



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00976/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 27 July 2018

Decision and Reasons Promulgated
On 06 September 2018

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

HA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Frantzis (Counsel)

For the Respondent: Mr M Diwnycz (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (the tribunal) which it sent to the parties on 2 May 2017, whereupon it dismissed her appeal against the Secretary of State's decision of 10 January 2017 refusing to grant her international protection.
2. In a decision of 12 February 2018, I set aside the decision of the First-tier Tribunal, though I preserved certain of its findings (see below) and I directed a further hearing in the Upper Tribunal so that I could re-make the decision. That hearing took place on 27 July 2018 and representation was as stated above. I am very grateful to each

representative. I have decided, in remaking the decision, to allow the claimant's appeal against the Secretary of State's decision of 10 January 2017 to refuse to grant her international protection. What is said below explains why. I have also decided to continue a grant of anonymity which was given to the claimant by the tribunal. Nothing was said about anonymity before me but, having given the matter some thought, I appreciate that the case concerns what might be regarded as quite sensitive information regarding the claimant's mental health which ought not to be in the public domain.

3. The claimant was born on 28 May 1969. She is a national of Pakistan. She has been married twice to two different Pakistani nationals whilst she was residing in Pakistan. Both of those marriages have ended in divorce. She has a son, who I shall simply call R in order to protect anonymity and who was born on 12 November 1995. It follows that he is now an adult. She first entered the United Kingdom on 24 December 2010. She then departed but returned to the United Kingdom on 9 November 2011 and has remained here ever since. R has been with her in the UK for most or all of the time she has been here and remains with her now.
4. The claimant asked the UK authorities to grant her asylum on 8 August 2012. She asserted that she would, if returned to Pakistan, be at risk of persecution or serious ill-treatment at the hands of her first husband. But that claim was refused and on 26th November 2012 an appeal was dismissed. On 12 February 2013 she submitted further representations which resulted in a decision of 21 February 2013 refusing to grant her leave to remain. Additional submissions were then sent on her behalf on 15 March 2013 but it was not until 10 January 2017 that the above decision refusing to grant international protection was made.
5. The claimant appealed the decision of 10 January 2017 but that only led to the decision to dismiss her appeal referred to above and which, as I say, was sent to the parties on 2 May 2017. The tribunal rejected her claim to be at risk at the hands of her first husband. It also rejected contentions made on her behalf to the effect that, if it were to be finally decided that she would have to return to Pakistan, she would commit suicide either in the UK or Pakistan. Those latter contentions underpinned a claim that removal would breach her rights under articles 3 and 8 of the European Convention on Human Rights (ECHR). Despite rejecting the article 3 and article 8 arguments the tribunal did recognise that there was evidence indicating she has mental health difficulties. I set aside the tribunal's decision for reasons which are explained in my written decision of 12 February 2018, but essentially on the basis that the tribunal, in rejecting the arguments concerning suicide risk, had failed to have proper regard to the totality of the medical evidence which was before it. I preserved the findings regarding risk at the hands of the first husband and directed a further hearing to focus upon the suicide/ mental health aspects.
6. At the hearing of 27 July 2018 I received brief oral evidence from the claimant and from R. The thrust of that evidence was that whilst attempts had been made to get in touch with their family members in Pakistan those attempts had not been well received and there was currently no contact. R also explained that he has to look after the claimant to a considerable extent as a result of her mental health difficulties to the extent that he is unable to properly sleep at night-time.
7. As well as the oral evidence I had the various documents which had been before the tribunal as well as a new skeleton argument which had been provided by Ms Frantzis. I had the benefit of oral submissions from the two representatives. I have, in reaching my

decision, reminded myself of what was said about suicide risk and international protection in *AJ (Liberia) v SSHD* [2006] EWCA Civ 1736; *J v Home Secretary* [2005] EWCA Civ 629; and *Y (Sri Lanka) v SSHD* [2009] EWCA Civ 362.

