



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05917/2014

THE IMMIGRATION ACTS

Heard at: Field House
On: 7 April 2015

Decision and Reasons Promulgated
On: 20 April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

S P J
(ANONYMITY DIRECTION MADE)

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms R Chapman, counsel (instructed by Elder Rahimi Solicitors)
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Bangladesh, born on 10 November 1986 in Chapai Nawabganj, Rajshahi. She appeals with permission against the determination of the First-tier Tribunal Judge promulgated on 20 January 2015. He dismissed her asylum, humanitarian protection and human rights claims (Articles 3 and 8).
2. He found "overall" that the appellant would not be at risk of any act of violence or an attempted violence upon her after her return to her home area, namely the city of Rajshahi [17].
3. He also found that there were not any exceptional circumstances warranting leave to remain outside the immigration rules. [20] He embarked on a "Razgar"

assessment; he had regard to the children's circumstances and "the duty under s.55 of the 2006 Act." He also dismissed the human rights appeal.

4. In granting permission First-tier Judge Cruthers found that it was arguable 'amongst other things' that the Judge should have 'further explained' his conclusion that the appellant does not face a real risk from Mr A, (her former husband), in her home area.
5. Ms Chapman, who represented the appellant before the First-tier Tribunal, relied on four grounds of appeal.
6. The Judge made inconsistent findings as to the risk to the appellant and her child, S, upon return to Bangladesh. He found that her former husband, Mr A, had threatened her family in Bangladesh, procuring the arrest and detention of her brother and that he had acted violently towards her and continues to be "malevolently disposed towards her." He also found that the Bangladesh authorities would be unwilling and unable to provide her with protection [14].
7. However, he then went on to find that the appellant did not have a well founded fear of persecution in her home area in Bangladesh and would not be at risk of any unpleasant action at the hands of Mr A.
8. She submitted that having accepted that the appellant was a credible witness, and having regard to the fact that the Family Court and the Home Office accepted that she had been subjected to domestic violence from her former husband in the past, his finding at paragraph 16 is inconsistent and irrational.
9. Moreover, Mr A is from the same home area as the appellant. His threats against the appellant's family in Bangladesh were made whilst he was present in the UK. As a result the appellant's brother had been unlawfully arrested and detained, having been ill treated by the local police in Bangladesh.
10. The reason that her children E and S spent time with the appellant over the Christmas holidays was as a result of a Family Court contact order, rather than through any instigation by Mr A. Moreover, contrary to the Judge's finding at paragraph 16, the appellant had expressly stated that she has no contact with Mr A but collects the children from his home by ringing the bell, after which the children come down on their own without their father.
11. Although Mr A knows her address in the UK, he is not able to come near her house, having regard to the Court order. If he came near her home she would be able to ring the police immediately. The Judge took no account of that fact.
12. The fact that Mr A has not assaulted or physically harmed her since the marriage broke down is referable to the fact that they are both currently in the UK where the authorities, unlike those in Bangladesh, offer the appellant protection against such acts. In addition, Mr A's immigration status is precarious.

