



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/03194/2013

THE IMMIGRATION ACTS

Heard at Bradford
on 2nd August 2013

Date Sent
on 6th August 2013

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ANISA ALI MOHAMMED AL-QADHI

Respondent

Representation:

For the Appellant: Mrs Pettersen – Senior Home Office Presenting Officer.

For the Respondent: Mr Cole instructed by Parker Rhodes Hickmotts Solicitors.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Kelly promulgated following a hearing at Bradford on 3rd May 2013 in which he allowed the appellant's appeal on asylum and human rights grounds against the direction for her remove to Yemen which accompanied the refusal of her claim for asylum or any other form of international protection.
2. The Secretary of State sought permission to appeal on the basis Judge Kelly failed to identify any Refugee Convention reason. The appellant was found to be at risk from a family in Yemen from which the State offered no protection. No defining factors were identified in order to show that the appellant formed part

of a Particular Social Group (PSG) which could not be inferred from the determination.

Discussion

3. The application was opposed by Mr Cole who submitted that it was possible to infer from a reading of the determination that the Judge had found that the appellant was a member of a PSG. He specifically referred to paragraph 29 of the determination in which Judge Kelly states:

29. However , I am satisfied that the appellant is at risk of being killed in revenge for the perceived slight to Alawi family honour as a result of her supposed 'kidnap' of Ashraaqat. I am also satisfied that the Yemeni state would not provide adequate protection against this risk, in view of what is said in the Amnesty International report, under the heading of ' harmful traditional practices '-

The penal code allows leniency for persons guilty of committing an honour crime or violent assaults against - or killing a woman, for perceived "immodest" or "defiant" behaviour. The law does not address other types of honour crimes, including beatings, forced isolation, imprisonment, and forced early marriage. [Page 124 of the appellant's bundle of documents]

4. The finding that the appellant will be at risk from a revenge attack is not challenged by the Secretary of State and so the appellant is entitled to some form of status. This was acknowledged by Mrs Pettersen at the hearing.
5. Judge Kelly allowed the appeal on asylum grounds but failed to make any, or adequate, findings demonstrating how the appellant was able to satisfy the test for assessing whether she is a refugee or not. There is no specific mention in the determination of a Convention reason. I find that in this respect the Secretary of State has made out her case. No such reason can be inferred from a reading of the document either. I shall now move on to consider whether such legal error is material to the decision to allow the appeal on Refugee Convention grounds.
6. In his submissions Mr Cole referred to the fact that the appellant was a woman and that women could form a PSG. He also submitted that it was accepted that the appellant was at risk and that the State would provide no protection and on this basis she was able to succeed under the Refugee Convention. Mrs Pettersen accepted that in certain circumstances this may be the case but that proper findings needed to be made on whether the appellant was able to succeed on this basis or not.
7. Paragraph 334 of the Immigration Rules states that:

“An asylum applicant will be granted asylum in the United Kingdom if the Secretary of State is satisfied that:

- (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom;
- (ii) he is a refugee, as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;
- (iii) there are no reasonable grounds for regarding him as a danger to the security of the United Kingdom;
- (iv) he does not, having been convicted by a final judgment of a particularly serious crime, he does not constitute danger to the community of the United Kingdom; and
- (v) refusing his application would result in him being required to go (whether immediately or after the time limited by any existing leave to enter or remain) in breach of the Geneva Convention, to a country in which his life or freedom would be threatened on account of his race, religion, nationality, political opinion or membership of a particular social group”.

8. The only applicable ground in paragraph 334 (v) would be membership of a PSG.

9. The Refugee or Person in Need of International Protection (Qualification) Regulations 2006. Regulation 6 states:

(1) In deciding whether a person is a refugee....

(d) a group shall be considered to form a particular social group where, for example:

(i) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and

(ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;

(e) a particular social group might include a group based on a common characteristic of sexual orientation but sexual

orientation cannot be understood to include acts considered to be criminal in accordance with national law of the United Kingdom;

10. In relation to the position of women, Mr Cole referred to the case of K and Fornah v SSHD [2006] UKHL 46, [A's bundle pp 131 - 161], and specifically to paragraphs 102 and 103 of the judgment in which Baroness Hale found:

102. Of course, much of the harm feared by women, including FGM, is perpetrated, not directly by the State, but by non-State agents. In paragraph 21, the Guidelines make another important point about the causal link ("by reason of") and the ground for the persecution:

"in cases where there is a risk of being persecuted at the hands of a non-State actor (eg husband, partner or other non-State actor) for reasons which are related to one of the Convention grounds, the causal link is established, whether or not the absence of State protection is Convention related. Alternatively, where the risk of being persecuted at the hands of a non-State actor is unrelated to a Convention ground, but the inability or unwillingness of the State to offer protection is for reasons of a Convention ground, the causal link is also established"

103. My Lords, each of the guidelines quoted above is consistent with, and in some cases directly derived from, the decision of this House in *Islam v Secretary of State for the Home Department; R v Immigration Appeal Tribunal, Ex p Shah* [1999] UKHL 20; [1999] 2 AC 629. I believe that they represent the correct approach. How then should they be applied in the two cases before us?

