Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/05876/2014
AA/05878/2014
AA/05814/2014

THE IMMIGRATION ACTS

Heard at Stoke on Trent	**Determination Promulgated**
On 22 April 2015	**On 23 April 2015**

Before

Deputy Upper Tribunal Judge Pickup

Between

Secretary of State for the Home Department

Appellant

and

SN
SA
EA
[Anonymity direction made]

Claimants

Representation:

For the claimants: Ms K Singh, instructed by Duncan Lewis & Co
For the appellant: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of the Secretary of State against the decision of First-tier Tribunal Judge Birk promulgated 1.10.14, allowing, on asylum and human rights grounds, the claimants' appeals against the decision of the Secretary of State to refuse their

asylum, humanitarian protection and human rights claims. The Judge heard the appeal on 1.9.14.

2. First-tier Tribunal Judge Saffer granted permission to appeal on 20.10.14, though without citing any reasons for doing so.

3. Thus the matter came before me on 22.4.15 as an appeal in the Upper Tribunal.

Error of Law

4. For the reasons set out herein I found that there were errors of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Birk should be set aside and remade. Having given my decision on error of law, and having decided to preserve the core findings of the First-tier Tribunal decision up to 30, the representatives of both parties agreed that there was no need to hear further evidence before remaking the decision. Ms Singh made further submissions at that stage on the two outstanding issues of relocation and sufficiency of protection. I then reserved my decision on the remaking of the appeal and now give both my reasons for finding errors of law and in remaking of the decision by dismissing the appeal.

5. Judge Birk did not accept the claimants' case on political opinion but accepted the claim based on the claimant being a member of a particular social group as the unmarried mother of two children in an extra-marital relationship with her partner. On this issue the judge found the claimant and her partner credible that there is hostility towards them from their families. The judge then went on to find at §33 that the claimants are entitled to refugee status and that there is also a real risk of breach of articles 2 & 3 on the same factual matrix. Having found that the first claimant is a refugee, the judge did not consider whether she is entitled to humanitarian protection; however, on the facts of this case they are covered by the same factual matrix and stand or fall together.

6. I note that the judge found in the article 8 assessment that the decision of the Secretary of State was proportionate and there has been no cross-appeal by the claimant against the human rights findings and thus that part of the decision must stand as made.

7. The claimant has not challenged the political opinion findings. The Secretary of State has not challenged any of the core factual findings. As stated above, the only real issues are in relation to internal relocation and sufficiency of protection, considered in the First-tier Tribunal decision from §29 through §33.

8. The first ground of application for permission to appeal asserts that the First-tier Tribunal Judge made a material misdirection in law in the approach taken to the issue of internal relocation, and failed to follow SSHD v AH Sudan & Others [2007] UKHL 49. In particular, it is submitted that in reaching the conclusion at §31 that the claimants are unable to relocate elsewhere in Pakistan, the First-tier Tribunal failed to take into account the types of support that the appellant's partner Mr A could offer on their return to Pakistan. The judge stated, "She has no family members and

friends elsewhere who would support her or any other resources that she can access. So I find that she is unable to relocate elsewhere in Pakistan." It is submitted that the judge focused material support, irrelevant to the protection issue, and gave no reasons to show either that relocation would not be possible or that living conditions on relocation would be so intolerable that relocation was unjustifiably harsh.

9. First, there is the support of the claimant's partner. Although he has made an asylum claim the situation had to be considered as at the date of hearing before the First-tier Tribunal in September 2014, at which time there had been no decision on his claim. He was in the UK as a student and therefore was present on a temporary basis, was now without any leave to remain, and could have had no legitimate expectation of being able to remain in the UK except in accordance with Immigration Rules, which he does not meet. He has no leave to remain in the UK and is thus in theory able to return to Pakistan, as the judge noted at §29. However, the relocation and sufficiency of protection considerations appear to have proceeded as if the claimants were returning to Pakistan without the partner. I was told today that his asylum claim has been refused and he is now awaiting an appeal hearing. That changes nothing, as I still have to proceed on the same basis that the claimants and the partner can return to Pakistan as a family unit.

10. Both appellant and partner have the advantage of education. Even though neither of them may have family support or financial resources to call upon in Pakistan, they would be in no different situation to many others in Pakistan and in that context can live a relatively normal life consistent with the situation of the majority of their fellow citizens.

