



Upper Tribunal

(Immigration and Asylum Chambers)

Appeal Number: HU/16872/2018

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice Centre
On 2 April 2019**

**Decision & Reasons Promulgated
On 8 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

G H

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Bashaw instructed by Platts Solicitors

For the Respondent: Mr C Bates Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. An anonymity direction was made previously in respect of this Appellant and shall continue.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Herwald promulgated on 5 November 2018 against a refusal of a human rights claim made on 11 February 2016, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 19 March 1972 and is a national of Pakistan.
4. The Appellant entered the UK in 2005. In 2013 she made a claim for asylum which was refused and she was appeal rights exhausted on 23 July 2013. She made a number of further submissions which were refused and on 2 December 2015 she made an application based on family and private life which was refused on 21 January 2016. On 11 February 2016 she made a further human rights application which was refused.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Herwald ("the Judge") dismissed the appeal against the Respondent's decision.
6. Grounds of appeal were lodged arguing that the Judge misunderstood the Appellants case in suggesting that the thrust of the case was that refusal of leave severely affected the Sponsors chance of getting free IVF; when this was not their case; the Judge failed to take into account the impact of the Forced Marriage Protection Order (FMPO) in so far as it was a factor in relation to the insurmountable obstacles she faced in enjoying family life with the Appellant in Pakistan; the Judge took onto account irrelevant evidence , her 'ability to cope ' in the UK as the issue was how her mental health issues would impact on the assessment of insurmountable obstacles in Pakistan.
7. On 13 February 2019 First-tier Judge Scott Baker gave permission to appeal.
8. At the hearing I heard submissions from Ms Bashaw on behalf of the Appellant that:
 - (a) The Appellants case was that the Appellant met the requirements of EX.1 in that there would be insurmountable obstacles for the Appellant and his

partner continuing family life in Pakistan. The relevant issues, the infertility problems, the sponsors mental health problems and the impact of the FMPO had to be looked at cumulatively.

- (b) The Judge mischaracterised the Appellants case at paragraph 22(n). The IVF problems were not the central issue but only part of the reason why the Appellant and his wife would face insurmountable obstacles in Pakistan. The loss of opportunity was the key issue for the sponsor and its likely impact on her mental health.
 - (c) In relation to the FMPO the Judge did not assess it at all and the relevance of it to the issue of insurmountable obstacles because the Appellants and sponsor would have no family support on return. She accepted that this was not an asylum claim but her fear of honour based violence would persist even if she relocated.
 - (d) In relation to Ground 3 the Judge used the fact that she was able to give evidence as a reason to say that she could cope if she was returned to Pakistan. This was irrelevant. The medical evidence said she was fragile and her health would deteriorate. The reference to having grown up in a Pakistani environment was irrelevant: Pakistan is different.
9. On behalf of the Respondent Mr Bates submitted that:
- (a) The Judge provided adequate reasons in relation to all of the issues raised in respect of 'insurmountable obstacles.'
 - (b) It was suggested that the Judge took into account irrelevant evidence: it was not irrelevant the issue was one of weight which was a matter for the Judge: the fact that she was able to give evidence although she had mental health issues was something that he was entitled to take into account. If the Sponsor had been unable to give evidence he clearly would have taken that into account. The suggestion that the fact that she had been brought up in a diaspora household is relevant to the issue of cultural familiarity and was something which KO stated was relevant.
 - (c) At 22 (m) in relation to IVF the Judge found that IVF was available in Pakistan but the difference was that the treatment was not free. The

burden was on them to show that the difficulty they perceived that delay might cause would adversely impact on her mental health and the likelihood of success. If they were saying the clock was ticking they had to establish this with evidence.

- (d) In relation to the FMPO the Judge was assessing this case at the date of hearing of a human rights claim not an asylum claim. He found that there was no evidence of any threats since the date of the asylum claim in 2013. The Judge was entitled to take the view, given the size of Pakistan and the intervening absence of any continued threat that the Appellant had failed to establish that the higher threshold which applied in this case, that there were insurmountable obstacles had not been met.
- (e) In relation to the Sponsors mental health the Judge had to assess the evidence that was before him. It was open to the Judge to note that by the time of the hearing the only medication taken by the Sponsor was beta blockers. There was no evidence from a consultant psychiatrist that supported their claims.

10. In reply Ms Bashaw on behalf of the Appellant submitted

- (a) The factors relied on by the Appellant had to be looked at cumulatively.
- (b) The Appellant had produced medical evidence which was at B1.

The Law

- 11. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
- 12. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his

evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

13. As to the duty to give reasons I take into account what was said by the Court of Appeal in MD (Turkey) [2017] EWCA Civ 1958 at paragraph 26:

"The duty to give reasons requires that reasons must be proper, intelligible and adequate: see the classic authority of this court in Re Poyser and Mills' Arbitration [1964] 2 QB 467. The only dispute in the present case relates to the last of those elements, that is the adequacy of the reasons given by the FtT for its decision allowing the appellant's appeal. It is important to appreciate that adequacy in this context is precisely that, no more and no less. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons is, in part, to enable the losing party to know why she has lost. It is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case some error of approach has been committed."

