



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/01026/2016

THE IMMIGRATION ACTS

Heard at Birmingham Employment Centre
On 13th July 2017

Determination Promulgated
On 9th August 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MISS AQSA AZAD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Adam Pipe (Counsel)
For the Respondent: Mr David Mills (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Watson, promulgated on 28th March 2017, following a hearing at Birmingham Sheldon Court on 16th March 2017. In the determination, the judge dismissed the appeal of the

Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of Pakistan, who was born on 1st July 1985. She entered the UK on a student visa in September 2011, and when her visa expired on 21st January 2013, she made an application for further leave to remain as a Tier 4 Student, which was granted on appeal on 12th February 2014. A further application to extend her visa was refused, whereupon she then made a human rights application based upon her family and private life rights on 16th June 2015. Her claim was rejected by a decision letter dated 10th February 2016. It is at that stage that she appealed against the decision referring also to a protection claim that she had, namely, that there would be a risk of forced marriage or death if she returned to Pakistan.

The Appellant's Claim

3. The Appellant's claim essentially is that she cannot return to Pakistan because she has no qualifications to show for her studies in the UK because her college had its licence revoked and she also did not complete her studies. She also claims that she would be subjected to pressure from her family, and particularly her stepmother, to marry an older cousin which she does not want to do.

The Judge's Findings

4. The judge noted at the outset that the Grounds of Appeal do not raise an asylum claim, but insofar as there is a claim that the Appellant would be subjected to forced marriage, this raises an Article 2 and Article 3, ECHR claim, and at the outset, the judge states that, "I should consider her claims in this statement" (paragraph 8). The judge held that the Appellant had not been a genuine student (paragraph 24). The judge also found that the records are not consistent with the longstanding fear of her family in Pakistan (paragraph 23). Further, the judge found that the medical evidence was such that, the Appellant only attended the GP with low mood shortly after receiving notice of her immigration hearing (which was served on 26th September 2016) "and her referral to mental health is after this. I find that the records show that her mood improves with a standard antidepressant medication" (paragraph 23). There was an expert report from Uzma Moeen, which the judge found to be lacking in credibility because it began with the observation that there were "adverse credibility findings" by the Secretary of State, whereas there were in fact none. The expert also had not met and spoken with the Appellant. Moreover, the expert refers to the Appellant's "estranged family" (AB58) whereas in oral evidence, the Appellant did not indicate any estrangement with her mother, brothers or other family members apart from feelings of pressure from a stepmother (see paragraph 26). The judge went on to make express findings that the Appellant had made a claim only after the application for further leave to remain on the basis of studies was refused (see paragraph 30) in relation to forced marriage. In fact, it was the judge's clear finding that the Appellant had earlier

“Declined the proposal and that there were no adverse consequences following her refusal. This is based upon her own evidence. I find that all her family agreed that she should go to the UK and that no attempts were made to force her to marry the cousin against her will or to prevent her going to the UK” (paragraph 31).

Indeed, the Appellant had “refused this proposal without any adverse consequences” (paragraph 35). Furthermore, the Appellant could relocate to another part of Pakistan if she so wished (see paragraph 36). There were no exceptional circumstances to the appeal (paragraph 42).

5. The appeal was dismissed.

Grounds of Application

6. The grounds of application state that the judge erred in using a test of exceptionality for consideration of the Article 8 claim outside the Immigration Rules which was contrary to **Agyarko [2017] UKSC 11**. The judge had also failed to engage properly with the country expert report. More importantly, the judge had omitted consideration of suicide attempts when assessing the medical evidence. There was also a failure to give adequate reasons for rejecting the claim of forced marriage. The Appellant’s vulnerability had not been properly considered in terms of the availability of internal relocation.
7. On 22nd May 2017, permission to appeal was granted by the First-tier Tribunal.
8. On 12th June 2017, a Rule 24 response was entered by the Respondent to the effect that the Appellant could return to her mother, her brother, and other family members and the availability of family support considerably reduced her vulnerability. Moreover, the judge had regard specifically to the decision in **SM and MH (lone women - ostracism) Pakistan CG [2016] UKUT 00067** so that it cannot be said that the judge was not aware that vulnerability was a relevant factor. The judge had made an adequate assessment and gave proper reasons for why she did not accept that the Appellant was at risk of forced marriage, and this was supported by evidence given by the Appellant herself (see the determination at paragraphs 31 to 35). The judge made significant observations in relation to issues arising from the expert report (see the determination at paragraph 26). In relation to the alleged suicide attempt, the judge’s findings that the Appellant would return to her family, demonstrated that a risk under Article 2, 3, or Article 8, ECHR could not be substantiated. There was nothing to suggest that the Appellant could not continue to receive medication if she so wished. This was particularly in the light of the rejected claim that she would not be able to receive support from her mother and two brothers on return.