11. In Shah and Islam and Others v SSHD HL (1999) INLR 144 Steyn LJ accepted that women in Pakistan were a social group based on the immutable characteristic of gender and the fact that, as a group, they were unprotected (neither of which characteristics involved an assertion of persecution either). Hoffman LJ said "Domestic violence towards women is prevalent in Pakistan. That is also true of many other countries and by itself does not give rise to a claim for refugee status. The distinctive feature of this case is that in Pakistan women are unprotected by the state; discrimination against women is partly tolerated by the state and partly sanctioned by it". He went on to point out that a question of causation is also involved. "Given the central feature of state tolerated and state sanctioned gender discrimination, the argument that appellants fear persecution not because of membership of a social group but because of the hostility of their husbands is unrealistic. Causation here is made up of two elements. First, the threat of violence from the husband, which is a personal affair directed towards the individual: second, the inability or the unwillingness of the state to do anything about this. There is nothing personal about this. The evidence was that the state would not assist them because they were women. It denied them a protection against violence which it would have

given to men. These two elements have to be combined to constitute persecution within the meaning of the Convention". Hope LJ said that the word "social" means that we are being asked to identify a group that is recognised as a particular group by society and as social customs and attitudes differ from one country to the next, the context of enquiry has to be the applicant's country of nationality. He pointed out that discrimination may set the group apart and the concept of discrimination does not offend against the rule that the group must exist independently of persecution because people can be discriminated against without being persecuted.

12. In RG (Ethiopia) v SSHD [2006] EWCA Civ 339 the Court of Appeal said that for women in a country to constitute a particular social group their circumstances need not match exactly those of women in Pakistan in order to fall within the Shah and Islam principles. Widespread societal discrimination combined with inadequate protection by the police and the courts may suffice without any disability for women being enshrined in law. In each case the issue was fact specific.
13. The US State Department report, 2012, on Human Rights Practices in Yemen, [A's bundle, pp 105 - 130], provides country information relating to the position of women in section 6 under the heading of 'Discrimination, Societal Abuses, and Trafficking in Persons', to be found on page 123 of the bundle. The report states that the law provides equal rights and equal opportunities for all citizens although the law was not enforced consistently and that discrimination based on race, gender and disability remaining a serious problem. It is said that despite strong female participation in the revolution, societal discrimination severely limited women's ability to exercise equal rights.
14. On page 124 of the bundle under the heading 'Discrimination' it is noted women do not enjoy the same legal status as men under family law, property law, inheritance law and in the judicial system. They experience discrimination in areas such as employment, credit, and pay, owning or managing businesses, education, and housing. The discrimination was accentuated by the 65% female literacy rate.
15. It is also noted [A's bundle p 125] that women also face unequal treatment in the courts, where the testimony of one man equates to that of two women.
16. I find women in Yemen are clearly a group of persons sharing a common characteristic which, without a fundamental change in social mores, is unchangeable - namely a position of social inferiority as compared with men. As Lord Bingham stated in K and Fornah: "They are perceived by society as inferior. That is true of all women, those who accept or willingly embrace their inferior position and those who do not." I accordingly find on the facts of the case that the appellant does come within a PSG and that this is the Convention reason relevant to the facts of this appeal. I accept Mrs Pettersen's submission

that there is no evidence that the appellant has been found to be at risk as a result of the fact she is a woman per se, but she was found to face a real risk on return sufficient to warrant a grant of international protection from which the State will provide no protection for her because she is a woman. In this respect the quote referred to in paragraph 102 of K & Fornah above: “*where the risk of being persecuted at the hands of a non-State actor is unrelated to a Convention ground, but the inability or unwillingness of the State to offer protection is for reasons of a Convention ground, the causal link is also established*” is relevant. The guidelines being referred to are the UNHCR Guidelines on membership of a particular social group published on the 7th May 2002.

- 17. I find that the appellant has established the causal link on the basis of the unwillingness of the State to offer protection based on her gender. I find that the appellant is entitled to refugee status as a result and therefore the Judge's finding that the appeal should be allowed on asylum grounds has not been shown to be infected by any material error.

Decision

- 18. **The First-tier Tribunal Judge made no material error of law. The determination shall stand.**

Anonymity.

- 19. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order as no application was made for the same and the facts do not establish the need for such an order.

Signed.....
Upper Tribunal Judge Hanson

Dated the 2nd August 2013.