



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01851/2017

THE IMMIGRATION ACTS

Heard at Field House
On 12 October 2017

Decision & Reasons Promulgated
On 23 October 2017

Before

UPPER TRIBUNAL JUDGE BLUM

Between

[F B]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Khan, of Buckingham legal Associates
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal Sweet (FtJ), promulgated on 29 March 2017, dismissing the Appellant's appeal against the Respondent's decision dated 8 February 2017 refusing her asylum claim.

Factual Background

2. The Appellant is a national of Pakistan, date of birth [] 1977. She is married to [AG] who is also a national of Pakistan, his date of birth being [] 1971. The couple have 3 children, born in [] 2004, [] 2005 and [] 2008.
3. The Appellant's asylum claim is based on a fear of ill-treatment from her family, her ex-fiancé, and the local community where she lived in Pakistan because she married for love. The following is a summary of her asylum claim. She comes from a conservative Muslim family. She has 3 brothers and 3 sisters. Her brothers, and [A] in particular, believe that marriages should only occur within a family's own caste. In 2002 [A] arranged for the Appellant to marry [TD], a business partner of her father and brother. Instead, in March 2002, she married [AG] with the help of her sister [S]. Later in 2002 her sister informed their brothers that the Appellant had gone to Dubai with her husband, although she did not. The Appellant mainly resided with another of her sisters ([R]) in Pakistan after her husband went to Dubai for work in July 2002. At some time in 2012 [A] came to [R]'s house, found the Appellant there and attacked her. The Appellant was rendered unconscious and found herself in hospital. She then stayed with a friend of her husband for 2½ months before entering the UK on 3 December 2012 as a dependent of her husband who was a student (he entered the UK in 2010). Her leave was valid until 18 August 2014. She overstayed and made an asylum claim on 17 August 2016 after finding out that [A] filed a police report alleging that her marriage was illegal and her children illegitimate. The Appellant believes the male members of her family regard her as having dishonoured them and that they will kill her to restore their honour, and that she also faces danger from her ex-fiancé, and the local community.
4. The Respondent did not accept that the Appellant entered a love marriage or that her family reacted in the manner claimed. This was based on a number of inconsistencies and implausibilities within the Appellant's account, and because of her delay in claiming asylum. The Respondent considered that the Appellant could, in any event, avail herself of the internal relocation alternative.

The decision of the First-tier Tribunal

5. The Appellant provided two bundles of documents for her appeal which included witness statements from her and her husband, educational certificates, a psychiatric report dated 12 March 2017 prepared by Dr Razia Hussain, and an expert country report, dated 14 March 2017, written by Uzma Moeen. The Appellant and her husband both gave oral evidence.
6. The FtJ did not find the Appellant gave a credible account of fearing her family. The Appellant claimed her brother filed a police report against her but no copy of this report was provided. The FtJ drew an adverse inference from the failure to provide the police report and the absence of any explanation as to why the

report was filed so long after the Appellant's marriage. The Appellant was unable to explain why it took her brother 10 years to locate her at her sister's house. The FtJ rejected the Appellant's claim that her brother believed she was living in Dubai. The FtJ found the Appellant was unable to satisfactorily explain why she delay her asylum claim and rejected her claim that this was due to her mental state. Having rejected the Appellant's account, the FtJ did not accept the findings in the expert country report. In conclusion, the FtJ dismissed the appeal on asylum, humanitarian protection and human rights grounds.

The grounds of appeal and the error of law hearing

7. The Appellant sought permission to appeal to the Upper Tribunal on the basis that the FtJ failed to consider explanations provided by her in her interview and her statement as to why her brother lodged a police complaint so long after her marriage, and why he only found out that she was living with one of her sisters in 2012. The grounds further contend that the FtJ erred in law in his approach to the psychiatric report in finding that the Appellant's anxiety and depression did not reasonably explain her delay in claiming asylum. Permission was granted by judge of the First-tier Tribunal Lambert on the basis that the grounds were arguable.
8. Ms Khan expanded upon the grounds in her oral submissions, and drew my attention to the relevant paragraphs of the Appellant's statement and the expert country report. She submitted that the FtJ failed to engage with the explanations provided by the Appellant in drawing his adverse inferences. The expert report indicated that the imposition of marriages was common in Pakistan and that some families reportedly elicited the help of the police in tracking down partners who marry without family approval, and that the estranged families often kill vulnerable love marriage couples even after several years of marriage. Mr Bramble invited me to consider the FtJ's findings as a whole, and submitted that the FtJ was rationally entitled to draw an adverse inference from the delay in reporting the marriage to the police.

