IAC-AH-KRL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/06138/2015

THE IMMIGRATION ACTS

Heard at Field House
On 16 March 2016

Decision & Reasons Promulgated
On 14 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS ANK
(ANONYMITY DIRECTION MADE)

Claimant

Representation:

For the Appellant: Mr E Tufan, a Home Office Presenting Officer
For the Claimant: Mr A Swain of Counsel

DECISION AND REASONS

Introduction

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs

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otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

2. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal which allowed Ms ANK's ("the claimant") appeal against the Secretary of State's decision taken on 18 March 2015 refusing the claimant's asylum claim.

3. The claimant is a citizen of Pakistan and was born on [ ] 1968. The claimant applied for a visit visa to come to the UK on 13 November 2013. Visa applications were also made for the claimant's husband and two of her children. On 28 November 2013 the claimant was granted a visa for six months valid from 28 November 2013 to 28 May 2014. On 13 April 2014 the claimant claimed asylum. The claimant's husband and two children are all dependants on her asylum claim. On 18 March 2015 the Secretary of State refused the claimant's claim for asylum. A decision to remove the claimant from the UK by way of directions under Section 47 of the Immigration, Asylum and Nationality (Removal: Person with Statutorily Extended Leave) was made.

The Appeal to the First-tier Tribunal

4. The claimant appealed to the First-tier Tribunal. In a decision promulgated on 29 December 2015, First-tier Tribunal Judge Seifert allowed the claimant's appeal. The First-tier Tribunal Judge found that the claimant's evidence as a whole was generally consistent and that the claimant had a well-founded fear of persecution in Pakistan and qualified for the grant of asylum. The judge found that there would not be sufficiency of protection and that internal relocation in Pakistan would be unduly harsh and is not a realistic option.

The Appeal to the Upper Tribunal

5. The Secretary of State sought permission to appeal to the Upper Tribunal. The grounds of appeal assert that the judge erred in law by failing to give adequate reasons for findings on material matters and failed to consider adequately the possibility of re-location. On 25 January 2016 First-tier Tribunal Judge Zucker granted permission to appeal. The grounds set out that it is arguable that the judge has given insufficient and inadequate reasons for the decision. Thus, the appeal came before me.

Summary of Submissions

The Secretary of State's Submissions

6. The grounds of appeal assert that the judge erred in law by failing to give reasons or any adequate reasons for findings on material matters. It is submitted that the judge failed to provide adequate reasons as to why the appellant's account is accepted and why there is not a sufficiency of protection available to the claimant and her family upon return. It is asserted that the judge made bare statements as to the acceptance

of evidence, rather than providing evidence based reasoning for the findings. Reliance is placed on the case of **Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) ("Budhathoki")**. Reliance is also placed on the case of **MK (duty to give reasons) Pakistan UKUT 00641 (IAC)**. The grounds draw attention to paragraph 62 of the First-tier Tribunal's decision submitting that the findings are bare statements as to the consistency of the claimant's account with no consideration or indication of what the inconsistencies are and no reasons provided as to why the inconsistencies referred to by the Secretary of State do not undermine the appellant's credibility. It is also asserted that the judge has failed to provide adequate reasons for finding that the appellant would not be afforded a sufficiency of protection and has no viable internal flight option. Reference is made to paragraph 65 of the First-tier Tribunal decision and it is submitted that the findings are not supported with evidence based reasons. It is further submitted that, in relation to the sufficiency of protection, internal flight would be available to the appellant. The judge has failed to provide adequate reasons as to why the findings in the case of **AW (sufficiency of protection) Pakistan [2011] UKUT 31 (IAC)** ("**AW**") do not apply. Reference is made to head note 2 of the **AW** case. It is asserted that the judge failed to provide reasons as to why, in light of the systematic sufficiency of state protection, the claimant would not be able to avail herself of that protection.

7. Mr Tufan relied on the grounds of appeal. He asserted that although the decision appeared very detailed, that detail was only with regard to setting out the background of the claim and the evidence. He submitted that at paragraph 60 of the decision there is a fundamental error of law. The judge gives no reasons for the findings made. She merely sets out her acceptance of the evidence but gives no reasons and engages in no analysis. He asserted that at the end of paragraph 60 the judge accepted that false information was given but it is not clear why the judge has accepted this evidence or why she has ignored the inconsistencies. He asserted that in particular there is no analysis as to why internal relocation is not a viable option. Mr Tufan referred to the case of **SM and MH (lone women – ostracism) Pakistan CG [2016] UKUT 00067 (IAC)** and submitted that this case emphasises that there is a sufficiency of protection in Pakistan. He relied on head note 8 which refers to women in Pakistan being legally permitted to divorce their husbands and remarry. He asserted that Pakistan is a large country and that the appellant and her husband could go anywhere within Pakistan.

