



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/01407/2014

THE IMMIGRATION ACTS

Heard at: Manchester
On: 15th January 2015

Decision Promulgated
On 21st April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

AW
(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Mair, Counsel instructed by Greater Manchester
Immigration Aid Unit

For the Respondent: Ms Johnstone, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Pakistan date of birth 4th May 1988. She appeals with permission¹ the decision of First-tier Tribunal Judge Edwards² to dismiss her appeal against the Respondent's decision to remove her from

¹ Permission granted by First-tier Tribunal Judge Molloy on the 21st May 2014

² Determination promulgated on the 25th April 2014

the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999³. That appeal had been brought on asylum and human rights grounds.

Background and Matters in Issue

2. The Appellant's claim was that she faced a real risk of persecution for reasons of her membership of a particular social group, namely women in Pakistan. She claimed that her father wanted her to marry her cousin. She did not agree to this and was badly beaten by her father and uncle. They attacked her using electrical wire and her teeth were broken when she fell. After the beating she agreed that she would marry her cousin but only after one year. She was permitted to return to her work as a teacher. She confided in the Headteacher of her school who helped her by arranging a visa to come to the UK to study. In October 2012 she told her family that she was going on a school trip but in fact she travelled to Islamabad and flew to the UK. After she came to the UK the Appellant fell pregnant as a result of a brief relationship. Her baby was born on the 28th September 2013. She is no longer with the child's father. The birth of this child outside of marriage was an additional risk factor relied upon by the Appellant.
3. In a refusal letter dated the 13th February 2014 the Respondent rejected the claim for want of credibility. The Respondent did not find the Appellant's evidence that she came from a strict and controlling family to be consistent with the fact that she came to the UK to study. It was found that material parts of her account were lacking in detail. The Respondent decided that even if the Appellant was at risk of "honour" based violence in her home area she could go and live somewhere else in Pakistan or avail herself of the protection of the Pakistani state. Particular reliance was placed on the availability of *Dar Ul Amaan* or other shelters to where, it is suggested, the Appellant could go for help.

The Determination of the First-tier Tribunal

4. The matter came before the First-tier Tribunal which also rejected the claim on the grounds that the Appellant's evidence could not be believed. The determination begins by addressing a report by Dr Lord, adduced to substantiate the Appellant's claims to have scars and damage to her teeth. In respect of the latter the Tribunal declines to place weight on Dr Lord's opinion in the absence of any evidence that she has any training in dentistry. As to the former the Tribunal notes Dr Lord's evidence that it is impossible to date the Appellant's scars. The Tribunal considers this to be "an important failing". Further Dr Lord is not in a position to say that the scars were not inflicted otherwise than as claimed but with the consent of the Appellant. The determination then turns to the evidence of the Appellant, rejecting her claim to have come from a strict Muslim family on the basis that she was educated, was allowed to work and save her own earnings, was permitted to travel on school excursions, and that she was permitted to receive dental

³ Decision served on the 19th February 2014, reasons for refusal letter dated 13th February 2014

treatment. Weighed in the balance against her was the fact that she was willing to tell a “substantial number of lies”: she lied to her parents about going to Islamabad, lied to the Entry Clearance Officer about the real reason she wanted to leave Pakistan, and lied to an Immigration Officer about the true purpose of her visit. She also lied to a friend, telling her that she was married. Having taken that evidence into account the Tribunal found that the Appellant had not discharged the burden of proof.

Error of Law Decision

5. The Appellant appealed to the Upper Tribunal on numerous grounds. At a hearing on the 18th September 2014 Mr McVeety, who appeared for the Respondent, accepted that the decision of the First-tier Tribunal did contain errors of law and that it had to be set aside. In a written decision dated 10th October 2014 I made the following findings:

The First-tier Tribunal erred in its approach to the medical evidence. As Mr McVeety rightly conceded, the fact that the scars cannot be dated cannot rationally be grounds for rejecting the opinion of Dr Lord. That is because it is generally very difficult to date scars that are older than 6-12 months old⁴. The suggestion that the scars might have been inflicted by proxy was not one that was made by the Respondent. That was not the Respondent’s case, and the matter was not put to the Appellant. The Upper Tribunal decision in KV (scarring - medical evidence) Sri Lanka [2014] UKUT 00230 (IAC) is not authority for the First-tier Tribunal to reject any physical evidence of injury on the basis that it might have been “self-inflicted by proxy”. This only becomes an issue if there is a presenting feature of the scarring that suggests, as more than a fanciful possibility, that it may have been deliberately inflicted at the behest of the claimant. If the Respondent, or the Tribunal, considered that to be the case the Appellant should have been alerted to that concern to enable Dr Lord to address it⁵.