8. I now turn to the evidence concerning the claimant's mental health. She had not had any history of psychiatric illness prior to her coming to the UK but had first been referred to the psychiatric services in October 2012. So, difficulties have been long standing. But it is most appropriate to look at the more recent medical evidence.
9. There is a report prepared by Dr Joanne Miller a GP with the medical practice where the claimant is registered and which is dated 19 October 2016. It is said therein that since registering with that practice "she has always been moderately to severely depressed". Reference is made to auditory hallucinations and to her hearing voices, at times of exacerbation of her condition, which "usually tell her to kill herself". It is said that she has experienced trauma in the past and that she "demonstrates many features of complex post-traumatic stress disorder; persistent low mood; chronic suicidal preoccupation; self-harming behaviour; a sense of helplessness and hopelessness; difficulties with inter-personal relationships and trust". It is said that she experiences periods of crisis when she "loses hope". It is also stated that due to the uncertainty surrounding her immigration status "she effectively lives in fear", presumably of not being able to remain in the United Kingdom. It is noted that she "has always maintained that she will kill herself rather than be deported to her home country" and reference is made to a previous overdose of medication and an attempt to self-harm. There is a letter of the same date written by one Louise Mellor, a mental health social worker, which says that the claimant has been "diagnosed with severe depressive episode with psychotic symptoms". Reference is made to her having made statements about ending her life and having heard voices.
10. There is another letter written by the same Dr Miller on 24 January 2017. In that letter Dr Miller wrote of the claimant shortly after she had learnt that her asylum claim had been refused, that "she presented in crisis as we anticipated. She was distraught. She is still seeking help from health professionals but it is difficult for us to know what the last straw will be. She told me she intended to buy some more razor blades and some petrol. I could not identify any clearer plan. My assessment is that the risk of suicide is likely to escalate rapidly if an attempt is made to detain her or her son, or if she believes that this is imminent". On 28 February 2017 Dr Miller provided a letter in which it was said that the claimant's recent mental health was "best described as a period of crisis with suicidal thoughts and possibly plans" though Dr Miller also made it clear she did not know "the extent of the suicidality as I have not been managing it". But it was indicated that a recent admission to hospital had been precipitated by the then recent negative asylum decision. That admission occurred on 7 February 2017 as is apparent from a letter of 21 February 2017 written by one Dr Mathen a consultant psychiatrist. He explained that she had been admitted under his care "for management of suicidal thoughts and emotional disturbances interfering with her social functioning and performance following the news of her likelihood of deportation from the United Kingdom". He referred to a working diagnosis of adjustment disorders with depressive reaction. He said she had mentioned the possibility of setting fire to herself if she were to be deported but that, since having been admitted under his care, she had not made any attempt upon her life though "the hopelessness, depressed mood, anxiety and the feeling of inability" continued. It was said that she had reported auditory hallucinations and low mood but those did not have "the true quality of a psychotic illness". Reference was made to a planned discharge

though it was said that since there was a risk of suicide she would be provided with appropriate mental health support to manage and contain the risk.

11. There is a joint letter written by one Louise Warner (a manager of women's mental health and wellbeing services) and one Dr Kate Smith (practice manager: Women in Exile) which refers to the claimant experiencing "high anxiety and despair" and having "spoken of suicidal tendencies". It is said "recently she tried to take her life" and that she had spoken of not wishing to live and had said she would kill herself "if she does not manage to find safety in the home here in the UK".
12. Bringing matters pretty much completely up to date, there is a letter of 17 July 2018 which has again been written by Dr Miller. This says that the claimant's psychological condition remains unchanged and that she is under the care of mental health services and subject to "a care programme approach", though it is not explained precisely what that is. But it was said that she had been experiencing high levels of anxiety as to what was then her imminent appeal hearing before me. In a letter of 23 July 2018 one Dr Gowda, a consultant psychiatrist, noted that the claimant was currently taking anti-depressant medication, a mood stabiliser, anti-psychotic medication and an anti-hypertensive medication. Again, reference was made to a link between the exacerbation of her symptoms and the proceedings concerning her immigration status. It was said that she felt her life was under threat from her ex-husband in Pakistan or at least would be if she had to return there. There was mention of a potential risk that her mental health would worsen if the then pending hearing before me "were to go against her" and it was said she "has clearly stated that she will burn herself with kerosene if an attempt is made to deport her".
13. Ms Frantzis urges me to conclude that, when taken together, that evidence demonstrates clear suicide risk. Mr Diwnycz argues that, effectively, there has been no recent change with respect to the medical evidence concerning the claimant's mental state. I should perhaps add that Dr Miller has indicated in writing that R has been suffering from depression though not to the same extent but it has never been suggested that there is any suicide risk regarding him.
14. The mental health professionals who have treated the claimant and who have offered their respective opinions about her, all take the risk that she might kill herself seriously. That is evident from what I have set out above. There are other letters regarding her health issues but the ones I have specifically referred to are the ones which I consider to be the most probative. Concerns have been expressed about her mental well-being by two consultant psychiatrists and by a GP who has been treating her for a number of years as well as other individuals. There might, as I touched upon in my decision of 12 February 2018, be a suspicion that to some extent the claimant is manipulative, notwithstanding her obvious mental health difficulties, in that the exacerbations and behaviour indicating a risk of suicide occurs, or seems to occur, when an adverse event has occurred regarding her bid to remain in the UK. But, whilst I have pondered upon that, I have concluded that in the face of clear expressions of concern regarding suicide risk from a number of appropriately qualified and experienced health professionals, I should accept that there is a genuine and indeed substantial risk that if the claimant concludes she will definitely not be permitted to remain in the UK she will end her life. However, it may be that intense medical supervision might, if sufficiently intrusive, prevent that until such time that actual removal to Pakistan has been achieved. So, I