The Claimant's submissions

8. Mr Swain submitted that in paragraph 56 of the decision the judge set out his (i.e. Mr Swain's) submissions where he referred to the inadequacy of protection in Pakistan. He asserted that the claimant's asylum claim was not limited to the fact that she had divorced and remarried. It was centred around the fact that she had had an extramarital affair. As a consequence of that she had divorced and had remarried. He submitted that the judge had the benefit of a three-hour hearing and had taken the view that the claimants were credible. On the basis of the witness evidence and against the backdrop of the objective evidence the claimant's account could not be more plausible. He submitted that the fact that the claimant had had an extramarital

affair and as a result of that had a child born out of wedlock were key factors. I asked Mr Swain where in the First-tier Tribunal decision these were identified as key factors. After having spent some time looking at the evidence at my request Mr Swain referred me to paragraph 27 of the First-tier Tribunal's decision from which he submitted it is clear that the judge took into account the evidence of the appellant from her asylum interview. After some further time considering the evidence I referred Mr Swain to question 23 of that interview where the appellant had set out that she was at risk because of the extramarital relationship and the fact her daughter was born out of wedlock. Mr Swain referred to the 1979 Hudood Ordinances, in particular pages 20 to 21 of the guidance. This he submitted was taken into account by the judge. The Ordinances criminalise extramarital sex and punishment can include stoning to death. He submitted that internal relocation was simply not possible because as a matter of law the appellant and her husband would be discriminated against. He submitted that it was evident from the points made, as set out in paragraph 56, of the decision that the judge had taken these factors into account. This was not a simple case of a Sunni marrying a Shia Muslim. He submitted that pursuant to the Home Office's own objective evidence the claimant satisfies the Qualification Regulations. He also asserted that if the issue was simply one of love marriages that would be sufficient of itself to require protection. He asserted that the case of **SM and MH (lone women – ostracism) Pakistan country guidance [2016] UKUT 00067 (IAC)** does not have a bearing on the instant case because the facts are different. In this case a child was born out of wedlock whilst the appellant was married to another man. He referred to paragraph 16 of the decision where the judge refers to the appellant's assertion that her brothers will kill her daughters. He submitted that this was realistic given that one of the children was born out of wedlock. He submitted that overall the decision was a reasoned decision when considering the earlier paragraphs and the evidence previously referred to.

The Secretary of State's reply

9. Mr Tufan submitted that Mr Swain had engaged in giving the reasons that in fact the judge should have given. He asserted that this does not absolve the fact that the judge erred by not undertaking the analysis. With regard to the Hudood Ordinances he submitted that these punishments have never been carried out and that it is clear that it is relevant to an assessment of risk to consider how and whether the laws have ever been implemented.

10. Both representatives submitted that if I was to find a material error of law the proper approach would be for the matter to be remitted to the First-tier Tribunal.

Discussion

11. The judge has set out in detail the claimant's claim and evidence. She has also set out in some detail the submissions made. However, there is very little analysis of, or engagement with, that evidence or the submissions. There is also no analysis of the objective evidence. A judge does not have to rehearse every piece of evidence but it is necessary to provide sufficient reasoning so that it is clear what evidence/issues the

judge accepted and what she did not and why she has arrived at the conclusions that she did. As set out in **Budhathoki** at paragraph 14:

> "…it is generally unnecessary, unhelpful and unhealthy for First-tier Tribunal judgments to seek to rehearse every detail or issue raised in the case. … It is, however, necessary for First-tier Tribunal judges to identify and resolve the key conflicts in the evidence and explain in clear and brief terms their reasons for preferring one case to the other so that the parties can understand why they have won or lost."

12. The First-tier Tribunal judge set out at paragraphs 22 to 24 a number of the inconsistencies noted by the Secretary of State. At paragraph 26 to 28 the judge set out further inconsistencies noted by the Secretary of State. At paragraphs 28 to 49 the judge set out the appellant's evidence including the oral evidence from the claimant and Mr K. Although some of that evidence explained a number of the inconsistencies that had been noted by the Secretary of State there is little or no analysis by the judge of the evidence and reasons as to why she preferred the evidence of the claimant to that of the Secretary of State. With regard to its sufficiency of protection judge set out at paragraphs 50 to 52 the Secretary of State's arguments and at paragraphs 53 to 56 the claimant's submissions. In respect of internal relocation, the judge set out at paragraphs 57 to 58 the Secretary of State arguments.

13. Having set out at length (some 36 paragraphs) the evidence and the submissions of the parties the judge then arrived at her conclusions commencing at paragraph 60. It is worth setting out in full the conclusions reached by the judge. From paragraph 60 the judge set out:

