



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/08659/2013
AA/08660/2013

THE IMMIGRATION ACTS

Heard at Manchester
On 11th April 2014

Determination Sent
On 16th July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

M F (FIRST APPELLANT)
S A (SECOND APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss Sachdev of Bury Law Centre
For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellants are both citizens of India and are mother and child. The First Appellant now has a second child, a daughter. The first Appellant claims that she is no longer in a relationship with the father of the daughter. She has failed to give

details with regard to the father of the daughter. However it is not contended that the daughter is a citizen of the United Kingdom nor has any other right to remain in the UK by reason of the child's status been asserted.

2. As this appeal impinges upon the rights of two minors and as an anonymity direction was made previously I make an anonymity direction in the present proceedings.
3. It is accepted that the rights of all parties are dependent upon the case in respect of the First Appellant.
4. This is the Appellants' appeal against the determination of First-tier Tribunal Judge Cruthers promulgated on 5th February 2014. The judge dismissed the Appellants' appeals against the decisions to remove them from the UK after rejecting their claims to asylum, humanitarian protection or other relief under the ECHR. By a decision made on 25th February 2014 First-tier Tribunal Judge Grant-Hutchinson gave permission to appeal.
5. In the leave Judge Grant-Hutchinson noted the mental health problems of the first Appellant and that it had been conceded before Judge Cruthers that it could not be argued that the Appellants should not be returned to India by reason thereof.
6. In granting permission to appeal the judge gave the following reasons:-
 - "3. However it is submitted that the judge has arguably erred in law by not giving any or any adequate reasons for:-
 - (a) the husband's use of local authority to intimidate and harass the First Appellant's parents to disclose her and her son's whereabouts;
 - (b) the letter submitted by the police in the UK that the Appellants would be at risk on return;
 - (c) the Appellant's husband breaches his restraining order in the UK to show his determination to go and get her;
 - (d) considering the birth of the Appellant's second child who was born out of wedlock in the UK;
 - (e) assessing the First Appellant's ability to work and accommodate herself with a 3 month old baby and a young child to look after on her own in a different area or the cultural attitudes and her personal safety by having her second child out of wedlock and assessing the background evidence accordingly; and
 - (f) taking into account the best interests of the first child who is 7."

Basic factual background

7. The Appellants came to the United Kingdom in or about 2010. The Appellants came to join the First Appellant's husband and the father of the Second Appellant, who was in the United Kingdom on a work visa. The appellants entered the UK in November 2010. By January 2011 there was significant domestic violence and the Appellants were housed in accommodation for victims of domestic violence.
8. There had been a history of domestic violence in India going back to 2004. For the violence in the UK the first Appellant's husband was prosecuted, convicted and sentenced to 26 weeks imprisonment for assault. After the completion of his sentence he returned to India.
9. The Appellants claimed asylum on 31st January 2011. At that stage the Appellant did not have a relationship with anybody else nor did she have the second child. Clearly the First Appellant now does have a second child. There is no evidence as to who the father of the child is or as to his status in the UK.
10. The first Appellant claimed that on return to India she would be at risk because of her husband would trace her and she would be subjected to further mistreatment. Further she claimed that the circumstances to which she would be returning as a single woman with children would be such as to expose her to a risk of serious mistreatment. There was no prospect of relocation and there was an inadequacy of protection. The Appellants also seek to claim that their rights under Article 8 would be breached if they were returned to India.
11. The judge found that the first Appellant's husband and family would not be able to trace the Appellant and that she would not be at risk of mistreatment. The judge dismissed the claim to asylum, humanitarian protection and relief on grounds of Article 2 and 3. The judge dismissed the Appellants' claims on Article 8 grounds.

Issues and consideration

12. The first challenge is on the basis that the judge has failed to take into account the fact that the Appellant's former husband would be using the local police and authorities to ascertain whether the Appellant was back in India and as such she would be at risk from her husband. The judge noted that the appellant had claimed that her husband was already looking for her in India. It is further submitted that there was evidence from the UK police [see Tab A page C1 of the bundle letter dated January 2011] that the Appellant would be at risk if sent back to India. It is asserted there is a restraining order relating to the Appellant's husband in the UK, which appears to have been breached. It is suggested that there have been no findings by the judge in respect of the evidence referred to.
13. Before me the Appellant's representative referred to the evidence indicating that the Appellant's former husband was still seeking the Appellant and the evidence that

there were concerns if the Appellant returned to India. The references were made to sections of the bundle submitted including Tab C pages 149-150 and Tab D of the bundle relating to the continued interest in the Appellant. Reference was also made to the background evidence as to relocation and availability of protection in India. [Tab A C1 , F3].