13. Ms Chapman further submitted that the Judge's finding at paragraph 18 that any discrimination that the appellant and S would be subjected to in the appellant's home area would not amount to persecution, amounted to a failure correctly to apply the Upper Tribunal's decision in SA (Divorced Woman/Women - Illegitimate Child) Bangladesh CG [2011] UKUT 245 (IAC). There, the Tribunal noted that she was not likely to be at real risk of serious harm in *urban areas* by reason of her having had an illegitimate child which becomes known.
14. The Judge wrongly assumed that the appellant and Mr A are from the city of Rajshahi, whereas it had never been disputed that she was from the village of Chara Danga near the town of Chapai Nawabganj, in the district of Rajshahi. Her mother also lives in the village of Chara Danga. Mr A is from a neighbouring village.
15. There was no reliable evidence upon which the Judge could find that the appellant could either return to the family home or be financially supported by the rental income from a house owned by her mother in the main city. This had not been raised during the hearing. No details or evidence was given as to the amount of money and whether this was in fact available to support her and S. There was no finding regarding any male protector. The appellant's father had died and her younger brother is a university student.
16. The Tribunal in SA, supra, was considering the generalised risk to a divorced woman with a child in the context of a return to a major urban area [90-109] rather than, as in the appellant's case, the return to a specific community where the appellant's transgression is known.
17. In that respect Ms Chapman noted that the Judge accepted that it is known in the community that the appellant has an illegitimate child born out of wedlock.
18. The Judge did not have proper regard to the evidence of Mr C who was S's former foster carer, and who stated that he believed that the breakdown of the relationship between the appellant and her husband would make it dangerous and possibly life threatening for the appellant and S to return to Bangladesh.
19. Nor did the Judge have regard to the evidence of the social worker, Ms Locke, that the appellant would be at great risk if she returned to Bangladesh. That was because Mr A had broadcast the news of her infidelity widely.
20. Further, the Judge failed to take account of the Home Office guidelines in respect of Bangladeshi women dated 22 December 2014 in which it is stated at paragraph 1.3.14 that taking into account the general position of women in Bangladeshi society, internal relocation may be unduly harsh for a woman with no support networks and who has no real prospect of securing access to a livelihood. Effective state protection is, in general, unlikely to be available for women fearing gender based violence.
21. Nor did the Judge make any findings when considering S's best interests, what the impact on S would be, despite the fact that this had been expressly raised both

in submissions and in the skeleton argument produced by Ms Chapman at that hearing. The impact claimed was based on the evidence of Ms Locke, as set out in the core assessment, that S would be at risk possibly of physical harm as the visible manifestation of her mother's adultery, and certainly at risk of emotional harm; she would be seen as an illegitimate child and a second class citizen.

22. In consequence of these misdirections regarding risk on return both to the appellant and S in their home area, the Judge failed even to consider whether it would be unduly harsh to expect the appellant and S to relocate internally. This had been dealt with at some length at paragraph 4 of the skeleton.
23. The appellant in fact has a paternal aunt, L, in Dhaka. Mr A had contacted L and told her what had happened, suggesting that the appellant is a prostitute. Accordingly, the appellant would not be able to turn to L for support.
24. Ms Chapman also referred to other reasons disclosed in the evidence before the First-tier Tribunal which had not been dealt with or referred to, including the appellant's assertion that people from the village area in Dhaka would know about her situation as she and Mr A are from the same community. Word would accordingly reach Mr A as to her whereabouts.
25. She would find great difficulty in finding housing as a single woman in the absence of a husband, father or male sponsor. She could only reside in a shelter for up to six months in unsuitable living conditions which would be contrary to S's best interests. There is in any event a lack of availability of shelters. All this, Ms Chapman concluded, had been before the First-tier Tribunal Judge.
26. She also noted that it had been submitted that the only possible or realistic form of employment for a woman in the appellant's situation would be in a garment factory. This however was unsuitable as the appellant would not have access to a network to obtain such employment; it would also put her at risk of being located by Mr A. Alternatively she would be forced to lie about S's provenance, justifying the absence of a husband and would in any event face stigma if she stated that she was divorced. There would be nobody to care for S whilst she worked as the hours are very long and garment workers are the poorest paid in the world. Nor could she be cared for in the village by the appellant's mother as this would alert Mr A as to her whereabouts.
27. The work is very dangerous. Ms Chapman referred to the Rana Plaza incident which was part of the evidence. That post dated the decision in SA, supra, and accordingly even such work cannot be assumed to be suitable or reasonable.
28. She accordingly submitted that the Judge erred in failing to make any findings in respect of internal relocation.
29. Finally, she submitted that the Judge erred when dismissing the Article 8 appeal. First, he erred in finding that Article 8 was not engaged as there were no exceptional circumstances which had an effect on his consequent findings.

