



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/06163/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4 February 2015**

**Decision & Reasons  
Promulgated  
On 18 May 2015**

**Before**

**UPPER TRIBUNAL JUDGE CONWAY**

**Between**

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

Appellant

**and**

**MRS TS  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr Shilliday

For the Respondent: Mr Ahmed

**DECISION AND REASONS**

1. Mrs TS is a citizen of Pakistan born in 1974. She appealed against a decision of the Secretary of State made on 1 August 2014 to remove by way of directions. She was refused asylum.
2. Although in proceedings before me the Secretary of State is the Appellant for convenience I retain the designations as they were before the First-tier Tribunal, thus Mrs TS is the Appellant and the Secretary of State is the Respondent.

3. The Appellant has two children born in 2001 and 2005. They are dependants in her appeal.
4. Her immigration history is not in dispute. She entered the UK with a visit visa on 8 December 2012. On 18 January 2013 she made an application for leave to remain on the basis of Article 8. This was refused on 12 December 2013. An appeal was dismissed on 12 June 2014. On 30 June 2014 she claimed asylum. As indicated this was refused on 1 August 2014.
5. The basis of her claim was that she is a member of a particular social group, namely, as a widow with two children. She fears her in-laws.
6. In summary, she and her husband lived with their children and her husband's father in the house of her sister-in-law and her husband. In November 2011 her father-in-law died. Her husband died in September 2012. She was mistreated by her in-laws who complained that the property that was left to her husband and sister-in-law jointly was theirs. They fraudulently signed documents to put everything into their names. They also made threats against her saying that if she made any attempt to claim the property she and her children would be killed. Her father, who visited her, said she should seek the protection of the police. She went to the police station to file a FIR against her in-laws. However the police began harassing her father instead. She came to the UK to escape her in-laws. She received threatening phone calls from them in the UK.
7. The refusal letter stated, in summary, that it was accepted that there is a property dispute and that she is a widow with two children. It was noted that when she came to the UK she planned to return and did not claim asylum for a long time after receiving phone calls and there is no evidence of the threatening phone calls. She has family in Pakistan she can return to.
8. She appealed the refusal.
9. Following a hearing at Birmingham on 23 September 2014 Judge of the First-tier Tribunal Birk dismissed the appeal on asylum and human rights grounds but allowed it on humanitarian protection grounds.
10. Her findings are at paragraphs [23ff]. It was accepted there was a property dispute between the Appellant and her in-laws. The judge found there was a legal process which could be used. She noted the Appellant's evidence that she does not intend to pursue a claim about the property dispute. Her position is that her fear stems from her in-laws thinking that she may pursue a claim [23].
11. As for the historical account the judge found the fact that she reiterated in her evidence that it was her intention when she arrived in the UK to return to Pakistan and she was not thinking of remaining here was *'inconsistent with the level of abuse and conduct which she claims was directed at her*

*and her children'. She went on to find that 'this is sufficient evidence to show that the land dispute and that there was some resulting hostility between herself and her in-laws but that the treatment by her in-laws were not of sufficient seriousness or gravity for her to be concerned about her safety or that she would or her children would be harmed on return at that point' [24].*

12. The judge went on (at [25]) to consider affidavits and letters from relatives and others but found that there was nothing which indicated that the *'information they relay is from their individual personal knowledge'*. She found that they did not corroborate the Appellant's evidence of historical events. Also, it was conceded that the father's evidence was inconsistent with the Appellant's on the issue of the visits to the police station.
13. At [26] having considered evidence from other sources including medical evidence and from the children's school, she found there to be *'very little weight in the evidence from these sources which show that the Appellant and her children have suffered the events that the Appellant claims occurred'*.
14. The judge noted a FIR but stated that while it indicated that the Appellant had made a formal complaint, she had not found the truth of the matters complained about. She repeated that it was unexplained why if matters were sufficiently serious for her to report them to the police she was still considering returning to Pakistan after her visit [27].
15. The judge considered the evidence that what precipitated her asylum claim was threatening phone calls. She found the Appellant's evidence about the number of calls to be vague [28]. Also, although it was claimed by the Appellant that her sister-in-law in the UK had also taken these calls there was no evidence to confirm that in the sister-in-law's statement. Further, without explanation, the sister-in-law had not attended the hearing to give evidence [29].
16. The judge went on (at [30]) to consider, and for several reasons she gave, reject evidence from the Appellant's brother about phone calls being received, concluding (at [31]) *'there is a lack of credible evidence in support of such calls having been made and so I do not find that such calls were made'*.
17. In further analysis the judge found that the in-laws *'are not so powerful and threatening'* as claimed and that the Appellant *'was only able to give generalisations about their influence which I do not find credible and which do not establish that they are able to or would seek her out on return'* [32].
18. She concluded (at [33]) *'I do not find that the Appellant is in danger from her in-laws ... even though there may be an issue between them regarding a property dispute which has caused some difficulties between them'*.

