Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/07508/2014
AA/07505/2014
AA/07502/2014

THE IMMIGRATION ACTS

Heard at North Shields
On 25 February 2016
Prepared on 1 March 2016

Decision & Reason Promulgated
On 28th April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

A. B.
M. B.
A. A.
(ANONYMITY DIRECTION)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Selway, Brar & Co Solicitors
For the Respondent: Mr Mangion, Home Office Presenting Officer

DECISION AND REASONS

1. The First Appellant [A1] entered the United Kingdom using her own Pakistani passport, and with the benefit of entry clearance as a Tier 4 student on 4 April 2011. Her leave expired on 28 February 2013.

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2. On 24 December 2011 A1 gave birth to her son, A2.

3. On 29 December 2011 A1 claimed asylum, with A2 as her dependent. The Respondent refused that claim, cancelled her leave so that she had none, and made a decision to remove her to Pakistan by reference to s47.

4. The Appellant appealed to the Tribunal against these immigration decisions. Although her appeal was heard and allowed on 15 June 2012 by decision of Judge Manchester, that decision was then set aside by the Upper Tribunal. The appeals were remitted to the First Tier Tribunal for re-hearing, with no findings of fact preserved.

5. On 11 January 2013 A1 gave birth to her daughter, A3.

6. Upon rehearing A1s appeal was dismissed on all grounds by decision of Judge Duff promulgated on 28 October 2013. Permission to appeal that decision was refused by Designated Judge Baird on 26 November 2013, and A1s appeal rights were duly exhausted.

7. As an overstayer the A1 applied on 14 July 2014 for a grant of ILR alleging that she was the victim of domestic violence. The application was refused on 12 September 2014, when a further removal decision was made, this time by reference to s10. All of the Appellants lodged a notice of appeal, and these were all accepted as valid appeals, although each was then dismissed by way of an individual decision of Judge Lea, all of which were promulgated on 25 November 2014.

8. The Appellants' handwritten application to the First Tier Tribunal for permission to appeal, was refused by Judge PJG White on 5 January 2015. The Appellants duly renewed their application to the Upper Tribunal on the same grounds. Permission was granted by Judge McWilliam on 5 May 2015, without sight of the decision of Judge Duff, on all of the grounds raised, noting that A1 was unrepresented and had been unrepresented at the hearing before Judge Lea. The basis for the grant was that it could be that the circumstances of A1 ought to have been considered by Judge Lea as a lone single woman with young children to support, and that they may not have been.

9. The Respondent filed no Rule 24 Notice.

10. Thus the matter comes before me.

<u>Grounds of appeal</u>

11. Mr Selway accepted that handwritten grounds of appeal should be read as raising four grounds of complaint. He declined to pursue either the complaint that A1 had been bullied by the HOPO and/or Judge Lea, or, the complaint that the hearing proceeded without A1 having legal representation, or, the complaint that Judge Lea gave no consideration to A1s medical records.

12. Mr Selway was plainly correct to take that course. There was no evidence produced to substantiate the claim that A1 had been bullied to any degree, in any respect, at any stage during the process. Nor was there any evidence to suggest that the Appellants had not been afforded a fair hearing in any respect. Nor did the decision itself offer any support for such complaints. The key adverse findings of fact had been made by Judge Duff, following a hearing at which A1 had been represented by experienced Counsel, who could be expected both to protect her interests and to present her case to its best advantage.

13. Moreover A1 had told Judge Lea that she was content for the hearing to proceed without representation, and Mr Selway accepted that she was in that position because none of the solicitors she had approached had been prepared to extend their services to her. This was not a case of an individual being abandoned by their lawyer shortly before a hearing, and she had been given ample time to find representation, which she was unable to secure because none of those she had approached had assessed the appeals as having arguable merit.

14. Finally Judge Lea had recorded in her decision [27] that she had considered A1s medical records. She had relied upon their content to make a finding of fact in A1s favour to the effect that she had been the victim of domestic violence. She had also considered their content when assessing the finding of fact made by Judge Duff in relation to the date of conception of A2.

15. Although the grounds of appeal before the First Tier Tribunal had relied upon both a claim to asylum, and humanitarian protection, Mr Selway accepted that neither of those grounds were viable on the evidence. Mr Selway also accepted on reflection that none of the findings of fact made by Judge Manchester had been preserved when his decision had been set aside by the Upper Tribunal. Thus Judge Lea had made no error in failing to take as her starting point any of the findings of fact made by Judge Manchester, as he had initially sought to argue. She had instead correctly taken the findings of fact made by Judge Duff as her starting point, and she had properly applied the principles set out in Devaseelan [2002] UKIAT 702.