Submissions

9. At the hearing before me on 13th July 2017, Mr Pipe, appearing on behalf of the Appellant, submitted that this appeal was essentially upon Article 8 and Article 3,

ECHR grounds. He submitted that proper findings needed to be made by the judge. Where this was most apparent was in relation to paragraph 23 where the judge looked at “GP records” and referred to the judge’s reference only to a “minor past” history of low mood. However, the judge neglects to make proper findings in relation to the Appellant’s suicide attempt. The Appellant took an overdose of ten paracetamol tablets. This is not mentioned in the determination. There appears to have been another attempt also, although evidence in relation to this was rather fragmented and rudimentary. Nevertheless, at page 207 of the Appellant’s bundle, there is a document dated 20th October 2016 which refers to the overdose of ten tablets of paracetamol four months earlier, and this was in itself significant enough, such that the judge should have referred to it. Furthermore, there is a letter at page 197 of the bundle from the psychological wellbeing practitioner referring to frequent suicidal thoughts and the risk of the Appellant acting on them. The judge does not mention the two previous overdose attempts at all. She refers to a “minor past” history of low mood. When it comes to making her findings (at paragraphs 32 to 33) there is no attempt to factor in the suicide attempt.

10. Second, the judge had wrongly disparaged the expert report of Uzma Moeen, which was a 50 page report (see page 70 of the bundle). For example, it was not correct to say that her report was based upon a “couple of paragraphs of a draft statement” because she had the full statement before her.
11. Third, the judge states (at paragraph 42) that the Appellant had not “shown any other exceptional circumstances relevant to consideration of Article 8”. However, it was well established that the correct approach is not to go around searching for a single exceptional factor, but to take all the factors cumulatively in the round in the balancing exercise before deciding whether they amounted to exceptionality. For all these reasons the decision should be set aside and remitted back to another judge.
12. For his part, Mr Mills submitted that, whereas it was true that the judge did not specifically refer to the suicide attempt, she did expressly take full account of the medical evidence under a separate large paragraph headed “GP records” (at paragraph 23). At page 206 of the Appellant’s bundle the Appellant went to the GP complaining about low mood, but prior to this there was nothing in relation to her depression or to any suicidal ideation. It is entirely relevant for the judge to pick this up at paragraph 23 when considering the medical evidence and to place reliance upon it. Therefore, the question is, that if the judge did not expressly refer to the suicide attempt, whether this was a “material error” in any way. He would suggest that it was not. If the Appellant was suffering from a low mood, and she took an overdose, this was a cry for help, but this was not an Article 3 claim, and the evidence did not suggest that it was, and the judge so held. It would be hard to show what difference this would have made to the eventual outcome of the decision. Indeed, it is clear from the letter of June 17th that the family was helping to prevent her from harming herself in the UK, and she is going to return back to family in Pakistan. The judge was entirely right to refer to the supportive family that the Appellant had. There was no material error of law at all in this determination. In fact, there is a glaring inconsistency in the Appellant’s evidence in this respect.

Under the heading “healthcare records of the Appellant” (paragraph 22) the judge draws attention to how the Appellant was referred to the community mental health team. She referred to a letter which states that, “her family do not allow her to be on her own”. However, the judge found this to be entirely inconsistent with the oral evidence given at the Tribunal before her, “where the Appellant stated that she was still collecting a child from school and looking after her on her own. She was left on her own as the two Akhtar sisters worked full-time” (paragraph 22). This suggested that she was not at risk of harming herself. The family did not think so. The evidence given was incorrect that she was not left alone. It was in these circumstances that the judge eventually reached the conclusion that,

“I find that she suffers from low mood and does not wish to return to Pakistan and would like to remain in the UK. I find that she does not suffer from a significant mental illness and that her low mood has responded well to a standard dose of antidepressant medication. I find that she is in contact with her mother and her older brother and that family support is available to her. I also find that Miss S Akhtar would support her financially on her return to Pakistan” (paragraph 35).

This conclusion was entirely sustainable and entirely based upon the evidence before the judge.

13. Third, as far as the expert report was concerned the judge gave proper reasons for making criticism of it. What the expert has read about the case before is always the first and most important question. In this case, the expert refers to there being “adverse credibility findings” by the Home Secretary. She did not even meet with the Appellant. She did not interview her. She referred to her being “estranged” from her family when she was not. She did not examine the standing of her family. But even more importantly,

“She has not taken into account or commented upon the fact that the Appellant was able to refuse the claimed proposal and come to the UK with the agreement of all of her family members and in particular with that of her brother and that she claims to be educated to B.Ed standard.” (Paragraph 26).

