



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12063/2016

THE IMMIGRATION ACTS

Heard at North Shields
On 2 May 2018

Decision and Reasons Promulgated
On 16 May 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

S B (BANGLADESH)
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Richard Selway, Counsel instructed by Brar & Co, solicitors

For the respondent: Ms Rhona Petterson, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the

original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse her international protection under the Refugee Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds. The appellant is a citizen of Bangladesh.

Background

2. The appellant was born in Bangladesh in 1985, a Muslim woman from Sylhet. Her family, and in particular her father, are strict Muslims.
3. The appellant studied in Bangladesh, then came to the United Kingdom in 2010 as a student, supported financially by her family in Bangladesh. In 2013, she completed a degree in business studies.
4. Also in 2013, the appellant met another student, she says coincidentally: he came from her own village, but she says they had not met in Bangladesh. They had a relationship and the appellant had a child by him in August 2014. They married in October 2014.
5. The appellant told her family about the relationship, and the coming child, when she was a few months' pregnant, but both families reacted badly as the couple were not married. The appellant's case is that their subsequent marriage has not improved the family reaction, and that her husband's family pressured him to leave her. She spoke to her mother a few weeks after the birth, but was told that she had shamed the family. The appellant says that her father has threatened to kill her.
6. In November 2015, following an argument, the appellant's husband left her and she has not seen him since. She has telephoned him repeatedly but been unable to contact him.
7. The appellant lost her home, as he had not paid the rent for three months. The appellant moved to Cardiff with her baby, and stayed with her father's cousin, who was supportive. After a few weeks, she moved to live with a friend in Birmingham. There, with the help of social services, she claimed asylum in April 2016.

First-tier Tribunal decision

8. The First-tier Tribunal recorded that the respondent did not dispute the facts of the relationship and the birth of a child to them before they married; that the appellant's husband left her in November 2015; that they were no longer in contact, and that the appellant would be returned to Bangladesh as a lone woman and a single parent with a young son.
9. The respondent did not accept that there existed any real risk to the appellant in Bangladesh at the level of persecution.

10. The First-tier Tribunal did not believe the coincidence of the appellant meeting someone from her small home village (about 500 houses), educated like her, and only 3 years older than she. The appellant had studied both in her local college and school, but also in Sylhet town. The Judge considered that even if they had not met, in such a small community they would at least have heard of each other. The Judge identified a number of discrepancies in the appellant's oral evidence at [41] – [48].
11. The Judge also considered documents, and in particular a copy of her father's identity card, and an affidavit from her father permanently renouncing any connection with the appellant on moral grounds and prohibiting her from claiming him as her father or receiving any benefit under his will. The Judge correctly applied the *Tanveer Ahmed* approach to reliability. The Judge was not satisfied by the appellant's explanation as to how she had been able to obtain these documents from Bangladesh: the appellant contended that her estranged husband had obtained them through a lawyer, who got them from the Court in the village, but without her family being aware of it. The Judge found that the documents were not reliable and gave them little weight.
12. At [72], the Judge made a comprehensive negative credibility finding about the appellant's account and proceeded to dismiss the appeal on all grounds.

Permission to appeal

13. The appellant appealed to the Upper Tribunal, arguing that her son's illegitimacy had not been properly taken into account and relying on SA (divorced woman – illegitimate child) Bangladesh CG [2011] UKUT 254 (IAC). The grounds accept that the decision of the First-tier Tribunal is 'fair and well thought through apart from in regards to what might be termed a key issue: the illegitimacy of the child'. There is no challenge to the negative credibility finding.
14. Permission to appeal was granted by Upper Tribunal Judge Coker, who considered that:

"It is arguable that the Judge failed to have regard to the appellant returning to Bangladesh with an illegitimate child as opposed to returning as a lone parent. It may [be]...that the outcome may be the same given other facts found, but it is arguable that this may have impacted upon the Judge's overall conclusion."