16. Equally, it was accepted by Mr Selway in the light of A1s own evidence to the Tribunal that the removal of the Appellants together would not engage their Article 8 rights. A1 did not claim that Mr H, the father of her children, had any ongoing contact or relationship with any of the Appellants. As infants the best interests of her children lay in remaining with her, and all of the Appellants would be removed together as a family unit. She did not claim to Judge Lea to have formed a new relationship, and neither did the evidence establish that any of the Appellants had established a private life in the UK of sufficient strength to render their removals disproportionate.

17. Thus the only complaint advanced before me was that Judge Lea had failed to consider adequately what the position of the Appellants would be in the event of their return to Pakistan, and in doing so had failed to give adequate consideration to their Article 3 appeals. Mr Selway argued that once Judge Lea had accepted that A1 had suffered domestic violence at the hands of Mr H, she ought to have gone on to evaluate the risk the Appellants faced in Pakistan either from the members of her own family, or, from Mr H and the members of Mr H's family.

Error of Law?

18. Ultimately Mr Selway accepted however that A1 had never claimed in her evidence to Judge Lea to face any risk of harm from any member of Mr H's family. One might have thought that this would be sufficient to dispose of that limb of the complaint, but Mr Selway argued that as an unrepresented litigant she would not have known the relevant caselaw, and thus would not have known of the need to do so. There is in my judgement simply no merit in this approach. A1 was an educated woman. She would know perfectly well who she feared as a source of harm in the event of return to Pakistan, and she was given every opportunity by both the Respondent in the course of the initial investigation of her asylum claim, and in the course of her appeal hearing, to identify those who she claimed to fear. Her failure to ever identify in her evidence any member of the extended family of Mr H as a source of fear of harm speaks for itself.

19. It is plain that Judge Lea was concerned by A1s failure to report any incident of domestic violence at the hands of Mr H during the course of her evidence to Judge Duff, even though her case before Judge Lea was that such violence had commenced prior to the hearing before Judge Duff, and she had told her solicitor about it [17 & 27]. A1s case before Judge Lea was that her relationship with Mr H had broken down in August 2013, and that she had not had any contact with him since he had finally left the matrimonial home on 21 January 2014 [ApB p66-8]. She claimed to believe he was currently detained somewhere in the UK [16-17]. A Prohibited Steps Order had been made against Mr H on 4 February 2014, and served upon Mr H, and then subsequently been continued by the Family Court [ApB p48].

20. Mr Selway accepted that since the promulgation of Judge Lea's decision the Upper Tribunal had provided guidance upon the position of single women returning to Pakistan in SM (lone women – ostracism) Pakistan CG [2016] UKUT 67, and, that the position of the Appellants should now be considered in the light of that guidance. Nevertheless he argued that the decision of Judge Lea was unsafe, and that the appeals should be remitted to the First Tier Tribunal for rehearing with no findings of fact preserved.

21. In response Mr Mangion argued that the complaints advanced ignored the adverse findings of fact that had been made by Judge Duff. Judge

Lea had adopted them, and then taken them as the basis for her own assessment of both the risk the Appellants faced upon return, and the proportionality of the decision to remove them.

22. Had the decision of Judge Duff, and the decision to refuse permission to appeal it, been available to Judge McWilliam then I am satisfied that she would not have granted permission to appeal in the terms in which she did. The decision of Judge Duff contains a series of adverse findings of fact that were made in relation to the evidence of A1. The attempt by A1 to appeal that decision was rejected on the basis that all of those adverse findings were well open to Judge Duff to make on the evidence, and were adequately reasoned, so that no arguable error of law had been demonstrated in relation to them. When A1 came to give evidence to Judge Lea, her assessment of the evidence was that there was no proper basis upon which she could revisit those findings so as to make different findings [28]. Mr Selway did not attempt to establish before me that this aspect of the assessment of the evidence was flawed in any way.

23. Accordingly the following findings of primary fact were made, and must stand;

    i) A1 had fabricated the claim to asylum that she advanced before Judge Duff, and which she had repeated before Judge Lea,

    ii) A1 was well educated in Pakistan at the expense of her family,

    iii) A1 had been employed as a teacher of English and Maths in Pakistan, something she could not have done without the approval of her family,

    iv) A1 travelled to the UK at the expense of her family, ostensibly to begin a course of higher education,

    v) A1 had lied about when she arrived in the UK, and the circumstances she had found herself in upon arrival,

    vi) A1 had not met Mr H by chance encounter upon arrival in the UK, but by pre-arrangement,

    vii) A1 had married Mr H, although it was unclear whether she had done so in Pakistan, or in the UK,

    viii) A1’s family had arranged for her to travel to the UK to live with Mr H as his wife, and,

    ix) A1 had conceived A2 with Mr H when she was in Pakistan.

