



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/09070/2014

THE IMMIGRATION ACTS

**Heard at: Field House
On: 25th May 2015**

**Determination Promulgated
On: 28th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

**KK
(anonymity direction made)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Price, Counsel instructed by Addison Khan
Solicitors

For the Respondent: Mr Kandola, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of India who is now aged 31. She appeals with permission¹ the decision of First-tier Tribunal (Judge Herbert) to dismiss her appeal against the decision to refuse to vary her leave and to remove her from the United Kingdom pursuant to s47 of the Immigration Asylum and Nationality Act 2006². That decision had followed rejection of her claim to international protection.

¹ Permission was granted by First-tier Tribunal Judge Lambert on the 11th February 2015

² Decision dated 17th October 2014

Background and Basis of Claim

2. The basis of the Appellant's asylum claim was that she had a well-founded fear of persecution in India for reasons of her membership of a particular social group. She stated that she had been in violent and unhappy marriage to a man who lived in Amritsar. Under his instruction she had successfully applied for a Tier 4 (General) Student Migrant visa and he had been granted entry clearance as her dependent. Once they had reached the UK he had effectively abandoned her. She had entered into a relationship with another man, and together they had had two children. Her husband was become aware that he was not the father of the children and had subjected her to domestic abuse. He told her family who have disowned her. She fears that if returned to India she will face a real risk of serious harm either from her (now ex-) husband, or her own family who perceive that she has disgraced them.
3. This had all been rejected on credibility grounds by the Respondent, but the First-tier Tribunal had accepted that the core of the Appellant's account was true and that she had been ostracised by her ex-husband's family, and possibly her own, because she had entered into an adulterous relationship with a Sikh man of a different caste. That said, the Tribunal was not satisfied that the Appellant qualified for international protection: it could not even be said with certainty that her husband was in India today (he may well still be in the UK); he had made no further attempt to contact her since March 2014 and even if he is still interested in pursuing her she could relocate within "the very significant Sikh community which exists in most cities in India". The appeal was therefore dismissed.
4. The grounds of appeal begin by alleging that the Judge appeared to have made up his mind about the decision before the hearing had begun. There is no justification for such an allegation and Ms Price was quite right not to pursue it. She was also right to apologise for the inordinate length of the grounds, which were almost as long as the determination itself. The challenge can be reduced to the following points:
 - i) The First-tier Tribunal failed to take objective background material into account which indicated that there is a failure of protection for women who are victims of domestic violence in India;
 - ii) The options for internal flight for a woman with two young children are "very limited" and it would be unduly harsh for a woman with two young children to relocate when it is clear she has committed adultery;
 - iii) In considering internal flight no consideration was given to the best interests of the children in accordance with s55 of the Borders, Citizenship and Immigration Act 2009;
 - iv) The fact that the Appellant's ex-husband did not continue to look for her in the UK was not relevant to whether he continued to present a danger to her in India;
 - v) The suggestion that the Appellant and her partner could change their

names was not open to the Tribunal as a way of meeting their protection needs.

5. For the Respondent Mr Kandola pointed out that this case wasn't about the sufficiency of protection available to single mothers, since it had not been found that the Appellant was actually at risk outside of Amritsar. Nor was she a single mother, since she would be removed with the father of her two children. There was nothing preventing the Appellant from marrying her partner and there would be no way for people they met to know that they were not/had not been married when the children had been born. It was not a question that they were likely to be confronted with since they would present to the outside world as a husband, wife and children.

No Error of Law

6. The principle submission made by Ms Price was that the First-tier Tribunal had erred in its risk assessment. She submitted that the Appellant's husband was a "wounded" party who would not simply forget that his wife had committed adultery and left him. He might not have looked for her in the UK but that was because there is a sufficiency of protection here; it would be different in India. In short, the Tribunal should have found there to be a risk of persecution wherever she went in India. With respect, there was not the evidential foundation for the First-tier Tribunal to have made such a finding. There was certainly no evidence that the aggrieved husband would "easily find" the Appellant if he wanted to hunt her down (paragraph 16 of the grounds). The Respondent's case was that internal flight was a safe option in a population of approaching one billion. This was something the Tribunal took on board, albeit in more modest terminology, at 74. There was no error in the finding that the Appellant and her partner could relocate to another city, and this finding was not simply based on a suggestion that they change their names. It was based on the finding that she and her partner are both educated, have the advantage in the Indian job market of having UK based experience, and crucially, that they had each other. This was the basis of the Tribunal's conclusions at 84: "I am certain that they would be able to make provisions for themselves and their two children".
7. If there was no evidential basis for finding that this normal family - i.e. a family without any particular "reach" - could find the Appellant outside of Amritsar then there was no need for the Tribunal to consider the country background material about how the police would respond if she went and made a complain about domestic violence.
8. The grounds of appeal are unfortunate in that it is possible to read them without understanding that the Respondent proposes to remove this family together. Paragraphs 3 through to 11 suggest that the Appellant and her children are facing internal flight alone. This is unhelpful and arguably misleading. Those are not the facts of the appeal, and not the facts upon which the First-tier Tribunal reached its sustainable decision on internal flight. The finding made was based on the evidence before it,

and supported by sound reasoning.

Decisions

9. The determination contains no error of law and it is upheld.
10. 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 make the following direction:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his 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

25th May 2015