Discussion

9. I find there is little merit in the submission that the FtJ was not entitled to draw an adverse inference against the Appellant based on her failure to claim asylum in the UK at an earlier time. The grounds contend that the judge failed to accord any or sufficient weight to the medical report which indicated that the Appellant was suffering from anxiety and a depressive disorder, and that she may have been reluctant to make an asylum claim because of her mental state. The medical report however only indicates that, at the time of its creation (12 March 2017) the Appellant was suffering from anxiety and a depressive disorder. It does not indicate whether she was suffering from any such disorder at the time of and after her entry to the UK and, in particular, between the expiry of her leave in August 2014 and her claim for asylum 2 years later,

although reference is made to the Appellant having a number of sessions in the Immediate Access to Psychological Therapy (IAPT) in Brent in 2015. Nor does the medical report itself suggest that the Appellant's mental state was capable of inhibiting her from making an asylum claim. The judge specifically noted that the Appellant's husband had advised her to claim asylum. It is also clear from the Appellant's interview that she entered the UK as a result of the alleged assault by her brother. The grounds contend that the judge failed to consider the Respondent's guidance in respect of delays in claiming asylum. The judge however gave rational reasons for rejecting this aspect of the Appellant's account and the failure to explicitly mention the Respondent's guidance cannot undermine the sustainability of the judge's conclusions.

10. I am additionally satisfied that the FtJ was entitled to draw an adverse inference from the failure to provide a copy of the police report allegedly lodged by the Appellant's brother. There does not appear to be any reason why the Appellant or her husband could not instruct a lawyer in Pakistan to obtain the police report (which I assume is a First Incident Report (FIR)).
11. I am however satisfied that the FtJ did err in law by failing to engage with the explanations provided by the Appellant as to why her brother would only lodge the report some 10 years after the marriage, and why the brother only located the Appellant at her sister's home in 2012.
12. In her interview (question 78) the Appellant explains that her sister, [S], informed her brothers that she (the Appellant) and her husband both went to Dubai after their marriage. In answer to question 92 of her interview the Appellant again stated that her sister informed [A] that she had left Pakistan, and that [A] said he would have no relationship with anyone who helped the Appellant. In her statement (paragraph 43) the Appellant again stated that [S] informed [A] that the Appellant had run away to Dubai in the hope that he would not pursue her in Pakistan, and that her husband's family said the same thing (paragraph 46). In her oral evidence at the First-tier Tribunal hearing the Appellant stated that [A] thought the Appellant was out of the country. At paragraph 47 of her statement the Appellant explained that [A] stopped talking to another sister, [R], as a result of a money dispute, and that the Appellant went to stay with [R] because [A] cut all ties with her. In her oral evidence at the hearing the Appellant again claimed that there was a money dispute between [R]'s husband and her brothers. At paragraph 53 of her statement the Appellant stated that, after finding the Appellant at [R]'s house, he no longer believed she had left the country and, for this reason, approached the police to help locate her. At paragraph 55 the Appellant again explained that her brother filed a police report because he did not accept that she had in fact left Pakistan and, as his sisters previously lied to him, he believed she may be somewhere in Pakistan.

13. At [37] the FtJ rejects the Appellant's claim that her brother thought she was living in Dubai. No reasoning however is given in support of this conclusion. The FtJ rejects the Appellant's claim that her brothers would not have known she was living with her sister, but again there is little reasoning in support of this conclusion, and no reference made to the explanation provided by the Appellant, as described in paragraph 12 above. At [33] the FtJ states that the Appellant was unable to explain why it took her brothers 10 years to locate her in a place where they would have been familiar, namely her sister's house. It is apparent however from paragraph 12 above that the Appellant did provide an explanation. The FtJ failed to engage with the explanations provided by the Appellant and failed to give legally adequate reasons for his conclusions.

14. I additionally have concerns with the FtJ's treatment of the expert country report. The FtJ does not accept the findings of the report because he does not accept the Appellant's account of the threats made against her. The assessment of the threats allegedly received by the Appellant should however have been considered in light of the expert report, which contextualised the Appellant's claim. The expert report confirmed that a woman who marries for love without the approval of her family could be subject to an honour killing, that the lodging of a FIR has been used to track people down, and that those in a love marriage have been targeted even 10 years after the marriage. A rejection of the Appellant's account before consideration of the expert report, which corroborates some aspects of her claim, breaches the principles enunciated in **Mibanga v SSHD** [2005] EWCA Civ 367.

15. While a judge may be entitled to reject the explanations provided by the Appellant, (and the issue of internal relocation is likely to require careful consideration even if the Appellant is found credible), I am not satisfied that the FtJ's ultimate conclusions would necessarily have been the same had the identified errors of law not been made. In these circumstances, it is appropriate to remit the matter back to the First-tier Tribunal for a completely new hearing, all issues open.

Notice of Decision

**The First-tier Tribunal's decision contains a material legal error.
The matter is remitted back to the First-tier Tribunal, to be decided in a de novo hearing before a judge other than judge of the First-tier Tribunal Sweet.**



19 October 2017

Signed
Upper Tribunal Judge Blum

Date