24. It was a necessary consequence of these findings of fact that A1 had travelled to the UK, and had entered into her relationship of marriage with Mr H, with the full knowledge and approval of her family.

25. A1 had simply reiterated to Judge Lea the same evidence about the formation of her relationship with Mr H that she had advanced to Judge Duff, and which he had rejected. On the basis of the unchallenged findings of fact that had been made by Judge Duff, Judge Lea was bound to adopt them as her own starting point.

26. What then were the consequences for the claim by A1 that she faced a real risk of harm from either Mr H, or, from members of her own extended family?

27. First. These were claims made by a witness whose general credibility was very significantly damaged by her own history of telling lies to the Tribunal.

28. Second. The claim to face a risk of harm from members of her own family was not based upon the view they were said to hold of the breakdown of the relationship with Mr H, but rather upon A1s repeated claim to have entered into that relationship without their approval or consent. Thus the basis of that claim was untrue, because Judge Duff and Judge Lea had each concluded that she did have the approval and consent of her family to her entry into a marital relationship with Mr H. She had never suggested that there was an additional or freestanding risk because of the breakdown in the relationship with Mr H.

29. Third. A1 did not claim to face any risk of harm from the members of Mr H's extended family, and thus even if the Tribunal were to pose the question whether A1 did indeed face such a risk, it would be bound to conclude that she did not.

30. Fourth. Even if the Tribunal were to conclude in A1s favour that she was now telling the truth when she claimed to face an ongoing risk of harm from Mr H, it would be bound to conclude that there was no immediate risk from Mr H to the Appellants upon removal to Pakistan, because it was A1s case that Mr H was currently in detention in the UK.

31. Fifth. Even if the Tribunal were to look ahead in order to assess the position upon the release of Mr H from detention in the UK, or in the event of his removal from the UK to Pakistan as one without immigration status in the UK, and then (despite the credibility issues) to conclude in her favour that there was a real risk that he would attempt to cause harm to the Appellants, it would be bound to conclude in the light of the guidance to be found in SM (lone women – ostracism) Pakistan [2016] UKUT 67 that this was a risk that could either be avoided altogether by internal relocation, or, because the reality was that A1 could return to her family home and rely upon the support and protection of the male members of her own family either to deter Mr H entirely from further contact with the Appellants, or, to guard against any risk that he might pose to them.

32. A1 is exactly the sort of qualified, educated woman who would be able to secure well paid employment in a city and thus earn sufficient to be able to support from her own resources herself and her children. If she had the support of male members of her family it would not be unduly harsh for her to relocate within Pakistan to a city, if she wished to avoid any possibility of contact with Mr H. Even if her family would

not support her in doing so, she would have the opportunity of using either state run domestic violence shelters, or privately run shelters, whilst she established herself in a new city, and again it would not be unduly harsh to expect her to do so.

33. Moreover, the Tribunal would be obliged to take account of the existence of the financial and practical support that would be available to A1 through any current voluntary returns scheme; AN & SS (Tamils – Colombo – risk) Sri Lanka CG [2008] UKAIT 00063. In that decision the Tribunal held that it was appropriate to take into account the availability of financial support from the Respondent to a returnee, through the Voluntary Returns Programme;

> 1. *Much has been made of the undue harshness which AN will face as a single mother without accommodation or employment and without friends or family to turn to in Colombo, but this is to leave out of account what even Dr Smith acknowledges to be the very generous support package offered by the IOM to voluntary returnees. After "smoothing the re-entry process" the IOM provides "a comprehensive package of support for five years after arrival", which includes "five years shelter guaranteed." We do not think it is open to the appellant to say that, if she loses her appeal, she will not take advantage of this package, and to argue from that refusal that she will face destitution in Colombo which, accordingly, is not a place to which she can reasonably be expected to relocate.*

Conclusion

34. It follows in my judgement that there is no realistic prospect of the Tribunal reaching a different conclusion upon the Article 3 appeal. There is therefore no error of law that requires the decision to be set aside and remade.

DECISION

The decision of the First Tier Tribunal which was promulgated on 25 November 2014 contains no error of law in the decision to dismiss the Appellants' appeals which requires that decision to be set aside and remade, and it is accordingly confirmed.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 1 March 2016

Direction regarding anonymity – Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellants are granted anonymity throughout these proceedings. No report of these proceedings

shall directly or indirectly identify them. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 1 March 2016