



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/06505/2014

THE IMMIGRATION ACTS

Heard at Field House
On 25 September 2014

Determination Promulgated
On 2 October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

MS ASMA MUNIR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P. Mason, Counsel.

For the Respondent: Mr S. Allen, Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellant, born on 18 February 1985, is a citizen of Pakistan.
2. No anonymity direction has been previously made in these proceedings and no reason has been put before me for such an order to be made.

3. The appellant applied on 25 October 2013 for indefinite leave to remain in the United Kingdom on the basis of domestic violence under Appendix FM of the Immigration Rules HC 395 (as amended). Her application was refused by the respondent following a decision on 14 January 2014. The respondent was not satisfied the appellant's application satisfied the eligibility requirements for leave on that basis under Appendix FM and also was not satisfied that the appellant could qualify for leave under any other part of Appendix FM or under Rule 276ADE of the Immigration Rules.
4. The appellant appealed that decision. Following a hearing at Hatton Cross, Judge of the First-tier Tribunal Miles, in a determination promulgated on 23 July 2014, dismissed the appellant's appeal.
5. On 11 August 2014, Judge of the First-tier Tribunal P. J. G. White gave permission to the appellant to appeal. His reasons for so doing were:-
 - "1. The Appellant seeks permission to appeal, in time, against a decision of First-tier Tribunal Judge Miles who, in a determination promulgated on 23 July 2014, dismissed the Appellant's appeal against the Respondent's decision to refuse to grant leave to remain.
 2. Having had regard to the grounds for permission to appeal and the determination, I am satisfied that in reaching his decision the judge arguably made an error of law for the following reasons:-
 - a. It is arguable that the judge gave inadequate reasons for stating that the situation facing the Appellant in Pakistan on return did not amount to 'persecution' / Article 3 ill-treatment (page 11).
 - b. It is arguable that the judge gave inadequate reasons for rejecting the expert evidence produced on behalf of the Appellant (page 10).
 - c. The judge made no findings in regard to Article 8, notwithstanding that issue was raised in the grounds of appeal and in Counsel's written skeleton argument.
 3. Accordingly I am satisfied that the grounds and determination disclose an arguable error of law."
6. Thus the appeal came before me today.
7. In making his submissions Mr Mason relied on the written grounds seeking permission to appeal which he duly expanded in oral argument.
8. So far as ground 1 is concerned, Mr Mason submits that the judge erred in failing to undertake a subjective assessment of the risk of persecution and in failing to consider whether being shunned and ostracised could reach the persecution threshold, that he failed to take account of the appellant's subjective fear, rejected the expert evidence

without giving adequate reasons and made mistakes of fact and speculated with regard to the evidence of the appellant's counsellor and thereby committed a procedural irregularity. So far as the second ground is concerned, he submitted that the judge failed to undertake an assessment of the other aspects of the appellant's appeal, namely Article 8 under the 1950 Convention and whether the decision was not in accordance with the law, thereby rendering the judge's decision "materially flawed".

9. Mr Allen in making his submissions observed that firstly the judge's determination is a complex one to follow. In essence the judge has relied on country guidance authorities which he is entitled to do. In particular **KA and Others (domestic violence) Pakistan CG [2010] UKUT 216** and **SN & HM (Divorced women, risk on return) Pakistan CG [2004] UKIAT 00283**. Albeit this appellant had only undergone the nikah and an Islamic divorce, that did not distinguish her case such that the judge erred in his reliance upon **KA**. The judge has taken into account the appellant's fears and it was open to him, for the reasons given, to reject the expert evidence. There is no speculation as asserted and the appellant's protection claims have been properly examined prior to their rejection.
10. Beyond that, contrary to Mr Mason's oral submissions, it was recorded in the appellant's Counsel's skeleton argument prepared for the First-tier hearing that it was "accepted that the immigration decision is in accordance with the law on a reading of the rule" and to now say that it is not on the basis that the "spirit" of the Rule is an argument which misses the point. The point being that the judge was to deal with the Immigration Rules themselves.
11. Finally, whilst the judge may have erred in not dealing with the Article 8 issue this cannot be a material error in the particular circumstances of this appellant.
12. I find that in considering the issues in this appeal it would have been of considerable assistance had the judge applied numbered paragraphs to his determination.
13. The appellant is a victim of domestic violence who claims she will be at real risk of serious harm should she be returned to Pakistan because she has left her fiancé, to whom she was a wife consequent upon an Islamic marriage, by reason of his domestic violence toward her.
14. The factual matrix is one of an appellant who travelled to the United Kingdom on a fiancé visa valid from 29 April 2013 until 29 October of the same year. She married Khalid Gul in an Islamic ceremony on 24 May 2013 which was on the day of her arrival. That marriage broke down as a result of domestic violence on 11 August 2013 and on 25 October of the same year she made application for indefinite leave to remain. In short, her case is that she cannot return to her husband by reason of his domestic violence toward her, nor can she return to Pakistan as a divorcée. Her husband and family have a history of violence which she fears as she will have been considered to have dishonoured her husband's family by leaving him; and accordingly her safety within Pakistan cannot be guaranteed. The appellant argues

that she is a member of a particular social group who by reason of the factual matrix of her claim is entitled to asylum and protection under Articles 2 and 3 of the 1950 Convention.

