



IAC-AH- -V1

**First-tier Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/04886/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14<sup>th</sup> November 2014**

**Decision & Reasons  
Promulgated  
On 19<sup>th</sup> November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**MRS GURPREET KAUR  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Chhotu, Direct Access Counsel

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of India born on 8<sup>th</sup> July 1989. She first came to the UK on 4<sup>th</sup> July 2009 as a working holiday-maker. In 2009/2010 she says she converted from Sikhism to Islam. On 12<sup>th</sup> September 2011 she married Mr Atta Ullah Khan, a Pakistani Muslim studying in the UK. Between 2011

and 2013 there were a number of applications made for the appellant to remain as the partner/spouse of Mr Khan which were all unsuccessful. On 25<sup>th</sup> March 2013 the appellant applied for asylum. She was refused asylum in a letter dated 25<sup>th</sup> June 2014. She appealed on 16<sup>th</sup> July 2014. Her appeal was dismissed in a determination of Judge LK Gibbs of the First-tier Tribunal following a hearing on 18<sup>th</sup> August 2014.

2. On 1<sup>st</sup> October 2014 Judge of the First-tier Tribunal Andrew found that there was an arguable error of law because the Judge Gibbs had not engaged with country of origin material before her and because no reasons were given for the conclusion that the appellant and her husband could have their family life in India.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

### *Submissions*

4. Mr Chhotu relied upon the grounds of appeal but amended them in oral submissions and with the help of a skeleton argument. In summary he argues as follows. It was argued that the appellant had a valid asylum claim which needed to be determined based on her fear of an honour killing by her family as she had married a Muslim man against their wishes. It was accepted by Judge Gibbs that the appellant had formally (if not sincerely) converted to Islam and that she was in a genuine and subsisting relationship with a Muslim Pakistani man. Country of origin material was before the First-tier Tribunal which would support risk of an honour killing in these circumstances and was not considered. Judge Gibbs had erred because she has seen the appeal as one just about risk based on a religious conversion, and thus had not adequately explored risk from the appellant's family arising from her marriage.
5. Mr Chhotu maintained also that there had been a procedural unfairness in that the appellant's evidence had not been sufficiently challenged about anything other than her conversion to Islam in the hearing. As such she was unaware that such negative conclusions, as were set out in paragraph 40 of the determination, would be drawn about the general credibility of her evidence. The appellant's evidence about the risks to her in India and Pakistan ought to have been accepted by Judge Gibbs absent direct challenges to it in the hearing. It was not permissible for the respondent just to rely upon the refusal letter globally in submissions.
6. In relation to the Article 8 ECHR claim the First-tier Tribunal had failed to look at all the elements of s.117B of the Nationality, Immigration and Asylum 2002 Act and so had not given the appellant the benefit of the positive elements. It was inaccurate to say that her relationship had developed when she was unlawfully in the UK as she had started her relationship with her husband when she was in the UK with leave as a working holiday-maker. There was also a failing in the determination as it

did not set out a Razgar style analysis of Article 8 ECHR at paragraphs 43 and 44, and because it had not been considered whether the appellant could live in India or Pakistan with her husband. Mr Chottu accepted that the appellant could not meet the requirements of the relevant Immigration Rules at paragraph 319C.

7. Mr Jarvis argued that there had been no challenge to the lawfulness of the finding by Judge Gibbs that there would be no adverse interest from the appellant's family. This was a new ground of appeal and permission should have been applied for on this basis.
8. It was also a new ground to argue that there were procedural errors in the determination of Judge Gibbs. It was not correct to say that it was the role of the judge to cross-examine on any issue, this was not part of the Procedure Rules indeed it would be an error if a judge were to do so. It was also perfectly acceptable for the Secretary of State to globally rely upon the refusal letter in submissions. There was no need for the Secretary of State to cross-examine on all issues either. The Secretary of State relied upon what the appellant had said at interview about living with her husband in India at paragraph 76 of the reasons for refusal letter: that he would not want to do this because it was his dream to settle in the UK or Saudi Arabia.
9. The appellant had in any case failed to identify any material flaws in the determination of Judge Gibbs. Judge Gibbs finding that the appellant's family would not treat her with adverse interest is not irrational at paragraph 40 of the determination. She points to the lack of credibility in the appellant's evidence; the lack of adverse interest by the appellant's relatives in the UK and the lack of calls from the appellant's family in India since September 2011.
10. It had been accepted for the appellant that the finding that the appellant had just made a formal conversion to Islam (paragraph 38 of the determination) was not legally flawed; and this was the central plank of the asylum case put to Judge Gibbs. There was no need for her to look at the country of origin evidence about honour killings as she found at paragraph 40 of her determination that this appellant's family had no adverse interest in her.
11. The Article 8 ECHR analysis was not legally flawed. There was no need to set the five Razgar points out if all the relevant findings were made. It was clear that Judge Gibbs found that the appellant had family life and that this would be interfered with if she were removed. However this was found to be a proportionate interference in the circumstances of the case.
12. At the end of the hearing I told the parties that I was satisfied that Judge Gibbs had not erred in law. I set out my reasons below.

