



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10513/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 5th April 2019

Decision & Reasons Promulgated
On 9th May 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

Ms S M
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Farooq for Anderson Smith Law.

For the respondent: Mr McVeety, Senior Presenting Officer.

DECISION AND REASONS

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Shergill. That decision, promulgated on 10 December 2018, dismissed her appeal against the respondent's refusal of protection.

2. There are a series of interrelated and transgenerational claims. Suffice it to say it is apparent from the decision of First-tier Tribunal Judge Shergill that the judge was not satisfied the appellant and her witnesses were being frank, particularly in relation to the family dynamics.
3. The necessary anonymisation can lead to some difficulties in recalling who is who. The way of introduction the appellant, Ms SM, entered the United Kingdom on a visit Visa on 25 August 2005 at the age of 18. She was accompanied by her mother, Mrs BP and her older sister, Mrs AR. She subsequently overstayed and then on 28 April 2018 made a claim for protection. This was refused and forms the subject matter of the present proceedings.
4. Her sister, Mrs AR, had also made a claim for protection which is connected to the appellant's claim. Her claim was allowed at 1st instance and the judge had requested details of what is called the Grant Minute or summary reasons.
5. Her mother at the time of hearing also had a related application which was pending but the parties agreed that the matter could proceed.
6. It was indicated that in 2011 her brother Mr KK, aka Mr RMK, also came to the United Kingdom on a visit Visa and subsequently made a claim for protection which is also pending. He has a disability in that it was indicated he cannot speak or hear.
7. There are also various siblings living in the United Kingdom including an older brother, Mr HR. He has been granted British citizenship. There was also reference to a Mr SK, a member of the firm representing the appellant. He was recently appointed a Magistrate. He is married to another sister. The judge made the point that Mr SK had been the sponsor of 3 members of the family who all overstayed.
8. The background to the claim is that her sister, Mrs AR, entered into an arranged marriage in Pakistan in 2002. The marriage was not successful and her husband was abusive towards her. It was variously indicated that her husband has connections in the police and military or with politicians. Mrs AR's in-laws wanted Ms SM to marry into their family. Given the experiences of her sister, Mrs AR, her mother was not agreeable. Consequently, the in-laws bore the family animosity and at various stages sought to harm not only the appellant but also her mother. It was said that her brother, Mr KK, moved from Kashmir, where there had been living, to stay with an uncle in Lahore. He was able to live there for a number of years until his in-laws located him whereupon they attacked him, burning his face and breaking his arm.

9. In refusing the appellant's claim the respondent said her account was vague at various stages. In any event, it was suggested there was sufficiency of protection from her and she could avoid difficulties from her in-laws by relocating, for instance, to Lahore. In terms of her private life the respondent did not see significant obstacles to her reintegration.
10. First-tier Tribunal Judge Shergill had issued specific Directions in relation to the appeal. As a result of this the judge was provided with the letter issued to her sister, Mrs AM, by the respondent, dated 21 March 2018, granting her protection. This indicated that her claim related to domestic violence and was largely consistent with the appellant's account. However, a distinguishing feature was that she was considered to be suffering from post-traumatic stress disorder and her mental health was an issue. The judge commented on the reasons given in the letter but said there was little reasoning in relation to sufficiency of protection or relocation in relation to Mrs SM. The judge clearly was taking into account the fact she had been granted protection but pointed out this was not a Devaseelan situation but referred to Ocampo -v- SSHD [2006] EWCA Civ 1276.
11. The judge heard from the appellant and her mother as well as another brother (not Mr KK). The judge accepted that women in Pakistan form a particular social group and that lone women were vulnerable and needed to have a male relative. The judge accepted that the Grant Minute in her sister's application supported a fair amount of what she herself claimed. The judge noted that her sister had not been interviewed when her claim was being assessed because of mental health issues raised. The judge took the view that whilst her sister's mental health issues factored in the assessment of her claim ultimately the grant was based upon acceptance of her account of events in Pakistan. The judge also had regard to the contents of her mother's interview.
12. At paragraph 20 the judge accepted that Mrs AR had been the victim of significant domestic violence and that it was plausible that her in-laws wanted to marry one of their brothers to the appellant. The judge also accepted that it was plausible that their mother, Mrs BB, resisted the proposal and that this then led to further violence for Mrs AR and attempts to injure the appellant. The judge found what was claimed was consistent internally and with the objective evidence.
13. At paragraph 21 the judge went on to consider whether there would be a male protector available for the appellant. It is in evaluating this that the judge expressed concerns about the reliability of the evidence presented in relation to support at paragraph 23. The claim made was that there were no male relatives

that the appellant could turn to for support in Pakistan. The judge referred to obfuscation in relation to enquiries about family members. The judge attempted to follow a family tree and concluded there should be at least 2 sisters still in Pakistan who were not married.

