IAC-AH-DP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04149/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 12 November 2014	**On 6 February 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

FATIMA FAISAL

Respondent

Representation:
For the Appellant: Ms R Pettersen, a Senior Home Office Presenting Officer
For the Respondent: Mr A Javed, Reiss Solicitors

DECISION AND REASONS

1. The respondent, Fatima Faisal, was born on 31 October 1981 and is a female citizen of Pakistan. I shall hereafter refer to the appellant as the respondent and to the respondent as the appellant (as they appeared respectively before the First-tier Tribunal).

2. The appellant had entered the United Kingdom in June 2011. By a decision dated 7 May 2014, the respondent refused to grant the appellant asylum following a claim which she had made for protection on 31 October 2011.

The decision was also made to remove the appellant by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. The appellant appealed against that decision to the First-tier Tribunal (Judge Cox) which, in a determination dated 11th September 2014, allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

3. Judge Cox found the appellant to have been a victim of domestic abuse at the hands of her husband. At [28] he was "satisfied that [her husband] had assaulted her in the United Kingdom ... I also accept that prior to leaving, [the husband] threatened to kill the appellant and that he would take the children away from her if she returned to Pakistan". The appeal turned on the level of threat either directly from the husband or indirectly as the single mother of three young children without support which the appellant might face upon return to Pakistan and the extent, if any, to which she might be assisted by members of her family in Pakistan. The appellant claimed that her parents are deceased.

4. Having found that the appellant was a victim of domestic abuse, the judge also noted that her husband had been granted a contact order in November 2012 in the County Court and a Prohibited Steps Order had also been made on 15 November 2012 preventing either parent from removing the children from the United Kingdom without the other's consent. Following the making of the contact order, her husband had last seen the children in the United Kingdom in 2013. At [34], Judge Cox found:

> In my view, these documents [Contact, Residence and Prohibited Steps Orders] are highly significant. The appellant's husband was prepared to issue proceedings in the UK so as to enable him to have contact with the children and I have no doubt that he would pursue the children in Pakistan. Especially as these proceedings started the year after the incident of domestic violence and there were earlier incidents of abuse.

This led the judge [35] to find that he was "satisfied the appellant had shown a real risk of continuing hostility from her husband such as to raise a real risk of serious harm in her former home".

5. I consider the judge's finding to be problematic. The Upper Tribunal should certainly hesitate before interfering with the findings of fact of the First-tier Tribunal which has the advantage of hearing oral evidence from witnesses. However, in this instance, the facts recited by the judge do not appear to justify the finding which he has drawn from those facts. I am satisfied that the judge's analysis of the evidence related to domestic violence but I do not understand why the issue of contact proceedings following the separation of the couple would lead the judge to conclude the appellant's husband, who could be expected to have no way of discovering that the appellant and children had returned to Pakistan, would "pursue" the children in Pakistan. It is true the contact proceedings were started a year after the last incident of domestic violence (indicating perhaps that the father had, notwithstanding the separation, a continuing interest in seeing the children) but it is also the case that, notwithstanding

the making of the contact order, the appellant's husband had not seen the children for at least a year before the hearing in the First-tier Tribunal. An obvious inference to draw from that fact is that the husband had lost interest in exercising contact at all. It does not follow, therefore, that there should be "no doubt" (as the judge expressed it) that the husband would "pursue the children in Pakistan" because he had obtained a county court contact order (which he was fully entitled to obtain as an estranged father) which he had subsequently allowed to lapse.

6. At [31] the appellant had told the judge that the husband "probably" knew where the appellant's family lived in Pakistan but that he had "not been to see them". The judge considered that this evidence was "plainly relevant" in assessing whether there was a real risk from continuing hostility from the husband in Pakistan but I have to say that it does not seem to be particularly strong evidence that the husband, who would be unaware that the family had returned to Pakistan, would learn that they had returned given that he had no contact with her family there.

7. In the light of these observations, I consider that this is a relatively rare case where the judge has given inadequate reasons for the findings of fact upon which he has determined the appeal. I am not satisfied that the judge was able to conclude, for the reasons which he has given, that there was a real risk that the appellant's husband would pursue her and the children in Pakistan. That is not to say that such a finding could never be made on the evidence but only that it was not a reasonable finding for the judge to make on the evidence which he cites in support.

8. I am also concerned regarding the judge's conclusion that the appellant's family would be unable to support her in Pakistan. At [37] the judge found that "the appellant has not provided any documentary evidence of her family's circumstances". However, he went on to say that he was satisfied

> that there is a reasonable degree of likelihood that the male members of her family (brothers and uncles) would not be able to provide her with effective protection. I appreciate they would be able to provide her with some support. However, in my view, at best this would be on a 'temporary basis' (see paragraph 54 of the refusal letter).

Paragraph 54 of the refusal letter notes the appellant's evidence to the effect that her family were not "in a financial position" to support her and the children. There is no suggestion that the family members would be unwilling to help the appellant. Paragraph 54 goes on to state, "it is considered that [your family] may be able to provide accommodation for you and your children, even on a temporary basis, regardless of their financial position". It is not clear from the judge's determination at [37] of why he concluded that the family members would be "able to provide her with some support". To say that this would be "at best" temporary is, in my view, to misinterpret the contents of paragraph 54 of the refusal letter. It is clear that the respondent takes the view that, in the absence of evidence of the circumstances of the appellant's family members, there is

no reason to suppose that they would not be able to assist her financially and by providing accommodation; there is a difference in meaning between the provision of help on a temporary basis "at best" and "at least". Furthermore, the judge's finding at [38] that the appellant had "not sought the support of her family" following domestic abuse which occurred in the United Kingdom does not appear to support the judge's consequent finding that, "as such, I believe a reasonable inference to draw that her family were not able to effectively protect her and provide her with sufficient financial support". It is difficult to see what effective support family members in Pakistan might have been able to provide to the appellant while she was living with her husband in the United Kingdom. In addition, there is, on the face of the evidence, no reason to suppose that the appellant's family members would fear hostility from her husband should they assist her in Pakistan because the appellant has not established that her husband would even know that she was in Pakistan. Once again, I do not rule out the possibility that a valid finding might be made that the appellant's family could not offer support; I simply observe the judge's reasons for his findings are not adequate.

9. In the circumstances, I set aside the First-tier Tribunal determination although I preserve the findings as regards past domestic violence in the United Kingdom (see [28]). I consider it appropriate for the First-tier Tribunal to remake the decision and to examine again the question of the support which the appellant might receive in Pakistan both from her family and from other sources and to determine whether the appellant is able to prove to the necessary standard that the appellant's husband would (a) be aware that she had returned to Pakistan and (b) would seek to pursue and harm her there.

Notice of Decision

The determination of the First-tier Tribunal dated 11 September 2014 is set aside. The findings of domestic violence [28] are preserved. All other findings are set aside. The matter will be returned to the First-tier Tribunal and for that Tribunal to remake the decision.

No anonymity direction is made.

Signed Date 20 January 2015

Upper Tribunal Judge Clive Lane