> "60. Having considered the evidence of the whole, I have found the appellant and Mr K to be credible witnesses. It is not in dispute that he is Sunni and she is Shia. They have been in a loving relationship since 2002. The appellant and her first husband were divorced in 2013 and later that year the appellant and Mr K were married. The originals of the divorce certificate and marriage certificate have been produced. I accept their evidence that their families were unaware of the marriage until 2014. They then found out that he was Sunni. Although the appellant's brother had seen Mr K at the appellant's home in Pakistan, they were not living together there and she was able to explain this on the basis that Mr K was her driver Mr K and the appellant have one child together, N. He also regards S like a daughter. After they came to the UK for a visit the appellant was informed by her friend in Pakistan that her family had found out about the relationship and marriage. She is in contact with B and her mother. Her mother told her of the problems the marriage had caused and that her family members threatened to harm or kill her and Mr K if they returned. The documents provided have been described earlier in this decision. These included FIRs. I accept that these contained some false information and appear to be designed to harm Mr K. The newspaper articles, one of which offers a reward, also support the fears expressed by the appellant and Mr K. The letters from the religious bodies are consistent with the appellant's and Mr K's accounts of the risk to them on return.
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> 61. In her closing submissions Ms Watkins submitted that there were discrepancies in the screening interview about when the appellant's parents found out that this was a Sunni/Shia marriage. She also said that there are uncertainties as to whether the appellant was living with Mr K during the year before they left Pakistan or whether he visited her. She submitted that there was uncertainty about how the picture of Mr K

> was obtained, and submitted the contents of the article page 78 of the appellant's bundle containing (sic) confusing information. Mr Swain submitted that any inconsistency in the interview does not show dishonesty and does not weaken the fear of this family if they return to Pakistan.
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> 62. Having considered the available evidence as a whole I found the account generally consistent. The few inconsistencies referred to do not necessarily undermine the general consistency and credibility of the appellant's case.
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> 63. In respect of sufficiency of protection and internal relocation, Ms Watkins stated that the reasons for refusal were comprehensive. The appellant was not in Pakistan and had not sought protection of the police. She would be returning to Pakistan with her husband and would not be a female alone. Even if it was accepted that the newspaper articles were genuine, these were in 2014. They might be from newspapers with a small circulation. There was no evidence that the FIRs were centrally circulated in the police system. Other than a few threatening phone calls from the appellant's mother, there was no evidence of recent interest in the appellant in 2015. Even if that were active interest, the appellant could relocate.
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> 64. Mr Swain referred amongst other matters, to the nature of the relationship between the appellant Mr K. There was an extramarital relationship and the birth of their child was outside wedlock. There is no effective state protection throughout Pakistan and internal flight was unrealistic. He referred in particular to pages 21 and 22 of the Guidance.
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> 65. Having considered the evidence and submissions, in the circumstances I am satisfied that there would not be sufficiency of protection and that internal relocation would be unduly harsh and is not a realistic option.
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> 66. For the reasons given above I am satisfied that it has been shown that it has been shown (sic) to the required standard that the appellant has a well-founded fear of persecution in Pakistan and qualifies for the grant of asylum." [names removed to preserve anonymity]

14. It is evident from the paragraphs set out above that the judge has failed to undertake a fact-specific analysis of much the evidence. Even when making her findings in these concluding paragraphs the judge appears to again recite submissions without a critical evaluation. There is no real explanation as to why she concluded in the claimant's favour. The judge has not dealt in any detail with the discrepancies in evidence noted by the Secretary of State other than to say that the few inconsistencies do not undermine the general credibility of the claimant's case.

15. In particular, at paragraph 66, set out above, despite being referred to the relevant case law on risk on return and internal re-location and in setting out the parties' submissions on the case-law the judge failed to explain why she considered that there would not be sufficiency of protection or why she found it would be unduly harsh and not a realistic option for the claimant to re-locate. There is no analysis of the objective evidence by the judge.

16. It was evident at the hearing before me that Mr Swain had to resort to piecing together the reasons as to why the judge arrived at her conclusions by referring to various paragraphs in the decision wherein the judge had set out submissions and

evidence and then drawing inferences from them. Whilst Mr Swain undertook this task with meticulous attention to detail I accept Mr Tufan's submission that what Mr Swain was most admirably doing was performing the task that the judge ought to have undertaken. It is not clear why the judge arrived at her conclusions particularly with regard to the possibility of re-location within Pakistan.

17. For the above reasons I find that there were material errors of law in the First-tier Tribunal's decision. It is far from clear that another Tribunal would have arrived at the same conclusion.

18. The decision of the First-tier Tribunal involved the making of a material error of law. I set aside that decision pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 ('TCEA'). I considered the Practice Statement concerning transfer of proceedings. I am satisfied that the nature and extent of judicial fact finding that is necessary in order for the decision in the appeal to be re-made is such, having regard to the overriding objective, that it is appropriate to remit the matter to the First-tier Tribunal.

19. I remit the case to the First-tier Tribunal for the case to be heard afresh before a different judge pursuant to section 12(2)(b) and 12(3)(a) of the TCEA. The case is to be listed on the next available date.

Notice of Decision

The decision of the First-tier Tribunal contained material errors of law. The appeal of the Secretary of State is allowed. The case is remitted to the First-tier Tribunal for a *de novo* hearing before a judge other than First-tier Tribunal Judge Seifert.

Signed *P M Ramshaw* Date 9 April 2016

Deputy Upper Tribunal Judge Ramshaw