



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

Appeal Number: PA/02808/2018

THE IMMIGRATION ACTS

Heard at Bradford

On 10 January 2019

Decision & Reasons

Promulgated

On 18 January 2019

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

AY

ANONYMITY DIRECTION MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Caswell, Counsel

For the respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) 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.

Introduction

1. I have made an anonymity order because this decision refers to the appellant's asylum claim.
2. The appellant has appealed, with permission granted by First-tier Tribunal ('FTT') Judge Keane, against a decision of FTT Judge Drake dated 1 June 2018, in which his asylum and Article 8 appeals were dismissed.

Background facts

3. The appellant, a citizen of Pakistan, claims to have entered the UK with a student visa in January 2010. The visa expired on 21 July 2011, and the appellant overstayed.
4. The appellant married RZ, a citizen of Pakistan, in February 2014. She arrived in the UK as a student in September 2013. She also overstayed when her visa expired on 30 October 2015.
5. RZ claimed asylum on 12 May 2016, with the appellant, and their child born in the UK in 2015, as her dependents. She claimed that she was at risk of persecution by reason of threats made toward her uncle in Pakistan. He was unhappy that she married the appellant when there was a family agreement for her to marry one of his sons in around 2012. RZ's family was told about the 2014 marriage which resulted in the threats from the uncle.
6. RZ's asylum claim was refused and certified as clearly unfounded in a decision dated 7 March 2017. At the hearing before me, Mr Caswell confirmed that this decision was not the subject of any legal challenge. The appellant separated from his wife in March 2017, when she was pregnant with their second child (born in July 2017). The appellant claimed asylum in his own right on 11 February 2018. This was based entirely upon the same claimed threats from RZ's uncle because of their marriage. The Respondent refused the appellant's asylum claim in a detailed and comprehensive decision letter dated 13 February 2018.
7. In a succinct decision, the FTT accepted that RZ's uncle would have been unhappy about her marriage to the appellant but concluded that the appellant was not at risk from the uncle as the threats made were very vague, with the last dating back by some four years. In any event, the FTT noted that if the uncle's objective was to force a separation, that had already taken place. The FTT also accepted the reasoning in the decision letter that the appellant would not be found by RZ's uncle as he did not have the influence to track him down to his home area.

8. The FTT also dismissed the appeal on human rights grounds and agreed with the reasons in the decision letter, given the lack of evidence regarding the claimed family life and in any event the inability to meet the Immigration Rules.

Grounds of appeal and hearing

9. The grounds of appeal have been drafted by the appellant's solicitors in handwriting. They are short and vague. Two grounds are relied upon:
 - (1) The FTT accepted the plausibility and credibility of the claim relevant to RZ's family and therefore should have regarded the threats emanating from them as plausible and credible.
 - (2) The FTT failed to properly address Article 8 and the children's best interests, given the evidence that the appellant has contact with his children and RZ's statement in support of this.
10. FTT Judge Keane granted permission to appeal on both grounds.
11. At the hearing before me Mr Caswell sought permission to amend the grounds. I refused his application without hearing from Mrs Pettersen. The application was made very late and for the first time and without notice at the hearing before me. Mr Caswell did not rely upon written draft grounds. The grounds he identified were limited to minor factual errors. Mr Caswell therefore relied upon the grounds of appeal as drafted by his instructing solicitors. He acknowledged that even if the appellant's claim was considered at its highest, it was difficult to challenge the finding that he could internally relocate in Pakistan. For this reason, he said little of substance regarding ground (1) and focussed his attention upon ground (2). Mr Caswell invited me to find that even though RZ and the children did not have leave at the time of the FTT hearing and were liable to removal, the FTT should have assessed their circumstances on the basis that the respondent would not in reality remove them.
12. I did not need to hear from Mrs Pettersen, the respondent having relied upon a rule 24 notice dated 6 September 2018.
13. After hearing from Mr Caswell, I indicated I would be dismissing the appeal for the reasons I now provide.

Error of law discussion

Ground 1 - asylum

14. I have no hesitation in rejecting the submission that the FTT erred in law in finding there was no current credible threat against the appellant from RZ's uncle or family members. The FTT was entitled to

regard the threats that were made as very vague and not directed against the appellant for the reasons provided at [9]-[10]. Moreover, the FTT was entitled to find that the last threat took place over four years ago and there was insufficient evidence of the uncle having the intent or ability to track the appellant down in his home area (see the FTT decision at [20]-[21]), such that internal relocation was inevitably available to the appellant, even when his claim was considered at its highest.

15. The reasoning offered by the FTT may be succinct but when viewed in context is adequate. The appellant's asylum claim was based upon the same asylum claim made by RZ. The decision that her claim was bound to fail was not challenged. The respondent noted that the uncle did not hold any power or influence in Pakistan and would be unable to track RZ, an educated woman, if she relocated to a large city. The same reasoning applies to this appellant.

Ground 2 - Article 8

16. The reasoning provided by the FTT regarding Article is very brief. It is however clear that the FTT endorsed the conclusions in the respondent's decision letter. The FTT has adequately explained its reasons for doing so. I address these below. The decision letter made clear points that have not been the subject of any criticism on the appellant's behalf either before the FTT or me: refusal of leave would not lead to unjustifiably harsh consequences for any member of the family; consideration was given the children's best interests and it was decided that the appellant's relationship with his children could continue in Pakistan, where they would be supported by both parents (living separately) in a country in which they spoke the language and would be educated. The FTT did not err in law in not considering the children's best interests expressly when it clearly endorsed and agreed with the respondent's reasons in his decision letter at [65]-[71].
17. The FTT regarded there to be a lack of evidence in the case. Mr Caswell reminded me that insufficient attention was given to RZ's statement. This supported the appellant's claim that although he was separated from RZ, he saw his children very regularly and played an active role in their lives. Mr Caswell was entirely unable to respond to my suggestion that this family life could take place in any large city in Pakistan. He acknowledged that as at the date of the FTT hearing, RZ and the children did not have leave to remain and RZ was an unlawful overstayer. I entirely reject the submission that the FTT ought to have ignored the practical reality of the situation and assessed the appellant's claim on the basis that he would be separated from his children. The practical reality is that if successful the appellant would be removed to Pakistan, as would RZ and their children.

18. The FTT considered that there was “a lack of basic qualification for such rights”. The FTT explained that the requirements of the Immigration Rules could not be met. Mr Caswell did not dispute this. In particular it was not disputed that as RZ has no leave to remain, and the children are not “qualifying children”, the family (including the appellant) could be removed to Pakistan at the same time and could set up home near to each other in a large city there.
19. When the decision is read as a whole I am satisfied that the grounds of appeal are not made out and the decision does not contain any error of law.

Decision

19. The FTT decision did not involve the making of a material error of law and I do not set it aside.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
10 January 2019