19. The judge went on to sum up her conclusions as follows (at [36]): the Appellant *'has not established that hostilities between herself and in-laws have reached a level whereby the Appellant faces a risk of serious harm or that her in-laws have the ability to carry out any threats'*. However, she did find that the relationship and family unit with her in-laws has *'broken down and that she would no longer be able to return to live there with them'*.
20. She found that the Appellant had *'exaggerated the extent of ill feeling and poor relationship that she has now with her in-laws'* and that it did not extend to *'acts of violence or serious threats in the UK or in Pakistan'*.
21. The judge found that the Appellant *'had to be pressed to tell the truth about her family in Pakistan'* at first saying she had none but when pressed accepted that she had cousins. The judge noted that in a previous determination it had been found she had *'many cousins'* in Pakistan. However, in the judge's view, this did not mean that she has a male family member in Pakistan who she can turn to for support or who she can reside with.
22. The judge took into account that it was found that *'her brother in the UK would support her in Pakistan but this would not mean that she has a male presence with her in Pakistan'*. The judge took into account that the Appellant is an educated woman, indeed educated to degree standard, and has worked in Pakistan doing private teaching. Also taken into account that she is a widow returning with two children, the judge found that *'the situation that would face the Appellant upon return is that she is without any male family assistance, presence or protection'* [36].
23. Having considered background material as to the difficulties which face women on their own in Pakistan the judge in her consideration of risk concluded (at [39]) as follows: the background material shows that she *'would face a very serious risk that she and her children would be destitute upon return because she would struggle to find work despite her education and the obligation of childcare would fall solely upon her'*. Also *'she has no long term financial means to support herself even if her brother in the UK offers to provide some financial support. She has no family network in Pakistan that she can realistically rely upon as I find that although she does have relatives that she is not in contact with them and there is no evidence that they could offer her support'*. The judge found that she would not be able to relocate to *'a more modern or progressive or more non-rural area to make matters better for herself because she will still face the serious problem of being without any family or male support'*. This (the judge concluded) *'is not within the ambit of the Refugee Convention or Articles 2 or 3 of the Human Rights Convention but I do find that she is entitled to Humanitarian Protection'*.
24. The judge ended by considering and dismissing the appeal on Article 8 grounds.