Rule 24 Reply

15. The respondent filed a Rule 24 Reply to the grant of permission, arguing that the First-tier Tribunal Judge had directed himself appropriately and noting the negative credibility finding. The Judge had not accepted that the appellant would have no family support on return to Bangladesh and had considered the circumstances of the appellant's return at [131].
16. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

17. For the appellant, Mr Selway argued that on a proper construction of *SA (Bangladesh)*, the appellant's appeal should have succeeded.
18. Ms Petterson relied on the refusal letter. She reminded me that the parts of the appellant's account which were accepted by the First-tier Tribunal were her nationality and geographical origin, her religion, and her relationship, the birth of the child, the marriage and the subsequent desertion of the appellant and the child by her husband, with the rest of her account (including the lack of family support and her parents' hostility) being found not credible. I further recall that the appellant has not challenged the negative credibility finding.

Discussion

19. I remind myself that this appellant is not a divorced woman and also that her child is, at least in United Kingdom law, legitimised by her subsequent marriage. The appellant has produced no evidence that the position is different in Bangladeshi law, though it may be so. The Judge found that the appellant would have family support in Bangladesh and that apart from the facts identified in paragraph 18 above, her account was fabricated.
20. I therefore look at the guidance which the Upper Tribunal gave in *SA (Bangladesh)*, so far as it is relevant to this appeal. The Tribunal found that a lone mother would obtain custody of her child under Bangladeshi law, unless disqualified from custody or contact by 'established allegations of immorality' in which case, custody would be likely to go to her own family members. At (4) in the judicial headnote, the Upper Tribunal found as follows:

"...(4) The mother of an illegitimate child may face social prejudice and discrimination if her circumstances and the fact of her having had an illegitimate child become known but she is not likely to be at a real risk of serious harm in urban centres by reason of that fact alone.

21. It is highly unlikely that in an urban area, away from her home in Sylhet, the appellant would be perceived as the mother of an illegitimate child, if that is the legal position in her circumstances. The appellant is not divorced: she is a married woman. She may be separated and estranged from her husband, but has never suggested that she is formally divorced. Even if the facts became known, the Upper Tribunal has held that there would be no real risk of serious harm 'by reason of that fact alone'.
22. At (5), the Tribunal dealt with the circumstances where the divorced mother of an illegitimate child without family support returns to Bangladesh and relocates, seeking to support herself alone:

(5) The divorced mother of an illegitimate child without family support on return to Bangladesh would be likely to have to endure a significant degree of hardship but she may well be able to obtain employment in the garment trade and obtain some sort of accommodation, albeit of a low standard. Some degree of rudimentary state aid would be available to her and she would be able to enrol her child in a state school. If in need of urgent assistance she would be able to seek

temporary accommodation in a woman's shelter. The conditions which she would have to endure in re-establishing herself in Bangladesh would not as a general matter amount to persecution or a breach of her rights under article 3 of the ECHR. Each case, however, must be decided its own facts having regard to the particular circumstances and disabilities, if any, of the woman and the child concerned. Of course if such a woman were fleeing persecution in her own home area the test for internal relocation would be that of undue harshness and not a breach of her article 3 rights."

23. This appellant would not have to fall back on working in the garment trade, should she relocate away from her home area. She is an educated woman and qualified for a better job than that. Again, the Upper Tribunal found, on those facts, that the risk fell well below Article 3 ECHR, unless there was a risk in the home area, which the First-tier Tribunal Judge was fully entitled to find did not exist here.
24. As stated in the grounds of appeal, the First-tier Tribunal's decision is properly, adequately and intelligibly reasoned. His failure to apply *SA (Bangladesh)* does not avail the appellant, on the facts found and having regard to the negative credibility finding and her personal circumstances. The grounds of appeal disclose no material error of law and the appeal is therefore dismissed.

DECISION

25. For the foregoing reasons, my decision is as follows:
The making of the previous decision involved the making of no error on a point of law I do not set aside the decision but order that it shall stand.

Date: 11 May 2018

Signed *Judith A.J.C. Gleeson*
Upper Tribunal Judge Gleeson