



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05955/2016

THE IMMIGRATION ACTS

Heard at Field House
On 4th July 2017

Decision & Reasons Promulgated
On 10th July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AB
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer
For the Respondent: Mr G Franco, Counsel instructed by Schneider Goldstein Solicitors

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State I refer to the parties as they were in the First-tier Tribunal.

2. The Appellant, a national of Bangladesh, appealed to the First-tier Tribunal against a decision of the Secretary of State of 19th May 2016 to refuse her application for asylum. First-tier Tribunal Judge Beach allowed the appeal. The Secretary of State now appeals with permission to this Tribunal.

The Background

3. The Appellant entered the UK on 20th March 2013 with leave to enter as a visitor accompanied by her two children. She claims that her husband in Bangladesh was violent towards her and that she was in fear of him. She claims that after she entered the UK as a visitor she was staying with relatives and she entered into a relationship with another man within two weeks of arriving in the UK. She says that she ran away with this man from her cousin's house leaving her two daughters behind. She says that she became pregnant and had a son born in the UK on 21st March 2014. Her relationship with her boyfriend broke down. The Appellant says that she fears returning to Bangladesh with an illegitimate child. She claimed asylum on 31 October 2015.
4. The First-tier Tribunal Judge expressed concern about some of the Appellant's evidence. The judge noted that there were discrepancies in relation to the Appellant's evidence about how she obtained her visit visa application and the judge treated the Appellant's evidence with some caution because she had "*not hesitated to use dishonest conduct in the past*" [51]. The judge noted discrepancies between the Appellant's evidence as to the abuse she said she suffered from her husband and found that the Appellant's account of her husband's behaviour in Bangladesh was not credible [54]. However the judge went on to consider the Appellant's claim as to the relationship she entered into in the UK and the birth of her child in the UK in March 2014 and concluded that, although the Appellant's account of meeting someone within a few days of arrival in the UK and almost immediately running away with him and beginning a relationship seems incredible,;

"... I am left with little option but to accept that it must be a true account. The facts speak for themselves. The appellant has a young son who was born in March 2014 and who could not, therefore (given the timeline), be the child of her husband. I must therefore assess the risk to the Appellant returning to Bangladesh as (in effect) a single woman with an illegitimate child" [55].

5. The judge went on to find that it is likely that the Appellant's husband will have found out about her relationship and possibly about the birth of her child. The judge found that there is a reasonable likelihood that the Appellant's husband "*may have threatened*" the Appellant when he found out about her relationship [56]. The judge found that it is unlikely that the Appellant's husband will take her back given that she now has an illegitimate child from an extramarital relationship. The judge found that the Appellant would face "*ostracism and possibly worse*" from her community if she returned there. The judge found that the Appellant's husband may well seek to "*avenge himself on the Appellant for the dishonour which he may view her as bringing on him*". In light of the background evidence, the judge found that there would be a real

risk to the Appellant if she returned to her home area as a woman estranged from her husband with an illegitimate child [57].

6. The judge went on to find that the Appellant's husband did not have any influence outside of the home area and she went on to consider the reasonableness of internal relocation at paragraph 59. The judge found the Appellant would be returning to Bangladesh as a single woman with no apparent family support. She found that the Appellant would not have the funds to re-establish herself in business and would have to try to seek employment and as a single woman with a young son and limited education and concluded that it is likely that this would be extremely difficult for her. The judge found that the Appellant would face some societal discrimination and would struggle to provide for herself and her son with no male protector or kinship support. The judge concluded that the Appellant could not reasonably be expected to relocate within Bangladesh.