25. The Respondent sought permission to appeal which was granted by a judge on 13 November 2014.
26. At the error of law hearing before me Mr Shilliday sought simply to rely on the brief grounds. No issue was taken with the judge's findings. The problem was the legal conclusion she drew from them. She had failed to explain which form of serious harm under Article 15 of Council Directive 2004/83/EC she would be at real risk of experiencing. Having found she was not entitled to protection under Article 2 or 3 of the ECHR it might be inferred that Article 15(c) was the relevant part but such was unclear and there was an absence of reasoning in respect of a situation of internal armed conflict. It was thus unclear why the Appellant had succeeded. He invited me to set aside the decision and remake it dismissing it.
27. In reply Mr Ahmed reminded me of the judge's findings at [36 - 39]. She had given adequate reasons for reaching her findings and thereby allowed the appeal. The Respondent's position amounted to nothing more than disagreement.
28. Mr Shilliday responded by repeating that no issue was taken with the factual findings and the reasons given for reaching these findings. The issue was the legal reasoning.
29. Mr Ahmed's final position was that the appropriate disposal was that the appeal be allowed under Article 3. He invited me to set aside the decision and remake it accordingly.
30. Mr Shilliday's final position was that he left it to me.
31. In considering this matter the factual findings are not challenged. As indicated they are laid out at [39] and amount to a real risk that the Appellant would be destitute on return because she would struggle to get work despite her education, and the obligation of childcare would fall on her. She has no long term financial means to support herself even if her UK brother offered some financial support. She has no family network in Pakistan being not in contact with relatives there and they could not offer support. She would have no male support there.
32. Such findings, the judge considered, could not bring the Appellant within the ambit of the Refugee Convention. Such is not challenged.
33. The judge also considered that her findings could not bring the Appellant within the ambit of Article 3. Yet she found that the Appellant was entitled to humanitarian protection. Paragraph 339C of the Immigration Rules states that a person will be granted humanitarian protection if the Respondent is satisfied that she does not qualify as a refugee, and (iii) *'substantial grounds have been shown for believing that the person concerned, if she returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail herself of the protection of that country.'* *'Serious harm'* is defined at

paragraph 339C as (iii) '*...inhuman or degrading treatment...of a person in the country of return*'; or (iv) '*serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict*'. The wording reflects Article 15 (b) and (c) of Council Directive 2004/83/ EC.

34. In the absence of any reference to international or internal armed conflict it is clearly the case that the judge did not have in mind paragraph 339C (iv)/Article 15 (c). The only other option before her was paragraph 339C (iii)/Article 15(b) '*serious harm consists of ... inhuman or degrading treatment ... of a person in the country of return*'.
35. That wording reflects Article 3 ECHR which she had earlier rejected as having no application to the findings.
36. In failing to give adequate reasons for concluding on the facts found that the Appellant, apparently on the grounds of destitution, succeeded on humanitarian protection grounds the judge materially erred in law. The decision is set aside to be remade. The findings stand.
37. The crucial issue is where do findings of a real risk of destitution for a widowed woman with two children and no male protection take the Appellant.
38. I was not referred to any case law on destitution by the representatives. However, I note **MB, YT, GA and TK v SSHD [2013] EWHC 123** where Mitting J held (at [29]) that '*Article 3 imposes no general obligation on a contracting state to refrain from removing a person to another state in which he would be destitute*'. It was not the function of Article 3 to impose a minimum standard of social support for those in need. A breach of Article 3 only occurred when deliberate state action was taken to prohibit a person from sustaining himself by work and when accommodation and the barest of necessities were removed. In a 'foreign case' '*wholly exceptional circumstances such as those obtaining in D v UK 30240/96 15 October 1996 may engage Article 3 and prohibit removal by a contracting state. Otherwise* [noting comment by the House of Lords in **Limbuela v SSHD [2006] 1 AC 396**], "*the fact that the applicant's circumstances, including his life expectancy would be significantly reduced if he were to be removed from the contracting state is not sufficient in itself to give rise to breach of Article 3*".
39. I see nothing exceptional in the Appellant's situation. I cannot see that the fact that she would return with two children and without male support there advances her claim.
40. In that regard among the extensive background material noted by the judge (at [37]) it was stated that while there are difficulties for single women throughout Pakistan, factors such as education, geographical location and socio-economic position all influence the situation of women. Consequently, the life chances of a poorly educated woman from the rural

provinces is likely to be markedly different to that of a well educated living in one of the more cosmopolitan centres such as Lahore, the capital city of Punjab, where the Appellant is from. As the judge found she is a woman of degree level education and she would continue to get financial support from her brother in the UK. I note that she speaks English and, it appears, is in good health as are her children.

41. I conclude on the unchallenged facts that the Appellant's circumstances do not engage Article 3. Nor does it succeed on humanitarian protection grounds. The appeal fails.

### **Notice of Decision**

The decision of the First-tier Tribunal contained an error of law. The decision is set aside and remade as follows:

The appeal is dismissed on asylum, humanitarian protection and human rights grounds.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Upper Tribunal Judge Conway