have asked myself what is likely to happen if she is actually removed to Pakistan along with R (I assume they will be removed together).

15. I accept the unchallenged oral evidence given to me that the claimant and R are no longer in contact with their family members in Pakistan. I infer from that that they will not be provided with any support from such family members. Mr Diwnycz did not address me regarding evidence concerning psychiatric facilities and psychiatric treatment available in Pakistan. But the Secretary of State's decision letter of 10 January 2017 referred to background country material demonstrating that medication for mental health difficulties was available in Pakistan though it was apparently indicated in a country of origin information report for Pakistan of 9 August 2013 that there was only one psychiatrist for every 10,000 people in that country. A country information request also referred to in the same letter had indicated that there were four hospitals (though I do not think the possibility that there might have been more was excluded) that could provide treatment for depression and post-traumatic stress disorder. But on the basis of my acceptance of the medical evidence I would conclude that the claimant will require significantly intense treatment if the risk of suicide is to be lessened to the extent that it probably will not be realised. Nothing in the material before me suggests that facilities in Pakistan will be sufficient to enable the claimant to benefit from that sort of intense support. I would conclude, therefore, and I would go this far, that even if the claimant is effectively prevented from ending her life by intense treatment until she is removed, she will do so in Pakistan.
16. In looking at the criteria set out in the case law to which I have referred, I conclude that the risk of suicide I have identified on the basis of the above evidence meets the minimum level of severity talked of in the case of *J* cited above. There is a causal link between removal and the inhuman treatment relied upon as violating the claimant's Article 3 rights. Whilst the Article 3 threshold is high in the context of foreign cases and suicide risk, it is met here. There are insufficient psychiatric facilities to reduce the risk in any significant way and the claimant will not have her own family support. Whilst she does not have an objectively well-founded fear of her first husband as has been authoritatively established in earlier litigation, she does have a genuinely held subjective fear, quite possibly as a result of her mental health difficulties, which will contribute to the risk.
17. In light of the above, on the unusual and in my judgment particularly compelling circumstances, the claimant succeeds on health grounds, specifically suicide risk, under Article 3 of the ECHR.
18. Strictly speaking I do not have to say anything more. But the case was also argued, on behalf of the claimant, under Article 8 of the ECHR albeit specifically within the terms of the current immigration rules. Reliance was placed upon rule 276 ADE and it was said that sub-paragraph (vi) is satisfied because the claimant would face very significant obstacles to her reintegration into the country to which she would have to go if required to leave the UK (Pakistan of course). On the basis of my findings regarding the degree of her mental health difficulties and, in particular suicide risk, it seems to me to follow that she must satisfy the immigration rules in that regard. Clearly if I conclude, as I have, that it is likely that she would end her life it must be the case that there would be very significant obstacles to her integration. So, the appeal also succeeds under what I refer to as the Article 8 related immigration rules.

Decision

The decision of the First-tier Tribunal involved the making of an error of law. That decision has already been set aside. In remaking the decision, I allow the claimant's appeal against the Secretary of State's decision of 10 January 2017 refusing to grant her international protection.

Anonymity

The First-tier Tribunal granted the claimant anonymity. I continue to do so pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008). Unless and until a tribunal or court directs otherwise the claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applied to both parties to these proceedings. Failure to comply could lead to contempt of court proceedings.

Signed:

Date: 30 August 2018

Upper Tribunal Judge Hemingway.

TO THE RESPONDENT FEE AWARD

I make no fee award.

Signed:

Date: 30 August 2018

Upper Tribunal Judge Hemingway