30. Given the extensive family court interventions, and the fact that three separate family units are involved as well as Social Services, there were such circumstances.
31. Moreover, his finding that the implementation of the decision to remove the appellant would not sever her links with her other two children, F and Sb was clearly wrong as he failed to take account of the reality of the position, namely that if the appellant and S are removed and F and Sb remained in the UK, her links would be severed, and if all of them are removed to Bangladesh, the appellant would be unable to maintain contact with them without Mr A finding out about her whereabouts, thus putting her at risk.
32. His finding at paragraph 22 that the appellant did not claim to have had extensive contact with her other two children was incorrect. He failed to take account of material evidence, namely the contact order affording the appellant access every other weekend as well as half of the school holidays.
33. Nor did the Judge conduct a proper and compliant assessment under s.55. In particular he failed to consider the impact on S of separation from Mr C and her former foster mother, and the fact that removal would prevent her from forming a relationship with her biological father.
34. Nor did the Judge have proper regard to the impact on all three children of the separation from each other. The social worker stated that S's removal would cause her harm. S had never been to Bangladesh, having been born in the UK.
35. The Judge did not have proper regard to the decision in SA, which made it clear that illegitimate children are stigmatised and discriminated against and that this would clearly be contrary to S's physical and moral integrity and against her best interests.
36. Ms Chapman referred to the extensive family court proceedings. Permission had been given to disclose the documents and details. These had been produced, by way of two judgements before the First-tier Tribunal.
37. On behalf of the respondent, Mr Tarlow submitted that there had been no material error of law. He distinguished between violence and what he characterised as unpleasant threats against the appellant, including potential threats [17]. Those were found not to have crossed the threshold of persecution. The Judge found that the appellant would not be at risk of an act of violence or attempted violence upon return to her home area, namely the city of Rajshahi [17]. He had regard to the appellant's evidence that for the two and a half years since she separated from Mr A, her mother had not been physically attacked. Nor had the appellant herself been physically attacked during this period.
38. Those findings are not perverse. The grounds amount to a disagreement with the findings of the First-tier Judge. It is clear from SA that there is discrimination as submitted, but it does not cross the threshold. Accordingly, the appellant would not

be in danger. In those circumstances, there had been no need for the Judge to consider the possibility of internal relocation.

39. With regard to the Article 8 assessment and findings, the Judge properly noted that the appellant could not qualify under the rule. There were no exceptional circumstances.
40. The reasons underlying that finding are set out in the Article 8 assessment at paragraph 21 onwards. Mr Tarlow submitted that the Judge had 'done enough to make the determination unappealable'.
41. In reply, Ms Chapman referred again to paragraph 17. The Judge was obliged not only to have regard to threats of violence, but also the associated stigma: all these factors need to be considered "holistically" having regard to the Tribunal's decision in SA.
42. She submitted that the facts in this case are in fact stronger than those in SA, where the appeal was allowed on Article 8 grounds.
43. There was a need to look more carefully at the cumulative basis for the appellant's claims under Article 8.

Assessment

44. The First-tier Tribunal Judge found that Mr A had indeed issued threats to the appellant's family in Bangladesh. He found that Mr A is a man prepared to act violently towards his spouse. That had been unsurprising given his violent reaction upon discovering that the appellant had been unfaithful. He evicted her from the matrimonial home.
45. The Judge also found that Mr A had been able to use influence with the local police force and bring about the arrest and detention of the appellant's brother. The appellant had given a credible account of her brother's arrest and detention including his beating during his detention.
46. He found that she gave a credible account as to the incident as a whole and to the circumstances in which he came to be released.
47. There was thus no reason which permitted a finding to the contrary that Mr A continues to be malevolently disposed towards the appellant. Moreover, the Judge accepted [14] that the Bangladesh authorities would be unable or unwilling to protect the appellant against him. He was from the same home area as the appellant.
48. The consequent finding at paragraph 16 that as at the date of hearing it was difficult to conceive that upon return to her home area, the appellant would be at risk of any unpleasant action at the hands of Mr A is at the very least, inconsistent.