I further find that there was no evidential basis for the finding that the Appellant’s father was not a strict Muslim because he allowed his daughter to be educated, to work and to have dental treatment. The idea that the Appellant’s limited degree of freedom was somehow incompatible with her claim that she was being forced in to marriage is over-simplistic and is not supported by the background evidence. There was a failure to assess all of the evidence in the round. The Appellant had given consistent evidence about her experiences in Pakistan and the Tribunal appears to attach no weight to that fact.

It was irrational to find that the Appellant had told “substantial lies” such that her overall credibility as a witness was undermined. Of the lies identified, only one, the failure to claim on entry, could reasonably be held against her. The remaining lies were told, on her case, to enable her to avoid or flee from persecution.

⁴ See for instance KV (scarring - medical evidence) Sri Lanka [2014] UKUT 00230 (IAC) at 229.

⁵ RR (challenging evidence) Sri Lanka [2010] UKUT 274 (IAC) at 3.

Finally there was a manifest error in failing to consider whether there was any risk to the Appellant – or her child – in being returned to Pakistan as an unmarried mother. Visa records show that she had declared herself single when she left Pakistan – there does not appear to be any challenge to that evidence. Nor is it in issue that she has had a baby since she came to the UK. At paragraph 43 the Tribunal find that it is in the best interests of this child to be with her mother, stating “that deals with any issues under s55 of the 2009 Act”. With respect, that does not.

The decision is set aside in its entirety.

The Re-Made Decision

6. At the resumed hearing I heard oral evidence from the Appellant. A full transcript of this evidence can be found in the Record of Proceedings. Both parties provided bundles of evidence and I heard helpful submissions from Ms Johnstone and Ms Mair. I reserved my decision.
7. The evidence falls into three parts:
 - i) The statements of the Appellant herself;
 - ii) Medical report and photographs;
 - iii) Country background including expert evidence.
8. In respect of the account given by the Appellant I am required to determine whether the evidence, taken in the round with (ii) and (iii) above, discharges the burden of proof to the lower standard of “reasonable likelihood”: is it reasonably likely that the account she has given is true? Whether or not the Appellant manages to discharge that burden, I must go on to consider whether she can show that she has a well-founded fear of persecution in Pakistan today. It may be, for instance, that she fails to demonstrate that she has suffered from any past persecution but the fact that she is now a mother to a young child, born apparently out of wedlock, may be sufficient to demonstrate current risk.

The Appellant’s Account

9. The Appellant is now aged 27. She is a Hindu speaker from a village near Abbotabad, but also speaks fluent Urdu and Punjabi. She describes her family circumstances as comfortable and middle-class. Her father was a civil servant. The Appellant is educated to Masters Level. She was awarded a Masters in Zoology in 2010 and was thereafter employed as a teacher at a private school.
10. The Appellant states that she comes from a family where she was expected to behave in accordance with the expectations of her family and society. She was permitted to be educated and to work, as long as she conformed to her father’s wishes and married one of her cousins. It was this expectation that, she claims, brought her into conflict with her father.

11. The Appellant states that her problems began in January 2012 when she quarrelled with her father after she told him that she would not marry the cousin chosen for her. This cousin's family were "rich and influential" so her father considered him a good match. They owned several fabric shops in various places in Pakistan. The Appellant did not want to marry this boy who was, in her view, involved in drugs and fighting⁶. She did not consider him to be of "good character". When she said no, her father and uncle beat her, including whipping her with the cable of an extension lead. During this assault she fell face front onto the floor and her teeth were broken. In the aftermath of this assault the Appellant told her mother that she agreed to the marriage, and that she would consent if she were allowed to continue working for a further year. This was agreed with her aunt (the boy's mother) and the marriage was arranged to take place in early 2013.
12. The Appellant did not go to the police. She did not think that they would help her, and she was conscious that her cousin had an uncle who was in the police. She knew this because it was well known in the family that her cousin had in the past been arrested for various offences (involving drugs) but his uncle had always managed to get him out.
13. Because her injuries were visible the Appellant had to take a few days off work. When she did return to work the headteacher asked her what had happened and she broke down and told him everything. He said that he would help her. They decided that she could apply for a visa to come to the UK and study, thereby getting away from her family. He introduced her to a friend of his who acted as a 'consultant'. This person helped the Appellant. He explained the whole process to her. The headteacher organised it for the Appellant to take her IELTS exam, to take a TB exam and to travel to Islamabad to apply for a passport and then the visa. The Appellant paid for all of this using her earnings and savings, plus she sold some gold jewellery that her parents had bought for her in March 2012 in preparation for her wedding.
14. The visa was approved on the October 2012. The Appellant states that she told her family that she was going on a trip with her school and on the 28th November 2012 the headteacher brought the Appellant to Islamabad where she boarded a flight to the UK.
15. After she arrived here the Appellant asked a friend to inform her mother that she was in the UK - she wanted her to know that she was safe.
16. Soon after her arrival the Appellant met a man at a bus-stop named AA whom she confided in about her experiences. They grew close and within weeks she started a relationship with him. He told her that he was British and that they would get married and live together - he was going to get a council flat. She fell pregnant by him. He left her when she was approximately 6 months pregnant. He stopped answering her calls and his

