



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/08001/2013
AA/08002/2013

THE IMMIGRATION ACTS

Heard at Stoke on Trent
On 21 October 2014

Determination Promulgated
On 20 November 2014

Before

Deputy Upper Tribunal Judge Pickup

Between

RA
SA

[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant:

Mr C Lane, instructed by Braitch RB Solicitors

For the respondent:

Ms C Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, RA, date of birth 13.1.76, and SA, date of birth 23.9.04, are citizens of Pakistan.
2. This are their appeals against the determination of First-tier Tribunal Judge Fox, promulgated 5.2.14, dismissing their linked appeals against the decisions of the

respondent, dated 2.8.13, to refuse their asylum, humanitarian protection, and human rights claims. The Judge heard the appeal on 13.1.14.

3. First-tier Tribunal Judge Reid refused permission to appeal on 27.2.14. However, when renewed to the Upper Tribunal Upper Tribunal Judge Coker granted permission to appeal on 27.2.14.
4. Thus the matter came before me on 21.10.14 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Fox should be set aside.
6. The relevant background to the appeal can be summarised as follows. On 17.5.03 the first appellant underwent an arranged marriage in Pakistan. She claims that her husband was physically and sexually abusive throughout the marriage, until he threw her out on 22.3.04, with kicking, metal and cigarette burns, and raping her. After separation he continued to threaten her life, to the extent that she felt she could not live safely with her parents and went to reside with different relatives from time to time, between 2004 and 2006. The divorce took place in 2005. However, her ex-husband sought to gain custody of their child, the second appellant. According to the first appellant the outcome of court proceedings was that the child would remain with her until 7 years of age. She was required to take her son to court once a month; sometimes her husband was present.
7. The first appellant claims that in 2007 her ex-husband kidnapped her son from the court for 9 hours, before returning him. She stopped attending court, but bailiffs came to her home, so she resumed attending court on a monthly basis. She claims that her husband chased her through the market on one occasion in 2009 and a few days later he kidnapped the child from school. She was made to sign a blank sheet of paper to enable her son to be returned to her. She believed this was intended to obtain the withdrawal of a child maintenance and dowry claim she had made against him. Although she changed the school she worked at, in January 2010 she received a message from her husband that he knew she was working there, that he was still pursuing her and intended to 'wreck' her face. She came to the UK to further her education and to escape her ex-husband. She claims she intended to return to Pakistan but was not prepared to hand over her son to her ex-husband.
8. The appellants arrived in the UK on 7.10.10 with leave as a Tier 4 (general) migrant student and dependant, under the points based system (PBS) of the Immigration Rules. Leave was subsequently extended as a Tier 1 (post study work) migrant to 31.5.14. However, on 21.6.13 the first appellant claimed asylum. She claims that her ex-husband has been harassing and abusing her family members in Pakistan, firing shots outside the home in August 2012 and April 2013. She and her son have been badly affected by the past and continuing problems from her ex-husband. She is suffering from depression and insomnia and her son, who has nightmares and

trouble sleeping, has received counselling. She believes that if she were returned to Pakistan her husband would kill her, and possibly their son. He is very wealthy and his uncle is a politician in the People's Party.

9. In granting permission to appeal, Judge Coker consider it arguable, "that the weight placed by the judge and the interpretation by the judge of what may in some scenarios be seen as insignificant matters has tainted his approach to the evidence as a whole. It is arguable that his interpretation, without reasons, of the first appellant's ex-husband retention of the child for 9 hours/3 days as oppose to the agreed one hour as extended custody as oppose to kidnapping was irrational. It is arguable that the judge has failed to consider the background material as regards access to the courts by divorced women in reaching his findings. Overall it is arguable that the assessment of evidence and the lack of reasoning for some findings may be irrational."
10. The Rule 24 response, dated 9.5.14, submits that the judge made reasonable, sustainable findings that were open to him on the evidence. "The respondent submits that the grounds advanced do not disclose any material arguable errors of law and are in mere disagreement with the negative outcome of the appeal. The determination is a very detailed and balanced evaluation of the material facts and supporting evidence of the appellants' claim and it is submitted that the findings spanning across paragraphs numbered 70-149 were properly open to the learned judge to make. On the material facts of this case, no reasonably alternative constituted Tribunal could possibly have arrived at a materially different outcome to that of this Tribunal."
11. At the outset of the hearing the parties agreed that the relevant issues were, PSG, (particular social group), credibility, section 55 best interests of the child, and articles 2,3 and 8 ECHR. It was agreed that the medical issues were confined to article 8 and article 3 was not relied on.
12. I find that Judge Fox conducted a very detailed assessment of the appellants' case, in a decision running to 151 paragraphs over 22 pages.
13. The first appellant did not give oral evidence, as she had apparently taken medication. Her sister, with whom the appellants had lived since arriving in the UK, gave oral evidence, which is set out in some length between §25 and §56 of the decision. The findings of fact are set out in detail over 12 pages, between §70 and §151. I note that the first appellant has disputed many of the findings, though some of them arose from her sister's oral evidence.
14. Rather oddly, at §20 Judge Fox decided that he would not consider some of the relevant case law, because it was promulgated after the refusal decision. That was an error of law; the judge is required to apply all relevant case law. There is also an incomplete sentence with missing content at §12, but §23 suggests that it related to the OGN submitted in closing submissions. However, in the circumstances of this case neither these errors nor minor factual errors are not material. In fact, taking an

