



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
PA/01070/2016

Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at North Shields**

**Decision &  
Promulgated**

**Reasons**

**On 26 September 2017**

**On 2 October 2017**

**Prepared on 27 September  
2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES**

**Between**

**M. K.  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the Appellant: Ms Rogers, Solicitor, IAC Limited

For the Respondent: Mr Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant claimed asylum on 23 June 2015, having entered the UK lawfully as a student in September 2011. That application was refused on 19 January 2016, although she was granted twelve months discretionary

leave to remain in order to allow her to give evidence against her ex-husband at his trial upon charges of rape and assault. He was acquitted by a jury of all the charges on 6 September 2016.

2. The Appellant's upgrade appeal to the Tribunal was heard on 14 December 2016 and it was dismissed by decision of First tier Tribunal Judge Monaghan promulgated on 6 January 2017.
3. The Appellant was granted permission to appeal to the Upper Tribunal on 9 May 2017 by Upper Tribunal Judge Gleeson. The Respondent filed a Rule 24 notice on 25 May 2017 in response to that grant of permission, opposing it. Thus the matter comes before me.

#### Error of Law?

4. When the appeal was called on for hearing Ms Rogers accepted that the key issue was whether the Appellant could reasonably be expected to internally relocate to avoid the risk of harm that the Judge had accepted on the lower standard of proof that she faced from her ex-husband and members of his family.
5. Neither representative had brought copies of the relevant current country guidance decision for the hearing, but when I obtained them, Ms Rogers accepted that AR & NH (lesbians) India CG [2016] UKUT 66 did not assist the Appellant's case. It is of concern that neither party appears to have brought that decision to the attention of the Judge, who makes no reference to it in his own decision.
6. It was accepted by Ms Rogers that the Appellant did not claim to face a risk of harm from her own family, and that her claim to have been rejected by her own family as a result of the breakdown of her marriage had been rejected by the Judge as untrue. The grounds of the application for permission offered no challenge to that finding of fact.
7. Although Ms Rogers advanced before me an argument that the Appellant as a woman would be unable to access any redress from the legal system in India, and as a woman would automatically lose custody of her child in favour of her ex-husband, she was unable to identify any evidence that was placed before the Judge that would substantiate that argument. Once I had gone through the evidence that had been filed on behalf of the Appellant for the hearing before the FtT, she accepted that the evidence that had been relied upon consisted solely of material relevant to the manner in which Indian society viewed, and responded to, the problems of marital rape and domestic violence. I am

not satisfied that the current country guidance decisions for India offer any material support for that argument either, and indeed Ms Rogers, accepted that they did not.

8. It is not suggested that the Judge made any material mistake in his analysis of the Appellant's circumstances upon return to India [57]. As he noted she has worked in the past in India as a tutor, and she now has the benefit of both a UK degree, and work experience in the UK. No doubt her fluency in English is much improved as a result of the length of time she has studied, worked and lived in the UK. It was entirely open to the Judge to conclude on the evidence before him that notwithstanding the fact that she would be a young single woman with a child she was equipped to find suitable well paid employment that would allow her to support herself and her child, were she to locate herself in one of the major cities in India. On his findings she also had the support of her family available to her, and it was up to her whether she availed herself of that. That approach was entirely consistent with the guidance to be found in AR & NH even if that decision was not itself referred to by the Judge.
9. The Appellant's ex-husband is said to be in the UK, although he is not understood to have any immigration status in the UK. Recently (and certainly since the promulgation of the Judge's decision) it is said by Ms Rogers that he has now made an application to the Family Court for contact with his son. That was information that was not before the Judge, and indeed there is still no evidence to that effect, as opposed to Ms Rogers' current instructions. The Judge cannot be criticised for failing to deal with this information, since he did not have it, and it discloses no error of law in his decision.
10. Even if there has now been made an application to the Family Court for contact to the Appellant's son, that fact would not of itself prevent the removal of the Appellant and her child from the UK by the Respondent. As set out above the current country guidance upon India offers no support for the proposition that the Appellant would be denied access to justice in India through the Indian legal system in the event of an attempt being made in the future by her ex-husband to obtain either contact, or custody, of their child.
11. In the circumstances it is plain that the grounds identify no arguable material error of law. The Judge's decision to dismiss the appeal must therefore stand.

DECISION

The Decision of the First Tier Tribunal which was promulgated on 6 January 2017 did not involve the making of an error of law in the decision to dismiss the appeal that requires that decision to be set aside and remade. That decision is accordingly confirmed.

Deputy Upper Tribunal Judge JM Holmes  
Dated 27 September 2017

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Deputy Upper Tribunal Judge JM Holmes  
Dated 27 September 2017