that an Urdu interpreter be booked, were not notified either to the parties or to the Tribunal administration. I adjourned the hearing and made the following directions:
  1. An Urdu interpreter was required;
  2. There be an anonymity order for the principal appellant and the child;
  3. That the respondent would not be filing and serving expert evidence.
  4. The resumed hearing is listed before me at 2.00pm on Wednesday 22nd November 2017 at Field House;
  5. The respondent is to file and serve a skeleton argument by 4pm on 16th November 2017;
9. I received skeleton arguments from both representatives. On 22<sup>nd</sup> November 2017, the appellant became unwell whilst giving her evidence, suffering from breathlessness during cross examination. I adjourned the hearing until 14<sup>th</sup> December 2017. The appellant again said she was feeling unwell and that she had had flu/a cold a few days earlier but that she wanted to proceed with the hearing. There was no request for an adjournment of the hearing by either representative; the appellant gave oral evidence for a very short time and I heard oral submissions from both representatives. I reserved my decision.

## Evidence

10. The agreed schedule of facts was the starting point. SM's evidence before me, in summary, was that:
  - (a) She was unaware that she could obtain a Shariah divorce in the UK;
  - (b) that her understanding was that whether she could obtain a divorce or not, her husband would be informed and he would be informed where she was living;
  - (c) she has never lived with Mr Akhtar save for a period since about May 2008 when they lived together at [ ]; since then she does not know where he lives; she has never asked him where he lives and he has never told her;
  - (d) she contacts Mr Akhtar by phone;
  - (e) he takes the children to school occasionally; at weekends, he takes them to the park; he comes round if she asks him if she's feeling unwell;
  - (f) she last had contact with her mother when her youngest child was born.
11. According to the report by the social worker, Ms Christine Brown, she met Mr Akhtar. She did not record his address in her report or where he worked but recorded his occupation as a chef, that he was one of seven siblings and that he sends (unquantified) money back to his family in Pakistan.
12. There is no current evidence from Mr Akhtar either oral or written. The respondent has no record of him being in the UK and has been unable to find any trace of him on the limited information provided about him. He has not attended any of the Tribunal hearings.
13. The respondent relied upon a document: Muslim Marriage and Divorce document by the Muslim Women's Network UK.
14. I had a report by Dr Livia Holden dated 31<sup>st</sup> March 2017 on SM's ability to divorce her husband, dishonour, ostracism and "honour" killing, adultery, risk on return both with Mr Akhtar and alone with her three children. There was no challenge by the respondent to Dr Holden's expertise or to the content or conclusions in her report.

## Findings and discussion

15. There is some reference in the papers to the appellant's husband being a British Citizen of Pakistani origin and to previous visit visas being issued to the appellant. It is not clear how accurate this is but nothing turns on this in this appeal. The agreed schedule of facts stands. The personal factual issues that arise from the appellant's evidence and need to be determined are the nature of her relationship with Mr Akhtar, the issue of divorce, the impact on her and the children if they are returned to Pakistan and her contact with her family.
16. Dealing first with her family the starting point in considering the recent evidence is the acceptance by the First-tier Tribunal that she became estranged from her family after her marriage and that although she had resumed contact with her mother that contact was not transmitted to her father or siblings. She now says she has had no contact with her mother since January 2015. Whether that is true, the fact remains that she has no contact with her family in terms of support,

whether protection from her husband or economic assistance, available if she returns to Pakistan. I doubt that she has no contact with her mother and find that she has not told the truth about this. Nevertheless, such contact as she has, given the agreed schedule of facts, is insufficient to amount to anything approaching the assistance or support she would require if she returns to Pakistan with her three children.

17. I do not believe SM does not know where Mr Akhtar lives. She lived with him when she was first estranged from her husband. She has his phone number. She has three children with him and has been in an emotional relationship with him since about 2008. He lives a short distance away from her by bus because he can get to her home within about half an hour of her phoning him. It is simply not credible that she has *never* asked him where he lives. Although Ms Brown has not recorded his address in her report, there is no suggestion that he refused to give it to her. It would be incredible for a responsible social worker not to ask such a question when considering the best interests of children, even if she has some (undisclosed) reason for not recording it in her report. Given it is accepted that he sees the children and they spend time alone with him, it would be irresponsible not to know where he lives.
18. SM has not sought legal advice on a Sharia divorce. According to the Muslim Marriage and Divorce document by the Muslim Women's Network UK relied upon by the respondent, there is an obligatory waiting period of 3 months (*iddah*) during which time the husband is required to support the wife financially after the institution of divorce proceedings. The different types of divorce are briefly explained. Where the wife is divorcing the husband, it states that the religious body will write to the husband setting out the reasons why the wife wants a divorce; usually the wife's address is included and that if she wants this to be confidential she must give instructions for it not to be disclosed. If there is no response from the husband a second and sometimes a third reminder is sent. Sometimes there is a reconciliation meeting set up. The document includes examples where the Sharia Council does not operate in accordance with the processes as set out in the document but it is not clear to what extent that is commonplace. Nor is it said how often a request to keep an address confidential is respected. Dr Holden says it is rare, in her experience, for a woman's address to be kept confidential. Although the respondent made much of SM's failure to seek legal advice and/or find out whether she was in fact already divorced or make an attempt to divorce her husband, I am satisfied that this has little to do with her current situation. She has three children with a man to whom she is not married and with whom she says she does not live, who is in the UK illegally and who, she says, will not return to Pakistan with her if she and the children are removed. He has not attended any of the hearings. This is surprising if he did care for the children because the outcome of the hearing could be their removal from the UK. His lack of involvement, for no given reason, does not indicate any concern for SM and/or the children.
19. In the absence of any evidence to the contrary and particularly in the absence of any evidence from Mr Akhtar I have no alternative but to find that on removal SM would be returning to Pakistan as a lone woman with three children, of whom her husband is not the father. I cannot find, as submitted by Mr Walker, that she could either have divorced her husband in the past or been divorced by