Finding on Material Error

14. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law.
15. I am satisfied that on any fair reading of the Judges findings as a whole he gave more than adequate reasons why he did not find any of the matters relied on by the Appellant either singly or cumulatively amounted to the high threshold

required to meet EX.1 that there would be insurmountable obstacles to the Appellant and his partner enjoying family life together in Pakistan a country to which the Sponsor enjoyed dual nationality.

16. The Judges assessment of whether the Appellant arguably met the requirements of the Immigration Rules in relation to insurmountable obstacles such that removal was disproportionate addressed all of the issues raised by Ms Bashaw at paragraph 22 (a)-(r). It is clear in the way he set his findings out that he considered the matters cumulatively and there is no suggestion of any one factors being viewed as more important than any other.
17. While the Judge does not explicitly refer to the FMPO in his findings he noted the Appellants evidence about the making of the order at paragraph 15 at acknowledged that a copy of the order was in the bundle so it could not rationally be argued that he has failed to take it into account. However the starting point in this case was that this was not an asylum claim based on the threat of honour based violence as that claim had previously been rejected in the appeal assessed by Judge Heynes in 2013. The relevance for this Judge who was , I agree with Mr Bates looking at the high threshold provided in EX.1, whether anything had occurred since the making of that order in 2011 and the adverse findings made by Judge Heynes about the existence of an ongoing threat to suggest that any concerns held by the Sponsor were objectively made out such as to have an impact on the parties relocating to Pakistan. At paragraph 22(d) –(e) the Judge addressed the issue of honour based violence and was entitled to conclude in the absence of any evidence of ongoing threats that such claims were not made out and therefore could not amount to insurmountable obstacles.
18. The Judge addressed the issue of the Sponsors mental health issues in great detail setting out the evidence at paragraph 15 (d)-(e) and analysing it at 22 (i)-(l) . He had before him material that there was provision for those with mental health problems in Pakistan. The medical evidence before him was that in May 2018 the Sponsor was not on any medication in respect of her chronic anxiety, schizophrenia and bi polar affective disorder , had some mild symptoms of feeling down and was stable under the care of her GP although this was

subject to review. The Judge therefore found that there was no evidence of any other intervention since then and although the Nurse practitioner suggested that she had come under pressure from her family there was no evidence that her mental health had deteriorated as a result of those stressors. It was of course open to the Appellant to call more up to date expert evidence on this issue but none was before the Judge. The Judge found that although the Appellant relied on a letter from September 2018 where it was suggested she might not feel well enough to give evidence in the Appellants appeal (i) in fact the Judge noted at 22(j) that she gave evidence before him and ‘evinced no difficulties’ in giving evidence. He was entitled to take that into account. Any fair reading of the findings makes clear that the Judge took into account all the evidence but in the light of that evidence looked at in the round he concluded that the Appellants mental health would not present insurmountable obstacles to her living with her husband in Pakistan.

19. In relation to the infertility problems of the couple while it is argued that the Judge miscategorised their argument that they were being deprived of free IVF. The grounds argue that the Appellants case was rather that IVF was their ‘last chance’ to have a child. ‘time was running out’, IVF was very expensive in Pakistan and this delay in starting IVF in Pakistan would impact on her mental health. I have read both the ROP and the skeleton argument and note that these specific arguments were not put to the Judge nor was there any medical evidence to support these claims advanced in the case. The Judge was therefore entitled to conclude that the evidence before him was that treatment was available in Pakistan and while it might not be free or indeed as good as that provided in the UK that was not the test. I finally note that the Judge records at 22(p) the Appellants response to why he and his wife could not relocate to Pakistan and there is not reference to her infertility problems in his response at all.
20. As to the duty to give reasons I take into account what was said by the Court of Appeal in MD (Turkey) [[2017](#)] [EWCA Civ 1958](#) at paragraph 26:

“The duty to give reasons requires that reasons must be proper, intelligible and adequate: see the classic authority of this court in Re Poyser and

Mills' Arbitration [1964] 2 QB 467. The only dispute in the present case relates to the last of those elements, that is the adequacy of the reasons given by the FtT for its decision allowing the appellant's appeal. It is important to appreciate that adequacy in this context is precisely that, no more and no less. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons is, in part, to enable the losing party to know why she has lost. It is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case some error of approach has been committed."

21. I am therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning. I am satisfied that the Judge was entitled to take into account the absence of any ongoing threats from her family , the availability of IVF in Pakistan, the availability of mental healthcare support and the fact that the Sponsor was a dual national who had cultural familiarity with Pakistan in concluding that the Appellant had not met the evidential burden of establishing that there were insurmountable obstacles to them enjoying family life in Pakistan.

CONCLUSION

22. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

23. **The appeal is dismissed.**

Signed

Date 3.4.2019

Deputy Upper Tribunal Judge Birrell