⁶ Witness statement 24th January 2014, para 14, page 4 Appellant's bundle

phone number went to “unobtainable”. She went to see his friend – they had always met at this man’s house – and he told her that he had not seen him.

17. The Appellant’s daughter was born in September 2013. His name is not on the birth certificate because the Appellant had nothing to give the registrar. The Appellant has told everyone – the other students she lived with, her midwife and her friend in Pakistan – that she was married to AA. She did this because she was embarrassed. She ran out of money. She had to leave college. She had to leave the accommodation she was living in. A stranger found her in the street crying with her baby and took her in. That lady was called NA and she has lived with her ever since. NA has provided a letter confirming this.
18. The Appellant claimed asylum on the 8th January 2014. Her fear is that her own family, or that of her cousin, will kill her or subject her to other serious “honour” based violence. She defied her family, rejected her cousin and now would be returning alone to Pakistan with a baby.

Past Persecution: My Findings

19. In her letter of 13th February 2014 the Respondent rejects the account as not credible. The principal reason for that finding is that the Respondent does not find it plausible that a woman from a “strict” or “controlling” family would be able to take a Masters, work or keep her job even after she refused marriage to her cousin. There is, as far as I can tell, absolutely no evidential foundation for the Respondent’s analysis. I do not find there to be anything implausible in the account. Plenty of Pakistani women (and indeed British women of Pakistani origin) are encouraged to get good qualifications and jobs whilst at the same time conforming to their families’ expectations about who they will marry. As the Appellant puts it in her witness statement:

“I spoke to my father about getting a job. He only allowed me to apply for a job as a teacher near the house with the understanding that once I married I would stop this job and be a housewife like my mother...while we were OK financially from my father’s good job, he told me that most of my income needs to be saved to pay for my future wedding expenses. Because a wedding in Pakistan is very expensive I think part of the reason why he agreed with me working was because I would save my salary and use it for my wedding expenses”⁷.

I find there to be nothing implausible in this explanation. As it stood at the date of decision the evidence was consistent and consonant with the country background material.

20. The other reason for refusal given in the Secretary of State’s letter was that the Appellant had failed to provide medical evidence to support her claims that she was brutally assaulted by her father and uncle. On appeal such evidence has been provided. The report of Dr Lord is dated 2nd April 2014. She examined the Appellant in a consultation the previous day. The

⁷ Witness statement dated 24th January 2014, paras 3-5 at page 2 Appellant’s bundle

Appellant told her that she had sustained scarring where her father and uncle had whipped her with the extension lead, and had dental treatment to repair the broken teeth. Dr Lord made the following observations:

- i) The Appellant's two upper incisors have been crowned. Dr Lord notes that there are two reasons for crowning teeth: decay and injury. Since the other teeth are healthy she deduces that the reason for crowning would be damage. These two teeth are likely to be injured in a fall such as that described by the Appellant;
- ii) The left forearm has a number of fine linear scars, on both the back and front. These are diagnostic of healed lacerations. The linear nature of the scar is highly consistent with them having been caused by an object such as an electrical cable – they do not have the appearance of scars caused by incision (ie a knife). They are in the position one would expect if the Appellant had been holding up her arm to protect her face and head;
- iii) There is a large pigmented area on the right shoulder blade. This is diagnostic of previous bruising, over a relatively large area. It could have been caused by repeated beating with a cable, as she describes.

Ms Johnstone takes the point made by Judge Edwards, that as far as we are aware Dr Lord has no specialist training in dentistry. This is true. All that her comments can reasonably be taken to establish is that the Appellant's front two incisors have indeed been crowned. Neither that fact, nor the report of Dr Lord, can go anywhere to establishing why that procedure was necessary. The evidence about the scarring is however helpful. The Appellant has a series of fine linear scars (I was provided with colour photographs) to her forearm, which Dr Lord finds to be "diagnostic of" healed lacerations which are "highly consistent"⁸ with being whipped with an object such as an electrical cable. They are defence wounds: they are in the position one would expect to see if the Appellant had raised her arm to protect herself. I have attached some weight to these scars, which taken in the round with her consistent evidence, support the Appellant's account of the assault by her family members.

