



**Upper Tribunal
(Immigration and Asylum Chamber)
RP/00039/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford

On 24 August 2017

**Decision & Reasons
Promulgated**

On 24 November 2017

Before

UPPER TRIBUNAL JUDGE LANE

Between

ES

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Karnik, instructed by Bushra Ali Solicitors

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, ES, is a female citizen of Pakistan. By a decision promulgated on 9 May 2017, I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. My reasons for so finding were as follows:

1. The appellant, E S, was born in 1986 and is a female citizen of Pakistan. She appealed to the First-tier Tribunal (Judge Mensah) against the decisions of the respondent of 1 and 11 March 2016 to revoke her refugee status and to refuse her further leave to remain. The First-tier Tribunal, in a decision promulgated on 28 October 2016, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The domestic circumstances of this appellant have a complex history. The appeal turned, in part, upon the state of the relationship between the appellant and her partner which had, in the past, involved allegations of domestic violence.

3. Part of the challenge to Judge Mensah's decision also concerns the fairness of the hearing before her and the proper discharge of the burden of proof in an appeal which, as regards the revocation decision, was correctly identified by Judge Mensah as resting upon the Secretary of State [26]. I do not find that that ground of appeal has been established. The grounds of appeal at [6] assert that the appellant had not been given a full opportunity to meet the whole of the case against her. Having adopted her witness statement, the grounds note that the Presenting Officer at the First-tier Tribunal hearing chose not to cross-examine the appellant nor did the First-tier Tribunal Judge Mensah ask her any questions. The appellant complains that the judge went on to make adverse findings against her without giving her the opportunity to provide explanations. The appellant put her case in evidence before the judge and, notwithstanding the absence of any cross-examination, the judge was charged with making findings on that evidence. The judge was required to make findings of fact in relation to the appellant's relationship with her partner and this she duly did. Other than complaining that the appellant was not given a chance to give explanations, the appellant has not shown that any of the findings of fact made by Judge Mensah did not arise directly from the evidence which she had before her. The appellant does not say, for example, the judgment has made any finding of fact in relation to a matter which was not addressed at all in the appellant's evidence. The fact that the appellant may make assertions in her evidence does not mean that the judge is obliged to accept those assertions as fact. Analysis of the appellant's by the judge is still required; that there may have been no cross-examination is immaterial. If the appellant wanted to give a more detailed account of her relationship with her partner and possibly to address apparent contradictions in her evidence, then she had every opportunity to do so.

4. I find, therefore, that the findings of fact as regards the appellant's relationship with her partner and children are sound. In particular, I find that the following findings shall remain in any event:

48. In all the circumstances I do not accept there has been any domestic violence since social services involvement with this family at the end of 2012, beginning of 2013. I find that the appellant and [H] have been in a subsisting relationship for over eight years which suffered a period of separation in 2012/13 due to domestic violence but which resolved itself after social services involvement. I am entirely satisfied on balance that in fact the appellant has sought to assert the end of the relationship in a false attempt to circumvent revocation [of her refugee status] after H's appeal was refused. They may have spent time living separately but the sexual relationship and the marriage has continued and many couples do not live together but have a subsisting marriage. They chose to do so for a multitude of reasons including convenience, economic and personal. Any one of those reasons could apply here but I am clear it is not because their marriage is over.

5. I find that the judge's finding at [53] is also sustained. Here, the judge found that the appellant and H are in a subsisting relationship and have

been since 2008 and that H is capable of working in Pakistan should the family live together and to provide for the family financially.

6. The remainder of Judge Mensah's decision is more problematic. The judge assessed the best interests of the children involved in this case and looked at the report of Dr Newth [49]. She did not, however, address the observation of Dr Newth at page 17 of his report that if H lived with the family there was a high risk that violence would recommence. The judge would not, of course, have been bound to accept the opinion of the expert witness but she should at the very least have addressed it. I consider that she should have addressed this part of the report notwithstanding her general findings (see above) that the relationship between the appellant and H has now been re-established.

