



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/09407/2015

THE IMMIGRATION ACTS

Heard at Field House

On 20 March 2018

**Decision & Reasons
Promulgated**

On 17 April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

**TAPASHEE [D]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms V. Easty, of Counsel instructed by White Horse Solicitors

For the Respondent: Mr P. Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against a decision of Judge of the First-tier Tribunal Chana who in a determination promulgated on 17 February 2017 dismissed the appeal of the appellant against a decision of the Secretary of State to refuse her leave to remain on human rights grounds. Her husband and her child are her dependents in this appeal.

2. The appellant is a citizen of Bangladesh born on 6 August 1981. She came to Britain in November 2010 with her husband with entry clearance as a student and was granted leave until 21 June 2013. Her leave was extended until December 2014. Before her leave expired she applied for leave to remain on human rights grounds with her husband, [DM], as her dependent. Her claim was based on the fact that they had had a child here who had been born on 18 July 2012. Her application was refused. In the grounds of appeal she amplified her reasons for not wishing to return to Bangladesh. These were that she came from a high caste Hindu family; she had married a Buddhist and converted to Buddhism when she had married. It was asserted that her family not only disapproved of the marriage but that she feared harm from them. She claimed that her rights under Articles 3 and 8 of the ECHR would be infringed by her removal. Her husband had prepared a statement in which he said that he had been threatened by his own religious community and family because of his marriage. The appellant asserted that if they had to return to Bangladesh she would be forced to give up her Buddhist faith and that their child would suffer physical harm.
3. It is of note that the appellant stated that she had met her husband at Chittagong university in 2001: he was studying a Masters degree in the same subject. They had fallen in love. In 2004 her father decided to marry her to someone else. She had told her father of her relationship. Because he was impressed by her academic ability he took her to India to take her away from [DM], but when she promised to give [DM] up her father allowed her to return to university. She had continued her studies and spending time with [DM] and they decided to marry, marrying in 2005. When she converted to Buddhism she made a declaration in the Magistrate's Court in Chittagong that she had converted of her own free will so that her Hindu religious community could not blame her husband for her conversion.
4. In her statement the appellant said that the fact that she had left her religion was considered to be "a rare and life ending crime" and that "Consequently I was blamed with horrendous allegations. I was leveled (*sic*) as sacrilegious, apostate and targeted and threatened for life". Her community had claimed that her marriage had disgraced and humiliated and "out-casted" the family and the community. Her husband's family had been constantly terrorised by the Brahamman community in collaboration with her family. She said that "Should had they become successful in the pursuance I would had to perform horrendous ritual activities like shaving off my hair and leaving *sic* on my own in the darkest corner of the house without meeting anybody until I became sacred again".
5. In paragraphs 3 onwards of the determination the judge set out the appellant's claim and in paragraphs 24 onwards she set out her findings of fact. She stated that "the burden of proof is on the

appellant and that it is on the balance of probabilities.” In paragraph 28 she stated that she could find no objective evidence had been placed before her that Hindus and Buddhists have any hostility towards each other or that any adverse consequences follow from a Buddhist marrying a Hindu or that there is intolerance between these two religions. She went on to say:

“28. ... There is no background evidence placed before me that Buddhism and Hinduism are substantially different religions. There is no background evidence placed before me to show that Hindus and Buddhists have a propensity for violence towards Hindus who marry each other.

29. There is no background evidence to demonstrate the philosophical differences between a Hindu and a Buddhist. There is no background evidence placed before me to say that Buddhist and Hindu beliefs differ in any manner shape or form such as for them to discriminate against each other, let alone to inflict violence. There is no background evidence that Buddhism is an independent religion to Hinduism. There is no background evidence before me that Buddhism is not a religion but a philosophy.

30. There is no background evidence placed before me that conversion is possible for a Hindu to Buddhism or vice versa. There is no evidence before me that conversion to Buddhism is done by swearing an affidavit in the Magistrates Court as the appellant claims that is what she did when she converted.

31. I find that the appellant's evidence that she and her family will be at risk in Bangladesh is a complete fantasy unsubstantiated by any background evidence whatsoever. This goes to credibility of the appellant and to the credibility of her claim that she and her family would be harmed if they are to return to Bangladesh.”

6. Thereafter the judge considered the issue of the rights of the appellant under Article 8 of the ECHR. She found that there were no exceptional reasons why the appellant, her husband and child could not return to Bangladesh and, having considered the fact that the appellant's husband was at the time of the appeal, in prison and also having found that the appellant's son could be educated in Bangladesh, concluded that there was nothing to indicate that the removal of the appellant and her family would be a disproportionate interference with their rights under the ECHR. She therefore dismissed the appeal.
7. The grounds of appeal assert that the appellant was astounded to see the determination. They repeat the appellant's claim that she came from a high caste Hindu family and would suffer on return her because she had married a Buddhist. They complained that the judge demotivated the appellant when commenting on the appellant's level of English and said that there had been a case study of a marriage between lower and higher caste people in the context

of the Indian sub-continent before her which showed the intolerance and violence between Hindus and Buddhists. They asserted that the appellant's child would be targeted on return as a child of an interfaith marriage and that his rights under section 55 had not been properly considered. They asserted that the appellant would face insurmountable hardship on return.