21. In her detailed submissions Ms Johnstone made several other points, arising from the evidence that had emerged during the appeal. She queried how it was that the Appellant was able to make several trips to Islamabad in the company of her headteacher without her family finding out. The Appellant's

⁸ The report references the criteria set out in the Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Istanbul Protocol"). This establishes the following criteria: (a) Not consistent: the lesion could not have been caused by the trauma described (b) Consistent with: the lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes (c) Highly consistent: the lesion could have been caused by the trauma described and there are few other possible causes (d) Typical of: this is an appearance that is usually found with this type of trauma, but there are other possible causes (e) Diagnostic of: this appearance could not have been caused in any other way than that described.

explanation is a straightforward one. She would go to the school in the morning, and as far as her parents were concerned she remained there all day. The journey to Islamabad could take up to three hours if the traffic was bad, but that still left enough time for a round trip within the school day. The Appellant was also cross-examined about her relationship with this man. In her statement she described herself as being "like a daughter" to him and yet she now claims to have no further contact with him. It was put to her that her lack of concern about the consequences for him of having helped her was not consistent with him being a father-figure. The Appellant replied that she wanted to distance herself from him in case she caused him any problems. Her family could not know that he had helped her but she did not want to be any more trouble. That was why she had not asked him for a statement.

22. Ms Johnstone also asked the Appellant about the application for a passport and visa. The Respondent has produced the VAF records which show that when she made her application the Appellant gave her home address as the place that she could be contacted during the process. Ms Johnstone asked the Appellant why she had risked giving that address to where correspondence might be sent. The Appellant said that she had been told that they never actually send you anything to the address, they always contact you by mobile. Ms Johnstone questioned why the Appellant would risk putting her home address if she was so afraid - if the British High Commission had sent a letter to her at home there was a good chance someone in her family would have seen it. This was a fair point and I have attached some weight to it. I have not attached any weight to the same point made in respect of the Appellant's account with the Muslim Commercial Bank. She said that her father knew she had opened a bank account to save for the wedding so there was no risk arising from the statements being sent to the house. I did not find this to be inconsistent with the Appellant's evidence that she was saving money through the "Committee" since it is perfectly possible that she would be saving money through both.
23. The final point related to the timing of the alleged assault. The Appellant has consistently claimed that it took place in January 2012 but has been unable to give an exact date. I attach no weight to that failure, since I would not expect someone in a state of shock, as she would have been, to be able to recall that date with certainty. In her closing submissions Ms Johnstone asked how it was that the Appellant could have sustained such injuries and yet be posing for passport photographs within weeks, her Pakistani passport having been issued in March of that year. I have attached little weight to this submission. The photograph could have been taken well over a month after the alleged incident - it shows the Appellant with her mouth closed and does not show her arms or shoulder. It is therefore perfectly possible that she still had the injuries but these could not be seen.
24. Overall the Appellant's evidence about her experiences has been largely consistent, detailed and it is supported to some degree by the medical

evidence. The country background material indicates that girls in Pakistan – even middle class ones – are expected to conform to conservative socio-religious expectations and that some families do respond with violence if those expectations are not met. I have given careful consideration to the submissions made by Ms Johnstone, in particular the point about the address on the visa application, but I am satisfied that the Appellant has, in respect of the events in Pakistan, discharged the burden of proof to the lower standard.