14. Finally, as far as Article 8 is concerned, Mr Mills submitted that this was a “semantic disagreement” because these the Supreme Court in **Agyarko [2017] UKSC 11**, had made it clear now that “what is required is a proportionality assessment to be made, and the threshold is a high one”. If one looks at the determination of the judge, it is apparent that such a proportionality exercise is carried out by the judge at paragraph 42. The judge makes it clear that there are no particular medical needs. Antidepressants will be available in Pakistan if required. The Appellant does not satisfy the Immigration Rules. There are no exceptional reasons for why her case should be considered outside the Rules. As against this the Section 117 considerations in favour of immigration control had to be taken into account and on that basis the Appellant could not succeed either.

15. In reply, Mr Pipe made three submissions. First, that the judge's engagement with Article 8 was not simply a "semantic disagreement" on the part of the Appellant because the judge overlooked the two previous suicide attempts, which would have made all the difference. Second, the expert report is wrongly disparaged because the expert is essentially giving country evidence and there are numerous pages in the report which are not undermined by the fact that the expert had not met with the Appellant. Third, the judge has wrongly minimised the of the Appellant's medical difficulties by referring to a "minor past" history of low mood, and overlooked completely the fact that there had been a suicide attempt. At page 207 of the Appellant's bundle there were GP records which recorded that four months ago the Appellant had taken ten paracetamol tablets as an overdose. Mr Pipe, nevertheless, had to accept that as far as the second additional suicide attempt was concerned, the GP records did not provide much information on this at all, and the whole question of a second suicide attempt was something that was not properly documented at all.

No Error of Law

16. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
17. First and foremost, it is not the case at all that the judge has overlooked the attempted suicide. In what is a meticulous and comprehensive determination, the judge, under the heading "documentary evidence" sets out in individual paragraphs a consideration of each segment of the evidence before her, drawing attention to the witness statement of Jabeen Akhtar, the letters from Malaika and from Faiz, children of Miss S Akhtar, the internet search results for jobs for the Appellant in Pakistan, her health records, her GP records, her course letters from Bradford College, her photographs, and the report from Uzma Moeen. The judge then demonstrates that consideration has been given to the fact that there is "no suicide plan" on 13th February 2017 in the records, and the Appellant is recorded as "feeling okay on citalopram" (see paragraph 23). The judge refers to there being "no thoughts of self-harm/suicide". (Paragraph 23).
18. Second, the judge did not find the factual circumstances of the Appellant's case to be such as to point to a fear of her attempting to commit suicide. In fact, whilst the evidence of the Appellant's family was that they do not allow her to be on her own, the judge found that this was inconsistent with the oral evidence before the Tribunal where the Appellant was "still collecting a child from school and looking after her on her own" (see paragraph 22).
19. Third, the judge did not find the Appellant to be in any fear of her family in Pakistan. (See paragraph 23). In fact, the Appellant had already had a marriage proposal from the very same older cousin, had declined it, and had been allowed to leave Pakistan to come to the UK to study and this is well set out at paragraph 26 of the

determination. The judge in fact criticises the expert for failing to take this into account (paragraph 26).

20. Fourth, the judge did not find the Appellant to be a genuine full-time student (paragraph 24).
21. Finally, and in a nutshell, this was a case where the judge did not accept that the Appellant was in any way “estranged” from her family, and had good relations with her mother, her brothers, and her family (see paragraph 26). In the same way the judge did not accept that the Appellant, who had declined a marriage proposal, would face adverse consequences following her refusal in Pakistan and that “this was based upon her own evidence” (paragraph 31).
22. It was not a matter of insignificance that this was a case, as the judge recognised, where the Appellant had made her application for further leave to remain, raising a human rights claim, after her initial application had been refused (see paragraph 30).
23. As far as Article 8 is concerned, this was also properly considered by the judge, and if one takes into account the latest judgment of the Supreme Court in **Agyarko [2017] UKSC 11**, it is plain that what the judge states at paragraph 42 is entirely consistent with the high threshold set out in **Agyarko** with respect to “insurmountable obstacles” and “exceptional circumstances”, because ultimately this is a proportionality exercise, and the judge engages in this at paragraph 42. There is no error of law.

Notice of Decision

24. There is no material error of law in the original judge’s decision. The determination shall stand.
25. No anonymity direction is made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

8th August 2017