Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number IA/36084/2013
and IA/36113/2013

THE IMMIGRATION ACTS

Heard at Centre City Tower, Birmingham
On 2nd November 2015

Decision & Reasons Promulgated
On 2nd December 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

A V
R V
(ANONYMITY DIRECTION MADE)

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Hayward (Counsel, instructed by Coram Children's Legal Centre)
For the Respondent: Mr D Mills (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellants are mother and son and are nationals of India. They came to the UK as visitors in 2009 with the First Appellant's husband who is the father of the Second Appellant. The family did not leave the UK but overstayed. In May 2013 the husband

was arrested attempting to remove the Second Appellant from the UK, he was later sentenced to 14 months imprisonment and subsequently he was deported to India. He is referred to in this decision as the Defendant.

2. The Appellants applied for leave to remain in the UK on asylum and human rights grounds. The Appellants' case was and is that they cannot return to India because of the danger posed to them by the Defendant and members of his family who have threatened them and who will target them in India. It is maintained that internal relocation within India is not reasonably available.

3. The appeals were first heard by First-tier Tribunal Judge Grant at Hatton Cross on the 11th of December 2013. The appeals were dismissed for the reasons given in a determination promulgated on the 17th of December 2013. In the determination the Judge had regard to the Appellants' immigration history, the support that they were receiving in the UK and found that they be expected to relocate within India and that the best interests of the Second Appellant were to remain with the First Appellant and to return to India with her.

4. The Appellants appealed to the Upper Tribunal on the basis that the decision of the First-tier Tribunal had made no reference to an expert's report relied on by them in support of their case. Permission having been granted to the Upper Tribunal the issue of whether the determination contained an error of law was heard by me on the 2nd of July 2014.

5. At that hearing I found that the decision did contain an error of law, with reasons to be given in the final decision, and that it was to be relisted for a hearing on the issues of the Appellants' return to India, articles 2 and 3 and the contents of the expert's report. It is not clear why the case then took over a year to re-appear for the final hearing and I take into account the effect of that delay on the Appellants and the uncertainty that they have had to contend with.

6. The error of law concerned the consideration that the Judge had given to the expert report of Dr Gill. This was relied on heavily by the Appellants to show that they could not safely return to India or be expected to relocate in the absence of male protection. The decision of the First-tier Tribunal made no reference to the report and so contained no assessment of the evidence presented and the conclusions set out. Given that the report went to the principal issues of the case I found that in the absence of an assessment of that evidence and with there being no discussion of how it related to the other evidence relied on by the Appellants the determination could not stand. The intention was to remake the decision in the Upper Tribunal.

7. Matters have moved on since the decision of the First-tier Tribunal. The Defendant was deported to India as noted above. Thee Appellants now point to their being in fear of his family and now him with the added grievance that he has been imprisoned, ejected from the UK and prohibited from returning. The facts were anticipated by Judge Grant in paragraph 17 of the determination, which remain

unchallenged, where she found that the Defendant would pose a real risk to the Appellants in her home areas in India.

8. The decision in paragraph 17 was predicated on the basis that the Appellants would return to India before the Defendant and that while they could not be expected to remain with family members in either Gujerat or Hyderabad permanently they could return in the short-term and use family support to relocate within India. Police protection would not be available in those areas. As these findings remain undisturbed the issue is that of internal relocation.

9. At the resumed Upper Tribunal hearing the First Appellant gave evidence. This is set out in the Record of Proceedings and I summarise it here. Her surname is Shia Muslim and she still practices her religion. Her mother lives with the Appellant's 11 year old half brother in Hyderabad supported by the First Appellant's brother who is a student and works part-time. Her mother has sisters in Gujerat and Hyderabad and they are not her family. The family could not support her as they are struggling and now that she is single they would not take responsibility for her.

10. In cross-examination she said that her mother and step-father separated about 8 years ago, she did not know if he supported them and had not asked. Her brother in the UK lives in west London, she did not know what he is studying and had not spoken to him for 6 months, his finances were limited and he would not be able to help. The First Appellant left school at 18 with no formal qualifications. In the UK she had worked for people locally and had done henna designing. Her mother had bumped into the Defendant about 6 months ago. She is closer to her mother now that she and the First Appellant's step-father had separated. Any work available in India would be low paid, about £2 a month and she would not be able to pay for things.

11. Evidence was also given by Ms Pragna Patel of the Southall Black Sisters dated the 6th of November 2014. The report is in the Coram Children's Legal Centre bundle of December 2014. Her evidence was that she born in Africa but is of Gujerati origin, has family there and has visited India, most recently in July 2015. In the course of her evidence she referred to the Islamic custom of a father receiving custody of a son and being entitled to ownership when the child reaches the age of 7 and that male preference is endemic. The view of women as inferior is embedded in society.