The Submissions

7. The Secretary of State's Grounds of Appeal to the Upper Tribunal contend that the judge made a material misdirection in failing to adequately apply the guidance issued by the Upper Tribunal in the case of **SA (divorced woman - illegitimate child) Bangladesh CG [2011] UKUT 00254**. It is contended that the judge made no clear finding or had given inadequate reasons in support of any conclusion that the Appellant would be at real risk of persecution. It is contended that the judge has given no adequate reasons for finding the core claim credible in light of the findings that the Appellant is not credible in relation to significant aspects of her claim. It is contended that no adequate reasons have been given for finding that the Appellant could not reasonably be expected to internally relocate and has failed in concluding that relocation is not available to apply the guidance in **SA**.
8. At the hearing before me Mr Tufan expanded upon the grounds highlighting that the judge made a plethora of negative credibility findings as to how the Appellant's husband treated her in Bangladesh and her involvement in the husband's work there. He pointed to the judge's concerns about the Appellant's evidence in light of her dishonesty in the past. He accepted that the judge made a positive finding in relation to the paternity of the child in light of the lack of evidence that the husband was in the UK at the time of conception. He noted that the judge had also found against the Appellant in relation to the husband's ability to find her if she were to return to Bangladesh. He submitted that, despite the findings against the Appellant in terms of credibility, from paragraph 59 onwards the judge found that it was not reasonable for the Appellant to relocate in Bangladesh and he submitted that this does not take account of the guidance in **SA**.
9. Mr Franco submitted that this Appellant would be returning to Bangladesh with a 3 year old child and as a result would have significant difficulties in relocating. It is not realistic that she would find employment in the garment industry as indicated as in the case of **SA**. She would be returning as a married woman with an illegitimate child, not a single or divorced woman. He submitted that it is clear from the decision

that the guidance in SA was very much to the forefront of the judge's mind. He noted that SA was relied upon in the submissions by the Presenting Officer [34] and the Appellant's representative [37] and by the judge at paragraph 49 where she set out the head note of SA. He submitted that at paragraph 55 the judge had noted that the Appellant would be returning as a single woman with an illegitimate child whereas in fact the Appellant would be returning as a separated married woman and would, in his submission, face a greater risk. He submitted that it is clear that the judge accepted that the Appellant's husband may have threatened her and set out the risks at paragraphs 56 and 57. He submitted that although the judge made negative credibility findings she made positive findings on key issues and that she therefore exercised her judicial function properly balancing and testing the evidence. It was open to the judge in his submission to conclude as she did. Although she made a finding in relation to dishonesty in relation to the Appellant and in relation to delay she found that this was not fatal [61]. The judge made findings in his submission on each issue. He submitted that there was some suggestion that people think that the Appellant has learning difficulties but the Appellant had not relied on this aspect and had not tried to exaggerate her case as she could have done.

10. Mr Franco relied on the Home Office instructions in relation to relocation. He relied on 'Bangladesh: background information, including actors of protection and internal relocation' November 2014 at paragraphs 1.26 and 1.27 which states:

"Careful consideration must be given to the relevance and reasonableness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular person. Case workers need to consider the ability of the persecutor to pursue the person in the proposed site of relocation, and whether effective protection is available in that area. Decision makers will also need to consider the age, gender, health, ethnicity, religion, financial circumstances and support network of the person, as well as the security, human rights and socio-economic conditions in the proposed area of relocation, including their ability to sustain themselves."

11. Mr Franco submitted that the judge had regard to all of these issues. The judge also looked at the country evidence in detail at page 8 of the decision. He submitted that this case does fall within the guidance in SA and the judge has sufficiently dealt with all of the issues.
12. In response Mr Tufan highlighted that when the Appellant made this application it was made by her and her then partner as a combined application but when the application was refused he left her. He questioned the exact factual scenario in this case.

Discussion

13. The conclusions of the Tribunal in the case of SA are summarised in the head note as follows:

- (1) *There is a high level of domestic violence in Bangladesh. Despite the efforts of the government to improve the situation, due to the disinclination of the police to act upon complaints, women subjected to domestic violence may not be able to obtain an effective measure of state protection by reason of the fact that they are women and may be able to show a risk of serious harm for a Refugee Convention reason. Each case, however, must be determined on its own facts.*
- (2) *Under Muslim law, as applicable in Bangladesh, the mother, or in her absence her own family members, has the right to custody of an illegitimate child.*
- (3) *In custody and contact disputes the decisions of the superior courts in Bangladesh indicate a fairly consistent trend to invoke the principle of the welfare of the child as an overriding factor, permitting departure from the applicable personal law but a mother may be disqualified from custody or contact by established allegations of immorality.*
- (4) *The mother of an illegitimate child may face social prejudice and discrimination if her circumstances and the fact of her having had an illegitimate child become known but she is not likely to be at a real risk of serious harm in urban centres by reason of that fact alone.*
- (5) *The divorced mother of an illegitimate child without family support on return to Bangladesh would be likely to have to endure a significant degree of hardship but she may well be able to obtain employment in the garment trade and obtain some sort of accommodation, albeit of a low standard. Some degree of rudimentary state aid would be available to her and she would be able to enrol her child in a state school. If in need of urgent assistance she would be able to seek temporary accommodation in a woman's shelter. The conditions which she would have to endure in re-establishing herself in Bangladesh would not as a general matter amount to persecution or a breach of her rights under article 3 of the ECHR. Each case, however, must be decided its own facts having regard to the particular circumstances and disabilities, if any, of the woman and the child concerned. Of course if such a woman were fleeing persecution in her own home area the test for internal relocation would be that of undue harshness and not a breach of her article 3 rights."*