7. In addition, I am concerned that Judge Mensah has not sufficiently addressed the question of the revocation of the appellant's refugee status, more particularly, the revocation of her status under the Qualification Directive. As the judge noted, the parties agree that revocation of the status is sought by the Secretary of State under paragraph 339A(v) of HC 395 (as amended). Mr Karnik, for the appellant, submits that the changed circumstances referred to in sub-paragraph (v) concerned those of the country to which it is intended to return the appellant rather than her own personal circumstances. Correctly, he submits that Judge Mensah did not deal with that aspect of the revocation at all. Judge Mensah's failure to do so is an error of law but I am not persuaded, from the submissions which I have so far received from Mr Karnik, that I should remake the decision and allow the appeal. I wish to hear further submissions on this point by reference to relevant case law (see, for example, Dang (refugee - query revocation Article 30) [2013] UKUT 00043). However, the resumed hearing in the Upper Tribunal before me will be conducted on the basis that the findings of Judge Mensah at [48] and (as I have indicated above) [53] shall stand. The factual matrix shall not, therefore, be re-addressed in the Upper Tribunal. I shall, however, be prepared to hear further submissions and (if appropriate) evidence in respect of the best interests of the children given the failure of Judge Mensah properly to address that issue in her decision.

Notice of Decision

8. The decision of the First-tier Tribunal which was promulgated on 28 October 2016 is set aside. The judge's findings of fact as regards the relationship between the appellant and her partner (in particular in the First-tier Tribunal decision at [48]) shall stand. The judge's conclusions in respect of (i) the revocation of the appellant's refugee status and (ii) the best interests of the children shall not stand and the decision shall be remade at or following a resumed hearing of the Upper Tribunal (Upper Tribunal Judge Clive Lane) at Bradford on a date to be fixed.

2. The findings of fact in this appeal are settled (see my error of law decision at [4-5]). The basis of the revocation decision taken by the Secretary of State and dated 1 March 2016 was as follows:

In your particular case, you were granted asylum at appeal on 21/10/2009 on the basis that as a single female with a young child that she would be at risk of persecution [sic] where you return to Pakistan. It was determined that internal relocation would not be an option and would be unduly harsh given that you had a young child. Furthermore, on submission of your

settlement protection application it was noted that you resumed your relationship with your husband, Mr AH and therefore the circumstances of which your application for asylum was granted had ceased to exist namely you were no longer considered to be a lone single female.

3. Mr Karnik, who appeared for the appellant, has helpfully summarised the law in his skeleton argument. Article 1C of the Refugee Convention provides refugee status may be lost if 'the circumstances in connection which he has been recognised as a refugee have ceased to exist, [he cannot] continue to refuse to avail himself of the protection of the country of his nationality.'
4. There is surprisingly little domestic law concerning the cessation provisions. The House of Lords in *R (Hoxha) v Special Adjudicator* [2005] 1 WLR 1063 at [65] held that 'the reason for applying a 'strict' and 'restrictive' approach to the cessation clauses ... is surely plain. Once an asylum application has been formally determined and refugee status officially granted with all the benefits both under the Convention and under national law which that carries with it, the refugee has the assurance of a secure future in the host country and a legitimate expectation that he will not henceforth be stripped of this save for demonstrably good and sufficient reason'.
5. Whilst I acknowledge Mr Karnik's submission that, in the vast majority of cases, it is likely that "the circumstances in connection which [the refugee] has been recognised as a refugee have ceased to exist" must refer to circumstances existing in the country of nationality, the Convention does not actually say that in terms; any correct construction of Article 1C (5) must admit the possibility of a change in the circumstances of the refugee himself or herself; in any event, such a possibility is not excluded in terms by the wording of the Article. Having said that, the most obvious example of a subjective "change in circumstances" relates to a refugee's age. If the Secretary of State decides to grant refugee status to an asylum seeker who is under the age of 18 years for reasons connected to his or her minority, she does not seek to revoke it simply because the refugee becomes an adult. The rationale for refraining from revoking refugee status in such circumstances is as indicated by Lord Brown in *Hoxha* (see above). Mr Karnik relies on further support (albeit not of a judicial nature) in the UNHCR Handbook. At [135], the Handbook provides:

135. "Circumstances" refer to fundamental changes in the country, which can be assumed to remove the basis of the fear of persecution. A mere - possibly transitory - change in the facts surrounding the individual refugee's fear, which does not entail such major changes of circumstances, is not sufficient to make this clause applicable. A refugee's status should not in principle be subject to frequent review to the detriment of his sense of security, which international protection is intended to provide.

It is clear that the authors of the Handbook have in mind circumstances changing in a refugee's country of nationality rather than in the circumstances of the refugee himself:

112. Once a person's status as a refugee has been determined, it is maintained unless he comes within the terms of one of the cessation clauses.¹⁵ This strict approach towards the determination of refugee status results from the need to provide refugees with the assurance that their status will not be subject to constant review in the light of temporary changes – not of a fundamental character – in the situation prevailing in their country of origin.

