Upper Tribunal
Immigration and Asylum Chamber **Appeal Number: AA/10734/2014**

AA/10748/2014

THE IMMIGRATION ACTS

Heard at: Field House	**Decision & Reasons Promulgated**
On: 5 August 2015	**On: 14 August 2015**

Before

Upper Tribunal Judge Pitt
Upper Tribunal Judge Markus QC

Between

Secretary of State for the Home Department

Appellant

and

SAK
FAK
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Savage, Senior Home Office Presenting Officer
For the Respondent: Mr Collins, instructed by S-K Solicitors

DECISION AND REASONS

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration

Tribunal (Procedure) Rules 2005. Neither party invited us to rescind the order and we continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

2. In this decision we refer to the Secretary of State as the respondent and to SAK and FAK as the appellants, reflecting their positions before the First-tier Tribunal.

3. SAK is the mother of FAK, a minor aged 15 years' old. FAK's claim is entirely dependent on that of SAK and it is expedient to refer only to her as the appellant for the purposes of this decision.

4. This is an appeal by the respondent against the decision promulgated on 27 May 2015 of First-tier Tribunal Judge K Chamberlain which allowed the appellants' asylum and Article 3 ECHR appeals.

5. The background to this case is that the appellant was subjected to serious physical and psychological domestic abuse by her husband over many years. The appellant came to the UK in 2014 with FAK to visit two of her adult children. The appellant claimed that prior to leaving Pakistan her husband threatened to kill her and that after coming to the UK he issued a false FIR against her, accusing her of theft.

6. The appellant then claimed asylum maintaining that she feared that on return her husband would kill her, that she would be arrested as he had issued the FIR against her and that the abuse would continue, possibly worse as it would be unmediated by her adult children who had all left home.

7. Before Judge Chamberlain, as set out at [10] of her decision, the respondent accepted that the appellant had been subjected to the level of domestic violence set out in her claim but did not accept the claim of threats to kill or that he had issued an FIR. The respondent's position, summarised at [11]-[13] of the decision, was also that the appellant could obtain sufficient protection and could relocate to avoid further harm on return.

8. Judge Chamberlain found at [29] that the appellant had been subjected to domestic abuse in line with the respondent's concession and also at [30] that FAK has been physically abused by his father. At [20]-[27] she found that it had not been shown that an FIR had been issued. At [29] she declined to make a finding on threats to kill where the domestic abuse was accepted by the respondent, that being sufficient to make the appellant a member of a particular social group. The judge went on to find at [31]-[37]that the appellant would not be able

to obtain sufficient protection or relocate internally, leading to a finding that she was a refugee.

9. The first ground of appeal, set out in paragraph 2, maintained that the First-tier Tribunal erred in finding that there was a risk on return at all, stating:

> "Past persecution does not automatically result in a well founded fear of persecution on return. This was very much challenged in the refusal letter, where it was not accepted that the first appellant's husband maintained an adverse interest in her."

10. With respect to the drafter of the grounds, we were not able to find any part of the refusal letter (RFL) challenging continuing adverse interest from the husband, albeit the threats to kill and FIR were not accepted. On the contrary, at paragraph 21 of the RFL the respondent's position was that "you would be able to return to Pakistan and *live elsewhere* (our emphasis)". On our reading, the respondent's refusal letter is predicated on the acceptance that if she returned to her husband, the appellant would experience abuse similar to that she suffered in the past. The reason the claim could not succeed was not because of insufficient risk from him but because the appellant could obtain sufficient protection (paragraphs 22-30 RFL) or relocate internally (paragraphs 31-38 RFL).

11. If more is needed to reject this part of the respondent's challenge, we noted that Judge Chamberlain was clearly aware that future risk was an essential part of her assessment. At [5a] she sets out the need for a current, real risk on return for an asylum claim to be made out. At [7] she again refers to the appellant having to establish, to the lower standard, "a future risk". The undisputed evidence before her of past abuse was clearly sufficient to support a finding of future risk of similar treatment if the appellant returned to her husband.

12. The respondent puts the same argument in a slightly different way at paragraph 3 of the grounds, maintaining that the adverse finding on the existence of an FIR undermined the claim of an ongoing risk from the husband. As above, that was not the respondent's position before the First-tier Tribunal. Ms Savage sought to extend this submission before us, maintaining that the First-tier Tribunal also erred in failing to make to make a finding on the claim of threats to kill, that being material to future risk. That argument must fail for the same reasons, that there remained an undisputed risk to the appellant from her husband such that she could not be expected to return to him and an assessment of sufficiency of protection and internal relocation made.

13. At paragraph 4 of the grounds the respondent put forward a third challenge, maintaining that the First-tier Tribunal judge should have assessed whether the appellant could relocate to an area a long way from her husband.

14. The difficulty with that challenge is that on the facts as found there was nothing before the First-tier Tribunal that could have allowed it to find that the appellant could relocate. Judge Chamberlain made sustainable (and unchallenged) findings at [33-[35] that living in a women's shelter was not an option for this appellant . Those findings are not challenged now. The judge also found at [32] that the appellant could not go to live with her daughter as her husband would be able to locate her there. That finding is also not challenged and appears to us, in any event, to be uncontentious.

15. The only other option put forward by the respondent is at the RFL at paragraph 37, that the appellant could start her "life at a new place". However, the country evidence put forward by the respondent in the RFL at paragraph 35, citing from the Country of Origin Information Report, indicates that:

> "Women are not recognized as an individual member of the community, they are members of their male dominated family… What do widows, divorced or spinsters do? They live with their parents or in-laws family. Older women with grown up children normally depend on their sons or daughters. There are always exceptions to their situations in the rural context but generally it is not socially safe and acceptable for [single] women to live in the rural context".

16. We were not taken to anything that suggested that the situation was materially different in an urban environment such that it could be said that it was open to the First-tier Tribunal to find that there was an internal relocation option for the appellant in Pakistan as the single mother of a minor child

17. For completeness sake we should also indicate that, albeit sufficiency of protection was addressed in the RFL, it was not suggested that the appellant could gain any meaningful redress from the authorities in the form of her husband being detained or injuncted from harming her. That was why the respondent accepted that she would have to relocate in order to avoid him. Albeit the submission for the respondent at paragraph 26 of the RFL was that Pakistan has a functioning security system with domestic violence legislation that "*would* come into force (our emphasis)", the only practical aspect of this which was relied upon was for the appellant to go to a shelter. That is why it had to be shown that an internal flight option was available to her, the Judge here finding that there was not.

18. For these reasons, we did not find that the decision of the First-tier Tribunal disclosed an error on a point of law.

DECISION

19. The decision of the First-tier Tribunal does not contain an error on a point of law and shall stand.

Signed:

Upper Tribunal Judge Pitt Date: 6 August 2015