



IAC-AH-KRL/FH-CK-V2

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

**Appeal Number: LP/00092/2021
(PA/50850/2020)**

THE IMMIGRATION ACTS

**Heard at Field House
On 18 November 2021**

**Decision & Reasons
Promulgated
On the 22 December 2021**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**SM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Mackenzie, instructed by Gentili Stark Solicitors Limited

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Nepal. She appealed to the First-tier Tribunal against the respondent's decision of 30 June 2020 refusing her application for asylum.
2. The basis of the appellant's claim is that she cannot return to Nepal because her parents, who are devout Buddhists, wish to force her into an

arranged marriage with one of three candidates of her choosing, and in the alternative would cut her off, leaving her in a situation where she would have to move away from them, and internal relocation within Nepal would be unreasonable.

3. The judge found the appellant to have been consistent with her evidence about her parents wanting her to enter into an arranged marriage. Her claim was supported by the objective material. He also found that she had not sought to exaggerate the consequences were she to refuse to enter into such a marriage. She had said that her parents would disown her were she to refuse. The judge therefore accepted that her parents did express displeasure that she had entered into a relationship in the United Kingdom with a man who is neither a Nepali nor Buddhist, and that they reacted to this by seeking to arrange a marriage for her with someone they deemed to be more suitable. The judge also accepted whilst the appellant was no longer in that relationship, it was likely that her parents had lost trust in her and as a result would still want her to enter into an arranged marriage.
4. The judge considered however that the appellant would be able to approach the police if necessary and that they could offer a sufficient level of protection from her family, but found that it was unlikely that the police would intervene solely to prevent a forced marriage from taking place given that there was no evidence before him that this was illegal or even frowned upon in Nepal. It did appear to the judge that the appellant could seek the protection of the police if she considered her family were seeking to harm her were she to refuse to enter into such a marriage, but that was not her case, her evidence was simply that they would seek to cut ties with her.
5. With regard to the argument that if that happened the appellant would be unable to provide for herself in Nepal given that it is a patriarchal country and discriminates against women, the judge considered the evidence, accepting that citizenship certificates are of great importance in Nepalese society. This issue arose as a consequence of the argument that the appellant said she could not realistically be expected to relocate because she is not in possession of her citizenship certificate. It was accepted on the appellant's behalf that she does have the number of her original certificate as it is in her passport, but it was argued that she would be unable to obtain a letter of recommendation from the municipal office because of misogynistic and sexist attitudes in Nepal.
6. The judge referred to evidence from Amnesty International in respect of citizenship certificates and their replacement. He accepted that there was a significant risk that the appellant might face administrative difficulties in Nepal in having her citizenship certificate reissued. He said that it was nevertheless clear that she was legally entitled to a new certificate and, applying the lower standard, did not accept on the evidence before him that she would never be able to obtain a new certificate. He accepted the

argument put forward on behalf of the Secretary of State that it might be difficult but not impossible for the appellant to obtain a replacement citizenship certificate if she was unable to recover her original one.

7. The judge went on to consider the argument that it would be difficult for the appellant to re-establish herself in Nepal because as a single woman she would face discrimination. Having considered evidence also from Amnesty International he did not accept that such discrimination as she would experience amounted to persecution and did not accept that she would be unable to re-establish herself in Nepal without the assistance of her parents. As regards the impact of the current pandemic, he considered that the effects of that virus on Nepal did not elevate her circumstances in the context of her asylum claim. He found, from her own evidence, that women's rights NGOs existed in Nepal and that she could seek their assistance on return if it proved necessary to do so.
8. In conclusion the judge found that the appellant could reasonably be expected to move to an area of Nepal away from her parents and re-establish her life there. While there might be obstacles to her re-establishing herself as a single woman in the light of prevalent discriminatory views in Nepal, in his view they would not be very significant for an educated and healthy woman from a higher caste. She could therefore be expected to find work and accommodation for herself. Her evidence was that her parents would likely do no more than cut her out of their lives and that they had no ties to the government and hence he found it unlikely that they would try to track her down or seek to harm her even if they did discover her whereabouts.
9. As a consequence the judge dismissed the appeal under the Refugee Convention and also found that the appellant was not entitled to humanitarian protection nor was she at risk of death and/or harm contrary to Articles 2 and 3 of the ECHR.
10. There was an issue which has subsequently been determined relatively briefly but in relation to which permission was granted, which is that the judge's conclusion that Mr Mackenzie, who also appeared below, had conceded that the Article 8 claim would stand or fall with the asylum claim.
11. This was robustly disputed by Mr Mackenzie and also by his instructing solicitor. The Secretary of State adopted a neutral position on the point. In a response to an application for directions, Judge O'Callaghan, who was due to sit with me but unfortunately owing to illness was unable to, expressed the provisional view that it was most unlikely that Mr Mackenzie would have abandoned any Article 8 argument bearing in mind that it was referred to in his skeleton argument and also it appears in the submissions before the judge. I entirely agree with Judge O'Callaghan's view, and made it clear at the outset of the hearing that bearing in mind the neutrality of the Secretary of State the matter was essentially moot and

concluded without the need for further argument that the judge had erred in law in finding that Article 8 claim had in effect been abandoned before him.