15. I find the judge took proper account of all issues in relation to such claims and throughout his determination has plainly engaged with the totality of the evidence the appellant put forward. He found that whilst many of the central facts of the appellant's claim are disputed in relation to what occurred following the appellant's entry into the United Kingdom, what is clear is that a religious marriage took place on the day of her arrival and that she was subsequently successful in obtaining a divorce from the Sharia Council in London. Whilst the appellant has never claimed to have been physically assaulted in the time that she was living with her husband and his family, the judge found that there was a degree of hostility towards her from her former husband and family. The judge properly reminded himself of the burden and standard of proof. The judge took account of the expert evidence. Ultimately though he was entitled to make findings of fact as to the level of threat the appellant faced either in the United Kingdom or in Pakistan were she to be returned there. The judge clearly analysed the expert evidence and set it into the context of the totality of the evidence that was considered before reaching his conclusions that the appellant would not be at risk of either persecution or treatment contrary to Article 3 were she to be returned to her home country.
16. The judge has clearly engaged with the expert evidence and given adequate reasons for his conclusions in relation to it. In so doing he has explained, again with reasons, why he prefers the analysis in the country guidance of **KA** to that of one of the experts here. He was also entitled to come to his conclusion that one of the experts (Mrs Moeen) was in error in her assertions that there was no possible part of Pakistan to which this particular appellant could not be identified by her ex-husband's family. The judge gave adequate reasons for concluding that the appellant's husband and family simply wanted nothing more to do with her rather than making specific attempts to target her if she were to be returned.
17. The judge has properly considered the evidence of the experts and, contrary to the asserted grounds, has applied anxious scrutiny to this appeal. To assert that the judge should have found that this particular appellant held such fears that it should override the objective analysis that relocation is reasonable is, in light of the judge's determination, no more than a disagreement with conclusions that were open to be made. Page 11 of the judge's determination provides clear reasons as to why the judge felt able to reject the concluding evidence of the appellant's two expert witnesses.
18. Ultimately the judge had to decide whether the appellant could meet the requirements of the domestic violence provisions within the Immigration Rules. She could not. Even in the appellant's Counsel's skeleton argument for the First-tier Tribunal hearing it was accepted that the immigration decision was in accordance with the law. I find the respondent's approach to this case not to be flawed as asserted. The judge's conclusions in relation to the inability of this particular

appellant being able to meet the requirements of the Immigration Rules flows from the findings made in relation to the appellant's eligibility for indefinite leave to remain as a victim of domestic violence and in particular the exclusion therein of a fiancée. In the circumstances of this appeal the "spirit" of any respondent policy is subsumed within the Rules themselves.

19. As to the Article 8 ground, it has to be said that the issue was not dealt with within the determination as has been submitted. However, there is a reality to this particular appellant's circumstances. She has been unable to meet the domestic violence provisions in the Immigration Rules and likewise the Immigration Rules so far as family and private life is concerned. Counsel's skeleton argument in the First-tier Tribunal argued that it was incumbent upon the Tribunal to undertake an assessment of all the exceptional factors "i.e. an [sic] proportionality assessment". In making this argument at paragraph 26, Counsel was relying on the authority of **MF (Article 8 - new Rules) Nigeria [2012] UKUT 00393 (IAC)**. Having been unable to meet the requirements of the Immigration Rules, even if the appellant's claim fell to be considered under Article 8 the factual matrix here is such that the appellant's claim would not succeed as there is little, if anything, to put on her side of the balancing exercise in any proportionality assessment. The judge's error in failing to deal with Article 8 cannot therefore be said to be material.
20. In all the circumstances the conclusions of the judge were open to him to be made on the evidence that was before him. Adequate reasoning has been provided which takes proper account of the appellant's own evidence and sets it into the context of the background material, taking into account relevant country guidance case law.
21. The making of the previous decision involved the making of no error on a point of law and I do not set it aside but order that the decision shall stand.

Signed

Date

1 October 2014

Deputy Upper Tribunal Judge Appleyard