Current Circumstances: My Findings

25. The final part of the Appellant's account concerns her relationship with AA, the man she met in the UK within weeks of her arrival, and her rescue by NA, the lady who found her crying in the street.
26. Whilst I have not found the alleged behaviour of the Appellant's family to be inherently incredible, I do find it remarkable that a Muslim girl coming from a strict and conservative upbringing in the NWFP would decide to have sex with a man very soon after she had met him at a bus-stop. It would go against absolutely everything that she had been brought up to believe in, notions of "honour" being deeply instilled in Pakistani girls from childhood. The Appellant's consistent evidence is that she did not want to marry her cousin because she considered him to be of "bad character", yet she claims that having arrived in the UK she immediately behaved in a manner contrary to all notions of what would be considered (in Pakistan) to be in "good" character herself. The Appellant's evidence about AA – unlike the rest of her account – is extremely vague. She has been unable to give any details about him other than his name. She cannot say where he lived or where he was from. She has produced no pictures of them together – unusual in an era where young people are incessantly taking photographs of themselves on their mobile phones. Nor is there a single text message, nor any evidence from the friend who allegedly allowed the affair to take place at his home. It is the Appellant's evidence that this man simply vanished without a trace. I agree with Ms Johnstone that if her "fiancé" had in fact disappeared the Appellant would have sought help, for instance by registering him as missing with the police.
27. Having weighed what scant evidence there is in the round I find that the Appellant has failed to demonstrate, to the lower standard, that her version of the events leading to the birth of her daughter are true. Given all of the background, in particular the importance that the Appellant herself has attached to "good" morality, I find it to be far more likely that AA is someone that she has in fact contracted a *nikah* with. I note that she has told her friend in Pakistan, the housemates she lived with in the student accommodation, her midwife, and the family that she now lives with, that she had a *nikah* with her baby's father.
28. The family that the Appellant currently lives with is said to consist of NA, her husband, her son, his wife and their young baby. The Respondent asks me to find it to be inherently unlikely that a stranger who found the

Appellant in the street would invite her to live with her, especially in an already full household. I agree, particularly in the context of Pakistani culture where it would be extremely unusual to invite a strange young woman to live in a house with at least two men to whom she was not related. NA herself has not come to court to support the Appellant's version of events. She has provided a handwritten letter in which she states that she invited the Appellant to live there on a "temporary basis": there does not appear to be any reason why the family's hospitality would then extend to encouraging the Appellant to turn down the NASS offer of accommodation. There was no need for them to take her in: NA would no doubt have been aware that a homeless woman with a young baby would have been provided for by social services. The most obvious inference that anyone familiar with Pakistani culture would draw is that NA is in fact the Appellant's mother-in-law and that she is living in her house as part of an extended 'joint family system'. I need not, however, make such a finding, since my task is confined to assessing whether the Appellant has discharged the burden of proof in respect of her current circumstances. For the reasons set out above I do not accept that she has had a child outside of wedlock, nor do I accept that NA is simply a stranger who has taken her in.

29. I have assessed all of the evidence in the round. I have found the Appellant's evidence about her experiences in Pakistan to be sufficiently consistent, detailed and in accordance with the background material to be reasonably likely to be true. I have weighed that in the balance when considering the remaining evidence. I have considered the fact that AA is not named on the child's birth certificate. I have also considered whether the Appellant's defiance of her family makes it more likely that she would have had this relationship. Having done so I am still not satisfied that the Appellant has shown this part of the account to be reasonably likely to be true. The evidence was vague and uncorroborated (where such corroboration would be relatively easy to obtain). Further the claim that the Appellant entered into a sexual relationship within weeks of meeting this man is entirely at odds with her portrayal of herself as a Muslim girl from a strict family who had the strength of moral character to reject marriage to someone whom she considered "bad".

Risk Assessment

30. I accept that the Appellant cannot safely return to her home area near Abbotabad. I have accepted that her family have already subjected her to persecution. They beat, whipped and threatened her because she was a woman. She defied them by leaving. Absent any change in circumstances I find it reasonably likely that the Appellant would be subject to similar serious harm should she try and return to her family. Her evidence is that both her father and uncle are still alive. I am satisfied that her return to that area would quickly come to her family's attention and she would be at risk of harm. I am satisfied that there would not be sufficient state protection to be able to protect her from that risk.

31. The question is then one of internal flight. The Appellant's case is that it would be unduly harsh to expect her to go to live in Pakistan as a lone woman with a young child. If I accepted that the Appellant is in fact a lone woman with a young child she may well be able to establish that for her, internal flight would be unduly harsh: indeed that much appears to be accepted by the Respondent in her current Operational Guidance Note. The Appellant has not however discharged that burden. For the reasons set out above I expressly reject her claim to have fallen pregnant with her daughter without having first contracted a *nikah* with the father. I cannot therefore be satisfied that she would be returned to Pakistan as an unmarried mother, or that internal flight would be unreasonable as a result.
32. Since I have found the burden not to be discharged in respect of this part of the Appellant's claim, I am unable to make any positive findings about the best interests of the Appellant's daughter, beyond stating that they lie with remaining with her mother.

Decisions

33. The determination of the First-tier Tribunal contains errors of law and it is set aside.
34. I re-make the decision in the appeal by dismissing it on all grounds.
35. I make a direction for anonymity having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders. I do so in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the Appellant nor any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”.

Deputy Upper Tribunal Judge Bruce
30th March 2015