overall view of both the evidence and the way in which Judge Fox addressed that evidence it is difficult to conceive that there could have been any other outcome than a dismissal of the claims.

15. In summary, Judge Fox found the evidence adduced on behalf of the appellants unreliable and in particular was satisfied that the first appellant's sister was not a witness of truth, gave evidence inconsistent with the first appellant's account, and was rehearsing a false asylum claim, as was the first appellant. At §92 the judge concluded that the sister had improvised some of her evidence. These were all findings open to the judge, having heard the evidence and being able to assess the witness.
16. The judge concluded that on consideration of the evidence in the round the allegation of kidnapping was an embellishment. Considering the claim in the context of the court proceedings and the ex-husband's right of access, the judge reached the conclusion that the evidence did not possess the features of kidnapping. On the first occasion the child was brought back to court after 9 hours. In relation to the second occasion, it is clear from §81 that the judge did not accept the factual account and gave clear reasons for that conclusion.
17. The findings also set out discrepancies, inconsistencies and parts of the account that the judge concluded were not credible. I find on any assessment that the judge has given cogent reasons for the findings reached and that they were sustainable on the evidence, even if there were some minor factual inaccuracies in the summary given.
18. The judge gave clear reasons for rejecting many of the documents relied on by the appellants, including court documents, police reports and affidavits. The judge did not find it credible that the ex-husband with the alleged behaviour and ability to act with impunity as described by the first appellant would co-operate in civil proceedings; wait some 5 years before allegedly kidnapping the second appellant; or co-operate in the appellants leaving Pakistan to migrate to the UK. At §97 the judge noted that documentation in relation to the latter action was inconsistent with the first appellant's claim that he was unaware that she was bringing the second appellant to the UK.
19. The judge also grappled with the expert evidence, including medical and expert opinion, setting out in considerable detail the deficiencies of the latter. At §120 the judge found that there was no causal link between the allegation of domestic violence, which was not accepted by the judge, and the first appellant's mental health, concluding that her mental health was directly linked to her legal issues, but noting that she has now abandoned any suicidal ideation. At §123 and again at §128 the judge concluded that when the evidence is considered in the round, he found the first appellant to be a manipulative individual who seeks to exploit the medical services and as such, §132 no weight can be placed on the social services report, "which is most likely the product of manipulative and unreliable statements made by the first appellant for the reasons stated."

20. At §142 the judge concluded that after considering the relevant case law, there was no reliable evidence to demonstrate that the first appellant is at risk as claimed and in particular that she does not meet the requirements of KA.
21. The judge went on to consider the appellants' claims under article 8 ECHR, taking into account section 55 and best interests of the second appellant child, referencing both Azimi-Moyad and Zoumbas.
22. Having considered the grant of permission I am satisfied that what Judge Coker thought arguable as irrational in relation to the kidnapping issue, is not borne out by a careful examination of the decision of Judge Fox. He was not characterising the retention of the child for 3 hours, or for 3 days on a separate occasion as merely "extended custody." The judge rejected the second incident altogether and gave cogent reasons for finding that in relating to the first incident the first appellant was exaggerating her claim, which the judge considered in the context of the claimed history between the first appellant and her ex-husband and the court proceedings. I find nothing irrational about the conclusions drawn, which are clearly supported by cogent reasons. Whilst another judge may have reached different conclusions, it cannot be said that the findings of Judge Fox were irrational or perverse.
23. Much of the criticism of Judge Fox's determination contained in the grounds and the oral submissions is no more than a disagreement with his findings and an attempt to reargue the case. Given the extensive treatment of the evidence, if anything in an overly-detailed manner, I do not accept that the judge has not taken all of the evidence into account in reaching his findings of fact. To the contrary, it is clear that he has made a careful assessment of all of the evidence.
24. The grounds of appeal have to be considered in the light of the findings as a whole. At the heart of the difficulties for the first appellant in seeking to appeal the decision of the First-tier Tribunal is that her alleged ex-husband (the judge was not in fact satisfied that she was divorced as claimed) gave her permission to bring the second appellant to the UK and thus for her to have sole custody of him for an indefinite period of time. Despite the first appellant's attempt to deny that he knew the child was accompanying her, contradicted by the documentary evidence, nothing in the evidence before the First-tier Tribunal dislodges that fact, which rather undermines the appellant's account and stands in stark contrast to the dark portrait she has attempted to paint of her ex-husband.
25. In short, the judge did not accept the first appellant's factual background, including her account of history with her ex-husband and the difficulties in Pakistan of which she complained. The judge found that the first appellant was in fact fabricating her account and that her claim was "rejected in substance" (§120), and at §126 that it was reasonable to conclude, in the light of inconsistencies and discrepancies in the evidence, that "the first appellant cannot be relied upon to provide an honest or reliable account of her circumstances." At §130 the judge did not accept the claim that her two female cousins had been the victims of honour killings. At §128 and elsewhere in the determination, the judge found that the appellant was manipulative