### *Conclusions*

13. The first ground of appeal contends that it was an error of law not to have dealt with country of origin material regarding family “honour” killings in India in circumstances where the victims have married against their family’s wishes. It is correct that this material was not referred to by Judge Gibbs but she had no reason to do so as she found that the appellant was not at risk of an honour killing from her family.
14. As Mr Jarvis has argued Judge Gibbs gives three substantial reasons for her finding at paragraph 40 of her determination that she does not believe that the appellant’s family have an adverse interest in her as a result of her marriage to Mr Khan. These reasons are not irrational and there is no error of law in her conclusion on this issue.
15. Judge Gibbs was entitled to find that the appellant was not a credible witness as she gives detailed reasons for her findings that she has not told the truth to the Tribunal about her reasons for conversion to Islam. However she does not just rely upon a finding that the appellant is not a credible witness, she points to two further issues based on the appellant’s testimony (the lack of adverse interest by her family in India since 2011 and the lack of any adverse interest from her family in the UK) as leading her to conclude that the appellant was not at risk from an honour killing. As Judge Gibbs has found there is no risk from the appellant’s family there is no need for her to consider background evidence on the issue.
16. Mr Chhotu has argued a further ground which was not amongst the original ones granted permission. This is not procedurally correct as Mr Jarvis has pointed out. However I will deal with it as I do not believe it discloses a material error of law either. There is no procedural error in Judge Gibbs not engaging herself in any cross-examination of the appellant on any issue. It is for the appellant to present her case in the context of the issues raised as in dispute by the respondent in the reasons for refusal letter. All matters put in dispute by the reasons for refusal letter are ones which Judge Gibbs must determine on the totality of the evidence, including any examination in chief and cross-examination of witnesses, before her. It is for the parties to decide the extent any examination of witnesses. The appellant was not taken by surprise in any sense in this determination as there were no incidences of Judge Gibbs going behind a concession made by the respondent. Judge Gibbs did not simply determine the issue of the sincerity of the conversion: she examined the risk from the appellant’s family in the context of her relationship and her Article 8 ECHR rights.
17. Mr Jarvis correctly argues that there is no need for Judge Gibbs to refer to Razgar or set out a five point analysis following this authority so long as she deals with all of the key issues. I find that she has done this. She has found that there is family life in this case, and at paragraph 43 refers back to her previous reasoning as to why the relationship between the appellant and Mr Khan is found to be genuine. She clearly accepts that there will be an element of interference if the appellant is removed, although she notes

that as Mr Khan only has leave to remain in the UK until 19<sup>th</sup> April 2015 this may not be a significantly long one (see paragraph 44 of the determination).

18. Judge Gibbs notes the authority of Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 00640 and that following this authority she is not obliged to carry out a freestanding Article 8 ECHR analysis if here are no arguably good grounds for granting leave to remain outside of the Immigration Rules. It is accepted by Mr Chhotu for the appellant that the appellant could not meet the relevant Immigration Rules to remain as Mr Khan's wife. No case was advanced for the appellant that she could meet the Immigration Rules as a spouse of a Tier 4 student migrant bar not having leave or entry clearance for instance. Before Judge Gibbs the appellant's representative (Mr Bahja) had not given any particulars of good grounds for granting leave outside of the Immigration Rules in his skeleton but had just baldly stated that such grounds did exist (see paragraph 44 of the determination).
19. However Judge Gibbs does in fact go on to examine the proportionality of removal at paragraph 44 of her determination. She finds that it would be proportionate in the context of the appellant marrying after she no longer had leave (this is factually correct as she married on 12<sup>th</sup> September 2011 when her working holiday leave to enter had expired in June 2011) and gives consideration to s.117B(4) of the Nationality, Immigration and Asylum Act 2002 in this connection. It is clear that Judge Gibbs had been aware that the appellant had valid leave prior to this as she notes this at paragraphs 5 and 6 of the determination and that the first in-time application for the appellant to remain as a partner of Mr Khan had been refused due to insufficient funds.
20. Judge Gibbs also notes the limited stay the appellant's husband currently has in the UK; she finds that it is open to the appellant to return to India and apply for entry clearance to join Mr Khan here; and that the appellant and Mr Khan could have family life in India for the reasons set out earlier in her determination. Judge Gibbs has of course found earlier in the determination at paragraph 40 that the appellant's family has no adverse interest in her as a result of her marriage. There is also a finding that there was no country of origin information before her that suggested that an interfaith marriage put the appellant and Mr Khan at risk in India (see paragraph 41). I do not find that this analysis is materially legally flawed or factually incorrect.

## **Decision**

1. The First-tier Tribunal had not erred in law.
2. The determination of the First-tier Tribunal dismissing the appeal is upheld.

No anonymity direction is made.

Signed

Date 18<sup>th</sup> November 2014

Judge Lindsley  
Deputy Judge of the Upper Tribunal

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 18<sup>th</sup> November 2014

Judge Lindsley  
Deputy Judge of the Upper Tribunal