14. At paragraph 25 the judge turned to consider her brother Mr KK. The judge heard from Mr K.K.'s brother, Mr HR, who has been granted citizenship. He claimed not to know about his brother's life in Pakistan. The judge referred to discrepancies between the evidence of the various family members. The general tenor of their evidence was that all of the appellant's siblings were in the United Kingdom. Their evidence caused the judge to question whether her brother Mr KK had been in the United Kingdom earlier than the claimed 2011.
15. At paragraph 33 the judge accepted the history of domestic violence given and found that the appellant might be at risk if she returned to her home area. However, her situation could be distinguished from that of her sister, Mrs AR. Her sister had left an abusive husband whereas the appellant had rejected a marriage proposal and more than half her lifetime had passed since. The judge said it was difficult to accept that a rejected suitor would still be concerned at this stage. Overall the judge felt the risk to the appellant was considerably less than that faced by her married sister. However, the judge accepted the possibility of a risk existing in her home area. Following from this then was the issue of relocation.
16. At paragraph 34 the judge commented upon the recent claim that her brother Mr KK encountered difficulties in Lahore, the very area the respondent suggested the appellant could relocate to. The judge took the view this was an attempt to anticipate and counter the relocation point. The judge did not find a real risk of her being discovered and was not satisfied that her claim pursuers were well-connected or influential.
17. The judge was not satisfied that her brother, Mr KK, had such disabilities that he could not take on the role of head of the household. At hearing, the judge commented that there was no formal confirmation he had made a claim for asylum. The evidence rather was that he was waiting for an interview. The judge concluded that the appellant could be returned along with her brother Mr KK who could act as her protector. In turn they could be supported by their other brother, Mr HR.

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18. Permission to appeal was granted in relation to what the judge had said at paragraph 34 and 35, which is concerned with relocation to Lahore and being accompanied by her brother Mr KK. The grant of permission referred to the suggestion Mr KK had a pending claim for protection and that there was no evidential basis to conclude he would be willing to return to Pakistan with the appellant. The grant suggested it was incumbent upon the judge to say more as to why it was likely that Mr KK would so return and act as her protector. Other grounds were advanced and these were not considered particularly meritorious but nevertheless could be argued.
19. At hearing the appellant's representative confirmed that her mother had a pending claim for protection. So had her brother Mr KK.
20. Mr McVeety accepted that in the circumstance it was a material error of law for the judge to have considered relocation on the basis her brother would accompany her and act as her protector. This was because of his own circumstance.
21. I would agree at this does amount to a material error of law in what is otherwise is a very carefully prepared decision. The decision indicates the judge carefully considered the evidence and made clear findings that were open. However, the outcome of the appeal turned on the question of relocation and the question of having a male protector. It was at this stage that the decision was flawed given her brother situation as an asylum seeker.

Decision

The decision of First-tier Tribunal Judge Shergill materially errs in law and is set aside. The matter is remitted to the First-tier Tribunal for a de novo hearing.

Deputy Upper Tribunal Judge Farrelly.

Date: 04 May 2019

Directions.

1. Relist in the First-tier Tribunal at Manchester for a de novo hearing excluding First-tier Tribunal Judge Shergill.
2. An Urdu Punjabi interpreter will be required.
3. It would be preferable if the appeal were not relisted until there had been an outcome in respect of the claim made for protection by the appellant's brother Mr KK. An issue is the question of the appellant's relocation, with the suggestion that he could return with her but for any outstanding claim of his.
4. It has been indicated that his claim and that of their mother is based upon a threat from the in-laws of Mrs AR ,the appellant's sister. She has been granted protection on this basis by the respondent at 1st instance. If those claims have been unsuccessful and there are pending appeals it would seem preferable for all appeals to be heard together. This would make for consistency and common evidence would be helpful to the judge hearing the appeal. Because the cases are interlinked in this way it would seem advantageous to have a Case Management Review in relation to this.
5. The First-tier Tribunal judge at paragraph 33 does not specifically find that the appellant would be at risk in her home area but refers to the *possibility* she might be at risk. The question of sufficiency of protection is referred to at paragraph 21 and this is linked to a disputed claim that the in-laws have connections. I would leave these matters open rather than restrict the scope of the enquiry by the First-tier judge ultimately dealing with the appeal or appeals. There should also be focus upon the question of the reasonableness of relocation and the availability of male support.
6. A hearing time of around two and a half hour is anticipated.

Deputy Upper Tribunal Judge Farrelly.
Dated: 04 May 2019