11. At §20 of the refusal decision, the Secretary of State considered that as the claimants had related their fear to only their home area of Jhelum, it would be reasonable to expect them to relocate elsewhere, such as Lahore or Hyderbad, relying on Januzi [2006] UKHL 5, to the effect that it would not be unduly harsh if the claimant can life a relatively normal life judged by the standards that prevail in his country of nationality generally, and AH (Sudan) to similar effect. As stated at §42 of AH (Sudan):

> "If a significant minority suffer equivalent hardship to that likely to be suffered by a claimant on relocation and if the claimant is as well able to bear it as most, it may well be appropriate to refuse him international protection. Hard hearted as this may sound and sympathetic although inevitable one feels towards those who have suffered as have these respondents (and the tens of thousands like them), the Refugee Convention, as I have sought to explain, is really intended only to protect those threatened with specific forms of persecution. It is not a general humanitarian measure. For these respondents persecution is no longer a risk. Given that they can now safely be returned home, only proof that their lives on return would be quite simply intolerable compared even to the problems and deprivations of so many of their fellow countrymen would entitle them to refugee status. Compassion alone cannot justify the grant of asylum."

12. It is clear from a reading of the decision of the First-tier Tribunal that there was an inadequate and flawed consideration as to whether relocation would be unduly

harsh. The judge focused on the lack of material support they would have on return to Pakistan and failed to properly identify what risk factors or intolerable conditions would prevent such relocation. Mere convenience or absence of property or financial resources or family support are insufficient to amount to such hardship as to render relocation unjustifiably harsh.

13. The judge did take into account threats of harm from the family members on both sides. At §30 the judge accepted as credible the alleged threats from family members to harm the claimant and that the extended family are at all the main airports and that as the two families of the first claimant and her partner are from two different provinces, they have a wider family network across Pakistan. However, the judge specifically failed to consider whether the family could safely relocate to other areas outside the two provinces of Pakistan in what is by any account a huge country. There is no finding that the family would be unsafe or at risk elsewhere and in my view insufficient evidence that they would not be able to relocate well away from the families of either the claimants or the partner in the vast country that is Pakistan.

14. For the same reasons, I find in remaking the decision in the appeal that whilst the claimants fear the threats of the wider family and that of the first claimant's partner, it has not been demonstrated that there is no part of Pakistan to which they can go where they will not be at risk from the threateners. Even if they are widespread across two particular provinces, it would be stretching credibility too far to suggest without cogent evidence that the influence of these particular families is so widespread across the whole of Pakistan society that there is no place of safety. Nothing has been demonstrated that they would have such power or influence to be able to know that they had returned to Pakistan or to have the ability to track them right across the country. For example, the Secretary of State suggested that they could relocate to Lahore, the second largest city in Pakistan with a population of over 9 million, where the claimants and the partner would be able to live without attracting the adverse attention of the families they fear. There are many other large towns and cities. Whilst there may be practical difficulties in relocating to a previously unknown area, there is no reason why the claimants, with or without the partner, would not be able to lead a relatively normal life comparable to that of a significant proportion of the country. In the circumstances, the claimants do not have a well-founded fear of persecution or face a real risk of serious harm, because there is place to which they can relocate where they will not face that harm and it is not unjustifiably harsh to expect them to do so. Accordingly, the claimants' removal would not cause the UK to be in breach of its obligations under the Geneva Convention.

15. In passing I find no error of law in the findings of the judge in §30, as complained of in the third ground of application for permission to appeal. The judge therein set out cogent reasons for accepting that evidence. Mr McVeety conceded that this was not a strong ground and he did not pursue it further than to reference it in the grounds.

16. The second ground of application for permission to appeal complains that at §31 and §32, the judge found that the claimants would not have effective protection in their

home area, because the threat is from the first claimant's own family members and that on the objective evidence the police would be ineffective in such disputes. However, the judge failed to follow the country guidance case of KA & Others (domestic violence risk on return) Pakistan CG [2010] UKUT 31 (IAC), or AW (Sufficiency of protection) Pakistan [2011] UKUT 31 (IAC), both of which indicate that there is no systemic insufficiency of state protection.

17. In KA & Others, the Upper Tribunal held, inter alia, that (iii) The Protection of Women (Criminal Laws Amendment) Act 2006 ("PWA"), one of a number of legislative measures undertaken to improve the situation of women in Pakistan in the past decade, has had a significant effect on the operation of the Pakistan criminal law as it affects women accused of adultery. It led to the release of 2,500 imprisoned women. Most sexual offences now have to be dealt with under the Pakistan Penal Code (PPC) rather than under the more punitive Offence of Zina (Enforcement of Hudood) Ordinance 1979. Husbands no longer have power to register a First Information Report (FIR) with the police alleging adultery; since 1 December 2006 any such complaint must be presented to a court, which will require sufficient grounds to be shown for any charges to proceed. A senior police officer has to conduct the investigation. Offences of adultery have been made bailable. However, Pakistan remains a heavily patriarchal society and levels of domestic violence continue to be high; (iv) Whether a woman on return faces a real risk of an honour killing will depend on the particular circumstances; however, in general such a risk is likely to be confined to tribal areas such as the North West Frontier Province (NWFP) and is unlikely to impact on married women; (vi) The guidance given in SN and HM (Divorced women – risk on return) Pakistan CG [2004] UKIAT 00283 and FS (Domestic violence – SN and HM – OGN) Pakistan CG [2006] 000283 remains valid. The network of women's shelters (comprising government-run shelters (Darul Amans) and private and Islamic women's crisis centres) in general affords effective protection for women victims of domestic violence, although there are significant shortcomings in the level of services and treatment of inmates in some such centres. Women with boys over 5 face separation from their sons; (v) In assessing whether women victims of domestic violence have a viable internal relocation alternative, regard must be had not only to the availability of such shelters/centres but also to the situation women will face after they leave such centres.