12. Ms Patel also gave evidence on the prevalence of domestic violence and the shame that divorce brings on a family as well as the danger of being returned to husband despite the pleas of women to the opposite. There is the added complication from the Appellant's religion, the nature of that community and the increased danger of violence from state agents. Women's shelters were at best for short term respite and these tended towards rehabilitating the woman back to the matrimonial or family home.

13. The improvement economically in India had not been translated into an improved position for women who were still used as tools and dowry violence is on the increase. It would be wrong to assume that the Appellant's brother would provide

for her, he would be expected to provide for their mother but there would be no expectation of support for her.

14. In summary Ms Patel's evidence was that the Appellant would not be able to relocate within India. She lacked the education or financial resources to do so and did not have the male support that would be required. In addition her husband would be entitled to custody of the Third Appellant and would be supported in that both socially and legally. (That would be in addition to the findings of Judge Grant, set out above and unchallenged).

15. The Home Office rely on the Country Information and Guidance report for India relating to women fearing gender-based harm/violence. In the section on Police and judicial attitudes and responses to violence against women it was noted that the effectiveness of law enforcement varied widely. Victims were often discouraged from reporting to the police through a fear of reprisals and the ability to pursue complaints was often not available to women. The report also refers to the deeply entrenched patriarchal attitudes of those involved in enforcement which further contributes to the lack of reporting and withdrawal of complaints.

16. The section on Single women contains reports that single women are rejected by society and treated with indifference by the federal government. A UN report of June 2013 reported that certain categories of women are extremely vulnerable to poverty and that includes women who have been abandoned or are homeless.

17. With regard to the assistance available that section of the report sets out the limitations on the options available and the nature of shelters. Whilst there are initiatives for women the other sections of the report suggest that the effect they have even on the rare occasions they are available is limited, sporadic and unpredictable.

18. I start with the evidence of the First Appellant that was accepted in the first hearing that the Defendant, now back in India, would remain a source of danger to her in India. It was also found and is accepted that the First Appellant would, once the Defendant was back in India, be unable to remain in her home areas of Gujerat or Hyderabad.

19. The evidence that is set out above shows that the Appellant has no effective male support or protection in India and I accept the evidence. Whilst it is possible that her brother did not provide support deliberately to enhance the Appellants' case I note that a lack of support from that quarter would be consistent with the cultural norms that apply and there is nothing in the history of the case to suggest that the family do not operate within those norms. The evidence shows that the First Appellant would not enjoy male protection elsewhere in India or that we would have access to financial support or that the very limited mechanisms of support would be available or of use to her.

20. Added to the finding of the Defendant in the Appellants is the evidence that within the Muslim faith he would expect to receive custody of the Second Appellant and

would enjoy considerable support legally and from state institutions in enforcing that expectation.

21. The burden is on the Appellants to show that they would be in danger in India and that return there would place the UK in breach of its obligations under the ECHR. As that is a protection issue the lower standard of proof, i.e. the real risk test, applies. In addition the best interests of the Second Appellant have to be assessed as a primary consideration under the 2009 Act which may override the public interest in the maintenance of immigration control.

22. The combination of the findings previously made, the lack of financial support and male protection and the absence of effective state assistance and protection lead me to find that if the Appellants were to be returned to India there is a real risk that they would suffer treatment contrary to articles 2 and 3 of the ECHR. The risk is that the First Appellant would be targeted violently and for the Second Appellant the risk is that he may be targeted violently and/or would again be abducted by the Defendant.

23. On that latter point I am satisfied that the previous actions of the Defendant in trying to abduct the Second Appellant show clearly that he does not act in the best interests of the Second Appellant. There is no evidence suggesting that his best interests would be adequately served by his being with his father in India rather than with his mother and I am satisfied that that is not the case.

24. With the danger to the Appellants of violence and abduction, the absence of support and effective state protection and the inability to relocate safely within India I find that the Appellants have shown that their removal would place the UK in breach of its obligations under the ECHR. The dangers there are such that it is in the best interests of the Second Appellant to remain in the UK with his mother rather than to be exposed to the problems that would face them in India.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision.

I re-make the decision in the appeal allowing the appeal of the Appellants.

Anonymity

The First-tier Tribunal made make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Fee Award

In the light of the decision to re-make the decision in the appeal by allowing it, I have considered whether to make a fee award (rule 23A (costs) o f 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 a whole fee award.

Reasons: Appeal allowed

Signed:
Deputy Judge of the Upper Tribunal (IAC)

Dated: 25th November 2015