Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA051122015

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke
On 23rd May 2016

Decision & Reasons Promulgated
On 9th June 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

MJ
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Selwood, of Counsel instructed by Malik & Malik Solicitors
For the Respondent: Ms C Johnstone, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Before the Upper Tribunal the Secretary of State becomes the appellant. However, for the avoidance of confusion and to be consistent I shall continue to refer to the parties as they were before the First-tier Tribunal.

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Background

2. On 31st July 2015 Judge of the First-tier Tribunal Fisher gave permission to the respondent to appeal against the decision of Judge of the First-tier Tribunal D Wilson in which he allowed the appeal on asylum and human rights grounds against the decision of the respondent to refuse international and human rights protection to the appellant, a female citizen of Afghanistan born on 1st July 1984.

3. Judge Fisher noted that the grounds of application contended that the judge had erred in law by concluding that the appellant would return to Afghanistan as a lone woman when she and her husband could relocate or she could join him in the Sudan, where he worked. Judge Fisher considered it arguable that the judge had failed to deal or deal adequately with the options which the respondent contended were available to the appellant.

The Hearing and Submissions

4. Ms Johnstone confirmed that the respondent relied upon the grounds which were summarised in the grant of permission. She referred, specifically, to paragraphs 39, 40 and 41 of the decision in which the judge referred to the cross-examination of the appellant about the alternatives available to her to either live with her husband in Darfur or return with him to Afghanistan where he could obtain employment. She thought the judge had failed to deal with these matters pointing to what she submitted was the inadequacy of the conclusions in paragraph 80 where the judge concluded that the appellant would, for all material purposes, be a lone woman if returned to Afghanistan. She reminded me that there was no evidence to show that the husband had claimed asylum even if his employer, the United Nations, had stated that it would be unsafe for him to return to Afghanistan.

5. Mr Selwood confirmed that the appellant relied upon the Rule 24 response. In this it is argued that the judge carefully assessed all of the evidence before him giving reasons for accepting her claims. It was concluded (paragraphs 67 and 68) that the appellant would be at real risk of serious harm on return to Afghanistan because of death threats to her and her children on account of her husband's employment by the UN. This was a finding made on the basis of past persecution as opposed to whether or not she would also suffer harm as a lone woman. These conclusions were adequately assessed and supported by the husband's employer confirming that he would not be returned to Afghanistan to work.

6. As to the possibility of relocation to Sudan, the response emphasises that the appellant is not a national of Sudan and so the suggestion is of no relevance when determining whether or not she is a refugee from Afghanistan. Reference is made to Article 1A(2) of the 1951 Refugee Convention which specifies that there must be a well-founded fear of persecution for a Convention reason in the country of the applicant's nationality or former habitual residence.

7. In further submissions Mr Selwood emphasised that the judge had considered the appellant's entire claim finding that the appellant would be at risk wherever she went based upon the problems she had suffered in Afghanistan. Her husband had been moved by his employer because of the risk to him in Afghanistan. He asked me to consider that the lone woman point was something of a "red herring" as the appellant

had already been assessed as being at real risk of persecution on return because of past events involving threats which had continued even after her husband had left the country.

Conclusions

8. After considering the matter for a few moments I announced that I was satisfied that the decision did not show a material error on a point of law and should stand. My reasons for that conclusion now follow.

9. Mr Selwood is right to point out, both in his response and orally, that, before considering the loan woman point, the judge had already found that the appellant would be at risk on return to Afghanistan because of the past threats which she and her children had received because of her husband's continuing employment by the UN. The possibility of relocation was also given adequate consideration, particularly in paragraph 67, where the judge relies upon the country guidance decision in *PM and Others (Kabul – Hizb-i-Islami) Afghanistan CG* [2007] UKAIT 00089 to support the conclusion, open to him, that the appellant's past history and circumstances would become known at some point on return putting her at risk, in effect, wherever she went in Afghanistan. For completeness, the judge also reaches proper conclusions about the inadequacy of protection available in relation to his conclusion that the appellant would be at risk on return (paragraph 69).

10. It is therefore evident that the judge's conclusion that the appellant would, for all material purposes, be a lone woman returning to Afghanistan and so would be at risk on that account is a peripheral finding which, at most, serves to support the earlier sound and cogently reasoned conclusion of a real risk of persecution. I hasten to add that the judge's findings in respect of the appellant's status on return are not without good reason, in any event. That is because the judge points out that the appellant's husband's employer, The UN, had assessed that it would be too risky for him to be returned to Afghanistan to work. Although the respondent believes that the appellant should have been able to relocate to Sudan where her husband now works, that is not a relocation alternative bearing in mind that the appellant is not a national of that country and so could not claim the protection of it for the purpose of the definition of a refugee in Article 1A(2) of the 1951 Convention.

11. Thus, the respondent's contention that the judge was wrong to conclude that the appellant would be a lone woman on return to Afghanistan is an irrelevant point when the judge had already found that the appellant was a refugee on the basis of past persecution and would be at real risk of suffering serious harm if returned whether with her husband or not. The possibility of the appellant living with her husband in Sudan is not a relocation alternative which the judge was obliged to consider even if cogent reasons were given by the judge for that not being possible.

Decision

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

Anonymity

The First-tier Tribunal made an anonymity direction which I continue having regard to the child interests in this appeal:

DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed Date 9th June 2016

Deputy Upper Tribunal Judge Garratt