18. AW (sufficiency of protection) Pakistan [2011] UKUT 31 (IAC), also indicates that there is no systemic insufficiency of state protection in Pakistan.

19. I find that without justification for doing so the judge failed to follow country guidance and focused only on one extract from country background information. On the circumstances of this case, with the family able to return together, SN & HM was of marginal relevance. As Mr Mc Veety submitted, relying on SG (Iraq) v SSHD [2012] EWCA Civ 940, at §47, "decision makers and Tribunal judges are required to take Country Guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, are adduced justifying their not doing so." Judge Birk made no reference to the relevant country guidance on sufficiency of protection in Pakistan and the one reference to the objective material stated no more

than that police and judges were "sometimes" reluctant to take action in domestic violence cases. None of this was sufficient justification for ignoring or departing from the country guidance. In the circumstances, this part of the decision is flawed for error of law.

20. In submissions addressed to remaking the decision Ms Singh pointed me to the 'Country Information and Guidance Pakistan: Women,' dated July 2014 (A58), and in particular the suggestion at 1.3.7 that whether a woman will face a real risk of honour killing will depend on the particular circumstances, and that whilst KA & others suggested that the risk was limited to tribal areas, "more recent country origin information indicates that the risk of honour killing in Pakistan is not restricted geographically or otherwise." Further at 1.3.8 that the authorities may be unable or unwilling to provide protection for women fearing honour crimes.

21. My attention was also drawn to the various Internet and press reports in the appellant's bundle as to violence perpetrated against women in relation to domestic violence, allegations of adultery, and the prevalence of honour killings. In addition, Ms Singh pointed me to the extract from the 2013 COIR for Pakistan, between A89-96. Some of this relates to the protection of single women, but I note that at 23.149 it is stated to be common for legal authorities including the police to mishandle cases involving love marriages or other "family issues," for which reason violence against women remains very high.

22. I have carefully considered and take all the above information into account in assessing on the merits of this case whether there is an insufficiency of protection. Whilst these extracts indicate that there are sometimes difficulties or challenges in obtaining protection for women in the first claimant's situation, there is no evidence of any systemic insufficiency of protection in Pakistan such as to enable me to conclude that KA & others should be departed from. It remains the country guidance case. I find insufficient information in the material before me to suggest that there would be such insufficiency of protection in all or most parts of Pakistan that the appeals ought to be allowed on that basis. In Horvath [1999] EWCA Civ 3026, Stuart-Smith LJ held that there must be a criminal law in place and a reasonable willness by the authorities to detect, prosecute and punish offenders. "It must be remembered that inefficiency and incompetence is not the same as unwillingness, unless it is extreme and widespread… Moreover, the existence of some policemen who are corrupt or sympathetic to the criminals, or some judges who are weak in the control of the court or in sentencing, does not mean that the state is unwilling to afford protection. It will require cogent evidence that the state which is able to afford protection is unwilling to do so, especially in the case of a democracy." In my view, for the reasons stated in KA & Others, and despite the further evidence relied on by the claimants, there is a willingness of the Pakistan authorities to provide sufficient protection against the threats of harm feared by the claimants.

23. For the same reasons relied on in relation to the asylum claim, I find that the claimants have failed to demonstrate to the lower standard that there are substantial grounds for believing that, if returned, they would face a real risk of suffering serious

harm and that they are unable or, owing to such risk, unwilling to avail themselves of the protection of the country of return. Thus the humanitarian protection claim also fails.

24. The decision of the First-tier Tribunal in relation to article 8 stands and the decision of the Secretary of State is not disproportionate to the claimants' rights of private and family life pursuant to article 8 ECHR when balanced against the legitimate and necessary public interest in maintaining immigration control in order to protect the economic well-being of the UK.

Conclusions:

25. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside and remade.

I set aside the decision.

I re-make the decision in the appeal by dismissing the appeal of each appellant on all grounds.

Signed

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I continue the anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.

Signed

Deputy Upper Tribunal Judge Pickup