14. It was asserted that police forces and the authorities can be used to trace individuals on return to India and that the first Appellant's husband would be able to use such means to trace the Appellants. It is asserted that the change of name of itself would have to be notified to the authorities and would expose the Appellants to the risk of being traced.
15. References were also made to the treatment of single and divorced women with children. It was asserted that there was no support and assistance that would be available especially as one of the children was male and aged over 5.
16. In essence it was being asserted that the judge had failed to take account of evidence that was before him.
17. The representative for the Respondent submitted that the judge was not required to refer to all the evidence but to give reasons based on the evidence for coming to the conclusions that he did. As per the case of R (Iran) v SSHD 2005 EWCA Civ 982 there was no requirement for a judge to deal with every piece of evidence.
18. The judge in the main has accepted the Appellant's historic account of mistreatment in the past and mistreatment leading up to the Appellant being placed in protected accommodation. However the judge has not accepted the risk that the Appellants face if they were to relocate on return to India.
19. At paragraph 54 the judge has specifically considered the likelihood and risk that the Appellant's former husband and family represent to the Appellant. The judge has specifically noted that there was no suggestion that the Appellant's husband had any particular power or influence in his home area much less across the rest of India. The judge noted that India was a large democratic country with a huge population. It had been suggested that the husband could place advertisements within local newspapers to seek to find out where the Appellant was. The judge noted the claims the Appellant's husband was already seeking to find her in India, the judge clearly found that such a suggestion was not realistic or credible.
20. The judge has thereafter referred to the background information with regard to India, its size and population. The judge has found on the basis of the evidence that he did not believe that the Appellant's husband or family could find the Appellant. Having taken account of the evidence the judge has come to the conclusion that the Appellants could safely relocate without there being any risk that them. In coming to that conclusion the judge took account of the claims that the Appellants could be traced by their names and would have to give notice of name changes to the authorities.

21. The judge has clearly considered all the background evidence in respect of India and was satisfied that the Appellant would not be traced if she were to relocate to another of India.
22. With regard to the letter from the police [Tab A C1] that letter is dated January 2011 when the criminal offences were originally being pursued and investigated. The judge has considered the position as at the date of the hearing in 2014. The judge was entitled to make the findings that he did on the evidence and there was no requirements for the judge to deal with every piece of evidence as is made clear in judgment of LJ Brookes in the case of *R (Iran) v SSHD* 2005 EWCA Civ 982 and the cases referred to therein.
23. The judge has considered whether it would be unduly harsh to expect the Appellant to relocate. In so doing the judge has referred to the current country guidance and background information with regard to India and was satisfied in the circumstances that the Appellant could relocate. The judge took account of the fact that the Appellant herself allegedly spoke three languages and had a BSc in computer science in India. The Appellant has worked for British Telecom in her home city of Chennai and had also worked for Tata Consultancy Services. The judge was satisfied on the basis of the Appellant's skills that the Appellant would be able to find employment sufficient to support herself and her children. The judge considered the position with regard to accommodation and was satisfied otherwise that the Appellant could accommodation and employment for herself.
24. Taking all the evidence into account the judge was entitled to find that the Appellant would be able to relocate and that it would not be unduly harsh for them to do so. The judge concluded that the Appellants could relocate back to India, the country of their nationality. That was a finding of fact that the judge was entitled to make on the basis of the evidence presented. The judge has given valid reasons for coming to the conclusions that he did on the risk to the Appellants on return to India.
25. In coming to the conclusions that he did the judge has gone on to consider the issues with regard to Article 8 and the best interests of the children. Clearly there was reference to the distress that the elder child felt with regard to his father. However as the judge has found that there was no likelihood of the father finding the family out and as the family would be able to relocate the judge has concluded that such a risk does not arise.
26. The judge has gone on to consider the circumstances of the children in respect of Article 8. The Appellants had entered in 2010 and had been in the UK less than five years. The judge has taken all relevant factors into account and was entitled to make the decision that he did. The Appellants do not meet the requirements of the Rules to be allowed to remain under the Immigration Rules. The decision was found otherwise to be proportionately justified. Those were findings of fact that the judge was entitled to make on the basis of the evidence presented.

27. Accordingly I find that there is no material error of law within the determination by First-tier Tribunal Judge Cruthers and I uphold the decision to dismiss this on all grounds. The appeal against the decision is dismissed.

Signed

Date

Deputy Upper Tribunal Judge McClure

Direction Regarding Anonymity - Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge McClure