



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

Appeal Number: PA/01821/2017

THE IMMIGRATION ACTS

Heard at Field House

On 26 January 2018

**Decision & Reasons
Promulgated**

On 23 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**MA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Dhanji, Counsel instructed by Haris Ali Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on [] 1985. On 9 January 2009 she claimed asylum in the UK on the basis of fearing her abusive husband and his parents would kill her. Her application was refused on 24 January 2014 and a subsequent appeal to the First-tier Tribunal, heard by Judge Herlihy on 19 June 2014, was dismissed. The appellant then made new submissions claiming to face a risk on return to Pakistan because she now had a daughter who was born on 18 December 2015 out of wedlock. She claimed to be at risk both because of her daughter being illegitimate and

because she had committed adultery, which is a criminal offence in Pakistan.

2. On 7 February 2017 the respondent refused the application. The appellant appealed to the First-tier Tribunal where her appeal was heard by Judge Andonian. In a decision promulgated on 11 September 2017 the judge dismissed the appeal. The appellant is now appealing against that decision.

Decision of the First-tier Tribunal

3. The judge accepted that the appellant had an illegitimate child born in the UK but not that she would face a risk on return because of this. He rejected the appellant's contention that her husband and family presented a danger to her. He also found that the authorities in Pakistan would, in the event that there was a threat to the appellant from her husband or family, provide her with sufficient protection and that it would be reasonable for her to relocate internally.
4. At paragraph 36 of the decision the judge stated that he did not find it credible that the appellant's husband would have the resources or inclination to look for her outside of her home area.
5. At paragraph 38 the judge stated that:

"Whilst it is accepted that a person may face some practical difficulties in starting life at a new place and may have a genuine concern about uncertainties involved there, the appellant has not provided any evidence to suggest that she would have an inability to lead a relatively normal life in another safe part of her country judged by the standards that generally prevail in her country of nationality."
6. The judge concluded at paragraph 41 that:

"The appellant had failed to demonstrate the authorities in Pakistan will be unable or unwilling to offer her protection if she sought it".

Analysis

7. Both parties agreed that the judge made a material error of law.
8. The uncontested evidence was that the appellant has a child who was born out of wedlock on 18 December 2015. The appellant's case was that because she would be returning to Pakistan with an illegitimate child, having committed adultery, both she and the child would be at risk of persecution from the state, as well as from her husband and his (and her) family. In addition, she maintained that she would face very significant obstacles such that removing her to Pakistan would be contrary to Article 8 ECHR.
9. The evidence before the First-tier Tribunal included the Home Office's Country Information and Guidance titled Pakistan: Women fearing gender-

based harm/violence, dated February 2016. Section 9 of this report includes the following:

“9.1.1 The offence of zina defines ‘adultery’ and is covered under the Offence of Zina Ordinance, 1979, which states, ‘A man and a woman are said to commit ‘Zina’ if they wilfully have sexual intercourse without being married to each other. Zina is liable to hadd (the punishment decreed by the Quran): stoning to death, or 100 lashes. The Hudood laws apply to both Muslims and non-Muslims although the punishments differ. The authorities have never carried out the penalty of death by stoning, partly due to strict evidentiary requirements. However, in many rural areas of Pakistan, jirgas issue death sentences for couples or women deemed to have offended the conservative culture. Reuters reported in 2014 ‘Such killings are illegal in Pakistan, but the police force is weak and often ignores them. Even if the cases are brought to court, they can take years to be heard and the national conviction rate hovers between 5 to 10 percent. If convicted, the victim’s family can forgive the killers - a major loophole since the killers often are the victim’s family.

...

9.2.1 As sexual relations outside of marriage is strictly prohibited under the 1979 Hudood Ordinances, having a child outside of marriage caused huge social stigma in Pakistan. Deutsche Welle noted in a report dated 21 April 2015 that, ‘In Pakistan, abortion is illegal, and so is adultery - creating a situation where hundreds of children born out of wedlock are secretly killed each year. Their bodies are literally thrown out with the garbage. Illegitimate children were referred to as ‘harami’, meaning forbidden under Islam. They do not have rights of inheritance and could not be registered with the National Database and Registration Authority without providing the father’s name. Not having an ID card caused difficulties in accessing vital government-run services.”

10. One of the issues that the judge needed to address when considering risk on return was the implication of the appellant having a child born out of wedlock and potentially being perceived as having broken the law of Pakistan by committing adultery. Reading the decision as a whole, and in particular paragraphs 37 to 38, it is apparent that the judge has concluded that the appellant could return to Pakistan and lead a relatively normal life without taking this critical factor into consideration. This was a material error of law.
11. In addition, the judge erred in the approach taken to sufficiency of protection from the authorities in Pakistan. The judge found that the appellant had not demonstrated that the authorities would be unwilling or unable to offer her protection if she sought it. This conclusion appears to be based on the judge’s assessment of the risk the appellant would face from non-state actors, i.e. her husband and family. However, the appellant’s claim is that because of her circumstances she would be at risk not only from non state actors but also from the authorities themselves. In failing to address the claim (and the evidence adduced to support the

claim, as cited above) that the appellant would be at risk from the state, the judge has made a material error of law.

12. Both parties submitted that the appeal should be remitted to the First-tier Tribunal as in order for it to be remade all of the factual circumstances would need to be considered afresh. Mr Walker's position was that the matter should be reheard in the First-tier Tribunal as various issues which in his view were highly damaging to the appellant's credibility, such as the use of a false name when registering the birth of her child, would need to be brought into consideration. Having considered the arguments on this point by the parties, and having regard to section 7 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, I am in agreement that the matter should be remitted to the First-tier Tribunal.

Notice of Decision

13. The decision of the First-tier Tribunal contains a material error of law and is set aside.
14. The appeal is remitted to the First-tier Tribunal to be heard by a judge other than Judge Andonian.

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



Deputy Upper Tribunal Judge Sheridan

Dated: 19 February 2018