him and been free to marry Mr Akhtar. Whilst theoretically that is possible the evidence is that she is not living with Mr Akhtar, his whereabouts are undisclosed and they do not intend to marry whether she is free to do so or not. It is irrelevant whether she is or is not married to her husband in the context of whether she would be returning with Mr Akhtar. It would only be relevant to the protection needs of SM, given Dr Holden's report and my comments below, if SM and her husband had divorced prior to the birth of the first child and she had been married to Mr Akhtar at the time of the birth of the first child. There was no evidence and no submission to that effect and thus the position is as I have outlined.

20. Mr Walker submitted that SM's argument that she would be returning to Pakistan as a lone woman with three children was not sustainable because she could have taken into her own hands the obtaining of a divorce and then marriage to Mr Akhtar, is not sustainable. Mr Walker submitted that she had failed to explain adequately why they don't marry. The evidence is that she does not live with Mr Akhtar and the agreed facts are that the relationship is "uneven" and they have not lived together other than for a short period of time in 2008. There was no evidence of any intention to marry, even if she were divorced. If Mr Akhtar cannot be found, he cannot be removed with her and the children. I must take a decision based on the situation as it is now – she is living alone with the three children and he is not to be found and there is no intention that they will marry at some stage in the future. Although Mr Walker is correct that there has been a lack of explanation why they do not marry, to a large extent that is because SM has not been forthcoming about him and he has failed to give evidence. There is no suggestion that her removal would be delayed pending him being found and any such suggestion would not in any event prevent my having to take a decision as the evidence currently is. As Mr Walker submitted, there is a possibility that her whole account of her lack of knowledge of Mr Akhtar's whereabouts is a fabrication and that if she succeeds in her application he may seek leave to remain based on her and the children's status. I agree that is a possible scenario but I have no doubt at all that evidence that comes to light at that time would be considered by the respondent. But on the evidence before me, now, I can make no other finding but that she would be returning to Pakistan as a lone woman with three children. She would not be returning to live with her husband or her family or his family or Mr Akhtar's family.
21. It is uncontroversial that lone Pakistani women with children or divorced women are a particular social group for the purposes of the Refugee Convention.
22. Mr Walker did not challenge Dr Holden's report. I have read the report and have some concerns that it is, in some respects, very general and draws general conclusions based on very old reports; for example, the murder of a woman in her lawyer's office at a reconciliation meeting (2009), the figures for "honour" killings and reference to incidents in the Tribal areas. There is considerable reference to the violence suffered by women who have married for love and the resultant dishonour yet SM has not provided evidence on this; her claim is based upon dishonour because of the breakdown of her marriage and the birth of three children for whom her husband is not the father. Considerable elements of the report refer to the possibility of SM obtaining a divorce, with the consequences of her husband either having already obtained a divorce or

obtaining one when she returns home, the consequences of her and Mr Akhtar marrying in Pakistan. According to Dr Holden children born during the currency of a marriage, even if the couple are not together, are deemed *prima facie*, to be the children of the husband. If her husband has divorced her already, then the children will clearly have been born out of wedlock. If they are not divorced it will be clear that she has committed adultery irrespective of them being deemed to be her husband's children; he has not (it is said) been in the UK. The agreed statement of facts records that her husband knows of the birth of the first child and has been calling her a woman of bad character. The birth of the two younger children will inevitably come to light if she returns to Pakistan.