14. In the body of the decision in **SA** the Tribunal makes a distinction between a woman with an illegitimate child who is married and one who is divorced at paragraph 82 which states as follows:

"82. It is important in our view to make a distinction between a woman with an illegitimate child who is married and one, like the appellant, who is divorced. The report by the United States Bureau of Citizenship and Immigration Services on the situation of women who have children who were born out of wedlock, dated 25th June 2001, referred to in the Refworld report which was relied on before the immigration judge but not referred to before us, quoted a research fellow at Harvard University stating that the safety of a woman in Bangladesh who had a child out of wedlock depended primarily on the woman's religion and secondarily on her economic status. If the woman was Muslim the very existence of the child proved the mother's adultery. In contrast to other countries, such as Saudi Arabia and Pakistan, where such a woman would be imprisoned and ostracised, in Bangladesh the situation depended on the woman's immediate family and on her class background. In the case of a married woman who bore a child out of wedlock there was the possibility of sanctuary for herself and her child if her own family was supportive and able to offer her protection against the danger of reprisal by her husband and her husband's family. The opinions expressed in that report were postulated on the basis that the woman had a husband rather than the woman having already been divorced. An ASK representative is reported as saying that a woman in Bangladesh who had an illegitimate child would most probably be treated as a social outcast depending on

her social status or monetary condition. She would be worse off if she came from a middle or lower middle income group as they were the most vulnerable to societal pressure and bore the brunt of failing to keep up a social façade.”

15. This information appears to distinguish between a married woman who bore a child out of wedlock and one who is divorced with an illegitimate child. It also highlights the prospect of the danger of reprisal by the woman’s husband and her husband’s family.
16. In this case the First-tier Tribunal Judge did not accept the Appellant’s account of previous domestic violence in Bangladesh but she did accept that the Appellant had had a child with another man in the UK. There is no evidence that the Appellant is divorced from her husband in Bangladesh. The judge found that the husband had threatened the Appellant [56] and that he may well seek to avenge himself on the Appellant for the dishonour which he may view her as bringing on him [57]. The judge found that the Appellant would be at real risk if she returned to her home area as a woman estranged from her husband with an illegitimate child [57]. I find that these are clear findings with adequate reasons which were open to the judge on the evidence. These are reasons for the conclusion at paragraphs 57 and 60 that the Appellant would be at risk in her home area. The guidance in SA is that there may not be a sufficiency of state protection in these circumstances.
17. The judge went on to consider the reasonableness of internal relocation. She took into account the factors set out at paragraph 59 of the decision. The Secretary of State complains that the judge failed to apply the guidance in SA. However the guidance at paragraph 5 of the head note of SA is clarified in the last sentence as being guidance in relation to whether or not there is a breach of an Appellant’s Article 3 rights in her home area. It is clear that this does not apply to an assessment of undue harshness in terms of internal relocation, this requires an assessment of the particular facts of the case. In assessing internal relocation it was up to the judge to decide on the facts whether it would be unreasonable to expect this Appellant to relocate within Bangladesh. I am satisfied that the conclusions reached by the judge in paragraph 59 were open to her on the basis of the evidence before her.
18. In conclusion I am satisfied that the judge properly applied the guidance in the case of SA. The judge reached conclusions open to her on the basis of the evidence in relation to risk on return to her home area in Bangladesh and the reasonableness of internal relocation within Bangladesh.

Notice of Decision

19. The decision of the First-tier Tribunal does not contain a material error of law.
20. The decision of the First-tier Tribunal shall stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 their 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.

Signed

Date: 8th July 2017

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 8th July 2017

Deputy Upper Tribunal Judge Grimes