12. In his submissions Mr Mackenzie referred to the evidence before the judge as to whether or not the appellant could obtain a citizenship certificate. There was evidence on this in the Australian Government Department of Foreign Affairs and Trade (DFAT) Country Information Report on Nepal of 1 March 2019 in the bundle and also the Amnesty International Report, to both of which the judge had referred. As regards the position of NGOs assisting women, they did exist but there was a question of whether they could help the appellant with accommodation and work, etc. Their limited range could be seen at paragraphs 3.70 and 3.74 of the DFAT Report.
13. The judge had erred at paragraph 75 as alleged at paragraph 13 of the grounds, in that it was enough that there was a serious possibility of adverse consequences and it was not necessary to show that it would be impossible. Also it did not have to amount to persecution, just that it was relevant to her ability as a single woman to live by herself elsewhere in Nepal.
14. As regards the issue of her being able to bring a claim against the government to obtain a certificate, the judge had not addressed the question of what she was to do whilst awaiting the certificate. As regards the point the judge made about the pandemic, it was not necessary to show she would be worse off than others. There was therefore a failure to analyse the evidence against the correct legal background and to consider the evidence all together.
15. The judge had erred in respect of Article 8 in not considering it, but it would be necessary to show however that this was material. It could not be said to be impossible to find an Article 8 breach. The test under Article 8 was not the same as that for relocation so the judge had erred even if not on the basis contended in respect of the errors argued for concerning the international protection claim. The errors were even more obvious when transposed to the correct context, for example with regard to the existence of very significant obstacles. These did not have to equate to persecution. All the internal relocation points related, more strongly, in respect of the Article 8 claim. They were the same matters but the test was different. It could not be said that the judge would have reached the same view. The matter should be adjourned and it might be necessary to remit as it could be necessary to provide up-to-date evidence.
16. In his submissions Mr Melvin placed reliance on both the Rule 24 responses. He argued that the challenge was one of semantics only. The judge had made clear findings on all the issues before him. The appellant's relationship in the United Kingdom had upset her parents who had refused to support her further education. It should be questioned whether that was the basis for an asylum claim on return. The issue of the

registration certificate turned on whether or not the municipality would reject her. There was no evidence other than that with regard to Nepalese society being patriarchal. At its highest the judge accepted there would be some difficulties but this did not mean the appellant would not be able to obtain a registration certificate on return. No cases of such difficulties had been cited. It was the case that there was some discrimination against women in Nepal, but the appellant was well educated and from a higher caste. The evidence was that at its highest her parents would cut her off if she did not accept one of the three candidates they had put forward for her to choose to marry. The case raised the question of whether any Nepali student in the United Kingdom could succeed on the basis that they could not obtain a registration certificate.

17. There were no Article 8 findings but no private life had been identified. The appellant had been back in the United Kingdom since 2019 and could not succeed on the facts of the case. No exceptional circumstances to make out an Article 8 claim had been made out. The claim under paragraph 276ADE(1)(vi) was essentially the same.
18. By way of reply Mr Mackenzie responded that the appellant was not inventing evidence and it was clear the judge had accepted there was a risk of forced marriage and this finding had not been appealed. The judge accepted it would be difficult to get a certificate but not impossible and that was the wrong test. Evidence had been provided with regard to the difficulties. The evidence showed that there were 4,000,000 people without such documentation for whatever reasons.
19. I reserved my decision.
20. It is common ground that the judge erred with regard to finding that there was no Article 8 claim before him. The major issue is therefore whether that is a material error in light of the findings the judge made on the asylum claim and in particular with regards to internal relocation. I see force to the point made by Mr Mackenzie that for example with regard to the judge's finding at paragraph 72 it is not necessary for an appellant to show that it is impossible to relocate or that the appellant in this case could never obtain a citizenship certificate. The Karanakaran test requires the judge to take into account every possibility which cannot be ruled out. The judge also erred at paragraph 73 in effectively equating the question for internal relocation with whether the discrimination and social stigma against women which he accepted was common in Nepal would equate to persecution. The threshold was again set too high, as can be seen from AH Sudan [2007] UKHL 49. There was a failure to address the question how the appellant could be expected to live or survive or waiting either for the provision of a certificate or awaiting for the outcome of any legal challenge to a failure to provide a certificate. There was also a failure to consider the various matters, the likely difficulty in obtaining a citizenship certificate, general discrimination and stigma against women, and the pandemic, on a cumulative basis. There was no evidence to show that

though women's groups exist they could assist the appellant in any material way with the difficulties she would face.

21. In my view these matters are such as to show flaws in the findings on relocation such that the decision in that regard as well as in respect of the Article 8 issue, will have to be remade. There may, as Mr Mackenzie said, be further evidence and I consider that the most appropriate forum for that remaking will have to be in the First-tier Tribunal, and therefore I direct that the matter be remitted for a full rehearing before the First-tier Tribunal at Taylor House.

Notice of Decision

The appeal is allowed to the extent set out above.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed
Upper Tribunal Judge Allen

Date 16 December 2021