49. The Judge appears not to have taken on board that the reason that the appellant's former husband had not made any threats or harm in the UK is that there is a court order preventing Mr A from coming to her house. She is able to ring the police immediately should that order be breached. The collection and dropping off of the children does not require any direct communication between them.
50. Accordingly, unlike in Bangladesh, the appellant can rely on protection from the police.
51. The Judge found that the appellant and S would be accommodated in the settled family unit with the appellant's mother and brother. They would support the appellant regarding any social prejudice and discrimination. They would also support them financially. Accordingly, she would not be at risk of serious harm.
52. However, the Judge did not grapple with the facts as presented. The finding that the appellant could return to the family house or be financially supported from rental income in the main city was not a matter that had been raised during the hearing. No details were provided regarding the amount of money or its availability to support them.
53. Moreover, the Judge found that the appellant and Mr A were from the city of Rajshahi whereas she was from a village in the district of Rajshahi and Mr A was from a neighbouring village. Accordingly, the reliance upon the Upper Tribunal's decision in SA which considered the generalised risk to a divorced woman with a child in the context of return to a major urban area was not applicable to the appellant's case. She would be returned to a community where her transgression is known.
54. The Judge has not assessed the implications to the appellant of her being the mother of an illegitimate child born out of wedlock; nor the evidence of Mr C or the social worker, Ms Locke. Nor was proper regard had to the Home Office guidelines to which I have referred.
55. The Judge had been required to have proper regard to and assess the evidence of Ms Locke, that S would be at risk, possibly of physical harm, as the visible manifestation of the mother's adultery and certainly at risk of emotional harm, where she would be seen as an illegitimate child and a second class citizen.
56. Having regard to the failure to have regard to the circumstances of the appellant and S in their home area as a whole, the Judge also failed to consider whether it would be unduly harsh to expect them to internally relocate.
57. Nor did the Judge deal with the implications for the children F and Sb were the appellant and S to be removed. Should the former children remain in the UK, the appellant's links with them would be severed. However, if they are all removed to Bangladesh, the appellant would be unable to maintain contact with them without Mr A finding out the whereabouts.

58. In that respect the Judge erred in finding that the appellant did not claim to have had extensive contact with these two children [22]. The terms of the contact order were not considered, which showed that she in fact sees them every other weekend as well as half of the school holidays.
59. Finally, in the Article 8 assessment, the Judge did not conduct a proper s.55 assessment. He did not consider the implications of any separation of S from Mr C and her former foster mother, including the fact that her removal would prevent her from forming a proper relationship with her own biological father.
60. Nor did the Judge have regard to the impact on all three children of their separation from each other. Ms Locke in her core assessment also found that S's removal would cause her harm. S had never been to Bangladesh before, having been born in the UK.
61. Nor did the Judge consider the implications from the evidence as well as from SA, supra, that illegitimate children are stigmatised and discriminated against. This was required to be considered as potentially affecting S's best interests.
62. I thus find that the Judge has not properly and appropriately directed himself. This is more than a case simply involving the risk that a mother of an illegitimate child may face with regard to social prejudice and discrimination if her circumstances are found out. The Judge should have considered all the other factors to which I have referred to including the fact that she would not be returning to a major urban area but to a specific community where the appellant's past is known. Moreover, the respective and competing interests of the children had to form part of the overall assessment.
63. I accordingly find that the decision of the First-tier Tribunal involved the making of material errors on a point of law. I set aside the decision.
64. Ms Chapman submitted without opposition from Mr Tarlow that should that be the decision reached, this was an appropriate case to be remitted to the First-tier Tribunal, Taylor House, for a fresh decision to be made.
65. Ms Chapman contended that complexity of the fact finding resulting from the issues raised as well as the amount of evidence that would have to be adduced, justifies the remitting of the case.
66. I have had regard to the Senior President's Practice Statement relating to the issue of remitting an appeal to the First-tier Tribunal. In giving effect to that approach, I am satisfied that the extent of judicial finding which is necessary in order for the decision to be made is extensive. There will be a complete re-hearing with no findings preserved. I have also had regard to the overriding objective and conclude that it would be just and fair to remit the case.
67. In the circumstances, I direct that the appeal be remitted to the First-tier Tribunal (Taylor House) for a fresh decision to be made.

68. The necessary administrative arrangements will need to be made.

Notice of Decision

The determination of the First-tier Tribunal involved the making of material errors of law and is set aside.

The appeal is remitted to Taylor House for a fresh decision.

An anonymity direction is made.

Signed

Date: 17/4/2015

Deputy Upper Tribunal Judge Mailer