6. Mr Karnik relies also upon an established textbook authority, Hathaway's *The Law of Refugee Status*. At [6.1.4 – 2nd edition] it is stated that “a refugee whose claim has yet to be determined is less likely to have become so established in the asylum country that unacceptable hardship would follow from dismissing her claim by reference to the usual well-founded fear standard. But once the asylum country has recognised her claim and the refugee has begun to remake her life, real caution is required before ordering a ‘second uprooting’”. The authors of Hathaway's were also of the view that “the drafters [of the Refugee Convention] focus on reversion to democracy as a rationale for these clauses [of cessation of status] and makes clear that there was no intention to organise cessation for purely personal reasons – for example, because an individual recognised as a refugee due to risks faced while a child has since become an adult”.
7. Mr Karnik submitted first that both judicial and academic authorities indicate that the cessation clause should only be applied where the change of circumstances occurred in the country of nationality and/or return and not in the refugee's personal circumstances and, secondly, notwithstanding the findings of Judge Mensah (which I have preserved) the appellant's husband AH had been found to have acted violently towards the family in the past and to have been an unreliable witness. Judge Mensah had found that there had been no domestic violence in this case since the end of 2012. She found that AH and the appellant had been in a subsisting relationship for over eight years although there had been periods of separation as a result of domestic violence in 2012 but these had “resolved”. The judge accepted that the couple spent time “living separately” but a sexual relationship had continued; she observed that “many couples do not live together but have a subsisting marriage”. Mr Karnik submitted that the revocation of the status of the appellant was not reasonable and her return to Pakistan unsafe if predicated on the assumption that she would return there and live together with AH and her child.
8. I agree with Mr Karnik's submissions. First, I acknowledge the judicial authorities which indicate that revocation of refugee status is not to be undertaken lightly not only because of the possibility that a refugee returning to his or her country of nationality may be exposed to real risk but also because, having once been granted refugee status, it is harsh in itself to expect a refugee in a new host country to rebuild a life for him or herself under the constant threat of removal to the original country of nationality. In the present appeal, the appellant was granted refugee status following appeal on the basis that she was a lone female with a child and that she would be at real risk in Pakistan upon return. The

possibility always existed that the appellant would form a relationship but not necessarily with a former partner. Indeed, there must be many women from Pakistan who have been granted refugee status for exactly the same reasons as this appellant who have now formed new relationships and have married but whose refugee status has not been challenged by the Secretary of State. It appears that the present appellant only came to the attention of the respondent because of proceedings relating to AH's immigration status. I find therefore that, whilst I do not accept that Article 1C(5) may only ever refer to circumstances in the country of return, I am not satisfied that there is a "demonstrably good and sufficient reason" in this case to strip the appellant of her refugee status.

9. Even if I am wrong in what I have said above and the ongoing relationship which the appellant has with AH does constitute a sufficient reason for stripping her of her refugee status, I am not satisfied that, on the facts, the "circumstances in connection with which" this appellant has been recognised as a refugee have "ceased to exist". That cessation has not occurred because I find as a fact that it is not likely that AH would accompany the appellant and her child to live in Pakistan. I am aware of the preserved findings of Judge Mensah but I find that, in the light of the previous history of domestic violence, the behaviour of AH towards women as a means of maintaining his immigration status in the United Kingdom and his unreliability as identified by previous judicial decision makers I find as a fact that he would not accompany the appellant and the child to Pakistan as the Secretary of State assumes that he would. I reach that conclusion notwithstanding Judge Mensah's observation that, although the couple do not live together permanently, they are still engaged in a sexual relationship. A strict application of Article 1C(5) must surely require that the circumstances, whether subjective or objective in the country of return, are sufficiently certain and settled that the returning former refugee would not be at real risk. I find that the likely future conduct of AH cannot be relied upon to obviate or diminish that risk.
10. For the reasons I have given, I find that the appellant's appeal against the Secretary of State's decision should be allowed.

Notice of Decision

11. The appellant's appeal against the decisions of 1 and 11 March 2016 (to revoke her refugee status and to refuse her further leave to remain respectively) are allowed.

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 him 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 2 November 2017

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 2 November 2017

Upper Tribunal Judge Lane