



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/13635/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at : Field House

**Decision and Reasons
Promulgated**

On : 24 April 2018

On: 25 April 2018

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

S N

(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr L Tarlow, Senior Home Office Presenting Officer
For the Respondent: Ms P Solanki, instructed by Sky Solicitors Ltd

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Ms N's appeal against the respondent's decision to refuse her protection and human rights claim.
2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Ms N as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.
3. The appellant is a citizen of Pakistan born on 15 September 1983. She arrived in the UK on 22 May 2011. On 23 November 2012 she was granted leave to remain as a Tier 4 general student migrant, but a subsequent application for further leave to remain on that basis was refused on 30 May

2014. She made an asylum claim on 12 June 2017. Her claim was refused on 11 December 2017.

4. The appellant's claim was based upon a fear of persecution from the Pakistani authorities and from her own family as a result of being in an unmarried relationship with a child born out of wedlock. The appellant claimed that she had previously been in a relationship with a man whom she married in the UK in 2012, to whom she was still married and who was in prison in the UK serving a 23 year sentence for sexual grooming. Her husband was a former policeman and his case had been widely reported in the press. He had assaulted her prior to his imprisonment. She had subsequently formed a new relationship with her current partner with whom she had had a child and would be punished by Pakistani law if she returned to Pakistan.

5. The respondent refused the appellant's claim in a decision dated 11 December 2017. The respondent accepted the appellant's account of her husband and his conviction and her account of her current relationship with her partner and their child and also accepted that she had a genuine subjective fear of persecution. However the respondent did not accept the appellant's account of problems with her family and did not accept that her fear was well-founded. It was not accepted that she was at risk on return to Pakistan or that her removal to Pakistan would breach her human rights.

6. The appellant appealed against that decision and her appeal was heard by First-tier Tribunal Judge Wright on 26 January 2018 and was allowed in a decision promulgated on 5 February 2018. Judge Wright found that the appellant was at risk on return to Pakistan on the basis of having had extra-marital relations and having a child out of wedlock and that she risked being charged and imprisoned by the authorities or being killed by her own family in an honour killing. The judge found that there were very significant obstacles to the appellant's integration in Pakistan as a result of the risk of prosecution and honour-killing and that her removal would breach her human rights on Article 2, 3 and 8 grounds. He allowed the appeal.

7. Permission to appeal to the Upper Tribunal was sought by the respondent on the grounds that the judge had failed to have regard to the country guidance in SM (lone women - ostracism) Pakistan (CG) [2016] UKUT 67 which contradicted his findings on risk on return and paragraph 276ADE and that the judge had failed to conduct a proportionality exercise under Article 8.

8. Permission to appeal was granted on 21 February 2018.

9. At the hearing before me, Ms Solanki properly accepted that she was in some difficulty in resisting the respondent's grounds in regard to the judge's findings on the appellant's likely arrest and prosecution. She asked that the appeal be remitted to the First-tier Tribunal if the decision was set aside. Mr Tarlow also asked that the appeal be remitted to the First-tier Tribunal.

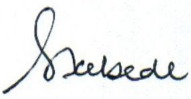
10. In the circumstances, given the judge's evident failure to consider and address the country guidance in SM, I advised the parties that the judge's decision was unsustainable and had to be set aside and re-made afresh by

another Tribunal. In view of the fact that there were various matters which needed to be considered, which were material to the question of risk on return and to a full proportionality assessment, including the impact on the appellant of her husband's conviction, I agreed with the parties that the case needed to be remitted to the First-tier Tribunal.

DECISION

11. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside.

12. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard afresh, with no findings preserved, before any judge aside from Judge Wright.

Signed: 
Upper Tribunal Judge Kebede

Dated: 24 April 2018