8. Although the application was refused in the First-tier Upper Tribunal Judge Coker granted permission stating that was arguable that the first-tier judge had failed to have adequate regard to evidence placed before her and that the judge, in the introductory paragraphs of the decision, had referred to the appellant as a man when she was not and that it might be relevant that the judge had taken the view that the appellant's English was poor but there was no interpreter and that that might have impacted on the appellant.
9. At the hearing of the appeal before me Miss Easty distanced herself from the grounds of appeal but emphasised that this was a case where if it had been properly prepared there would have been an expert report. She referred to the comments the judge had made in paragraphs 29 onwards of the determination and stated that the judge had not considered the documentary evidence and the affidavits produced. She said that the judge was wrong to state that there was no evidence of the marriage and that there was no background evidence before her. She also asked me to take into account that the hearing had taken place on 27 May 2016 and although the determination had been signed on 9 June 2016, it had not been promulgated until 17 February 2017. The fact that the judge had stated that the standard of proof was the balance of probabilities when this was an Article 3 case was an error. She said that the judge's comment that this claim was a complete fantasy was not in accordance with the evidence although she again stated that the case had not been prepared as well as it should have been. With regard to the consideration of the appellant's rights under Article 8 of the ECHR Miss Easty stated that the judge had referred to out of date case law. She emphasise that the judge, when she had said that the appellant could return to Bangladesh and that her husband that could follow after the end of his sentence had erred because she should have taken into account the facts as at the date of hearing which were that the appellant's husband could not return with her. She accepted that it was now the case that the appellant's husband, who had been sentenced to one year's imprisonment had been released last November.
10. Mr Nath stated that the judge had no background information before her and that there had been no application for an adjournment so that further evidence could be obtained. There was nothing material in the documentary evidence which was placed before the judge which could possibly have influenced the decision. He emphasised that the appellant had not applied for asylum.

Discussion

11. When considering this case it is important to note the chronology which is that the appellant, at the age of 20, met her husband at university. She had told her father in 2004 of the relationship and he had taken her to India to further her studies, but then, on her assertion that the relationship was over, agreed that she should return to Chittagong university in Bangladesh. She married in 2005 but it was not until 2008 that her family and that of her husband became aware of the marriage. Thereafter she and her husband remained in Bangladesh until 2010 when they came to Britain as a student and her dependent. The appellant did not apply for asylum when she entered and indeed it was not for five years that her application for leave to remain on human rights grounds was made. She has never applied for asylum or asserted that she would face persecution for a Refugee Convention reason on return.
12. I have read the affidavits of the appellant and her husband. The reality is that they lack any specific detail to show that they suffered Article 3 ill-treatment in Bangladesh after their marriage in 2005 or after 2008, when their families became aware of the marriage, before they left in 2010. The letter from the Mayor at Cox Bazar states that the appellant's father is a "well reputed person" and that the mayor knew that the appellant had married a Buddhist. He states that that was totally unacceptable to their religion and the local community and against that culture. He went on to see say that he knew that they had left Bangladesh in 2010 and that if they wished to come back to Bangladesh both of their families will be "un-pleased to each other". There is nothing in that letter to indicate that he considered that the appellant would be in danger if she returned. There is also a complaint by Mr Mudsuddy to the Officer in Charge of a police station in Dakha in which he states that "our lives have been face in threatened" *sic* and that the marriage was never accepted by both parents and by the local religious community. There is nothing to indicate that that application to the police station was based on any specific action against the couple and there is simply nothing to show that in the following two years they suffered any harm. I consider that the judge was entitled to find that there was no evidence before her that the appellants would suffer treatment which would cross the threshold of Article 3 or treatment on return. I consider that she was entitled to state that there was no background evidence to show animosity between Hindus and Muslims such that those who entered into interfaith marriages would be persecuted by members of either religion. There is no allegation of a risk of ill-treatment by the State let alone is there any indication that there would not be for the appellant, her husband and child, a sufficiency of protection. The grounds of appeal were simply wrong to assert that there was objective evidence to show interfaith hostility between Hindus and Buddhists in Bangladesh before the judge.

13. While it is the case that the judge referred to the standard of proof as being that of the balance of probabilities when in fact she should have considered whether or not there was a real risk of Article 3 harm, that is not relevant in the context of the facts in this case where there is no evidence whatsoever to discharge the lower standard of proof. While I accept that Judge Coker was correct to note that the judge erred in the opening paragraphs of the determination by referring to the appellant as "he" rather than "she" that is clearly not a material factor as, after the opening paragraphs the appellant was always referred to as "she" and her husband as "her husband". There is nothing in Miss Easty's argument that the judge was applying "old" case law: the case law which was applied is still relevant. Moreover, I consider that there is nothing in Miss Easty's point that the judge should specifically have considered the fact that the appellant would be returning to Bangladesh alone. What the judge said was that the appellant could return and that her husband could follow her. The judge would have been fully aware of the fact that the appellant's husband would have been released from prison within less than six months of the signing of the determination, as indeed was the case. The date that the judge signed the determination is the relevant date for deciding whether or not the determination was completed timeously and the date the determination was signed was within an actable period after the appeal was heard.
14. The reality is that both the appellant and her husband have considerable academic qualifications from a university in Bangladesh and some experience of living in Britain and that there is nothing to indicate that they would be destitute on return. The judge was fully entitled to conclude that the appellant and her husband would be able to return to Bangladesh and would not face Article 3 ill treatment when they did so and to conclude that there was nothing that would indicate that the rights of the appellants under Article 8 of the ECHR would be infringed by their removal or that the rights of the child who was aged 4 at the date of the decision, and is still young would be infringed: he would be returning to the country of his nationality with his mother, shortly to be joined by his father and the family would be able to establish themselves in the country of their nationality.

Decision.

This appeal is dismissed

Signed:
2018.



Date: 23 March

Deputy Upper Tribunal Judge McGeachy