23. According to Dr Holden, SM will be considered "a disobedient woman, of low moral standards, being a proven adulteress and the mother of illegitimate children". Although she records that 'dishonour' arises out of refusal to follow parental wishes, in this appellant's case it is because of the birth of the three children. SM's claim for protection does not arise from her having contracted a "love" marriage.
24. The finding by First-tier Tribunal Judge Cruthers that SM is at risk of being persecuted in her home area of Lahore does not form part of the Statement of Agreed facts before the Court of Appeal. Nevertheless, on return to Pakistan SM will have to register the children. According to Dr Holden, and this was not challenged, the mere fact of registration will bring the existence of the children and thus the whole issue of her adultery to the attention of not only the authorities but also her family. SM is, according to Dr Holden, committing a serious crime for which she is likely to be charged and convicted. It cannot reasonably be said that she could 'live under the radar' given that the children must be registered; her husband's name would be noted; he is not the father of the children and she is not with the father of the children. Even if she were with Mr Akhtar (whether married or not) MH was born during the currency of her marriage to Mr Mehmood and he is not the father. She may in fact (although there is no evidence to that effect) be divorced from Mr Mehmood but that does not place her in any better position.
25. Despite some misgivings on my part over the generality of Dr Holden's report and that a considerable part of the evidence upon which she relies is quite old, her conclusions were not challenged by the respondent, save as referred to below. I was not directed to any evidence to contradict or challenge her report. It was part of the agreed statement of facts that SM's husband had made threats in the past and continued to do so. On the basis of the evidence before me and in the light of the agreed statement of facts, I find, as did judge Cruthers, that SM would be at real risk of being persecuted if returned to her home area, namely Lahore.
26. The issue is whether it would be unduly harsh for SM and the children to internally relocate. The unchallenged evidence of Dr Holden is that the only realistic options for relocation are either to Islamabad or Lahore where there are facilities available, although SM's ability to access such facilities is severely compromised. In SM's case that means the only realistic option is Islamabad. According to the unchallenged evidence of Dr Holden, some 70 – 80% of women face violence. The successful relocation of women depends upon the

city and province; wealthier women with jobs/income in urban areas would not have much difficulty. SM does not fall within at category. Although Mr Walker submitted that there were shelters available for single women with children, Dr Holden relied upon a 2012 study which referred to the lack of protection available in shelters, the poor living conditions and that children over the age of 10 were not always able to remain living there resulting in women having to give up custody of their children. Dr Holden reiterated throughout her report that the availability of security both financial and personal depended upon being able to access financial support, a protected life style for example living in a gated community and support from family members.

27. The children will have to be registered to enable them to obtain services including future employment. SM would be unlikely to obtain employment and even housing without such registration. Registration would by its very nature expose the fact, after very little follow up, that she has three children outside her marriage. She would thus, according to Dr Holden be exposed to violence, possible criminal charges and certainly to ostracism and significant societal disapproval. Such results would make it seriously difficult for SM to find adequate accommodation, employment and schooling for her children.
28. There was no evidence that Mr Akhtar would provide SM with any financial support. There was no evidence that he did so now, although there was evidence that he sent money back to his family in Pakistan. I cannot take a decision on the basis that he would provide for her financially, particularly given that he appears to care so little for SM and the children that he has not come before the Tribunal to give evidence.
29. Mr Walker did not challenge Dr Holden's report on the availability of protection from the police or other authorities for SM in the context of her returning with three illegitimate children without a husband and possibly not divorced from her first husband. That she is liable to criminal charges is not in dispute. That there have been various killings due to breaches of so-called "honour" is not in dispute, although the extent of such extreme violence now was not clear from the report. But the extent of entrenched violence and the lack of willingness as well as ability of the authorities to provide sufficiency of protection does not appear to be in doubt and was not challenged by Mr Walker.
30. On the basis of the evidence before me I find that relocation of SM would be unduly harsh and that there is a lack of sufficiency of protection.
31. This appeal was remitted by the Court of Appeal for consideration of whether SM and MH were at real risk of persecution and or serious harm looking specifically at the issues of fornication, adultery and ostracism looking at *HJ and HT* [2010] UKSC 31. *HJ* looked specifically at the ability of a social group being able to live freely and openly.
32. It can be seen from the above that, fundamentally, SM and MH (and the two younger children) will not be able to keep their whereabouts and their identity secret because of the requirement to register. It is not simply a case of attempting to "live under the radar" but is a case that it is impossible to do so because registration is a requirement. Without registration, education, and



employment, all other facets of ordinary life would be prevented or made extremely difficult. Issues of access to accommodation and employment flow from registration. Presentation of identity documents of themselves and the seeking of accommodation and employment will result in the identification of SM as a single woman with three children by a man to whom she is not and was not married. That the children are not the children of SM's husband, will become apparent on registration. Her husband has had an interest in SM, as described by SM's mother and accepted in the agreed statement of facts. The availability of accommodation, employment and protection will be seriously compromised by SM's lack of financial and economic support as well as lack of support from her family. The risk of criminal charges is present in addition to violence from her ex-husband. According to Dr Holden SM's ability to 'hide' her status as a lone woman would not be possible; her lack of economic independence, the lack of any male figures in her family unit would all result in her being vulnerable to exploitation, to a lack of accommodation, to a lack of employment and to identification as a woman with three children of whom her husband was not the father. Even though *HJ (Iran)* refer to the ability to live openly and although it was submitted on behalf of SM and MH that they should not be required to hide their circumstances, that does not arise in this case. The fact of the requirement of registration removes any element of choice, even if choice were available.

33. In these circumstances, I find that SM (and the children) are at real risk of being persecuted for a Convention reason if removed to Pakistan.

34. I allow the appeal of the decision on the international protection claim. There is no requirement for me to make findings under Article 8, the appeals having been allowed on refugee grounds.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

I re-make the decision in the appeal by allowing it on international protection grounds.



Upper Tribunal Judge Coker

Date 19<sup>th</sup> February 2018