and had manipulated and exploited medical and social services in the UK to promote a false asylum claim.

26. The judge also considered at §144 that in the alternative the evidence demonstrated that the appellants have the option of internal relocation.
27. The only ground of any potential merit was that the judge has failed to consider the relevant background material as regards child contact and divorced women in Pakistan. However, a number of findings in the decision render this issue largely irrelevant as inconsistent with the conclusions of the judge on the first appellant's factual claim.
28. At §110 the judge found that on the available evidence that the first appellant has effective support from male relatives and extended family members, who were able to make complaint to the police. At §113 the judge found that the evidence demonstrated that the first appellant has enjoyed historic and effective support from her family and that the family is wealthy, as confirmed by the first appellant's sister's evidence. Her father is a retired civil servant. She received protection and support from her family (§119). In addition, the first appellant's employment prospects in Pakistan are good. It is clear from §133 that the judge did not accept that the first appellant had been beaten with an iron bar. More significantly, after assessing all the evidence, at §142 the judge concluded that, "there is no reliable evidence to demonstrate that the first appellant is at risk as claimed for the reasons stated." It is also clear that the judge found no reliable evidence that her husband has brought a charge of adultery against her, despite several years of opportunity and an allegedly vengeful motivation to do so. At §144 the judge did not accept that the transfer of custody of the second appellant to the father is a *fait accompli*, relying on paragraph 23.79 of the COI report, "or that the father would require formal custody of the second appellant in any event, when one considers that the first appellant has failed to provide reliable evidence that she is divorced as claimed and therefore it follows that she has failed to provide reliable evidence that she is estranged from her husband as claimed. In the alternative there is no reliable evidence that the husband would seek to deny contact between the appellants."
29. The judge also concluded from §116-120 that the first appellant is not at risk of suicide or self-harm but that if there are any mental health issues, which he doubted, they do not relate to any alleged domestic violence or her circumstances in Pakistan, but her precarious immigration status in the UK. If she ever had them, she has abandoned any self-harm or suicidal intentions. At §135 and onwards, the judge gave reasons for not accepting that the appellant suffers from PTSD. If she is in need of any mental health treatment, the judge found that such treatment is available in Pakistan.
30. Some of Mr Lane's submissions were in fact made in error, perhaps compounded by the fact that he was not at the First-tier Tribunal appeal hearing and was unaware of what material had been placed before the judge and what issues were in contention. For example, he drew my attention to the GP's letter at A37 to contradict the judge's

finding at §116 that the first appellant did not display any signs of suicidal ideation. However, Mr Lane appeared to be unaware that the GP notes forming the source material, not in the appellant's bundle, had been handed in at the appeal hearing and that these bear out the judge's findings.

31. Mr Lane was also relying on a passage in the psychiatric report by Dr Dhumad at §17(g). However, unknown to him, the part he was relying on had been redacted and was no longer relied on by the first appellant. Mr Lane was also relying in his submissions on certain documents, an application and letter, that had not in fact been produced to the First-tier Tribunal.
32. In the circumstances, I reach the conclusion that the criticisms of Judge Fox are of the 'nit-picking' variety, attempting to disassemble what was a very comprehensive assessment of the entire evidence and issues before him. The submissions are largely argumentative and in my view amount to no more than a disagreement with the findings, an attempt to reargue the case in the Upper Tribunal. I find that in his lengthy submissions Mr Lane has distinctly failed to identify to me any findings which could be regarded as irrational or perverse or not capable of being supported by the evidence.

Conclusion & Decision:

33. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed:

Date: 18 November 2014

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I continue the anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable in this case.



Signed:

Date: 18 November 2014

Deputy Upper Tribunal Judge Pickup